EUROPEAN COMMISSION
DG Competition

Case M.9387 - ALLIED IRISH BANKS / FIRST DATA CORPORATION / SEMERAL

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 23/10/2019

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EUROPEAN COMMISSION

Brussels, 23.10.2019
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.9387 – Allied Irish Banks/First Data Corporation/Semeral 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]**

Dear Sir or Madam,

(1) On 18 September 2019, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Allied Irish Banks plc ("AIB", Ireland) and First Data Corporation ("FDC", USA) (together, the "Notifying Parties") will acquire joint control over Semeral Limited ("Semeral", Ireland). Semeral is the holding company of Payzone Ireland Limited ("Payzone", Ireland).[3] AIB, FDC, Semeral, and Payzone are designated hereinafter as the "Parties".

1. THE PARTIES

(2) AIB is a financial services group operating predominantly in Ireland and providing a range of banking, financial and related services to retail, business, and corporate

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 322, 26.9.2019, p. 6.

customers. FDC is active in electronic commerce and payment services for businesses worldwide. In Ireland, AIB and FDC jointly control AIBMS, a JV active in merchant acquiring and payment card processing services.[4]

(3) Semeral is a holding company controlled by The Carlyle Group (USA). Semeral controls Payzone, which operates a multi-channel consumer payments acceptance network in Ireland, predominantly focused on services that facilitate the payment of utility bills, transport-related charges, and pre-paid mobile top-ups.

2. THE CONCENTRATION

(4) The Notifying Parties signed a Share Purchase Agreement on 18 April 2019, by virtue of which the operation ("Transaction") will be structured as follows. First, [DETAILS OF JV STRUCTURE]. Augmentum would then acquire directly 100% of the shares of Semeral.

(5) Although Semeral has no activities other than being the holding company for Payzone, Payzone is a business with a market presence to which market turnover can be clearly attributed and hence, as clarified in paragraph 24 of the Consolidated Jurisdictional Notice ("CJN"),[5] it constitutes an undertaking within the meaning of the Merger Regulation.

(6) Following completion of the Transaction, the Notifying Parties would acquire joint control of Augmentum, Semeral, and Payzone. Post-Transaction, the Notifying Parties would jointly make decisions related to the strategic commercial conduct of each of Augmentum, Semeral, and Payzone. [DETAILS OF JV STRUCTURE].[6]

(7) As neither of the Notifying Parties exerted previously any form of control over Semeral (or Payzone), the transaction qualifies as an acquisition of control by third parties pursuant to paragraph 91 of the CJN.

(8) In light of the above, the transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

(9) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[7] (AIB: EUR 2 874 million; FDC: EUR 7 349 million; Payzone: EUR […] million). Two of them have an EU-wide turnover in excess of EUR 250 million (AIB: EUR 2 874 million; FDC: EUR […] million). AIB and Payzone achieve more than two thirds of their aggregate EU-wide turnover in Ireland, but FDC does not.

(10) The notified operation therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

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4 See Case M.4814, *AIB/FDC/JV*.

5 Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ C 95, 16.2.2008, p.9)

6 Stakeholders Agreement (17 April 2019), clauses 2.8(a)(i) and 2.8(a)(ii), and Schedule 1.

7 Turnover calculated in accordance with Article 5 of the Merger Regulation.

4. RELEVANT MARKETS

4.1. Supply of POS terminals to merchants

4.1.1. Product market definition

(11) A POS terminal (or "POS") is the electronic device used to process card payments at the merchant's location. It is a necessary element for physical card based transactions. POS terminals are either sold or leased to merchants. POS terminals are supplied either together with the merchant acquiring services or on a standalone basis.

(12) There are different types of POS terminals: traditional POS terminals and mobile POS (or "mPOS") card readers. Traditional POS terminals connect to the merchant acquirer's system through the merchant's fixed telephone line, through broadband (via fixed cable or WiFi) or through the mobile telephone network. mPOS card readers connect to the merchant's mobile device (smartphone or tablet) via Bluetooth and an app on that mobile device then connects to the merchant acquirer.[8] POS terminals are used by merchants of different sizes.[9]

(13) In *FIS/Worldpay*, the Commission considered a separate product market for the supply of POS terminals to merchants.[10] The Commission left open the question whether a possible relevant market for the supply of POS terminals should be sub-segmented by type of POS device or based on the size of the POS terminal customers.[11]

(14) In this case, the Notifying Parties submit that the market for supply of POS terminals should not be further sub-segmented, by device type or by merchant size.

(15) For the purposes of the present decision, the exact product market definition can be left open since the Transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible definition (i.e., supply of POS to all merchants; supply of traditional POS to merchants; supply of POS to large merchants; supply of POS to medium-sized merchants; supply of POS to smaller merchants).

4.1.2. Geographic market definition

(16) In its decisional practice, the Commission considered that the market for supply of POS to merchants is likely national in scope but eventually left the question open.[12]

(17) In this case, the Notifying Parties submit that the market for POS terminals could be broader than national and cover a territory including Ireland and the UK, because

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8 Case M.9357, *FIS/Worldpay*, para. 28.

9 See Case M.9357, *FIS/Worldpay*, para. 34, where, by reference to the UK, the Parties defined smaller merchants as all merchants with an annual total payments volume ("TPV") below GBP 380 000; medium-sized merchants as all merchants with an annual TPV between GBP 380 000 and GBP 1 million; and large merchants as all merchants with an annual TPV exceeding GBP 1 million.

10 Case M.9357, *FIS/Worldpay*, paras. 36-38. See also Case M.7873, *Worldline/Equens/Paysquare*, paras. 62-69.

11 Case M.9357, *FIS/Worldpay*, para. 38.

12 Case M.9357, *FIS/Worldpay*, para. 41 and M.7873, *Worldline/Equens/Paysquare*, paras. 128ff.

sales/leases are completed remotely and providers can offer support services in both countries in the same language.

(18) For the purposes of the present decision, the exact geographic market definition for the supply of POS to merchants can be left open, since the Transaction does not give rise to serious doubts as to its compatibility with the internal market even under the narrowest plausible geographic market definition, i.e. at national level in Ireland.[13]

4.2. Top-ups for pre-paid mobile telecommunication services

4.2.1. Product market definition

(19) Retail mobile telecommunication services include the delivery of voice and data services to end customers via a mobile network.[14] Mobile Network Operators ("MNOs") and to Virtual Mobile Network Operators ("MVNOs") can offer such services either on a post-paid basis (where customers enter a long-term contract and receive a monthly bill) or on a pre-paid basis (where customers advance purchase credit to use their mobile phone).

(20) Customers of pre-paid mobile telecommunication services need to purchase credit (or "top up" their phone) regularly. MNOs/MVNOs offer in-house top-up capabilities but they also rely on third party services which provide additional top-up options. MNOs/MVNOs remunerate the third parties to use their top-up services.

(21) Customers who want to top up their mobile phones can do so through two channels: (i) the *customer-present* channel and (ii) the *customer-not-present* channel. In more detail:

(a) *Customer-present channel*. This channel allows customers to top up their mobile phone by visiting a retail store of the MNO/MVNO or by purchasing vouchers in a retail outlet; and

(b) *Customer-not-present channel*. This channel allows customers to top up their mobile phone by calling or texting a dedicated number provided by the MNO/MVNO; by using the app or the website of the MNO/MVNO (using a payment card); or via their bank account using online banking or the bank app or at an ATM.

(22) In past decisions, the Commission defined a market for retail mobile telecommunication services.[15] The Commission has not assessed top-ups for pre-paid mobile telecommunication services in its previous decisional practice.[16]

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[13] According to the Parties, the market for supply of POS terminals to merchants (under all possible sub-segmentations) would not be affected by the Transaction under any plausible geographic market definition wider than Ireland. See reply to RFI 6, 22 October 2019.

[14] Case M.6992, *Hutchinson 3G UK/Telefonica Ireland*, para. 141, with references to previous decisions.

[15] Case M.6992, *Hutchinson 3G UK/Telefonica Ireland*, para. 141, with references to previous decisions. The Commission argued that this market should not be further sub-divided into a post-paid and a pre-paid segment (see Case M.6992, *Hutchinson 3G UK/Telefonica Ireland*, paras. 142-143). Top-ups are not required for post-paid mobile telecommunication services and as such, these services are not relevant for the assessment of the plausible product markets in this case.

[16] In Case ME/659/18, *Post Office Limited/Payzone Bill Payments Limited*, the CMA considered that mobile top-ups constitute a separate market which is different from other business payment systems but

(23) In this case, the Notifying Parties submit that there is a relevant market for top-ups for pre-paid mobile telecommunication services, which is separate from the market for retail mobile telecommunication services. The Notifying Parties also stress the differences between top-ups through the customer-present channel and through the customer-not-present channel. In any event, the Notifying Parties take the view that it can be left open whether the relevant market includes all top-up services for pre-paid mobile telecommunication services or there are separate markets for customer-present top-ups and customer-not-present top-ups.

(24) The Commission's market investigation suggests that top-ups through the customer-present and the customer-not-present channels are not substitutable for the following reasons:

(a) The vast majority of MNOs/MVNOs need (and have) access to both channels to distribute pre-paid mobile telecommunication services to end customers and compete effectively. As an MNO/MVNO explained: "*ceasing to offer top-ups through any of the existing channels would be a risk for [the MNO/MVNO] as it would trigger customer frustration/risk churn/NPS ramifications*"[17].

(b) According to most MNOs/MVNOs, customers are unlikely to switch between channels. As one MNO/MVNO put it, "*customers who choose one method usually stick with it*".[18] Another MNO/MVNO added: "*... the majority of customers tend to use the same method for topping up as the method they began the usage journey with, to a large extent using the same retail outlet continuously for example*".[19] An internal document of AIB confirmed that "[…]";[20] and

(c) There are important technical differences between the customer-present and the customer-not-present channels, which means that suppliers could not readily switch or expand from one to the other. With the exception of the MNO/MVNOs' own capabilities, there are no suppliers who are active in both channels in Ireland today.[21]

(25) In any event, even if all top-up solutions for pre-paid mobile telecommunication services in Ireland were considered to belong to one single market, this would be a highly differentiated market, as it would include two distinct and very dissimilar channels, i.e., the customer-not-present and the customer-present channel, which do not compete closely.

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eventually left the issue open (see paras. 49-52). This market would correspond to customer-present top-ups for pre-paid mobile telecommunication services.

17 MNO/MVNO's email of 23 August 2019, in response to questionnaire of 16 August 2019, Doc ID 65 ("NPS" refers to the Net Promoter Score, a customer satisfaction index). In the same vein, MNO/MVNO's email of 23 August 2019, in response to questionnaire of 16 August 2019, Doc ID 66 and MNO/MVNO's email of 20 August 2019, in response to questionnaire of 16 August 2019, Doc ID 40.

18 MNO/MVNO's email of 23 August 2019, in response to questionnaire of 16 August 2019, Doc ID 57 and in the same vein, MNO/MVNO's email of 23 August 2019, in response to questionnaire of 16 August 2019, Doc ID 62.

19 MNO/MVNO's email of 23 August 2019, in response to questionnaire of 16 August 2019, Doc ID 62.

20 [INTERNAL DOCUMENT], provided as Form CO, Attachment H-1.

21 See Tables 2 and 3 below.

(26) For the purposes of this decision, the exact product market definition can be left open since the Transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible definition (all top-ups for pre-paid mobile telecommunication services; customer-present top-ups for pre-paid mobile telecommunication services; customer-not-present top-ups for pre-paid mobile telecommunication services).

4.2.2. Geographic market definition

(27) In *Hutchinson 3G UK/Telefonica Ireland*, the Commission concluded that the relevant geographic market for retail mobile telecommunication services is national in scope because of the national licences required for MNOs to operate and grant access to their networks.[22]

(28) Consistent with this precedent, the Notifying Parties submit that the geographic scope of the market for top-ups for retail mobile telecommunication services is also national.

(29) In this case, the market investigation did not provide any indications that would require the Commission to depart from its precedents. In any event, the exact geographic market definition for this market can be left open, since the Transaction does not give rise to serious doubts as to its compatibility with the internal market even under the narrowest plausible geographic market definition, i.e. at national level in Ireland.[23]

4.3. Merchant acquiring (downstream market)

4.3.1. Product market definition

(30) Merchant acquirers offer services that enable merchants to accept card payment transactions by connecting them to a range of card schemes and by providing solutions to process card payment transactions.[24]

(31) The Commission has previously defined a relevant product market for merchant acquiring services. The Commission has also considered separate plausible markets for merchant acquiring services based on (i) the payment card scheme (merchant acquiring for domestic or international card schemes); (ii) the payment card brand (merchant acquiring for VISA or Mastercard card schemes); (iii) the payment card type (merchant acquiring for credit or debit cards); and (iv) the payment platform (merchant acquiring through physical POS terminals or online).[25]

(32) In this case, the Notifying Parties submit that it is not appropriate to define separate markets for merchant acquiring services based on the payment card brand; the payment card type; or the payment platform. The Notifying Parties add that there is no domestic payment scheme in Ireland and a market delineation based on the payment card scheme would not be appropriate in this country.

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22 Case M.6992, *Hutchinson 3G UK/Telefonica Ireland*, para. 164.

23 According to the Parties, a plausible market including all top-ups for pre-paid mobile telecommunication services would not be affected by the Transaction under any plausible geographic market definition wider than Ireland. See reply to RFI 6, 22 October 2019.

24 Case M.9357, *FIS/Worldpay*, para. 14.

25 Case M.9357, *FIS/Worldpay*, paras. 16-21 with references to earlier Commission decisions.

(33) For the purposes of this decision, the exact product market definition for merchant acquiring can be left open since the Transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible definition (i.e. merchant acquiring; merchant acquiring for Visa card transactions; merchant acquiring for MasterCard transactions; merchant acquiring for credit card transactions; merchant acquiring for debit card transactions; merchant acquiring for payments made through physical POS terminals; and merchant acquiring for payments made through web-enabled interfaces).

4.3.2. Geographic market definition

(34) In past decisions, the Commission has considered the market for merchant acquiring to be likely national in scope, irrespective of the type of card, the card scheme or the card brand that merchant acquiring services concern.[26] The precise scope of the geographic market definition was ultimately left open.[27]

(35) In this case, the Notifying Parties did not depart from the Commission's precedents as regards geographic market definition for merchant acquiring.

(36) For the purposes of the present decision, the exact geographic scope of the market for merchant acquiring can be left open since the Transaction does not give rise to serious doubts as to its compatibility with the internal market even under the narrowest plausible geographic market definition, i.e. at national level in Ireland.[28]

4.4. Provision of ISO services (upstream market)

4.4.1. Product market definition

(37) Merchant acquirers often use their in-house sales teams to identify and sign up new customers (merchants). Merchant acquirers can also outsource new customer recruitment to third parties, namely, independent service organisations or ISOs.[29] A merchant acquirer may use one or more ISOs concurrently. Sometimes, merchant acquirers may recruit merchants both directly and via ISOs. Even when a merchant is recruited through the ISO, the contractual relationship for the provision of merchant acquiring services remains between the merchant and the merchant acquirer. ISOs are focused solely on recruiting, onboarding and supporting new merchants.

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26 See e.g., M.6956, *Telefonica/Caixabank/Banco Santander*, para. 49 and M.5241, *American Express/Fortis/Alpha Card*, para. 30. See also M.7241, *Advent International/Bain Capital Investors/Nets Holding*, para. 30, where the Commission considered that the market for merchant acquiring services for all plausible market segmentations, except web-enabled transactions, is most likely national in scope, whereas the market for merchant acquiring services for payments made through web-enabled interfaces would be at least EEA-wide.

27 Cases M.9357, *FIS/Worldpay*, paras. 25-26, M.7950, *EGB/GP*, paras. 32 and 38, M.7873, *Worldline/Equens/Paysquare*, para. 108, and M.7241, *Advent International/Bain Capital Investors/Nets Holding*, paras. 23ff.

28 According to the Parties, the market for merchant acquiring services (under all possible sub-segmentations) would not be affected by the Transaction under any plausible geographic market definition wider than Ireland. See reply to RFI 6, 22 October 2019.

29 Case M.9357, *FIS/Worldpay*, para. 42.

(38) The Commission has previously considered a separate relevant product market for the provision of ISO services in *FIS/Worldpay*.[30] The Commission eventually left open the question whether ISO services should be sub-segmented by type of associated merchant acquiring services.

(39) The Notifying Parties consider that ISO services and merchant acquiring services belong to the same relevant product market. According to the Notifying Parties, "*ISOs and merchant acquirers offer the same fundamental service, i.e., the ability to accept card payments... [W]hile ISOs... effectively operate as a reseller of a merchant acquirer's services, ISOs and merchant acquirers do compete directly for merchants...*".[31] Having said this, the Notifying Parties also consider a separate plausible relevant market including only the provision of ISO services (and excluding merchant acquiring services).[32] In any event, the Notifying Parties submit that the precise product market definition can be left open, as the Transaction does not give rise to competition concerns under any plausible market delineation.

(40) Consistent with its decision in *FIS/Worldpay*, the Commission considers that ISO services and merchant acquiring services do not belong to the same market. This is in line with the Notifying Parties' claim that *"the ISO acts as the representative of their merchant acquirer partner... regardless of whether the merchant is recruited directly by the merchant acquirer or indirectly on behalf of the merchant acquirer by an ISO, merchants enter into merchant acquiring contracts only with merchant acquirers."*[33] This means that merchant acquiring services (the basis of an ISO's offering to merchants) are controlled by merchant acquirers, not by ISOs themselves. What is more, ISOs have a contractual relationship with and are remunerated by the merchant acquirer – not the merchant directly.[34]

(41) For the purposes of this decision, it can be left open whether this separate market for ISO services should be sub-segmented further, since the Transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible definition (all ISO services; ISO services market split by type of associated merchant acquiring services).

4.4.2. Geographic market definition

(42) In *FIS/Worldpay*, the Commission left the geographic market definition for ISO services open given that the transaction did not raise any issues even at the narrowest plausible geographic market definition (i.e., at national level).[35]

(43) The Notifying Parties submit that the geographic market scope for the provision of ISO services is national, but that given that the transaction does not present any competition concerns, the exact definition can be left open.

(44) For the purposes of the present decision, the exact geographic scope of the market for ISO services can be left open since the Transaction does not give rise to serious

30 Case M.9357, *FIS/Worldpay*, para. 46.

31 Form CO, para. 6.139.

32 The Notifying Parties take the view that a plausible market for the provision of ISO services should not be sub-segmented by type of associated merchant acquiring services.

33 Form CO, paras. 6.24 and 6.139.

34 Case M.9357, *FIS/Worldpay*, para. 42.

35 Case M.9357, *FIS/Worldpay*, para. 49.

doubts as to its compatibility with the internal market even under the narrowest plausible geographic market definition, i.e. at national level in Ireland.[36]

5. COMPETITIVE ASSESSMENT

5.1. Introduction

(45) Article 2 of the Merger Regulation requires the Commission to examine whether notified concentrations are compatible with the internal market, by assessing whether they would significantly impede effective competition in the internal market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position.

(46) A merger giving rise to a significant impediment of effective competition may do so as a result of the creation or strengthening of a dominant position in the relevant market(s). Moreover, mergers in oligopolistic markets involving the elimination of important constraints that the parties previously exerted on each other, together with a reduction of competitive pressure on the remaining competitors, may also result in a significant impediment to effective competition, even in the absence of dominance.[37]

(47) The Commission Guidelines on the assessment of horizontal mergers under the Merger Regulation (the "Horizontal Merger Guidelines")[38] describe horizontal non-coordinated effects as follows: "*A merger may significantly impede effective competition in a market by removing important competitive constraints on one or more sellers who consequently have increased market power. The most direct effect of the merger will be the loss of competition between the merging firms. For example, if prior to the merger one of the merging firms had raised its price, it would have lost some sales to the other merging firm. The merger removes this particular constraint. Non-merging firms in the same market can also benefit from the reduction of competitive pressure that results from the merger, since the merging firms' price increase may switch some demand to the rival firms, which, in turn, may find it profitable to increase their prices. The reduction in these competitive constraints could lead to significant price increases in the relevant market.*"[39]

(48) The Horizontal Merger Guidelines list a number of factors which may influence whether or not significant non-coordinated effects are likely to result from a merger, such as the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers, or the fact that the merger would eliminate an important competitive force.[40] That list of factors applies equally regardless of whether a merger would create or strengthen a dominant position, or would otherwise significantly impede effective competition due to non-coordinated effects. Furthermore, not all of these factors need to be

36 According to the Parties, the market for ISO services (under all possible sub-segmentations) would not be affected by the Transaction under any plausible geographic market definition wider than Ireland. See reply to RFI 6, 22 October 2019.

37 Horizontal Merger Guidelines, para. 25.

38 OJ C 31, 5.2.2004, p. 5.

39 Horizontal Merger Guidelines, para. 24.

40 Horizontal Merger Guidelines, paras. 27 and following.

present for significant non-coordinated effects to be likely. The list of factors, each of which is not necessarily decisive in its own right, is also not an exhaustive list.[41]

(49) Finally, the Horizontal Merger Guidelines describe a number of factors, which could counteract the harmful effects of the merger on competition, including the likelihood of buyer power, the entry of new competitors on the market, and efficiencies.

(50) In addition, the Commission Guidelines on the assessment of non-horizontal mergers under the Merger Regulation (the "Non-horizontal Merger Guidelines") distinguish between two main ways in which vertical mergers may significantly impede effective competition, namely input foreclosure and customer foreclosure.[42]

(51) For a transaction to raise input foreclosure competition concerns, the merged entity must have a significant degree of market power upstream.[43] In assessing the likelihood of an anticompetitive input foreclosure strategy, the Commission has to examine (i) whether the merged entity would have the ability to substantially foreclose access to inputs; (ii) whether it would have the incentive to do so; and (iii) whether a foreclosure strategy would have a significant detrimental effect on competition downstream.[44]

(52) For a transaction to raise customer foreclosure competition concerns, the merged entity must be an important customer with a significant degree of market power in the downstream market.[45] In assessing the likelihood of an anticompetitive customer foreclosure strategy, the Commission has to examine (i) whether the merged entity would have the ability to foreclose access to downstream markets by reducing its purchases from upstream rivals; (ii) whether it would have the incentive to do so; and (iii) whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market.[46]

5.2. Overview of Affected Markets

(53) The Transaction gives rise to limited horizontal and vertical overlaps. The Transaction results in two horizontally affected markets, namely (i) the supply of POS terminals to merchants, where Payzone, FDC, and AIBMS are active and (ii) top-ups for pre-paid mobile telecommunication services that AIB and Payzone offer to MNOs/MVNOs. The Transaction also gives rise to a vertical link which results in two affected markets: (i) ISO services provided by Payzone (upstream) and (ii) merchant acquiring services provided by AIBMS and FDC (downstream).[47]

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41 Horizontal Merger Guidelines, paras. 24-38.

42 OJ L 24, 29.1.2004, p. 1.

43 Non-horizontal Merger Guidelines, para. 35.

44 Non-horizontal Merger Guidelines, para. 32.

45 Non-horizontal Merger Guidelines, para. 61.

46 Non-horizontal Merger Guidelines, para. 59.

47 The Transaction also gives rise to a vertical link between (i) manufacture of POS terminals and supply to intermediaries where FDC is active (upstream) and (ii) supply of POS terminals to merchants where Payzone, AIBMS, and FDC are active (downstream). Both FDC’s share in the upstream market and the combined share of Payzone, AIBMS, and FDC in the downstream market are below 30%. Thus, these markets are not vertically affected by the Transaction.

5.3. Supply of POS terminals to merchants in Ireland

(54) AIBMS, FDC, and Payzone each offer POS terminals to merchants in Ireland. AIBMS sources POS terminals from [SUPPLY SOURCE]. FDC mainly supplies POS terminals under the Clover brand that it manufactures itself. FDC also supplies a limited number of POS terminals sourced from [SUPPLY SOURCE]. Payzone supplies POS terminals it sources from [SUPPLY SOURCE].

(55) In a plausible market including the supply of all POS terminals to all merchants in Ireland, the combined entity would hold a combined share of [20-30]% (in terms of installed base of POS). The Transaction does not raise concerns because, as shown in Table 1 below, the combined share of the Parties remains below 25%[48] and the share increment contributed by Payzone is limited ([0-5]%, with an HHI delta of [below 150]).[49]

Table 1 – Supply of POS terminals – Ireland (2018) Installed Base of POS terminals				
FDC	**AIBMS**	**Payzone**	**Key Rivals (>5% Share)**	**Other Rivals**
[10-20]%	[5-10]%	[0-5]%	Worldpay ([10-20]%), SumUp ([10-20]%), Elavon ([10-20]%), Barclays ([5-10]%)	BOIPA ([0-5]%), Paymentsense/Valitor ([0-5]%), Postpoint ([0-5]%), Swedbank ([0-5]%), Others ([5-10]%)

Source: Parties' estimates – Form CO Table 6.8

(56) Moreover, post-Transaction, the combined entity would continue to face competitive constraints from several players, including merchant acquirers (e.g., Elavon, Worldpay, Barclays) and other competitors (e.g., SumUp, BOIPA, Paymentsense/Valitor, Postpoint, and Swedbank).

(57) Finally, the Parties do not compete closely in terms of their POS offering. AIBMS and Payzone only supply POS terminals to merchants who also purchase merchant acquiring services from AIBMS, while FDC offers some POS terminals […]. FDC mainly supplies the POS terminals it manufactures itself (under the Clover brand), while AIBMS and Payzone source POS terminals from third parties ([SUPPLY SOURCE] and [SUPPLY SOURCE], respectively).[50]

(58) In light of the above considerations, the Commission concludes that the Transaction does not give rise to serious doubts as to its compatibility with the internal market in the plausible market for the supply of POS terminals to merchants in Ireland.

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48 *Cf.* Horizontal Merger Guidelines, para. 18.

49 The Parties confirmed that if the market were sub-segmented according to the size of the merchant, the combined entity's market shares would remain below 25% and the increment provided by Payzone would remain below 5% in merchant acquiring services to larger merchants; in merchant acquiring services to medium-sized merchants; and in merchant acquiring services to smaller merchants. The Parties defined the three categories of merchants along the lines of the definition used in Case M.9357, *FIS/Worldpay* (see fn. 9 above). The Parties also confirmed that their combined share and the increment contributed by Payzone would be comparable in a plausible market for the supply of traditional POS to merchants in Ireland (i.e., excluding mPOS).

50 See Reply of the Notifying Parties to RFI 5, 9 October 2019, Table 5.1.

5.4. Top-ups for pre-paid mobile telecommunication services in Ireland

(59) Regarding top-ups for pre-paid mobile telecommunication services in Ireland, AIB offers top-up solutions to its registered banking customers through its website; through its banking app; by text or call using AIB's banking phone service; or at an AIB ATM. Payzone offers top-up services exclusively through physical vouchers, purchased in a retailer outlet.

(60) Thus, AIB is active only in the customer-not-present channel while Payzone is active only in the customer-present channel. The Transaction would result in an affected market only if the two channels were considered to form part of one single market, i.e., the market for top-ups for pre-paid mobile telecommunication services.[51] Such a market including all top-ups for pre-paid mobile telecommunication services would be highly differentiated, as it would include two distinct and very dissimilar channels, i.e., the customer-not-present and the customer-present channel, which do not compete closely.[52]

(61) In this plausible market, as shown in Table 2 below, the combined entity would hold a combined share of [50-60]%, with an increment of [10-20]% contributed by AIB.

Table 2 – Top-ups for pre-paid mobile telecommunication services - Ireland (2018) Value of Top-ups		
Supplier	**Channel**	**Estimated share**
Payzone	Customer-present channel (vouchers)	[30-40]%
AIB	Customer-not-present channel (bank app, website, ATMs)	[10-20]%
Combined		**[50-60]%**
PostPoint	Customer-present channel (vouchers)	[10-20]%
BOI permanent tsb	Customer-not-present channel (bank app, website)	[10-20]%
MNOs/MVNOs	Customer-not-present channel (phone, text, app, website) and Customer-present channel (retail shop)	[10-20]%
EPay	Customer-present channel (vouchers)	[5-10]%
Omnivend	Customer-present channel (vouchers)	[0-5]%
Total		100%

Source: Parties' estimates - Form CO, Table 6.11

(62) Despite the Parties' significant combined share in top-ups for pre-paid mobile telecommunication services, the market investigation suggested that the Transaction

51 The market investigation provided strong indications that customer-present top-ups and customer-not-present top-ups do not belong to the same relevant product market but the precise market delineation is ultimately left open for the purposes of this decision. See paras. (24) and (25) above.

52 See in more detail paras. (63)ff. below.

would not give rise to competition concerns in this market for the reasons discussed below.

5.4.1. The Parties are distant competitors

(63) The Parties offer different top-up solutions that cater for the needs of different end customers. For instance, while any customer can purchase the top-up vouchers offered by Payzone, only customers with an AIB bank account can use its top-up capabilities. An internal document of AIB confirmed that "[…]".[53] An MNO/MVNO explained: "*if a sim card was purchased in a retail environment [end-customers] are likely to top up in a retail environment. Customers who purchased through a website would likely continue to do so, and the bank account option... would refer to a younger demographic who are more inclined to use their apps to do general business*".[54] The market investigation also suggested that customers of each segment rarely switch between pre-paid distribution channels.[55] Therefore, the solutions of AIB and Payzone do not compete closely for the same type of end-customers.

(64) During the market investigation, MNO/MVNOs confirmed that when negotiating with Payzone fees for top-up services, they do not use as benchmark the fees offered to AIB and other players in the customer-not-present channel. A reason for this is that Payzone (like other customer-present actors) follows a different cost structure than customer-not-present competitors, because [DETAILS OF PAYZONE'S COST STRUCTURE].[56] MNO/MVNOs added that when negotiating with AIB the fee for top-up services, they also do not use as benchmark the fees offered to Payzone and other players in the customer-present channel.[57]

53 [INTERNAL DOCUMENT], provided as Form CO, Attachment H-1 (emphasis added).

54 MNO/MVNO's email of 23 August 2019, in response to questionnaire of 16 August 2019, Doc ID 62.

55 MNO/MVNO's email of 23 August 2019, in response to questionnaire of 16 August 2019, Doc ID 57 and in the same vein, MNO/MVNO's email of 23 August 2019, in response to questionnaire of 16 August 2019, Doc ID 62.

56 Minutes of call with MNO/MVNO, 12 September 2019, para. 7.b.

57 Minutes of call with MNO/MVNO, 12 September 2019, para. 7.a.

(65) Rather, each of AIB and Payzone compete more closely with other rivals than with each other:

(a) Payzone's top-up solution competes closely with the other services in the customer-present channel. Vodafone, Three, and eir (which together account for approximately 90% of all mobile telecommunication services in Ireland) use top-up vouchers not just from Payzone, but also from PostPoint and Euronet (epay). Payzone also competes with the (customer-present and customer-not-present) top-up options that the MNOs/MVNOs themselves offer.[58] As one MNO/MVNO put it during the market investigation: "*the customers abandoning the voucher channel started using [the MNO/MVNO's] own top-up capabilities (online and in-store)*".[59]

(b) AIB's top-up solutions compete closely with the (customer-not-present) top-up options that the MNOs/MVNOs themselves offer.[60] Both the banking top-ups and the MNO/MVNO own tools are predominantly online solutions, based on apps and websites. According to one MNO/MVNO, there is "*more interchangeability between top-ups through digital channels offered by MNOs/MVNOs and banks (including websites and apps), and less interchangeability between voucher top-ups and top-ups through digital channels*"[61].

(66) Finally, in the past 5 years, the percentage of mobile subscribers in Ireland using pre-paid services has declined by 11%,[62] while the percentage of post-paid retail mobile subscribers in Ireland has increased. The Notifying Parties recognize that for the […]."[63] The market investigation suggested that this is particularly true for customers using the voucher channel.[64] […].[65] This further confirms the lack of competitive closeness between the top-up solutions of AIB and Payzone.

5.4.2. Customers of pre-paid top-up solutions (MNOs/MVNOs) multi-home and have countervailing buyer power

(67) As shown in Table 3 below, most MNOs/MVNOs active in Ireland use several solutions to offer top-ups for pre-paid mobile telecommunication services to their

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58 Indeed, the MNOs/MVNOs have every incentive to encourage subscribers who switch away from Payzone's solutions to use the MNO/MVNO top-up capabilities. *First*, this would allow the MNOs/MVNOs to retain the commission that would otherwise have to be paid to a third party. *Second*, supplying customers directly may provide MNOs/MVNOs with additional insights into their customer base, including customer profiles and usage patterns. *Third*, their own top-up methods provide MNOs/MVNOs with an additional opportunity to distribute promotional material and advertisements to their customers (see Reply of the Notifying Parties to RFI 5, 9 October 2019, para. 7.3).

59 Minutes of call with MNO/MVNO, 12 September 2019, para. 5.

60 Minutes of call with MNO/MVNO, 12 September 2019, para. 6. See also fn. 58 above regarding the MNOs/MVNOs' incentives.

61 MNO/MVNO's email of 23 August 2019, in response to questionnaire of 16 August 2019, Doc ID 65.

62 See Form CO, fn. 80.

63 [INTERNAL DOCUMENT], provided as Form CO, Attachment I-2.

64 Minutes of call with MNO/MVNO, 10 September 2019, 5.

65 [INTERNAL DOCUMENT], provided as Form CO, Attachment H-1, p. 114, which identifies as the main risk for Payzone the […].

end customers. None of the MNOs/MVNOs use Payzone and AIB as their only top-up options.

Table 3 - Mobile top-up services used by MNOs/MVNOs – Ireland (2018)								
Channel	**Supplier**	**Vodafone**	**Three**	**eir**	**Lyca Mobile**	**Tesco Mobile**	**Virgin Mobile**	**Post Mobile**
Customer-not-present and Customer-present channel	Own capabilities	✓	✓	✓	✓	✓	✓	✓
Customer-not-present channel	AIB	✓	✓	✓		✓		
	BOI	✓	✓	✓				
	permanent tsb	✓	✓					
Customer-present channel	Payzone	✓	✓	✓	✓	✓		✓
	PostPoint	✓	✓	✓		✓		✓
	EPay	✓	✓	✓		✓		
	Omnivend	✓	✓		✓	✓		

Source: Parties' analysis – Form CO, Table 6.12

(68) MNO/MVNOs appear to be sophisticated customers with negotiating power. The most recent negotiations between MNOs and MVNOs and the Parties confirm this. […].[66] […].[67] […].[68]

(69) Finally, in the course of the market investigation, the MNO/MVNOs confirmed that if the combined entity tried to increase the fees it charges for its (customer-present or customer-not-present) top-up solutions, they would encourage customers to switch to in-house top-up capabilities or to post-paid contracts,[69] although it would be difficult to abandon the banking or the voucher top-up channels altogether. The Notifying Parties' internal documents also indicate that […].[70]

5.4.3. The Transaction did not raise concerns for the majority of market participants

(70) The market investigation reached six out of seven MNOs/MVNOs active in Ireland. The majority of MNOs/MVNOs that responded confirmed that the Transaction does not give rise to competition concerns regarding top-ups for pre-paid mobile telecommunication services in Ireland.[71]

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66 [INTERNAL DOCUMENT], provided as Form CO, Attachment I-3, p. 1.

67 [INTERNAL DOCUMENT], provided as Form CO, Attachment I-3.

68 See MNO/MVNO's email of 23 August 2019, in response to questionnaire of 16 August 2019.

69 Minutes of call with MNO/MVNO, 10 September 2019, para. 11; minutes of call with MNO/MVNO, 12 September 2019, para. 8; MNO/MVNO's email of 23 August 2019, in response to questionnaire of 16 August 2019, Doc ID 57.

70 [INTERNAL DOCUMENT], provided as Form CO, Attachment I-2.

71 E-mail responses by MNO/MVNOs to questionnaire of 16 August, 2019.

5.4.4. Conclusion

(71) In light of the above considerations, the Commission concludes that the Transaction does not give rise to serious doubts as to its compatibility with the internal market in the plausible market for top-ups for mobile telecommunication services in Ireland.

5.5. ISO Services in Ireland (Upstream) – Merchant Acquiring Services in Ireland (Downstream)

(72) AIBMS and FDC offer merchant acquiring services in Ireland, holding a combined share of [30-40]% (by value of transactions) and [30-40]% (by volume of transactions) in 2018 in the relevant market for merchant acquiring services.[72] Payzone offers ISO services only to AIBMS in Ireland, and it holds a share of [30-40]% (by value of transactions) and [50-60]% (by volume of transactions) in the market for ISO services in Ireland.[73]

(73) The Transaction does not give rise to competition concerns regarding the vertical link between the upstream market for ISO services in Ireland and the downstream market for merchant acquiring services in Ireland for the reasons explained below.[74]

5.5.1. Input foreclosure

(74) The Transaction is unlikely to give rise to input foreclosure concerns. The combined entity would not have the ability to foreclose its downstream competitors in merchant acquiring in Ireland (under all plausible market delineations) by restricting access to ISO services for the following reasons:

(a) Input foreclosure may raise competition problems when it is essential for the downstream product, e.g., when that product could not be manufactured or effectively sold on the market without the input.[75] ISO services do not seem to be an important input for merchant acquiring. Merchant acquirers can and do provide on their own the services offered by ISOs (i.e., signing up

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72 The Notifying Parties confirm that their market shares in merchant acquiring would remain comparable under all plausible market delineations (i.e., if the merchant acquiring services were to be sub-segmented on the basis of the payment card brand, the payment card type, or the payment platform). The Notifying Parties added that all merchant acquirers are typically active in each of the plausible sub-segments in Ireland. For these reasons, the analysis and conclusion in this Section applies regardless of the precise relevant market delineation in merchant acquiring services.

73 The Notifying Parties submit that ISOs in Ireland facilitate the acceptance of all types of cards, of all brands, for payments made through physical or web-enabled interfaces. For these reasons, the analysis and conclusion in this Section applies regardless of a possible sub-segmentation in the market for ISO services.

74 Even assuming that ISO services and merchant acquiring services belong to the same market, as the Parties argued (see para. (39) above), the horizontal overlap between AIBMS', FDC's, and Payzone's activities would not give rise to serious doubts as to the compatibility of the Transaction with the internal market. The combined share of the Parties would be [30-40]% (in terms of value of transactions) and [30-40]% (in terms of volume of transactions) in a hypothetical market including both ISO services and merchant acquiring services in Ireland. The increment contributed by Payzone would remain low ([0-5]% in terms of value of transactions and [5-10]% in terms of volume of transactions). Post-Transaction, the combined entity would continue facing competition by several strong rivals, including Worldpay, Elavon, Barclays, BOIPA, Valitor, Paymentsense, Swedbank, JP Morgan Chase, and others, such as Adyen and Stripe. The Parties would not be close competitors as AIBMS and FDC are merchant acquirers while Payzone is an ISO, only reselling merchant acquiring services of AIBMS.

75 Non-horizontal Merger Guidelines, para. 34

merchants and managing customer relationships).[76] For example, in 2018, [70-80]% of the merchants that AIBMS recruited were identified and signed up through AIBMS's own sales team. […].

(b) The combined entity would not have the ability to foreclose downstream competitors, as it cannot negatively affect the overall availability of inputs for the downstream market.[77] […]. Post-Transaction, the combined entity would not be able to foreclose any of its downstream rivals by restricting access to Payzone's ISO services, because none of these rivals relies on these services today to compete effectively. In any event, a number of ISOs will remain in the market post-Transaction and will be able to satisfy merchant acquirer demand. This includes BOIPA, Payment Plus, and eCOMM. In the upstream market, there has also been new entry recently, e.g., by Paymentsense and RMS, which are headquartered in the UK, but started offering ISO services in Ireland in recent years.

(75) As the Commission found that the combined entity would have no ability to foreclose merchant acquirers in Ireland, it is not necessary to assess in detail the incentives of the combined entity or the overall impact of the Transaction on competition.

5.5.2. Customer foreclosure

(76) The Transaction is unlikely to lead to customer foreclosure concerns. The combined entity would not have the ability to foreclose its upstream competitors in ISO services in Ireland (under all plausible market delineations) by restricting access to a significant customer base for the following reasons:

(a) When considering whether the merged entity has the ability to foreclose access to downstream markets, the Commission examines whether there are sufficient economic alternatives in the downstream markets for the upstream rivals to sell their output.[78] In this case, post-Transaction, a significant customer base of merchant acquirers will remain in Ireland for ISOs to sell their services to (representing approximately 63% of the market (in terms of volume of transactions) or 67% (in terms of value of transactions)). Such potential customers include Worldpay, Elavon, Barclays, Valitor, Swedbank, JP Morgan Chase, Adyen, and Stripe.

(b) The combined entity has the ability to engage in customer foreclosure, only when it involves a company which is an important customer in the downstream market.[79] AIBMS and FDC are not significant customers for ISO services in Ireland today. As explained above, AIBMS mainly recruits merchant customers directly (through its own sales team) while FDC does not use ISOs to recruit merchants in Ireland. In any event, AIBMS already sources approximately […]% of its (limited) demand for ISO services from Payzone. The remaining AIBMS' demand for ISO services from providers

[76] Case M.9357, *FIS/Worldpay*, para. 80(a).

[77] Non-horizontal Merger Guidelines, para. 36.

[78] Non-horizontal Merger Guidelines, para. 61.

[79] Non-horizontal Merger Guidelines, para. 61.

other than Payzone only represents […]% of the overall demand for ISO services in Ireland.

(77) As the Commission found that the combined entity would have no ability to foreclose ISOs in Ireland, it is not necessary to assess in detail the incentives of the combined entity or the overall impact of the Transaction on competition.

5.5.3. Conclusion

(78) In light of the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of either input or customer foreclosure on the markets for ISO services (upstream) and merchant acquiring (downstream).

6. CONCLUSION

(79) 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