



EUROPEAN COMMISSION
DG Competition

***Case M.10146 - PENTA INVESTMENTS /
ASSECO POLAND / SUPERNIUS /
PROSOFT KOSICE***

Only the English text is available and authentic.

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

Article 4(4)
Date: 28/04/2021



EUROPEAN COMMISSION

Brussels, 28.4.2021
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.

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Subject: Case M.10146 – PENTA INVESTMENTS / ASSECO POLAND / SUPERNIUS / PROSOFT KOSICE
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: 19.03.2021

Legal deadline for response of Member States: 14.04.2021

Legal deadline for the Commission decision under Article 4(4): 28.04.2021

Dear Sir or Madam,

1. INTRODUCTION

- (1) On 19 March 2021, 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 March 2021.
- (4) By letter of 25 March 2021, 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) Supernius, a.s. (“Agel”) is a private healthcare provider in central Europe based in Bratislava. It currently operates hospitals, clinics, a network of pharmacies, laboratories, distribution companies and other specialized medical facilities in Czechia, and operates twelve ordinary hospitals, a specialized hospital and other companies related to the provision of health care in Slovakia.
- (6) Penta Investments Limited (“Penta”) is an investment firm based in the Channel Islands with investments in healthcare, financial services, retail, manufacturing, media and real estate markets.
- (7) Asseco Poland S.A. (“Asseco”) is a Polish IT company and a member of the Asseco Group, which operates in the field of information technology in several countries around the world.

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’).

- (8) Prosoft Kosice, a.s. (“Prosoft”) is a software company focused on software solutions for healthcare providers operating in Slovakia. Pre-transaction, Prosoft is jointly controlled by Asseco and Penta.

3. THE OPERATION AND CONCENTRATION

- (9) The transaction in question involves the entry of Agel as a new jointly controlling parent in Prosoft, with the objective to exploit synergies in the development of the next generation medical software. Post-transaction, [...] Agel, Penta and Asseco will hold [...] shares in Prosoft and will each have the right to appoint [...] nominees on the Board of Directors and the Supervisory Board of Prosoft. Both in the Board and the general meeting of shareholders, voting [...]. Lastly, neither the articles of association of Prosoft nor the shareholder agreement will confer [...]. Therefore, the transaction concerns the acquisition of joint control within the meaning of paragraphs 62-82 of the Consolidated Jurisdictional Notice.³
- (10) 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. The Parties submit that Prosoft shall remain as an autonomous economic entity post transaction and will continue to sell its product, the Promis Information system, to many third-party customers.
- (11) The transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation.

4. EU DIMENSION

- (12) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million [...]. Three of them had an EU-wide turnover in excess of EUR 250 million in 2019 [...], but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.
- (13) The notified operation therefore has an EU dimension within Article 1(2) of the Merger Regulation.

5. ASSESSMENT

5.1. Relevant product markets

5.1.1. Market for the provision of application software for the healthcare sector

- (14) 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

³ Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (“Consolidated Jurisdictional Notice”), OJ C 95, 16.4.2008.

⁴ See e.g. Commission decision of 20 June 2011 in Case M.6237 – Computer Sciences Corporation/iSoft Group, paragraph 22.

- (15) With regard to functionality, the Commission considered that the software industry generally distinguishes between the following types of software: (i) infrastructure software (i.e. servers and databases); (ii) middleware (i.e. integration platforms); (iii) application software and office software; and (iv) operating/browser software.⁵
- (16) With regard to end uses, the Commission previously considered a distinction on software markets either between high-end and low-end⁶ or between high-end, mid-range and low-end⁷. However, the Commission considered that all healthcare software belongs to the category of high-end use, and therefore a further segmentation would not change the competitive assessment.⁸
- (17) Within this segmentation, Prosoft's product, the Promis Information system, qualifies as application software. However, for the purpose of the assessment of the referral request, the exact product market definition for the provision of software solutions in the healthcare sector can be left open as the outcome of the assessment would not be different under any of the abovementioned plausible market definitions.

5.1.2. *Market for the provision of diagnostic and hospital care services*

- (18) The Commission has previously considered a product market for the provision of diagnostic and hospital care services.⁹
- (19) The Parties submit that following a previous referral decision of the Commission¹⁰, the Antimonopoly Office of the Slovak Republic has cleared an earlier transaction by which Penta acquired joint control over Prosoft, along with Asseco. According to the Parties, the Antimonopoly Office of the Slovak Republic previously considered that a product market for healthcare services could be segmented into: (i) inpatient healthcare services; (ii) outpatient healthcare services; and (iii) pharmaceutical services.
- (20) For the purpose of the assessment of the referral request, the exact product market definition of the provision of diagnostic and hospital care services, or specific markets for the provision of inpatient or outpatient healthcare, can be left open as the outcome of the assessment would not be different under any of the abovementioned plausible market definitions.

⁵ Commission decision of 20 June 2011 in Case M.6237 – Computer Sciences Corporation/iSoft Group, paragraph 23; Commission decision of 15 December 2014 in Case M.7458 – IBM / INF Business of Deutsche Lufthansa, paragraph 35.

⁶ See e.g. Commission decision of 20 June 2011 in Case M.6237 – Computer Sciences Corporation/iSoft Group, paragraph 27; Commission decision of 29 March 2010 in Case M.5763 – Dassault Systemes/IBM DS PLM Software Business, paragraph 17.

⁷ See e.g. Commission decision of 20 June 2011 in Case M.6237 – Computer Sciences Corporation/iSoft Group, paragraph 27; Commission decision of 20 July 2010 in Case M.5904 – SAP/Sybase, paragraphs 27-28.

⁸ Commission decision of 20 June 2011 in Case M.6237 – Computer Sciences Corporation/iSoft Group, paragraph 28.

⁹ Commission of 19 November 2018 in Case M.9015 – Penta Investments / Asseco Poland / Prosoft, paragraph 14; Commission decision of 21 May 2010 in Case M.5805 – 3i/Vedici Groupe; Commission decision of 28 April 2014 in Case M.7221 – Bridgepoint Capital/Médi-Partenaires; Commission decision of 4 August 2014 in Case M.7322 – Ramsay Health Care/Crédit Agricole/Générale de Santé; Commission decision of 28 August 2015 in Case M.7725 – Vedici/Vitalia; and Commission decision of 14 December 2015 in Case M.7833 – CDC International Capital/Mubadala Development Company/Vivalto Bel/Groupe Vivalto Santé.

¹⁰ Commission of 19 November 2018 in Case M.9015 – Penta Investments / Asseco Poland / Prosoft.

5.2. Relevant geographic market

5.2.1. Market for the provision of application software for the healthcare sector

- (21) In a previous decision regarding markets for healthcare software, the Commission noted regulations relating to national healthcare schemes may affect the geographic scope of the healthcare software market and any potential submarkets, as there are for instance geographic variations in the nature of billing and reimbursement. Although the market investigation in this decision was inconclusive on the geographic scope of the market, the Commission considered the impact of the transaction also on the narrowest market (i.e. national), while ultimately leaving the exact geographic market definition open.¹¹
- (22) Further, in its previous referral decision in case M.9015, the Commission 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 the regulatory framework which is specific to each country due to a number of factors in particular the reimbursement systems. The Parties submit that this still applies.
- (23) On the basis of the above, the market for the provision of application software for the healthcare sector is likely national or wider, although for the purpose of the assessment of the referral request, the exact geographic scope can ultimately be left open as the outcome of the assessment would not be different under any of the abovementioned plausible market definitions.

5.2.2. Market for the provision of diagnostic and hospital care services

- (24) Per established Commission precedents, the market for the provision of diagnostic and hospital care services is national or narrower in scope. In previous decisions, the Commission also 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.¹² The same scope would likely also apply to narrower markets for the provision of inpatient or outpatient healthcare services.
- (25) In any event, for the purpose of the assessment of the referral request, the exact geographic scope of the relevant market could be left open as the outcome of the assessment would not be different under any of the abovementioned plausible market definitions.

¹¹ Commission decision of 20 June 2011 in Case M.6237 – Computer Sciences Corporation/iSoft Group, paragraphs 34-35.

¹² See Commission decision of 21 May 2010 in Case M.5805 – 3i/Vedici Groupe; Commission decision of 28 April 2014 in Case M.7221 – Bridgepoint Capital/Médi-Partenaires; Commission decision of 4 August 2014 in Case M.7322 – Ramsay Health Care/Crédit Agricole/Générale de Santé; Commission decision of 28 August 2015 in Case M.7725 – Vedici/Vitalia; and Commission decision of 14 December 2015 in Case 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.

5.3. Assessment of the referral request

(26) The transaction gives rise to a vertical link between an upstream market for the provision of application software for the healthcare sector through Prosoft and a downstream market for the provision of inpatient healthcare in Slovakia through Agel and Penta. In addition, the transaction could give rise to coordinated (“spill-over”) effects on the market for the provision of inpatient healthcare in Slovakia.

5.3.1. Legal requirements

(27) According to the Commission Notice on Case Referral¹³, in order for a referral to be made by the Commission to one or more Member States pursuant to Article 4(4), the following two legal requirements must be fulfilled:

- a) there must be indications that the concentration may significantly affect competition in a market or markets,¹⁴ and
- b) the market(s) in question must be within a Member State and present all the characteristics of a distinct market.¹⁵

(28) As regards the first requirement, the Commission considers that there are indications that the transaction may significantly affect competition in two ways.

(29) First, the transaction may result in vertical effects between an upstream market for the provision of application software for the healthcare sector through Prosoft (less than 10% market share according to internal estimates from the Parties¹⁶) and the potential downstream market segment for the provision of inpatient healthcare services in Slovakia through Agel and Penta. Based on the information submitted in the Reasoned Submission, both Agel and Penta hold high market shares in certain local markets¹⁷ in Slovakia (above 30% according to internal estimates of the Parties¹⁸).

(30) Second, the transaction may also lead to coordinated (“spill-over”) effects on the potential market segment for the provision of inpatient healthcare services in Slovakia as both Agel and Penta will remain active on this market and hold high market shares in certain local markets.

(31) In view of the high market shares (above 30%) on the downstream market, the proposed transaction may significantly affect competition in this market.

(32) As regards the second requirement, the information provided in paragraphs (14)-(25) above indicates that the markets in question present all the characteristics of a distinct market. Moreover, the markets in which competition is affected are only local Slovak markets within the potential market segment for the provision of inpatient healthcare services. As a result, the competitive effects of the proposed transaction appear to be restricted to this single Member State.

¹³ Commission Notice on Case Referral in respect of concentrations (“Commission Notice on Case Referral”), OJ C 56, 5.3.2005.

¹⁴ Further developed in point 17 of the Commission Notice on Case Referrals.

¹⁵ Further developed in point 18 of the Commission Notice on Case Referrals.

¹⁶ Form CO, Section 3.3.

¹⁷ For Agel in the districts of: Zlaté Moravce and Levice; and for Penta in the districts of: Michalovce, Humenné, Svidník, Trebišov, Rožňava, Vranov nad Topľou, Spišská Nová Ves, Rimavská Sobota, Dunajská Streda.

¹⁸ Form CO, Section 3.3.

- (33) Therefore, the proposed transaction may significantly affect competition in this market within the territory of Slovakia.

5.3.2. *Additional factors*

- (34) Point 11 of the Notice on Case Referral requires that regard be had to the benefits inherent in a ‘one-stop-shop’, for competition authorities and businesses alike. The proposed referral to the Antimonopoly Office of the Slovak Republic takes into account these advantages, as there will not be multiple filing obligations.
- (35) In addition to the verification of the legal requirements in section 5.3.1 above, point 19 of the Notice on Case Referral provides that it should also be considered whether referral of the case is appropriate, and in particular whether the competition authority or authorities to which the parties are contemplating requesting the referral of the case is the most appropriate authority for dealing with the case. In doing so, the likely locus of the competitive effects of the transaction must also be taken in consideration.
- (36) This is the case here. On 25 March 2021, the Antimonopoly Office of the Slovak Republic as the competent authority of Slovakia informed the Commission that Slovakia agrees with the proposed referral and that it considers it is the most appropriate authority for dealing with the transaction. It reiterates in this regard that, according to the parties, this is the first time that competitors in inpatient healthcare markets in Slovakia have an ownership in the same company.
- (37) In addition, point 23 of the Notice on Case Referral states that consideration should also, to the extent possible, be given to whether the national competition authority to which referral of the case is contemplated may possess specific expertise concerning local markets, or be examining, or about to examine, another transaction in the sector concerned.
- (38) As mentioned above, the Antimonopoly Office of the Slovak Republic has previously reviewed cases in this sector, and in particular a previous transaction whereby Penta and Asseco acquired joint control of Prosoft. The Antimonopoly Office of the Slovak Republic therefore possesses specific expertise regarding both the market players and the national and potentially narrower than national markets at stake.

5.3.3. *Conclusion on referral*

- (39) 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.
- (40) Moreover, additional factors support that a referral is appropriate in this case, in particular that the Antimonopoly Office of the Slovak Republic accepts the referral and considers itself to be the most appropriate authority to review the transaction, and that the Antimonopoly Office of the Slovak Republic has previously reviewed cases in the relevant markets including a previous acquisition of joint control in Prosoft.

6. CONCLUSION

- (41) 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 Antimonopoly Office of the Slovak Republic. 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)
Olivier GUERSENT
Director-General