



EUROPEAN COMMISSION
DG Competition

Case M.10634 - CVC / GAMING1

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

Article 6(1)(b) NON-OPPOSITION
Date: 16/05/2022

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EUROPEAN COMMISSION

Brussels, 16.5.2022
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.

CVC Capital Partners SICAV-FIS S.A.
Avenue Monterey 20
L-2163 Luxembourg
Grand Duchy of Luxembourg

Subject: Case M.10634 – CVC/GAMING1
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹ and Article 57 of the Agreement on the European Economic Area²

Dear Sir or Madam,

- (1) On 11 April 2022, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking CVC Capital Partners SICAV-FIS S.A ('CVC', Luxembourg) will acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control over certain entities belonging to the Gaming1 Group (the 'Target', Belgium) by way of purchase of shares.³ (CVC and the Target are designated hereinafter as the 'Parties'.)

¹ OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

² OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

³ Publication in the Official Journal of the European Union No OJ C 167, 21.4.2022, p. 32.

1. THE PARTIES

- (2) **CVC** is a private equity fund providing investment advice to and managing investments on behalf of investment funds ('CVC Funds'). CVC Funds holds interests in companies in various industries, including chemicals, utilities, manufacturing, retailing and distribution, primarily in Europe, the United States and the Asia-Pacific region.
- (3) **The Target** owns land-based casinos, gaming halls and betting agencies in Belgium, France and Switzerland, and is active in the operation of online gambling websites (casinos and sports betting) and mobile applications in Belgium, Malta, Portugal, France, Switzerland, Spain, Serbia, Colombia and the US. The Target also has activities within online licensing of games to third party operators, including in Belgium, Portugal, Switzerland, Spain, the Netherlands and Serbia.
- (4) The Gaming1 Group is composed of several entities, which are all directly or indirectly controlled by the same entities and individuals (the 'Sellers').⁴ The Target is comprised of a number of entities: i) the parent companies Cortex Holding SA and Ardent Finance SA and their direct and indirect subsidiaries, as well as the entities ii) Pro-Sécurité, iii) Bowling Gosselies SA, iv) Namur Casino Resort SA, v) Produweb Holding SRL and vi) BSManagement SRL and the direct and indirect subsidiaries of these entities. In order to satisfy Belgian gaming regulations, the Transaction excludes certain entities of the Gaming1 Group, in which CVC will only hold an indirect economic interest and no governance rights following the Transaction (the 'STAK Entities').

2. THE OPERATION

- (5) On 27 December 2021, Meuse Bidco SA ('Bidco', a special purpose vehicle controlled by CVC Funds) entered into a share purchase agreement under the terms of which the Sellers agreed to sell the Target to Bidco.
- (6) [...] ⁵ [...] ⁶ Following completion of the Transaction, CVC will therefore exercise sole control over the Target. ⁷

3. UNION DIMENSION

- (7) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁸. Each of them has a Union-wide turnover in excess of EUR 250 million, but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension.

⁴ [...].

⁵ [...].

⁶ [...] see paragraph 54 of the Commission's Consolidated Jurisdictional Notice.

⁷ With the exception of the Joint Ventures.

⁸ Turnover calculated in accordance with Article 5 of the Merger Regulation. The STAK Entities has been excluded for the purpose of calculating the relevant turnover.

4. COMPETITIVE ASSESSMENT

- (8) The Target is active within the provision of online and in-store betting and gaming services in the EEA as well as B2B online licensing of games to third party operators.
- (9) Two CVC* portfolio companies, Tipico and Sisal, are active within the provision of online and in-store betting and gaming services in the EEA; Tipico provides online and in-store betting and gaming services in Germany and Austria. Sisal's primary activities include in-store retail gaming, including operating gaming machines, horse racing and sports betting at betting shops, and online gaming and betting services predominantly in Italy, but also to a lesser extent in Spain.
- (10) The Transaction therefore gives rise to horizontal overlaps between the Parties' activities within provision of online and in-store betting and gaming services, as well as a vertical relationship between i) the Target's upstream activities in the B2B licensing of games to third party operators and ii) CVC*'s downstream activities in online betting and gaming services.

4.1. Market definition

4.1.1. Gaming and betting services

- (11) In its previous decisions, the Commission considered whether the gaming and betting services market could be further segmented between: (i) games; (ii) bets (horseracing and sports betting); and (iii) gaming machines.⁹ The Commission has also considered a separation between physical and online gaming and betting channels in previous decisions involving companies with activities in both spaces.¹⁰ Ultimately, the Commission has left open the question of whether different types of gaming and betting services constitute a single product market or not.¹¹
- (12) The Commission has taken the view in previous decisions that the geographical scope of gaming and betting markets is national due to differences in terms of demand across national territories and in the national regulatory systems, in particular with regard to the granting of licenses.¹²
- (13) The Notifying Party submits that the relevant product market is the overall market for provision of gaming and betting services and that, in line with previous Commission decisions, the geographic scope of this market is national. In any event, the Notifying Party submits that the exact product market definition can be left open in the present case, since the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible product market definition.

* CVC* should read CVC Funds in this decision.

⁹ See cases M.8640 – CVC/Blackstone/Paysafe; M.8058 – Novomatic/Lottomatica/JV; M.4114 – Lottomatica/GTECH; M.10126 – Apollo Management/Lottomatica Videolot Rete/Lottomatica Scommese, paragraph 9; M.4114 - Lottomatica/GTECH, paragraph 7.

¹⁰ See case M.10126 – Apollo Management/Lottomatica Videolot Rete/Lottomatica Scommese.

¹¹ See inter alia cases M.8640 – CVC/Blackstone/Paysafe, paragraph 33; M.10126 Apollo Management/Lottomatica Videolot Rete/Lottomatica Scommese, paragraph 12.

¹² See cases M.8640 – CVC/Blackstone/Paysafe, M.8058 – Novomatic/Lottomatica/JV; M.4114 – Lottomatica/GTECH.

- (14) For the purpose of the present Transaction, the exact product market definition for gaming and betting services can be left open as the outcome of the assessment would not differ irrespective of the plausible product market definition. In line with previous Commission decisions, the geographic market for gaming and betting services is considered to be national.

4.1.2. *B2B licensing of games*

- (15) In the absence of a Commission precedent, the Parties submit that the relevant market is the market for the business-to-business licensing of online games. In previous decisions, the Commission has identified a market for development and publishing of game software¹³, which the Target submits is similar to the activities of the Target within B2B licensing of games.
- (16) In past decisions, the Commission left open whether the market for development and publishing of game software should be defined as the publishing of all games, or whether it should be further sub-segmented by i) online/offline games, ii) by platform (between PC, video game consoles, mobile), and iii) by game genre.¹⁴ Given the minimal activities of the Target on this market, the Parties submit that it is not necessary to delineate this product market further.
- (17) The Commission has left open in previous decisions whether the geographical scope of the market for development and publishing of game software was EEA-wide or global.¹⁵
- (18) Since the Target's activities within B2B licensing of games is *de minimis* under any plausible market definition, the exact delineation of the market can be left open in the present case, as no serious doubts would arise under any plausible product and geographic market definition.

4.2. **Competitive assessment**

4.2.1. *Horizontal overlap – gaming and betting services*

- (19) Within the EEA, CVC*'s portfolio company Tipico only carries out revenue-generating activities in Germany and Austria, and CVC*'s portfolio company Sisal is only active within Spain and Italy. On the other hand, the Target is active within the EEA in Belgium, France, Luxembourg, Malta, the Netherlands, Portugal, Romania, Serbia and Spain. The Transaction therefore only leads to a horizontal overlap between the activities of CVC*'s portfolio company Sisal and the Target in Spain.
- (20) The Parties hold a combined market share below [0-5]% in Spain under any plausible market definition, and the Transaction will therefore not lead to material horizontal overlaps on any market.

¹³ See cases M.7866 - Activision Blizzard/King; M.10001 – Microsoft/Zenimax; M.5008 – Vivendi/Activision.

¹⁴ See cases M.7866 - Activision Blizzard/King; M.10001 – Microsoft/Zenimax; M.5008 – Vivendi/Activision.

¹⁵ See cases M.7866 - Activision Blizzard/King, paragraphs 31-32; M.10001 – Microsoft/Zenimax, paragraph 27; M.5008 - Vivendi/Activision, paragraph 29.

4.2.2. *Vertical relationship*

- (21) The Transaction gives rise to a vertical relationship between i) the Target's upstream activities for B2B licensing of games to third party operators in the EEA, and ii) CVC*'s downstream activities in online betting and gaming services in Germany, Austria, Spain and Italy.

Upstream market – B2B licensing of games

- (22) The Target has [...] activities within the market for B2B licensing of games in the EEA, where it achieved a total revenue of EUR [...] in 2020. Due to its [...] activities within this space, the Target is not in possession of detailed information regarding the total market size, but it submits that its market share is below [0-5]% under any plausible market definition. Furthermore, the Target submits that its content offering with respect to B2B licensing of games [...] from that of its competitors.
- (23) The Commission considers that it is unlikely for input foreclosure concerns to arise from the Transaction. The Target is not an important supplier of games licenses, and the market for B2B licensing of games (including casino games such as slots) is highly fragmented with over 150 undertakings in the EEA operating over 200 brands. Customers will therefore have sufficient alternative sources of supply. [...].

Downstream market – gaming and betting services

- (24) CVC*'s portfolio company Tipico holds a market share of [50-60]% in Germany on an overall market for gaming and betting services, and a market share of [30-40]% on a market for online gaming and betting services in Germany. CVC*'s portfolio companies Sisal and Tipico's market shares do not exceed [10-20]% on any other national market in which they operate (Austria, Italy and Spain) under any plausible market definition.
- (25) It is unlikely that customer foreclosure concerns could arise from the Transaction. Although CVC*'s portfolio company Tipico holds a relatively high market share in Germany on the downstream market, competitors within the field of B2B licensing of games are not reliant on serving customers specifically in Germany, given that the upstream market for B2B licensing of games is at least EEA-wide in scope. Furthermore, in 2020 and 2021 the Target [...] turnover in Germany related to B2B licensing of games.
- (26) At the EEA-level, the merged entity does not constitute a sufficiently significant customer to raise customer foreclosure concerns with respect to the upstream market for B2B licensing of games either, since the merged entity is not active in all EEA-member states and does not achieve high market shares on any national downstream markets with the exception of Germany and Belgium. As mentioned in paragraph (24) above, CVC does not achieve market shares above [10-20]% on any national downstream markets with the exception of Germany. The Target holds a market share of [30-40]% in Belgium on an overall market for gaming and betting services, and a market share of [30-40]% on a market for online gaming and betting services in Belgium. The market shares of the Target do not exceed [10-20]% on any other national market in which it operates (mainly France, Portugal, Switzerland and Spain) under any plausible market definition.

5. CONCLUSION

- (27) 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

Executive Vice-President