



EUROPEAN COMMISSION
DG Competition

Case M.10668 - PPF / MMB

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

Article 4(4)
Date: 03/05/2022



EUROPEAN COMMISSION

Brussels, 3.5.2022
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.

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Subject: **Case M.10668 – PPF / MMB**
Commission decision following a reasoned submission pursuant to Article 4(4) of Regulation No 139/2004¹ for referral of the case to Czechia and Article 57 of the Agreement on the European Economic Area².

Date of filing: 8 April 2022

Legal deadline for response of Member States: 4 May 2022

Legal deadline for the Commission decision under Article 4(4): 19 May 2022

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’).

Dear Sir or Madam,

1. INTRODUCTION

- (1) On 8 April 2022, 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. PPF requests that the concentration be examined in its entirety by the competent authorities of Czechia.
- (2) According to Article 4(4) of the Merger Regulation, before a formal notification of a concentration has been made to the Commission, the parties to the transaction may request that it be referred in whole or in part from the Commission to the Member State(s) 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 8 April 2022.
- (4) By e-mail of 20 April 2022, the Czech National Competition Authority (“NCA”) as the competent authority of Czechia informed the Commission that Czechia agrees with the proposed referral.

2. THE PARTIES

- (5) **PPF Group N.V.** (“PPF”) is a multinational finance and investment group incorporated in the Netherlands. PPF focuses on the financial services, consumer finance, telecommunications, biotechnologies, retail services, real estate, mechanical engineering and agriculture sectors. PPF is active in the retail banking sector through its subsidiaries Air Bank a.s., Home Credit Slovakia a.s. and Home Credit a.s. (jointly referred to as the “Air Bank Group”).
- (6) **Moneta Money Bank A.S.** (“MMB”) is a Czech universal bank listed on the Prague Stock Exchange.
- (7) PPF and MMB are hereinafter together referred to as the “Parties”.

3. THE PROPOSED TRANSACTION

- (8) On 8 April 2022, PPF notified to the Commission its intention to acquire sole control over MMB and requested the Commission to refer the case to Czechia pursuant to Article 4(4) of the Merger Regulation. In parallel to the acquisition of sole control over MMB by PPF, MMB intends to acquire sole control over the Air Bank Group.
- (9) PPF is the largest shareholder of MMB with 29.94% of MMB’s registered share capital and voting rights. On 6 May 2021, PPF and MMB entered into a Framework Agreement,³ pursuant to which PPF shall sell and transfer to MMB 100% of the shares of the Air Bank Group. The acquisition of the Air Bank Group by MMB will be financed by MMB increasing its capital with the issuance of new shares. The issuance of the new shares will take place in two subscription rounds.

³ As amended on 18 November 2021 and approved by MMB’s shareholders meeting of 20 December 2021.

On the basis of the Framework Agreement, PPF is contractually bound to take part in both of MMB's newly issued shares subscription rounds to the maximum extent possible. PPF has also agreed on a backstop obligation whereby it is obliged to subscribe all the shares that are not subscribed by the current shareholders at the end of the two subscription rounds.⁴ Thereby, PPF intends to acquire sole control over MMB.

- (10) For the reasons set out in the following, the Commission considers that the commitment by PPF under the Framework Agreement to subscribe all new shares that other shareholders would decide not to subscribe in the context of MMB's capital increase leads to a notifiable concentration within the meaning of Articles 3 and 4 of the Merger Regulation. Moreover, the Commission considers that, in view of the timeline of completion for (i) the acquisition of sole control over MMB by PPF, and (ii) the acquisition of sole control by MMB over the Air Bank Group, the acquisition of sole control by MMB over the Air Bank Group constitutes an internal restructuring of PPF.⁵ Alternatively, these transactions would at least constitute a single concentration within the meaning of Article 3 of the Merger Regulation, given that they are interrelated. In more detail:
- (11) *First*, PPF submits that as a result of the agreed capital increase and related subscription of newly issues shares in MMB, it is highly likely to obtain the majority of voting rights in MMB. In that respect, it should be noted that MMB's strategic commercial decisions (including decisions such as the business plan, budget or major investments) are taken by its Management Board. The members of the Management Board are appointed and removed by the Supervisory Board. MMB's Supervisory Board currently has nine members. Six members are elected by the shareholders at the shareholders meetings, while the remaining three are elected by the employees of MMB.⁶ At the shareholders meetings, decisions to appoint (or remove) members of the Supervisory Board are taken by simple majority votes.⁷ Therefore, should PPF acquire more than 50% of the shares of MMB, it would be considered to have *de jure* sole control over MMB. Moreover, based on the average attendance at MMB's shareholders meetings over the last three years, the holding of [percentage of the company's share] or more of MMB's shares would also allow PPF to have a *de facto* majority at shareholders meetings. PPF would thus be considered to have acquired *de facto* sole control over MMB.⁸
- (12) To substantiate its view that it is highly likely that it will acquire sole control over MMB, PPF submits the following reasons:⁹ (i) the subscription of new shares will require shareholders to mobilise their funds over at least several weeks (i.e. covering the period for the two subscription rounds). PPF expects that not all MMB shareholders (especially given the war in Ukraine, high inflation, and

⁴ Form RS, paragraphs 1, 4 and 61(c).

⁵ Pursuant to the Framework Agreement, the acquisition of MMB by PPF will be completed before the acquisition of the Air Bank Group by MMB. See also Annex 10 of the Form RS.

⁶ Article 20 of MMB's Articles of association.

⁷ Form RS, paragraphs 10 and 81.

⁸ Form RS, paragraph 30. Moreover, based on the average attendance at MMB's shareholders meetings over the last three years where the dismissal and/or appointment of members of the Supervisory Board was put on the agenda, the acquisition of [percentage of the company's share] or more of the shares of MMB would allow PPF to have a *de facto* majority at shareholders meetings. Thus, the acquisition of less than [percentage of the company's share] of MMB's shareholding would allow PPF to dismiss/appoint MMB's members of the Supervisory Board and would therefore confer PPF *de facto* sole control over MMB (Form RS, paragraph 30).

⁹ Form RS, paragraphs 21-27 and 86.

general instability of financial markets) will be willing to invest their disposable funds into additional MMB shares; (ii) a vast minority of MMB's shareholders do not attend MMB's shareholders meetings (accounting for around 25% of MMB's shareholding) and, more specifically, did not attend MMB's shareholders meetings in June 2021 and December 2021 where the acquisition of the Air Bank Group by MMB and its financing were decided; these shareholders thus do not seem concerned by the fate of MMB and are unlikely to take part in the subscription rounds, (iii) MMB's larger shareholders need the Czech National Bank's approval in order to increase their shareholding in MMB to more than 10%, and to the Parties' knowledge, such approvals have not been requested, and (iv) PPF has already requested the Czech National Bank to grant its approval to acquire up to 100% of MMB's shares, substantiating PPF's high likelihood to acquire sole control over MMB at the result of the subscription rounds.¹⁰ The Commission considers these arguments to be convincing.

- (13) In light of the specific circumstances of the case, and while it cannot be entirely excluded that PPF will acquire less shares than expected, there is nevertheless a Framework Agreement pursuant to which PPF is contractually bound to subscribe all the shares that are not subscribed by the current shareholders at the end of the two subscription rounds. Thus, the Commission considers that PPF's plan to acquire sole control over MMB is sufficiently concrete.
- (14) *Second*, as regards the question of how to qualify (i) the acquisition of sole control over MMB by PPF, and (ii) the acquisition of sole control by MMB over the Air Bank Group, it should be noted that based on the current timeline for completion of the transactions, the acquisition of MMB by PPF is foreseen to be completed before the acquisition of the Air Bank Group by MMB.¹¹ In this scenario, the acquisition of the Air Bank Group by MMB would thus not lead to a change of control and would simply be considered as an internal restructuring of PPF. However, if for whatever reasons the acquisition of the Air Bank Group by MMB would occur before MMB is part of PPF, then the Commission considers that (i) the acquisition of sole control over MMB by PPF, and (ii) the acquisition of sole control by MMB over the Air Bank Group constitute a single concentration, as they are interrelated.
- (15) Recital 20 of the Merger Regulation states that “[i]t is [...] *appropriate to treat as a single concentration transactions that are closely connected in that they are linked by condition or take the form of a series of transactions in securities taking place within a reasonable short period of time.*”
- (16) The conditionality referred to in Recital 20 of the Merger Regulation can be *de jure* or *de facto*.¹² The CJN notes that *de facto* conditionality “*requires an economic assessment of whether each of the transactions necessarily depends on the conclusion of the others. Further indications of the interdependence of several transactions may be the statements of the parties themselves or the simultaneous conclusion of the relevant agreements. A conclusion of de facto interconditionality*

¹⁰ Moreover, should PPF acquire 30% or more of MMB's shares at the end of the subscription rounds and at the same time fulfil additional requirements under Czech law, it will have to launch a mandatory tender offer on MMB's remaining shares. Form RS, paragraphs 33-34 and 63.

¹¹ Pursuant to the Framework Agreement, the acquisition of MMB by PPF will be completed before the acquisition of the Air Bank Group by MMB. See also the Annex 10 of the Form RS.

¹² Consolidated Jurisdictional Notice (“CJN”), paragraph 43.

*of several transactions will be difficult to reach in the absence of their simultaneity”.*¹³

- (17) The acquisitions of sole control by PPF over MMB and by MMB over the Air Bank Group (i) form part of PPF’s overall plan aiming to merging some of its retail banking activities with MMB and at the same time obtaining sole control over MMB,¹⁴ and (ii) have been simultaneously designed and agreed upon in the same Framework Agreement dated 6 May 2021.¹⁵
- (18) Moreover, while there is no *de jure* conditionality between the two transactions,¹⁶ PPF confirmed that it would not have sold the Air Bank Group to MMB if it did not intend to acquire sole control over MMB. Indeed, according to PPF itself, PPF’s intention from the very beginning was to acquire control over MMB.¹⁷ The Framework Agreement has thus been structured so that the acquisition of the Air Bank Group by MMB is financed by an increase of MMB’s capital with the issuance of new shares, which will most likely (as explained above) confer sole control to PPF over MMB.¹⁸
- (19) Therefore, on the basis of the available information, the Commission considers that, on balance, (i) the acquisition of sole control over MMB by PPF, and (ii) the acquisition of sole control by MMB over the Air Bank Group are interdependent, as they have been simultaneously designed and planned by PPF to reach together the same economic goal: the acquisition of sole control by PPF over a single economic entity that will combine the businesses of both MMB and the Air Bank Group.
- (20) The proposed concentration therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

4. EU DIMENSION

- (21) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million and each of them has an EU-wide turnover in excess of EUR 250 million. PPF does not achieve more than two-thirds of its aggregate Union-wide turnover within one Member State. The proposed concentration therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

¹³ *Ibidem.*

¹⁴ Form RS, paragraph 65.

¹⁵ As amended on 18 November 2021 and approved by MMB’s General Meeting of 20 December 2021.

¹⁶ In theory, in the very unlikely event that PPF does not acquire sole control over MMB at the end of the subscription rounds, the sale of the Air Bank Group to MMB could still be carried out.

¹⁷ Form RS, footnote 3.

¹⁸ In that respect, it should be noted that PPF’s initial proposition to MMB was the sale of the Air bank Group in exchange for the exclusive right to subscribe for newly issued MMB shares, which would have given PPF control over MMB. However, this feature of the transaction, which required a 75% shareholder approval, was blocked by a minority of shareholders. Hence, PPF and MMB modified this feature and allowed other shareholders to take part in the subscription, but PPF’s intention (and high likelihood) to acquire sole control over MMB remains intact

5. ASSESSMENT

- (22) The proposed concentration results in horizontally affected markets (i) in retail banking, and (ii) in payment card issuing in Czechia. The proposed concentration does not give rise to any affected markets outside of Czechia.

5.1. Relevant Markets

5.1.1. Retail banking

5.1.1.1. Product Market Definition

- (23) In past decisions, the Commission considered that retail banking comprises all banking services provided to private individuals and very small enterprises.¹⁹ The Commission considered that retail banking could be further segmented into a number of individual product markets, namely personal current accounts, savings accounts (deposits), lending (personal loans, consumer credits/loans, mortgages), private banking services, mutual funds and other investment products.²⁰ According to the Parties, the Czech NCA also identified a number of individual product markets within the banking sector (including services provided to retail customers) in its precedents.²¹
- (24) The Notifying Party did not expressly provide its view on the scope of the relevant product market.
- (25) In any event, for the purposes of the Commission's assessment under Article 4(4) of the Merger Regulation, the precise scope of the product market can be left open.

5.1.1.2. Geographic Market Definition

- (26) In past decisions, the Commission considered that the geographic market for retail banking is national in scope due to the different competitive conditions within individual Member States and the importance of a network of branches.²² In some cases, the Commission also considered a subnational/regional scope of the banking market, depending on the characteristics of the countries concerned, but left the question of whether the market should be considered national or subnational in scope open.²³ According to the Parties, the Czech NCA consistently considered that the retail banking markets are national in scope.²⁴
- (27) The Notifying Party considers that the geographic markets for retail banking are national in scope.²⁵

¹⁹ See for instance, case M.8414 - *DNB / Nordea / Luminor Group*, decision of 14 September 2017, paragraph 15.

²⁰ Case M.9625 – *Banca Comerciala Romana / Raiffeisen Bank / BRD Societe Generale / CIT One*, decision of 10 March 2020, paragraph 26; Case M.8553 – *Banco Santander / Banco Popular Group*, decision of 8 August 2017, paragraph 14.

²¹ Form RS, paragraph 113. See for instance the Czech NCA's decision ÚOHS-36149/2020/840/MWi – *Česká spořitelna / Waldviertler Sparkasse*.

²² See for instance, Case M.8414 - *DNB / Nordea / Luminor Group*, decision of 14 September 2017, paragraphs 21-24.

²³ Case M.9625 – *Banca Comerciala Romana / Raiffeisen Bank / BRD Societe Generale / CIT One*, decision of 10 March 2020, paragraph 36.

²⁴ Form RS, paragraph 119.

²⁵ Form RS, paragraph 121.

- (28) In any event, for the purposes of the Commission’s assessment under Article 4(4) of the Merger Regulation, the precise scope of the geographic market can be left open.

5.1.2. *Payment card issuing*

5.1.2.1. Product Market Definition

- (29) In past decisions, the Commission considered a segmentation between different types of cards, in particular between (i) debit and credit cards, (ii) personal and corporate cards, (iii) national and international cards, (iv) selective and general cards and (v) universal and special purpose cards. It has also looked at payment cards on a card brand basis.²⁶ According to the Parties, the Czech NCA also considered a market for payment card issuing, without any further segmentation.²⁷
- (30) The Notifying Party did not expressly provide its view on the scope of the relevant product market.
- (31) In any event, for the purposes of the Commission’s assessment under Article 4(4) of the Merger Regulation, the precise scope of the product market can be left open.

5.1.2.2. Geographic Market Definition

- (32) In past decisions, the Commission considered the market for payment card issuing to be national in scope.²⁸ According to the Parties, the Czech NCA consistently considered retail banking markets, including payment card issuing, as being national in scope.²⁹
- (33) The Notifying Party did not expressly provide its view on the scope of the relevant geographic market.
- (34) For the purposes of the Commission’s assessment under Article 4(4) of the Merger Regulation, the Commission will assess the Parties’ position at national level.

5.2. **Assessment of the referral request**

5.2.1. *Legal requirements*

- (35) According to the Commission Notice on case referral,³⁰ 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,³¹ and
 - (b) the market(s) in question must be within a Member State and present all the characteristics of a distinct market.³²

²⁶ Case M. 8553 – *Banco Santander / Banco Popular Group*, decision of 8 August 2017, paragraph 32.

²⁷ Form RS, paragraph 113. See for instance the Czech NCA’s decision ÚOHS-12534/2021/873/LBř – *Raiffeisenbank / Equa*.

²⁸ Case M. 8553 – *Banco Santander / Banco Popular Group*, decision of 8 August 2017, paragraph 34.

²⁹ Form RS, paragraph 119.

³⁰ See the Commission’s Notice on Case Referral in respect of concentrations (OJ C 56, 5.3.2005, p. 2) (the “Notice”).

³¹ Further developed in point 17 of the Commission Notice on Case Referrals.

The concentration may significantly affect competition in a market or markets

- (36) According to paragraph 17 of the Notice, the existence of an affected market is generally considered sufficient to meet the requirement set forth in Article 4(4) of the Merger Regulation.
- (37) In light of the information submitted by the Parties in the Reasoned Submission, the proposed concentration would result in several horizontally affected markets in Czechia, namely on the markets for (i) retail loans (combined market share of [20-30]% with an increment brought about by PPF of [10-20]% -point),³³ (ii) saving accounts (combined market share of [20-30]% with an increment brought about by PPF of [5-10]% -point), and (iii) credit card issuing (combined market share of [20-30]% with an increment brought about by MMB of [5-10]% -point).³⁴
- (38) Therefore, the first legal requirement set forth by Article 4(4) of the Merger Regulation appears to be met.

The market(s) in question must be within a Member State and present all the characteristics of a distinct market

- (39) According to paragraph 18 of the Notice, the second requirement set forth by Article 4(4) of the Merger Regulation is satisfied if the geographic scope of the markets where competition is affected is national or narrower than national.
- (40) As indicated above, the markets for retail banking and payment card issuing contain strong local elements and have been defined as national or narrower than national in scope by the Commission.
- (41) Therefore, the second legal requirement set forth by article 4(4) of the Merger Regulation also appears to be met.

5.2.2. Additional factors

- (42) In addition to the verification of the legal requirements, paragraph 19 of the Notice 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. Paragraph 23 of the Notice also states that consideration should also, to the extent possible, be given to whether the NCA(s) to which the referral of the case is contemplated may possess specific expertise concerning local markets.
- (43) *First*, the Czech NCA has specific expertise in the assessment of markets in the sector concerned. Indeed, the Czech NCA has reviewed several concentrations in the banking sector in Czechia in recent years.³⁵

³² Further developed in point 18 of the Commission Notice on Case Referrals.

³³ More specifically, within the retail loans, the proposed concentration would result in two horizontally affected markets, namely (i) consumer credits (combined market share of [20-30]% with an increment brought about by PPF of [10-20]%) and (ii) payment card loans (combined market share of [20-30]% with an increment brought about by MMB of [5-10]%).

³⁴ Form RS, Annex 12.

³⁵ The Parties listed the following recent decisions: ÚOHS-36149/2020/840/MWi - *Česká spořitelna / Waldviertler Sparkasse*; Also see Decision S 195/02 - 2808/02 – *ORP – Asociace pro mobilní platby*;

- (44) *Second*, in light of the information submitted in the Reasoned Submission by the Parties, the Commission considers that the effects of the proposed concentration are confined to Czechia, where MMB generates the entirety of its turnover. Thus, the case will require investigative efforts for which the Czech NCA seems better placed to conduct. Specifically, the customers in the retail banking sector are private individuals and very small enterprises in Czechia, and therefore a market investigation carried out by the Czech NCA appears to be better suited to properly reach the demand side of the market, to understand its main characteristics and to deal with possible concerns.
- (45) *Third*, a referral of the proposed concentration to the Czech NCA satisfies the need to preserve the benefit of the “one-stop-shop” as there are no affected markets outside Czechia. The case would thus be referred in its entirety to a single competition authority (i.e. the Czech NCA), which is an important factor of administrative efficiency.

5.2.3. *Conclusion on referral*

- (46) In the light of the foregoing and on the basis of the information provided by the Parties in the Reasoned Submission, the Commission concludes that 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(s) within a Member State which presents all the characteristics of a distinct market.
- (47) Moreover, the requested referral would be consistent with paragraphs 19-23 of the Notice, in particular because the Czech NCA appears to be the most appropriate authority to examine the proposed concentration.

6. CONCLUSION

- (48) For the above reasons, and given that Czechia has expressed its agreement, the Commission has decided to refer the Transaction in its entirety to be examined by the Czech NCA. 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