DETERMINATION OF MERGER NOTIFICATION M/18/030 - AVANTCARD/TESCO BANK

Section 21 of the Competition Act 2002

Proposed acquisition by Avantcard Designated Company Activity of sole control of certain assets of Tesco Personal Finance PLC (T/A Tesco Bank)

Dated 02 May 2018

Introduction

1. On 16 April 2018, in accordance with section 18(1)(a) of the Competition Act 2002, as amended ("the Act"), the Competition and Consumer Protection Commission (the "Commission") received a notification of a proposed transaction whereby Avantcard Designated Company Activity ("Avantcard") would acquire sole control of certain assets comprising a portfolio of performing receivables and related contracts and goodwill (the "Target Assets") that comprise the credit card business of Tesco Personal Finance PLC (T/A Tesco Bank) ("Tesco Bank") (the "Proposed Transaction").

The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to a Deed of Sale dated 9 April 2018 between Tesco Bank and Avantcard.

The Undertakings Involved

The Acquirer - Avantcard

- 3. Avantcard provides credit cards and personal loans to customers in the State. The credit cards issued by Avantcard can be used in any establishment and are part of the MasterCard network. The [...] of turnover generated by Avantcard in the State comes from the provision of credit card services.
- 4. Avantcard is owned and controlled by EVO Banco SAU, a Spanish bank based in Madrid which, in turn, is ultimately owned and controlled by investment funds managed by affiliates of Apollo Management L.P. ("Apollo"). Investment funds managed by affiliates of Apollo invest in equity and debt securities issued by companies involved in various business activities.
- 5. In addition to Avantcard, the following [...] companies controlled by investment funds managed by affiliates of Apollo generated turnover in the State in 2017:
 - [...];

- [...];
- [...];
- [...];
- [...];
- [...];
- [...];
- [...];
- [...];
- [...];
- [...];
- [...];
- [...]; and
- [...].
- 6. For the financial year ending 31 December 2017, Apollo's worldwide turnover was approximately €[...], of which approximately €[...] was generated in the State.¹

Tesco Bank

- 7. Tesco Bank is a subsidiary of Tesco Personal Finance Group Limited, which is owned and controlled by Tesco plc. Tesco Bank provides financial services and products such as mortgages, insurance, credit cards, personal loans and deposit accounts to private and business customers in the United Kingdom.
- 8. In 2000, Tesco Bank began issuing credit cards to customers in the State. Tesco Bank ceased issuing credit cards to new customers in the State in May 2017 but it continues to service existing credit cards. Tesco Bank does not provide mortgages, insurance, personal loans or deposit accounts to customers in the State.

The Target Assets

9. The Target Assets comprise a portfolio of performing² credit card receivables and related customer contracts that comprise Tesco Bank's credit card business in the State. Specifically, the Target Assets include the following assets of Tesco Bank:

¹ For the financial year ending 31 December 2017, Avantcard's worldwide turnover was approximately €[...], [...] of which was generated in the State.

² In the notification, Avantcard defines "performing" to mean that the amounts owed are between 0 and 90 days due.

- All performing credit card accounts opened by Tesco Bank together with all customer contracts;
- All receivables, i.e., each and every amount owed by a customer (or a guarantor) under all performing credit card accounts opened by Tesco Bank and all customer contracts;
- The names, addresses and, if available, telephone numbers of all customers;
- Any cards which have been issued or re-issued or are in the course of being issued or re-issued by Tesco Bank;
- The asset information comprising:
 - a) the card application, account opening information, customer contract and details of anti-money laundering, know your customer and similar information, in relation to each credit card account, as well as any copies of such information;
 - all Tesco Bank books, records, documents, manuals, policies, materials and other information relating exclusively to the operation of the Target Assets, including any correspondence between Tesco Bank and the customer, billing and payment data and records and any and all other documents, information or other materials exclusively relating to such accounts; and
- The claims (i.e., the benefit of all rights and claims arising exclusively from the operation of the Target Assets by Tesco Bank).
- 10. The Target Assets do not include any employees of Tesco Bank.
- 11. For the financial year ending 28 February 2017, the Target Assets' estimated³ worldwide turnover was approximately €[...], [...] of which was generated in the State.

Rationale for the Proposed Transaction

12. The parties state the following in the notification:

"The decision to exit the Irish credit card sector is part of the strategy of Tesco Bank to review its financial services products in the Irish market. Avantcard considers that the Vendor's Irish portfolio is a good fit for its existing business in Ireland. Key transaction advantages include improved presence in Ireland, the ability to spread fixed costs across a larger customer base thereby lowering average costs and enabling Avantcard to be a more effective competitor."

Third Party Submissions

³ The Target Assets do not have separate financial accounts.

13. During the Phase 1 investigation, the Commission received one third party submission concerning loyalty points earned by Tesco Bank's credit card customers. The Commission considers that this third party submission raises no competition issues in relation to the Proposed Transaction.

Competitive Assessment

- 14. There is a horizontal overlap between the business activities of Avantcard and the Target Assets in the State with respect to the provision of credit card services.⁴
- 15. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case.
- 16. In paragraph 25 of its 2008 decision in *Case M.5384 BNP Paribas/Fortis*, the European Commission expressed the view that debit cards "are not substitutable for credit/charge cards for most consumers in most instances and can be excluded from the relevant market(s) pertaining to credit/charge cards".⁵
- 17. The narrowest potential product market affected by the Proposed Transaction is the provision of credit card services in the State. The Commission, however, does not need to come to a definitive view on the precise relevant product market in this instance since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the precise relevant product market is either narrow (e.g., the provision of credit card services in the State) or broader (e.g., to include the provision of debit cards). In order to determine whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has analysed its impact by reference to the narrowest potential relevant product market (being the potential market for the provision of credit card services).
- 18. Similarly, the Commission does not need to come to a definitive view on the precise relevant geographic market in this instance since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the precise relevant geographic market is national or broader than the State. However, in order to determine whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has analysed its impact by reference to the narrowest possible relevant geographic market (being the potential market for the provision of credit card services in the State)

The Provision of Credit Card Services in the State

19. The Target Assets have a small presence in the State with respect to the provision of credit card services. Market share estimates provided by Avantcard indicate that the Target Assets represent approximately [0-5]% (by value) of the total amount of receivables (i.e., what is owed to a credit card issuer by its customers) in the State in July 2017⁶ and [0-5]% of the total number of credit cards issued in the State in February

⁴ As noted above, Tesco Bank ceased issuing credit cards to new customers in the State in May 2017 but it continues to service existing credit cards.

⁵ The European Commission's decision can be accessed at

http://ec.europa.eu/competition/mergers/cases/decisions/m5384_20081203_20212_en.pdf

⁶ This is the most recent data available from the Central Bank of Ireland for the total amount of receivables in the State and it can be accessed at

2018.⁷ Avantcard estimates that its own share of the total amount of receivables in the State is approximately [10-15]% and [5-10]% of the total number of credit cards issued in the State.

- 20. Thus, the increase in Avantcard's share in the potential market for the provision of credit card services in the State will be only [0-5]%. Following completion of the Proposed Transaction, Avantcard will continue to compete with a number of providers of credit card services in the State including Allied Irish Banks plc (with estimated⁸ shares in the State of [25-30]% and [30-35]%, respectively, in the total amount of receivables and the total number of credit cards issued), Bank of Ireland Group plc (with estimated shares of [25-30]% and [25-30]%, respectively), Ulster Bank Ireland DAC (with an estimated share of [10-15]% in both the total amount of receivables and the total number of credit cards issued), Permanent TSB plc (with estimated shares of [5-10]% and [5-10]%, respectively) and KBC Bank Ireland plc (with an estimated share of [0-5]% in both the total amount of receivables and the total number of credit cards issued).
- 21. In light of the above, the Commission considers that the Proposed Transaction raises no competition concerns in the potential market for the provision of credit card services in the State.

Vertical Relationship

22. Avantcard informed the Commission that there is no vertical relationship between Apollo and the Target Assets in the State. The Commission has not identified any vertical relationship between Apollo, or any of Apollo's portfolio companies, including Avantcard, and the Target Assets in the State. Therefore, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

Conclusion

23. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

24. The Deed of Sale contains non-compete and non-solicitation restrictions on Tesco Bank. The duration of these non-compete and non-solicitation restrictions does not exceed the maximum duration acceptable to the Commission. The Commission considers

https://www.centralbank.ie/docs/default-source/statistics/data-and-analysis/credit-and-banking-statistics/credit-and-debit-card-statistics/2017q2 ie credit debit cards.pdf?sfvrsn=4

⁷ Data regarding the total number of credit cards issued in the State is provided by the Central Bank of Ireland and can be accessed at

https://www.centralbank.ie/statistics/data-and-analysis/credit-and-banking-statistics/credit-and-debit-card-statistics

⁸ Avantcard informed the Commission that "These estimates are based on Avantcard's knowledge and experience of the Irish credit card sector."

⁹ In this respect, the Commission follows the approach adopted by the EU Commission in paragraphs 20 and 26 of its "Commission Notice on restrictions directly related and necessary to concentrations" (2005). For more information see http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN

these restrictions to be directly related to and necessary for the implementation of the Proposed Transaction insofar as they relate to the State.

Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed transaction whereby Avantcard Designated Company Activity would acquire sole control of certain assets comprising a portfolio of performing receivables and related contracts and goodwill that comprise the credit card business of Tesco Personal Finance PLC will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

Brian McHugh Member Competition and Consumer Protection Commission