

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
ELECTRONIC PAYMENT)
SERVICES, INC.,)
)
Defendant.)

Civ. No. 94-208
Filed: April 21, 1994
COMPLAINT

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable and other relief against the defendant named herein and complains and alleges as follows:

Nature of this Action

1. The United States brings this civil antitrust action to obtain permanent injunctive relief against an anticompetitive practice of defendant Electronic Payment Services, Inc. ("EPS") that constitutes a tying arrangement that is *per se* unlawful under Sherman Act § 1, 15 U.S.C. § 1, and that constitutes a means whereby EPS unlawfully has maintained a monopoly in access to regional automatic teller machine ("ATM") networks in the Commonwealth of Pennsylvania and the States of New Jersey, Delaware, West Virginia and New Hampshire, and

in substantial portions of the State of Ohio (collectively the "affected states"), all in violation of Sherman Act § 2, 15 U.S.C. § 2.

2. EPS owns and operates the Money Access Service ("MAC") ATM network, which has market power or monopoly power in the market for regional ATM network access in the affected states. EPS generally prohibits its customers -- banks, savings and loan associations and credit unions (collectively "banks") that seek to make ATM network services available to their depositors -- from obtaining ATM processing services (described at paragraph 6 below) from independent data processing firms who seek to compete for that business. Instead, EPS requires MAC customers either to obtain those services from EPS or to provide them in-house, at a cost that is prohibitive for many smaller banks.

3. As more fully described below, EPS's tying practice not only serves to raise the cost to banks of processing services, but also prevents banks from participating in more than one regional ATM network. Defendant thereby has maintained its monopoly in the affected states.

4. The United States seeks a permanent injunction, pursuant to Sherman Act § 4, 15 U.S.C. § 4, prohibiting EPS from refusing to allow its customers to obtain ATM processing from third party processors; requiring EPS to connect to those third party processors on nondiscriminatory terms; and other and further relief appropriate to remedy these violations.

Definitions

5. "ATM network" means an arrangement whereby more than one ATM and more than one depository institution (or the deposit records of such depository institutions) are interconnected by electronic or telecommunications means, to one or more computers, processors or switches for the purpose of providing ATM services to the retail customers of depository institutions.

6. "ATM processing" means providing the data processing services and telecommunications facilities and services used:

1. to operate, monitor and support the operation of ATMs deployed by a depository institution;

2. to connect the ATMs deployed by a depository institution to that institution's deposit authorization records, for authorization and confirmation of "on-us transactions," and the record-keeping and other functions related to such transactions; and

3. to connect the ATMs deployed by a depository institution to one or more branded ATM networks for authorization and confirmation of "on-others transactions," and the record-keeping and other functions related to such transactions.

ATM processing can be provided as a service distinct from branded ATM network access, and can be performed in the facilities of the ATM switch, a depository institution's own facilities, or in the facilities of a data processing service organization.

7. "ATM switch" means a telecommunications and data processing facility used to receive and route transactions from ATMs or ATM processors to data processing facilities used by depository institutions to authorize ATM transactions. A "MAC switch" is an ATM switch operated by or on behalf of, or providing such functionality for branded ATM network access to, MAC or any successor branded ATM network controlled by defendant.

8. "Intercept processor" means a depository institution that provides ATM processing for itself.

9. "MAC" means Money Access Service, the branded ATM network owned, controlled and operated by EPS, or any successor brand to "MAC."

10. "Third party processor" means any person that currently or in the future offers ATM processing services to depository institutions. Third party processors may include both depository institutions providing ATM processing for other depository institutions and firms unaffiliated with depository institutions that provide such services.

Party Defendant, Jurisdiction and Venue

11. EPS is made a defendant in this action. EPS has its principal place of business at 1100 Carr Road, Wilmington, Delaware 19809. EPS is owned by four bank holding companies: CoreStates Financial Corp., Philadelphia, Pa.; PNC Financial Corp., Pittsburgh, Pa.; Banc One Corp., Columbus, Ohio; and KeyCorp, Albany, New York. EPS owns and operates MAC, a regional ATM network, and other businesses. "EPS" and "MAC" are used interchangeably in this Complaint.

12. This Court has jurisdiction over the subject matter of this civil antitrust action pursuant to Section 4 of the Sherman Act, 15 U.S.C. § 4. This Court has jurisdiction over EPS pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22.

13. EPS is a Delaware corporation, and is found and transacts business in the District of Delaware. Venue is proper in the District of Delaware pursuant to 15 U.S.C. § 12 and 28 U.S.C. § 1491.

Interstate Commerce

14. Defendant's MAC ATM network is the largest ATM network in the United States by transaction volume. In 1992, the MAC network handled 92 million transactions monthly for 1,455 depository institutions deploying 13 thousand ATMs.

15. The MAC network operates in interstate commerce, and defendant's practices affect interstate commerce.

The MAC ATM Network and its Practices

16. ATMs permit a depositor, using an ATM card and personal identification number, to obtain cash, monitor account balances, and transfer money or make payments. Some ATMs also permit customers to make deposits, and some dispense items of value other than cash (such as travelers checks, railroad tickets, etc.). ATMs usually are owned and maintained by individual banks, and are deployed by banks on premises and at other public locations convenient to their customers.

17. ATMs typically are connected by telephone wires to a computer that provides processing, also known as driving, for several ATMs. That computer often is connected to a network switch, such as the MAC switch, for interchange of transactions among otherwise unaffiliated banks. An ATM network typically charges a switch fee per transaction, and may also charge various monthly or annual membership fees. The processor charges a separate fee for its services. Outside the MAC network, the driving computer might be operated by the bank, by a network, or by an independent data processing firm, and the driving computer might connect those ATMs to several different networks. MAC's rules and practices, however, constrain interconnection of different ATM networks.

18. Banks seek to participate in shared ATM networks, such as MAC, in order to give their depositors ubiquitous access to their accounts. While a bank can deploy its own ATMs, the advantage to a shared ATM network is that a bank's depositors will be able to use ATMs at many more locations than one bank alone could practicably support. The areas a bank seeks to serve through a shared ATM network include the areas in which its depositors live, work and shop, and the broader areas in which they move regularly. A bank's ability to offer its depositors access to other banks' ATMs, and thereby to offer its depositors convenient access to their accounts, is in most bankers' view necessary to attract and retain deposits. A bank -- particularly a small bank, thrift or credit union with one or only a few offices -- would be at a competitive disadvantage if it could not offer its depositors access to many conveniently located ATMs. Because no

other service constitutes a reasonably close substitute for regional ATM network access, regional ATM networks constitutes a product market and a line of commerce within the meaning of the antitrust laws.

19. The MAC network is the dominant ATM network in the affected states. In Pennsylvania, New Jersey and Delaware, more than 90% of the ATMs are connected to MAC; in New Hampshire, approximately 80% of the ATMs are connected to MAC. No other regional network has a significant presence in Pennsylvania, Delaware, West Virginia or New Hampshire. Although the New York Cash Exchange ("NYCE") ATM network has a presence in New Jersey, for reasons set forth below, EPS's MAC network nonetheless has monopoly or market power in New Jersey.

20. Nearly all banks in the affected states believe they have no choice but to participate in the MAC network. Banks in the affected states affiliate with MAC because MAC is the only ATM network that provides ubiquitous ATM network access throughout all or most of the contiguous affected states. Banks that do not seek to provide regional ATM network access in areas smaller than these States do not have significantly greater alternatives than do statewide banks.

21. Banks in the affected states often obtain ATM network access from MAC even though defendant's switching and processing fees, and other costs of doing business with MAC, are higher than those charged by other networks and by independent processors. Defendant has market power in the market for

regional ATM network access in the affected states. That market power is of sufficient size and durability to constitute monopoly power.

22. Until 1992, MAC generally did not permit its customers to participate in rival ATM networks while also participating in MAC. While the rule against multiple affiliations was formally dropped in 1992, MAC engages in practices that make it impractical for many participating banks -- particularly smaller banks -- to belong to a rival network while belonging to MAC. In particular, MAC requires banks either to obtain ATM driving from defendant or to provide ATM driving in-house as intercept processors, which is prohibitively expensive for many smaller banks, thrifts and credit unions. MAC generally forbids its network customers from obtaining ATM driving from any of the several data processing firms that provide that service in a national market.

23. There are several regional and national firms in the business of ATM processing that could and would seek to compete to provide ATM driving services to MAC network members. Absent MAC's prohibition, many MAC customers would seek to obtain ATM processing from these or other firms. Defendant's rules and practices thus prevent willing buyers and sellers from conducting business at competitively determined prices and terms.

24. Once defendant drives a bank's ATM, defendant can prevent that bank from connecting its ATM to another network. To connect to a network other than MAC, MAC must establish the connection. MAC generally has not provided connections to the ATM networks that would be its strongest competitors.

25. The anticompetitive effects of MAC's "no-third-party-processing" rule are twofold:

a. *First*, it excludes competitors from the market for ATM processing in areas where MAC has market power in the market for ATM network access, extending the exercise of that market power into the processing market and permitting MAC to charge higher prices -- which it does both directly and indirectly; and

b. *Second*, by preventing many banks from participating in networks other than MAC, the rule makes it substantially more difficult for other networks to enter into MAC's areas of dominance to compete with MAC. The rule therefore serves to exclude competitors and maintain MAC's monopoly power.

26. The rule against third party processing is not necessary to obtain any efficiencies or quality control assurances that could not reasonably be obtained through less anticompetitive means. MAC allows some of its largest members to use third party processors, and permits those third party processors to connect to MAC, but will not allow those same third party processors to provide ATM driving services to other, smaller MAC customers.

First Violation Alleged

27. The United States repeats and realleges the allegations of paragraphs 1 to 26 herein.

28. The provision by defendant of ATM network access and processing services pursuant to MAC's rules, constitute an agreement or agreements within the meaning of Section 1 of the Sherman Act.

29. Regional ATM network access and ATM processing are separate products.

30. Defendant has market power in the market for regional ATM network access in the affected states.

31. The amount of commerce affected in the market for ATM processing in the affected states is substantial.

32. Defendant's rules and practices act to force many of its ATM network access customers to purchase ATM processing from defendant, rather than from other firms of the customer's choosing.

33. Defendant's tying arrangement unreasonably restrains trade and is unlawful *per se* under Section 1 of the Sherman Act.

Second Violation Alleged

34. The United States repeats and realleges the allegations of paragraphs 1 to 33 herein.

35. Defendant possesses substantial monopoly power in the market for regional ATM network access in the affected states.

36. Defendant wilfully has maintained its monopoly power in the market for regional ATM network access in the affected states through exclusionary practices.

37. Defendants' actions and practices constitute unlawful monopolization under Section 2 of the Sherman Act.

Prayer for Relief

WHEREFORE, plaintiff the United States prays that:

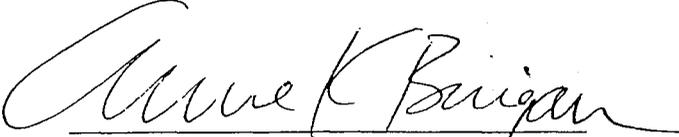
a. defendant be enjoined from requiring any depository institution that obtains ATM network access from defendant to obtain any ATM processing from defendant; from selling or contracting to sell access to, membership in, or switching of transactions by the MAC network, on the condition, agreement, or understanding that the purchaser thereof shall not use or purchase ATM processing services from any other person; or from restricting in any manner, directly or indirectly, the ability of a depository institution to obtain ATM processing for access to the MAC ATM network from any person other than defendant;

b. defendant be enjoined to provide third party processors with nondiscriminatory access to the MAC switch that is at least equal in type and quality to the access MAC provides to intercept processors;

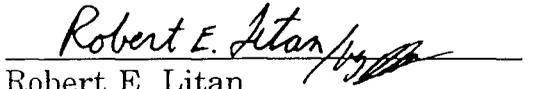
c. defendant be enjoined from discriminating in the pricing of access to the MAC network;

d. the United States be granted such other structural, injunctive or further relief as this Court may deem just and proper; and

e. the United States recover the costs in this action.


Anne K. Bingaman
Assistant Attorney General

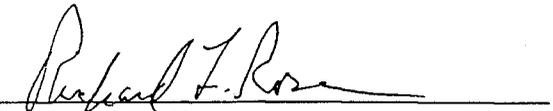

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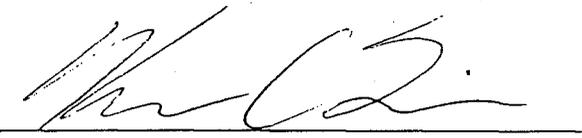

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