

The New York Times

Business Day

Tuesday, December 16, 2003

Accord Lets First Data Acquire Concord EFS

By JENNIFER BAYOT

The First Data Corporation said yesterday that it had reached a late agreement to settle a government lawsuit blocking its planned \$7 billion acquisition of Concord EFS.

First Data, a leading payments processor, agreed to sell its 64 percent stake in the NYCE Corporation, which routes debit card transactions, and permit NYCE to operate as a separate unit until a buyer is found.

First Data announced the settlement with the Justice Department shortly before the case was scheduled to go to trial.

The company's plan to acquire Concord, announced in April, has been stalled by the government's lawsuit, which asserted that the merged company would stifle competition among debit networks that require a personal identification number. The complaint said that the combined company would process about half of all PIN debit transactions in the country, giving it enough leverage to charge merchants higher fees, which would most likely be passed on to customers.

First Data's divestiture of NYCE would settle those claims, which were filed in October by the Justice Department, eight states and the District of Columbia.

"This settlement removes uncertainty and allows the companies to proceed with achieving the benefits of this merger," Charles T. Fote, First Data's chairman and chief executive, said in a statement.

"This settlement ensures that American businesses will pay competitive prices for PIN debit transactions and that consumers will benefit from that competition," R. Hewitt

A deal that could create a serious competitor to Visa and MasterCard.

Pate, assistant attorney general in charge of the antitrust division at the Justice Department, said in a statement.

By selling NYCE, which is based in Montvale, N.J., First Data apparently is looking at the bigger prize: Star Systems, Concord's PIN debit network and the largest in the country. NYCE has a 12 percent market share, according to The Nilson Report in Oxnard, Calif.

Merchants use the various networks to permit their customers to pay for purchases using a debit card and a personal identification number. In 2002, consumers bought more than \$150 billion in goods and services using PIN debit networks, according to the Justice Department's complaint.

To reflect the decreased value of the deal, First Data and Concord are adjusting the financial terms, changing its value to about \$6.9 billion based on First Data's Friday closing price of \$39.30.

Under the new agreement, First Data will exchange 0.365 of a share of its common stock for every share of Concord's common stock. The original exchange ratio was 0.40. Concord shareholders will own about 19 percent of the outstanding shares of the combined company.

First Data said the transaction would be completed by the second quarter of 2004, instead of the end of this year, to give the companies time to obtain the approval of their shareholders.

The boards of both companies have approved the terms of the revised merger agreement.

Industry analysts say the merged company, with or without NYCE, will create a new payments powerhouse.

"This transaction is a breath of a fresh air to the industry," said Brian W. Smith, a partner at Mayer, Brown, Rowe & Maw in Washington and a former general counsel at MasterCard. "It has the potential to create a major competitor to the existing payment systems, including Visa and MasterCard."

Craig Peckham, an analyst with Jefferies & Company in New York, said he doubted that the sale of NYCE would hold back First Data, adding that the company could draw on a breadth of products.

"In the broader context, NYCE really represents a small piece of First Data's overall business," he said.

More business comes from First Data's Western Union and merchant services divisions, among others, he explained.

"I think in the long term they're positioning themselves as a viable competitor to Visa and MasterCard," Mr. Peckham said. But he said he thought the networks would continue to work together for now.

First Data said the merger could dilute earnings next year but would save the company \$205 million in 2006.