EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Mastercard Incorporated
2000 Purchase Street,
Purchase, NY 10577
United States of America

Subject: **Case M.9744 – MASTERCARD / NETS**
Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

1. On 26 June 2020, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation and following a referral pursuant to Article 22 of Merger Regulation by which MasterCard Incorporated ("Mastercard" or the "Notifying Party", United States) acquires sole control of Nets' A/S ("Nets", Denmark) account-to-account payment business (the "Target") (the "Transaction").[3] Mastercard and the Target are together referred to as the "Parties".

2. The Transaction was referred to the Commission by the Danish competition authority pursuant to Article 22 of the Merger Regulation (the "Referral Request"). The Referral Request was subsequently joined by the national competition authorities of Austria, Finland, Norway,

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 C 219, 3.7.2020, p. 15.

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Sweden, and the UK. The Commission acquired jurisdiction to examine the Transaction on 2 April 2020.

1. THE PARTIES AND THE OPERATION

3. **Mastercard** is a US-based technology company operating in the global payments industry. Mastercard's main activities include ownership and operation of payment card schemes and provision of switching services for card transactions. Mastercard is also active in alternative payment solutions through its subsidiary VocaLink Holding Limited ("Vocalink"). In particular, Vocalink provides account-to-account ("A2A") core infrastructure services ("CIS") for interbank payment schemes (also known as "A2A CIS"). A2A payment schemes allow for payments directly from one bank account to another, with no need for a card.

4. The **Target** is currently a business unit within Nets, a payment solution provider headquartered in Denmark. The Target operates as a global payments business providing payment services and technology solutions, mainly in the Nordic region, as well as in the Single Euro Payments Area ("SEPA"). The Target's activities focus on the provision of (i) A2A CIS, (ii) A2A payment and ancillary services and (iii) open banking services.

5. On 6 August 2019, Mastercard and Nets entered into a sale and purchase agreement pursuant to which Mastercard agreed to purchase all the shares of three newly incorporated wholly owned indirect subsidiaries of Nets, which hold the assets comprising the Target's business. Therefore, the Transaction consists in the acquisition of sole control by Mastercard of the Target and gives rise to a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

2. UNION DIMENSION

6. The Transaction does not meet the turnover thresholds set out in Articles 1(2) or 1(3) of the Merger Regulation. As a result, the Transaction does not have a Union dimension within the meaning of Article 1 of the Merger Regulation.

7. The Transaction was referred to the Commission by the Danish national competition authority on the basis of Article 22 of the Merger Regulation on 27 February 2020. The Referral Request was subsequently joined by the national competition authorities of Austria, Finland, Norway, Sweden and the UK (together with Denmark the "Referring States") within the legal deadline of Article 22(2) of the Merger Regulation.

8. On 2 April 2020, the Commission adopted six decisions pursuant to Article 22(3) of the Merger Regulation accepting the requests of the Referring States.[4] On this basis, the Commission acquired jurisdiction to examine the Transaction with regard to the Referring States.

3. COMPETITIVE ASSESSMENT

9. The Parties' activities overlap horizontally mainly with respect to the provision of (i) A2A CIS and (ii) A2A payment services.[5]

4 C(2020) 2172 final, addressed to Austria; C(2020) 2177 final, addressed to Denmark; C(2020) 2173 final addressed to Finland; C(2020) 2174 final, addressed to Norway; C(2020) 2170 final, addressed to Sweden; and C(2020) 2178 final, addressed to the UK.

3.1. A2A CIS

3.1.1. Overview of the market and the Parties' activities

10. A2A CIS consist in providing interbank payment scheme operators[6] with the core infrastructure and related services required for the processing of payments directly from the payer's bank account to the payee's bank account, without requiring the use of a card ("A2A payments").

11. More specifically, suppliers of A2A CIS provide the core infrastructure/technology required to authorise, clear[7] and initiate the settlement (*i.e.* the completion of the transaction through the transfer of funds) of A2A payments. The Parties are active in the clearing process but do not conduct the settlement process, which is carried out by distinct providers (which are typically central banks). In other words, A2A CIS entail all the clearing processes that precede the transfer of funds, such as verifying that there are funds or credit available on individual accounts, authorising the transactions, bookkeeping, forecasting and liquidity management.[8]

12. Depending on the requirements of the interbank payment scheme operator, suppliers of A2A CIS may provide (i) **batch payment** processing (*i.e.* processing together payment orders at discrete intervals of time), (ii) **instant (or real-time) payment** processing (*i.e.* processing of payments on a transaction-by-transaction basis in real time) or (iii) both. Historically, A2A core infrastructures only processed batch payments. However, with the emergence of instant payments in the last decade, the market is progressively migrating from batch payments to instant payments.

13. A2A CIS can be provided either as:

- a software solution including only the provision of a licence for the software allowing the processing of A2A payments ("**software-only solution**"); or

- a managed solution consisting in the provision of A2A core infrastructure (including the software, together with the hardware and the telecommunication networks and processes), as well as its management and operation in accordance with the rules set out by the scheme operator ("**managed services**").

14. The markets for the provision of A2A CIS are essentially bidding markets. Suppliers of A2A CIS (as software-only solutions or managed services) compete in tenders for contracts with interbank payment scheme operators. A2A CIS contracts are long-term contracts, the duration of which can exceed 10 years, which may be periodically tacitly renewed to ensure continuity of the infrastructure without switching A2A CIS provider.

15. Mastercard and the Target both provide software-only solutions and managed services. Their respective offering also includes both batch and instant payment processing. The Parties participate in A2A CIS tenders across the EEA (and beyond).[9] As detailed in Table 1 below, in the EEA, the Parties currently provide A2A CIS in several countries. In particular, Mastercard is

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5 The Parties' activities also overlap in open banking (*i.e.* system allowing banks and other financial institutions to share the financial data of their customers with third-party financial service providers through an application programming interface). In relation to open banking, no affected markets arise under any plausible market definition.

6 Payment scheme operators are typically consortia of banks or banks' associations. Payment scheme operators act as the custodians of a payment scheme's rules and technical standards, determine access criteria and accept new members, procure A2A CIS and take responsibility for regulatory compliance.

7 Clearing refers to the process of transmitting, reconciling and, in some cases, confirming payment orders prior to the completion of the transaction and the transfer of funds (*i.e.* settlement), including potentially the netting of orders and the establishment of final positions for settlement.

8 A2A core infrastructures may also be referred as A2A clearing platforms.

9 For instance, at global level, Mastercard also provides A2A CIS in Peru, the Philippines, Saudi Arabia, Singapore, Thailand and the US. […]

(i) the incumbent provider in Sweden and the UK and (ii) won in 2019 (against the Target) a tender for the provision of A2A CIS at pan-Nordic level in the context of the P27 project.[10] The Target is the historic provider in Denmark and Norway and won, in recent years, several tenders for the provision of A2A CIS in the EEA.

TABLE 1 – A2A CIS activities of the Parties in the EEA		
Party	**Managed services**	**Software-only solutions**
MASTERCARD	- **UK** *(batch & instant payments)* - **Sweden** *(batch payments)* - **Nordics (P27)** *(batch & instant payments)*	-
TARGET	- **Denmark** *(batch & instant payments)* - **Norway** *(batch & instant payments)* - **Italy** *(instant payments)* - **Slovenia** *(batch & instant payments)*	- **Hungary** *(instant payments)*

3.1.2. Market definition

3.1.2.1. Product market definition

(A) Commission's precedents

16. The Commission has not assessed in detail the relevant product market definition for A2A CIS in the past.[11]

(B) The Parties' views

17. In the Parties' view, the market should be defined as comprising the supply of A2A CIS to all interbank payment schemes and should not be further segmented.[12]

18. In particular, the Parties submit that segmenting the market based on the scope of the services provided (*i.e.* software-only solutions *vs*. managed services) is not relevant. The Parties argue in particular that the software is the core element of the A2A CIS offer, whereas the components of a managed service (such as datacenters and telecommunication networks) are simply mechanisms by which the software solution may be delivered. According to the Parties, these additional components are essentially commodity services that are readily available in the market and may be supplied by a range of providers (on a stand-alone basis or together with the software) or sourced by customers in-house.[13] The Parties also argue that most players can provide both types of services, either alone or in consortium with third parties.[14]

19. Moreover, the Parties submit that segmenting the A2A CIS market depending on the type of payment processing (*i.e.* instant *vs*. batch payments) is not relevant since both types of payment

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10 P27 is a joint venture between six Nordic banks, which is currently setting up a new payment platform (not yet operational) with the aim of establishing a real-time and batch multi-currency payment infrastructure across the Nordic region. The P27 project currently covers Denmark, Finland and Sweden (Norwegian banks were also initially part of the project but withdrew from it in 2018). In the context of this project, P27 issued two tenders: (i) a tender for the provision of A2A CIS (the "P27 Layer 1 tender"), which was awarded to Mastercard in 2019 and (ii) a tender for the provision of A2A payment services (the "P27 Layer 2 tender"), which is still ongoing.

11 The only Commission decision relating to A2A CIS is a referral decision adopted in 2016 in Case M.8149 – *Mastercard/VocaLink*, where the assessment of the UK referral request did not require a detailed analysis of the market, whose exact delineation was left open.

12 See Form CO, paras. 225 and ff.

13 See the Parties' Supplemental submission on competition in the provision of A2A CIS managed services (the "Supplemental submission on managed services"), dated 22 July 2020, paras. 5 and ff.

14 See Form CO, para. 332(g).

processing (i) co-exist in most cases (*e.g.* it is common for A2A CIS tenders to cover both batch and instant payments); (ii) are characterised by the same competitive landscape and (iii) rely to a very large extent on the same core technology and standards. In this respect, the Parties indicate that the vast majority of requirements in A2A CIS tenders are identical, notwithstanding whether the tenders relate to instant or batch payment processing.[15]

(C) The Commission's assessment

(C.i) Potential segmentation based on the scope of the services provided

20. The results of the market investigation indicates that software-only solutions and managed services are likely to constitute distinct product markets for the following reasons.

21. *First*, most competitors and a significant share of customers consider that A2A CIS providers do not typically have the capabilities to provide both software solutions and managed services. In particular, market participants stressed the fact that the *"business model for [managed] services and [software] products is quite different"* and that providing managed services *"implies much wider responsibilities and different type of expertise than just delivering a [software] product"*.[16] The Commission notes that this contradicts the argument made by the Parties, according to which managed services are simply mechanisms by which the software solution may be delivered.

22. Moreover, several market participants disputed the Parties' claim that, apart from the software, the components required to provide managed services are commodity products readily available on the market, indicating that some of these components are "*proprietary or complex components*" (such as core gateways),[17] which are difficult to find on the market.[18] In addition, a competitor stressed that "*select[ing], specify[ing] and arrang[ing] these components to work effectively with the [software]*" is "*essential*" to be able to provide managed services and require specific "*knowledge*".[19]

23. *Second*, competitors generally consider that the provision of managed services and software-only solutions are characterized by different competitive dynamics and landscape.[20] A large number of respondents to the market investigation explained that, although some A2A CIS providers (such as the Parties) offer both types of solutions, most players provide either only managed services or only software solutions. A competitor expressly indicated that "*in most cases, providers are specialized to offer only one type of solution".* Similarly, a customer stated that A2A CIS provider "*normally offer one or another kind of solutions, but not both*".[21] For example, STET indicated that it "*only offers the managed service but do not sell the products i.e. not the software*".[22] This is also reflected in the Parties' internal documents, which qualify two competitors, namely […] and […], as "*software vendor*".[23] The Parties do not contest the above

15 See Form CO, paras. 234 and ff. (see also paras. 22, 99 and 101).

16 See replies to Questionnaires Q1 to competitors (question 11) and Q2 to customers (question 10).

17 Core gateway are software components providing payment services providers ("PSPs") (e.g. banks), with a secure access to the A2A core infrastructure.

18 See replies to Questionnaire R1 (question 9.1). Conversely, several market participants confirmed that some the components required to provide managed services (such as datacentres and networks) are commodity products readily available on the market.

19 See replies to Questionnaire R1 (question 9.1).

20 See replies to Questionnaire Q1 to competitors (question 12).

21 See replies to Questionnaires Q1 to competitors (questions 11 and 12) and Q2 to customers (question 10). See also non-confidential versions of the minutes of conference calls with competitors (i) dated 23 April 2020 (3pm), paras. 16 and 18; (ii) dated 23 April 2020 (5:15pm), paras. 9-10; and (iii) dated 24 April 2020, para. 11.

22 See Annex 1.6 to the Form CO.

23 See Annex 5.4-7 to the Form CO, slide 20. In fact, Mastercard expressly acknowledged that "*neither […] nor […] currently offer managed services in their own*" in the EEA, but rather "*offer commercial off the shelf (COTS)*

and expressly acknowledged that a large number of A2A CIS providers do not offer both managed and software solutions which, in their view, "*may be due to competitors' capabilities"* or to "*a deliberate strategic choice based on each competitor's preferred business model*".[24]

(C.ii) Potential segmentation based on the type of payment processing

24. The results of the market investigation suggest that distinguishing instant and batch payment processing would not be warranted.

25. *First*, the Commission found that instant payments are progressively replacing batch payments, but that the migration of the entire market may take a long time depending on the specificities of each country; for this reason, batch payments are expected to continue to exist for many years.[25] As a result, both types of payment processing are currently coexisting in the EEA, where it is not uncommon to have A2A CIS tenders requiring solutions covering both batch and instant payments. The Parties provided several recent examples of such tenders (including *e.g.* in the Nordics (P27), the UK, Austria, Bulgaria and Slovenia).[26] This is also corroborated by the feedback received from the market. For example, a competitor stated that "*requirements in A2A CIS tenders tend to encompass both batch and real-time solutions*".[27]

26. *Second*, a majority of competitors consider that the processing of batch and instant payment relies, to a large extent, on the same core technology. For example, a rival of the Parties indicated that "*the approach to processing A2A instant payments and A2A batch payments follow very similar patterns*". Although some market participants took the opposite view, they did not deny the existence of similarities between batch and instant payments, but gave a more nuanced picture stating that the "*underlying technology could be different*" or that "*while the underlying processes can be very similar and the software deployed can also be very similar, there are significant differences on how the underlying systems behave*".[28]

27. *Third*, most competitors and customers consider that A2A CIS providers typically have the capabilities to process both types of payment. A respondent explained that "*traditionally A2A CIS players provided batch payment solutions but […] have developed instant payment solutions to respond to demand*", which has evolved over time. Several respondent also stressed that A2A CIS providers, which do not have yet the capabilities to process instant payments, "*will complete sooner or later the necessary steps to develop and implement A2A instant payment solutions*".[29]

28. *Finally*, competitors generally took the view that the batch and instant payment processing should not be considered as separate markets as they present similar competitive dynamics and landscape.[30]

(D) Conclusion

29. Based on the results of the market investigation and for the purpose of this decision, the Commission concludes that the provision of A2A core infrastructure managed services and

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software packages to be operated by a local partner or customer organization" (see the Parties' reply to RFI 1, question 74(d)).

24 See Form CO, para. 332(g) and the Parties' reply to RFI 2, question 5.

25 See non-confidential versions of the minutes of conference calls with competitors (i) dated 23 April 2020 (3pm), para. 17 and (ii) dated 23 April 2020 (5:15pm), para. 8.

26 See Annex 6.3 to the Form CO.

27 See non-confidential version of the minutes of a conference call with a competitor dated 21 April 2020, para. 14. See also replies to Questionnaire Q1 to competitors (question 15).

28 See replies to Questionnaire Q1 to competitors (question 13).

29 See replies to Questionnaires Q1 to competitors (questions 14 and 16) and Q2 to customers (question 11).

30 See replies to Questionnaire Q1 to competitors (question 16).

software-only solutions constitute distinct product markets. A further differentiation based on the type of payment processing is not warranted.

3.1.2.2. Geographic market definition

(A) Commission's precedents

30. As previously indicated, the Commission has not assessed in detail the relevant market definition for A2A CIS in the past. However, in 2016, in case M.8149 – *Mastercard/VocaLink*, the Commission concluded (in line with the view expressed by Mastercard in that case) that the provision of A2A CIS presents the characteristics of national markets. This conclusion was based on the fact that the Commission has consistently considered that the markets for payments processing services are national in scope (due to the existence of various national characteristics) and that the core infrastructures in this case were designed according to the specific characteristics of the payment schemes in the UK.[31]

(B) The Parties' views

31. In the present case, Mastercard and the Target submit that the market is global in scope for several reasons.[32] ***First***, they claim that the provision of A2A CIS is highly standardised worldwide, with the increasing adoption of the ISO 20022 messaging standard at global level[33] and that there is no material difference between the requirements set by the tendering authorities around the world. ***Second***, the Parties consider that the emergence of supra-national tenders (such as the P27 Layer 1 tender in the Nordics) demonstrates that demand from tendering authorities is wider than national. ***Third***, the Parties argue that A2A CIS providers compete across the globe (with non-EEA players bidding in the EEA and EEA players bidding outside of the EEA) and that participating in A2A CIS tenders does not involve significant costs and risks, or any other significant technical or legal barriers for foreign bidders.

32. In any event, the Parties conclude that the geographic scope of the market can be left open in the present case since the Transaction does not raise competition concerns under any plausible geographic market definition.

(C) The Commission's assessment

33. The market investigation was not fully conclusive with respect to the geographic scope of the A2A CIS markets: while the Commission found that these markets are unlikely to be worldwide, their exact geographic scope in the EEA is unclear.

(C.i) A2A CIS markets are unlikely to be global in scope

34. As explained below, the market investigation strongly suggests that, contrary to the Parties' claim, the A2A CIS markets are unlikely to be global in scope.

35. ***First***, the market investigation contradicted the Parties' claim that the market is highly standardized across the globe. Although market participants acknowledged "*a trend towards the ISO20022 standard which provides for a common minimum standard*", they generally stressed the fact that this standard "*has not been implemented in many countries yet (especially outside of Europe)*" and that global standardization is "*still to be achieved*" and "*will take many years.*"[34]

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31 See case M.8149 – *Mastercard/VocaLink*, paras. 18-20 and the decisional practice cited.

32 See Form CO, paras. 247 and ff.

33 ISO 20022 is an ISO standard for electronic data interchange between financial institutions (see www.iso20022.org).

34 See replies to Questionnaires Q1 to competitors (question 17) and Q2 to customers (question 12). See non-confidential version of the minutes of a conference call with a competitor dated 23 April 2020 (3pm), para. 13.

36. For example, a competitor indicated that "*there are still material differences depending on the geography, because jurisdictions have different approaches towards A2A, both in terms of the underlying technology, or standards used*".[35] Another player noted that "*outside Europe, market conditions are not uniform, (e.g. the ISO 20022 messaging standard is not uniformly adopted across the globe) and vary from country-to-country with different standards and regulations*".[36] Similarly, customers indicated that "*at global level there are differences in terms of standardization due to different regulations and customer behaviours*" and that "*the ISO20022 is not yet globally used everywhere*".[37]

37. It follows that both customers and competitors consider that the level of standardization at global level is still rather low.[38]

38. *Second*, the Commission found that market conditions are not homogeneous across the globe. A large majority of respondents (including both customers and competitors) consider that, as a result of the above lack of standardization, the competitive dynamics and landscape differ depending on the geographies.[39] For instance, a market participant explained that "*the competitive landscape is generally different in Europe and in Asia because in each specific market, a supplier needs to have proven experience and references, taking into consideration the market features and the specific regulations*".[40]

39. In this respect, the Commission notes that, while the elements in the Commission's file confirm that A2A CIS providers compete, to some extent, across the globe, they also suggest that participating in tenders involves significant costs and technical or legal barriers for non-EEA bidders and may take up several years. For example, according to a competitor, "*albeit non-European players […] may participate in EEA/UK tenders and could potentially enter the EEA/UK market for A2A CIS, they currently exert limited competitive constraints in the EEA/UK because (i) they lack local knowledge and footprint, which are paramount, and (ii) they offer A2A CIS solutions that are not SEPA compliant*."[41] Other players indicated that "*the process of participating in a tender is in itself highly complex, expensive and time consuming*".[42]

40. Contrary to what the Parties argue, the mere participation of non-EEA players in the RFI phase of EEA tenders for the provision of A2A CIS does not disprove the above.[43] Indeed, according to the Parties themselves "*it is the RFP process […] that is the time-consuming element*".[44] , The RFP phase is also much more costly: according to Annex 6.57 to the Form CO, the costs incurred by the Target for the participation of the RFP phase can be up to […] higher than the costs incurred for the RFI phase.[45] This is confirmed by a competitor, which explained that "*the investment required for the RFI phase is rather low, contrary to the RFP phase, which requires significant investments and the constitution of a dedicated team*".[46] The

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35 See replies to Questionnaires Q1 to competitors (question 17) and Q2 to customers (question 12) (emphasis added).

36 See non-confidential version of the minutes of a conference call with a competitor dated 24 April 2020, para. 14 (emphasis added).

37 See replies to Questionnaire Q2 to customers (question 12).

38 See replies to Questionnaires Q1 to competitors (question 17) and Q2 to customers (question 12).

39 See replies to Questionnaires Q1 to competitors (question 19) and Q2 to customers (question 13.1).

40 See non-confidential version of the minutes of a conference call with a competitor dated 21 April 2020, para. 16.

41 See non-confidential version of the minutes of a conference call with a competitor dated 24 April 2020, para. 16.

42 See non-confidential version of the minutes of a conference call with a competitor dated 21 April 2020, para. 16.

43 The tenders for the provision of A2A CIS typically contain an initial request for information ("RFI") phase, in which bidders set out their capabilities and track record. Following this phase, a number of suppliers are shortlisted for the subsequent stage (the request for proposal or "RFP" phase). In the RFP phase, suppliers are invited to submit their proposals. On this basis, the payment scheme operator selects a small subset of bidders and conducts contract negotiations with them.

44 See the Parties' reply to RFI 1, question 41(h).

45 See Annex 6.57 to the Form CO.

46 See non-confidential version of the minutes of a conference call with a competitor dated 23 April 2020 (3pm), para. 22.

Parties also admit that "*tender processes have become more complex over time and hence newer process are more costly*" and Mastercard indicates that the participation in a single tender can cost […]. Moreover, the bidding data submitted by the Parties shows that non-EEA players are rarely shortlisted (*i.e.* invited to the RFP phase) in EEA tenders and that, conversely, EEA players have a very limited track record outside of the EEA.[47]

(C.ii) The exact geographic of the A2A CIS markets in the EEA is unclear

41. The results of the market investigation are not conclusive as regards the exact geographic scope of the A2A CIS markets in the EEA.

42. ***On the one hand***, several elements suggest that the A2A CIS are no longer national in scope and could be potentially regional (*e.g.* pan-Nordic) or EEA-wide.

43. *First*, in recent years, the provision of A2A CIS in the EEA has been increasingly governed by international standards (*e.g.* the messaging standard ISO 20022). In particular, respondents emphasized the role of the SEPA[48] and the European Payment Council ("EPC")'s payment schemes[49] in the increasing standardisation and competition in the EEA. It follows that customers and competitors generally consider that the provision of A2A CIS is relatively standardized at EEA level.[50]

44. *Second*, some recent tenders for the provision of A2A CIS took place at supranational level, such as the pan-Nordic level Layer 1 tender issued by P27 in 2018 and the pan-European tender organised by EBA Clearing in 2015.[51]

45. *Third*, EEA customers do not always require A2A CIS providers to have a local presence at national level. For instance, […]. An EEA customer also explained that datacentres are not always needed at national level but should be "*at least located in the EEA for regulatory reasons and technical limitations (having data centres located too far away could undermine the processing of instant payments)*".[52]

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47 See Annex 6.3 to the Form CO.

48 The SEPA is a payment-integration initiative of the EU for simplification of bank transfers in euro. As of 2020, there were 36 members in SEPA, consisting of the EEA countries (including the UK), Switzerland, Andorra, Monaco, San Marino, and Vatican City.

49 The EPC is an international **non-profit association** composed of 76 members who are PSPs (mostly banks) or associations of PSPs, whose purpose is to support and promote the integration and development of European payments. In particular, the EPC has developed and manages four payment schemes that facilitate domestic and cross-border euro payments within the SEPA: (i) the SEPA Credit Transfer ("SCT") scheme (launched in 2008); (ii) the SEPA Instant Credit Transfer ("Inst SCT") scheme (launched in 2017); (iii) the SEPA Direct Debit Core ("SDD Core") schemes (launched in 2009) and (iv) the SEPA Direct Debit Core Business-to-Business ("SDD B2B") scheme (launched in 2009). Pursuant to Regulation (EU) No 260/2012 of 14 March 2012 (also known as the "SEPA Regulation"), the SCT **and the SDD Core schemes are mandatory** for all PSPs offering euro credit transfer and direct debit services in the EEA. The SCT Inst and the SDD B2B schemes are optional (*i.e.* PSPs are free to propose services based on these two schemes). See https://www.europeanpaymentscouncil.eu.

50 See replies to Questionnaires Q1 to competitors (question 17) and Q2 to customers (question 12). For example, a competitor stated that "*in EEA region significant standardization progress has been made in the past years (SEPA, ISO20022)*". Another player indicated that "*There is further standardisation in the EEA due to the EPC schemes*". See also non-confidential versions of the minutes of conference calls with competitors (i) dated 23 April 2020 (3pm), para. 14 ("*Through the SEPA project, the Eurozone has been a leader in the migration to a harmonised version of the ISO 20022 messaging standard. As a consequence, the non-Euro countries in the EEA (UK, Sweden, Denmark, etc.) have equally adopted these standards in parallel to legacy standards for domestic transactions.*"); (ii) dated 23 April 2020 (5:15pm), para. 13; (iii) dated 24 April 2020, para. 13.

51 EBA Clearing is a provider of pan-European payment infrastructure solutions. Founded in 1998, the EBA Clearing is owned by 50 of the major banks operating in Europe and based on a country-neutral governance model. See: https://www.ebaclearing.eu/about-eba-clearing/at-a-glance/the-company.

52 See non-confidential version of a conference call with a customer dated 22 April 2020, paras. 14 and 15.

46. *Fourth*, the main EEA providers of A2A CIS, including the Parties, compete across the EEA.[53]

47. *Finally*, customers consider that competitive dynamics are rather homogenous across the EEA. While competitors disagree with this statement, they share the customers' views that competition for the provision of A2A CIS is homogeneous in the Nordic region (due notably to the P27 project).[54]

48. ***On the other hand***, other elements in the file also suggest that the geographic market could still be national.

49. *First*, although the level of standardization in the EEA is higher than in other geographies, several competitors and customers stressed the "*lack of interoperability across Europe*" which, according to them, reveals "*a lack of standardization (even in Europe)*". Another market participant explained that "*in EEA, SEPA has achieved a high level of standardization, but even here there are differences in implementation due to different interpretation of SEPA Implementation Guidelines or because some aspects of processing are left open to the market*". As a result, competitors generally expressed the view that competition is not homogeneous in the EEA.[55]

50. *Second*, many market participants stressed the importance of having a local footprint due to the existence of national specificities and the need to tailor the A2A core infrastructures to meet specific customer needs and local requirements/specificities. For example, a competitor explained that "*even in Europe, [A2A] core infrastructure solutions are highly customised to local market dynamics*".[56] Similarly, another player stressed the "*existence of local specificities/requirements (e.g. legal requirement for payments data to be held in data centres located in the same country/region)*" and the fact that "*consumers' habits remain very different from one country to another (including in the EEA). As a result of the above, it is important to have local presence/footprint and, depending on the region/country, the competitive dynamics/conditions may differ (including in the EEA)*".[57]

51. In this respect, some elements in the file suggest that the local footprint may be more important for managed services than for software services. For instance, according to a competitor, the local footprint is *"of paramount importance, especially for managed services (providers being usually required to operate the system locally notably for data privacy constraints)*" and that "*local presence is, to some extent, less relevant for the provision of software-only solution"*.[58]

52. *Finally*, the Commission notes that the Parties themselves acknowledged that it is an "*inherent part of any A2A CIS providers' business model to understand the particularities of local markets, obtaining regulatory approval and building up working relationships with the local national bank*",[59] which is also corroborated by their internal documents.[60]

(D) Conclusion

53. Based on the results of the market investigation and for the purpose of this decision, the Commission considers that it can be left open whether the A2A CIS markets are national, regional within the EEA or EEA-wide in scope as these alternative geographic market

53 See notably the bidding data submitted by the Parties (Annex 6.3 to the Form CO).

54 See replies to Questionnaires Q1 to competitors (question 19) and Q2 to customers (questions 13.2 and 13.3).

55 See replies to Questionnaires Q1 to competitors (question 17) and Q2 to customers (question 12).

56 See replies to Questionnaires Q1 to competitors (question 17) and Q2 to customers (question 12). Emphasis added.

57 See non-confidential version of the minutes of a conference call with a competitor dated 23 April 2020 (3pm), para. 15.

58 See non-confidential version of the minutes of a conference call with a competitor dated 23 April 2020 (5:15pm), para. 14 (emphasis added).

59 See Form CO, para. 258.

60 See *e.g.* Annex 5.4.3-3 to the Form CO, pp. 21, 27, 33, and 37.

delineations do not affect the Commission's conclusions regarding the compatibility of the Transaction with the internal market.

3.1.3. Competitive assessment

3.1.3.1. The Parties' views

54. The Parties submit that the Transaction does not give rise to competition concerns regardless of the exact scope of the A2A CIS market. Their main arguments are summarized below.

55. *First*, the Parties submit that, post-Transaction, the new entity would face significant competition in the EEA from a wide range of competitors with relevant capabilities across both managed services and software-only solutions. In particular, over the period 2014-2019, the Parties have identified 21 competitors having participated in EEA tenders for the provision of A2A CIS. The Parties note that several of these rivals have been shortlisted and have won at least once.[61]

56. *Second*, the Parties argue that the growing trend towards the constitution of bidding partnerships (or consortia) by A2A CIS providers favours competition. Consortia allow A2A CIS providers (i) to participate in tenders for projects that they would not be able to run on their own or (ii) to improve their offer and, thus, their chances to win (by *e.g.* partnering with a local partner). The Parties also note that sometimes the creation of consortia is even encouraged by A2A CIS customers.[62] In this context, the Parties submit that, when assessing the number of credible players currently active on the market, the Commission should not only consider players able to bid on their own but should also take into consideration consortia. They also submit that bidding in consortia allows providers unable to bid on their own to progressively gain expertise and build a track record.

57. *Third*, the Parties consider that they are not each other's closest competitors in the market for the provision of A2A CIS. This, according to them, is corroborated by the bidding data. In terms of offerings, the Parties observe that their products are largely complementary: [Parties views on how their products compare to each other].[63]

58. *Fourth*, the Parties consider that A2A CIS customers play a critical role in ensuring an adequate level of competition within the market. These sophisticated customers have the relevant expertise to design competitive tender processes and generally extend the invitation to a large number of providers, including the possibility to participate in consortia. In addition, the Parties submit that customers' capability to develop A2A CI solutions in-house further exerts significant competitive pressure on A2A CIS providers.[64]

59. *Finally*, the Parties consider that the market for A2A CIS is characterised by relatively low barriers to entry and to switching. In particular, they note that customers often impose transitional arrangements on incumbent providers to facilitate the switching to new providers. They also observe that increasing standardization facilitates market access.[65]

61 Form CO, paras. 334 and ff.; Supplemental Submission on managed services, para. 4 and paras. 8 and ff.

62 Form CO, paras. 245 (e); Supplemental Submission on managed services, paras. 29 and ff.

63 Form CO, paras. 340-342; Supplemental Submission on managed services, para. 4 and paras 50 and ff.

64 Form CO, paras. 386 and ff.; Supplemental Submission on managed services, paras. 80 and ff.

65 Form CO, paras. 458-460; Supplemental Submission on managed services, paras. 64 and ff.

3.1.3.2. The Commission's assessment

(A) Preliminary remarks

60. As a preliminary remark, the results of the market investigation, do not materially differ depending on the EEA country or region concerned.[66] Although national or regional specificities exist (with *e.g.* different incumbent providers and specific local requirements), the main characteristics of supply and demand in the A2A CIS markets can be described along the same set of dimensions across the EEA. Therefore, unless otherwise specified, the findings of Section 3.1.3.2 (regarding *e.g.* competitive landscape, closeness of competition, barriers to entry and switching) do not materially differ depending on the geographic market at stake.

61. In addition, as explained in Section 3.1.1 above, A2A CIS markets are essentially bidding markets where competition primarily takes place during the tender processes for the award of contracts with payment scheme operators. Moreover, the latter typically award their contracts to a single successful bidder ("winner-takes-all" principle). In this context, the Commission considers, in this case, that the number of credible competitors is a better metric of market power than market shares (at a given date), because momentary market share figures are unlikely to give reliable indications as to how competition will unfold when a new tender comes up).[67] The above is not disputed by the Parties.[68] In this context, the Commission's assessment will focus on the number of alternative credible competitors remaining active on the A2A CIS markets post-Transaction.

(B) Market for the provision of managed services

62. For the reasons set out below, the Commission finds that the Transaction raises serious doubts as to its compatibility with the internal market with respect to the provision of managed services in the EEA under all plausible market definition.

63. *First*, the number of credible players able to bid on their own for the provision of managed services in the EEA is limited. In this market, the elements in the Commission's file, including the feedback received from the market investigation, as well as the Parties' internal documents and bidding data, revealed that the Transaction would lead to the **reduction in the number of**

66 See *e.g.* replies to questions 25.4 and 34.3 of Questionnaire Q1 to Competitors and question 19.4 of Questionnaire Q2 to Customers.

67 See *e.g.* cases M.8258 – *Advent International/Morpho*, paras. 161-162, and M.3641 – *BT/Infonet*, para. 16. Such a finding does not mean that market shares have no value when assessing the strength of the various competitors on a bidding market, especially where those market shares remain relatively stable over time (see *e.g.* case /-210/01 – *General Electric v. Commission*, paras. 149-150). However, in the present case, the data available does not cover a sufficiently long period of time, which is due to the relatively recent emergence of instant payments (in the last decade) and to the fact that tenders are infrequent.

68 See Form CO, paras. 245, 327 and 435. Nevertheless, the Parties provided market shares estimates for the provision of A2A CIS at EEA level based on different metrics: (i) the **volume of transactions** processed through the core infrastructure in the EEA (**Mastercard: [10-20]%; Target: [5-10]%**) and (ii) the **number of A2A tenders won** in the EEA since 2014 (**Mastercard: [5-10]%, Target: [20-30]%**). However, the Parties submit that the above market share estimates are not reliable since: (i) these market shares are mere internal estimates, with no public available data to support them and (ii) these are bidding markets, which are lumpy markets. For the same reasons, the Parties also strongly contest the approach taken by the Danish competition authority consisting in computing market shares based on the **value of the EEA contracts** reported in the Parties' bidding data (**Mastercard: [30-40]%; Target: [20-30]%**).
The Commission considers that, irrespective of the metrics used, the above market shares estimates do not accurately depict the Parties' market power for several reasons. *First*, market shares at a given date are less relevant to assess market power in bidding markets and the limited data available does not cover a sufficiently long period of time to assess the market share evolution. *Second*, depending on the metrics used, the Parties' combined market share at EEA level differs significantly (*i.e.* [20-30]% based on the volume of transaction, [20-30]% based on the number of tenders won; [50-60]% based on the contract value). *Third*, the market shares provided by the Parties based on the volume of transactions are of limited relevance since (i) those are computed on the basis of a broadly defined total market (encompassing of total transaction volumes for credit transfers and direct debits) that is clearly much broader than the A2A CIS market at stake; and (ii) the Parties have not been able to allocate [40-60]% of this broadly defined market. *Fourth*, market share estimates based on the number of tenders won suffer from the problem of treating all bids as equal and identical despite significant differences in complexity and total contract value.

credible competitors from five to four, the Parties' main and only credible competitors in the EEA being Equens, SIA[69] and STET.[70]

64. In fact, many of the players mentioned in the Form CO (i) do not consider themselves as competitors of the Parties[71] and (ii) are perceived by market participants as being neither credible[72] nor competitive[73] providers of managed services in the EEA. Several respondents also stressed that the "*number of managed service providers [is] more restricted*" than for software-only solutions and that "*very few providers offer Managed Services*". [74]

65. This is also corroborated by the Parties' internal documents, which suggest that several players mentioned in the Form CO are not active or credible in managed services. For example, the Parties' internal documents (i) qualify […] as "*software vendor*";[75] and state that (ii) […];[76] that (iii) […];[77] and that (iv) […].[78]

66. Similarly, the bidding data submitted by the Parties[79] shows that, while many players are participating in the RFI phase of tenders for the provision of managed services,[80] very few have been shortlisted at least once (namely […][81]) and (ii) only three of them (*i.e.* Equens, STET and SIA) have won at least one tender[82] (see Table 2 below).

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69 The Parties explained that, in the Eurozone, SIA typically bids in consortium with EBA Clearing and independently from EBA Clearing outside the Eurozone. EBA Clearing is a provider of pan-European payment infrastructure solutions, owned by the largest European banks, which has a long lasting partnership with SIA. Under this partnership, SIA provides EBA Clearing with its A2A CIS technology. In particular, SIA has implemented and manages the pan-European A2A core infrastructures of EBA Clearing, namely STEP2 (clearing platform for batch payments launched in 2003) and RT1 (clearing platform for instant payments launched in 2017 and awarded to SIA pursuant to a tender process). The Commission understands that EBA Clearing does not have its own A2A CIS technology and does not bid independently from SIA.

70 See *e.g.* replies to Questionnaires Q1 to competitors, (question 25) and Q2 to Customers (question 19).

71 See replies to Questionnaires Q1 to competitors (question 4). For example, a respondent indicated that it "*does not have A2A capabilities*"; a second one explained that it "*does not provide a Software-only solution or a Managed Service*"; a third one stated that it has "*no activity in the EEA*"; a fourth one indicated that it "*does not see itself as a provider of A2A CIS*" and a fifth one explained that it "*does not provide A2A CIS*".

72 See replies to Questionnaires Q1 to competitors (question 25), and Q2 to Customers (question 19).

73 See replies to Questionnaires Q1 to competitors (question 26), and Q2 to Customers (question 20).

74 See non-confidential version of the minutes of a conference call with a competitor dated 23 April 2020 (5:15pm), paras. 9 and 10, as well as replies to Questionnaires Q1 to competitors (question 25), and Q2 to customers (questions 15 and 19). See also Section 3.1.3.2(C) below.

75 See Annex 5.4-7 to the Form CO, slide 20.

76 See Annex 5.4.3-36 to the Form CO, slide 10.

77 See Annex 5.4.3-3 to the Form CO, slide 36.

78 See Annex 5.4.3-3 to the Form CO, slides 32 and 34.

79 See Annex 6.3 to the Form CO.

80 In that respect, the Commission considers that the Parties' claim that competitors have the ability to constrain the Parties by their mere participation in the RFI phase suffers from several flaws. In particular, participation in the RFI phase, which is relatively easy and entails limited costs (see paragraph 40 above), does not guarantee the ability to win. Moreover, the larger number of bidders involved in the RFI phase appears to be explained, at least partly, by the fact that it is possible to bid in consortia, however, that does not mean that each consortia member individually can constrain the Parties. See also non-confidential version of the minutes of a conference call with a customer, dated 22 April 2020, para. 6 indicating that several bidders involved in the RFI phase of its tender for managed services were "*not credible bidders for the A2A clearing and settlement*".

81 With respect to […], the Commission notes that, apart from Annex 6.3 to the Form CO, there is no indication in the file (neither in the Parties' internal documents, nor in the feedback received from the market) that […] is active or credible in the provision of A2A CIS in the EEA (*e.g.* no market participants mentioned it as a competitor). […] has also been shortlisted twice in consortia with software providers (*i.e.* […]) but does not currently have the ability to participate in A2A CIS tenders on a stand-alone basis.

82 Equens won a tender for the provision of managed services in the Netherlands in 2016 and […]. STET won a tender in Belgium in 2016 […], currently provides managed services in France and […]. SIA won […] the tender organized by EBA in 2016 for the provision of managed services at pan-European level.

67. *Second*, although the market investigation confirmed that it is common to bid in consortia when participating in tenders for the provision of managed services, it also revealed that the competitive constraints exerted by consortia in A2A CIS tenders are more limited than suggested by the Parties.

68. On the one hand, the results of the market investigation suggest that such consortia allow competitors that would not have the capabilities to run a project on their own to leverage the footprint or the specialized capabilities of third parties to submit credible bids.[83] Some respondents also confirmed that consortia may compete on an equal level with providers bidding on their own.[84]

69. However, on the other hand, the Commission found that setting up consortia may be difficult since some of the components required to provide managed capabilities are "*proprietary or complex*" and, thus, hard to find on the market.[85] The market investigation also suggests that consortia are not relevant for all tenders and mainly concern large and complex projects, which are less common. For smaller and less sophisticated tenders, consortia are primarily justified by the need to acquire the required local footprint, rather than the need to acquire capabilities that are missing in-house.[86] Moreover, several respondents stressed that consortia may be riskier and more complex, which can affect the competitiveness of the bid. For example, a customer explained that an A2A CIS provider bidding on its own "*offers "one-stop-shopping": avoiding the need to run multiple procurement processes, enabling less complexity in the contractual constructions without back-to-back agreements and multi-vendor governance, and a more stable and secure delivery of procured services.*" Similarly, another customer stated that a "*consortium is less competitive, due to the division of tasks and responsibilities between companies and because of the mixing of different technologies*." Similarly, another competitor stated that "*it is not easy to set up a consortium to participate in an A2A CIS tender (and be successful)*" and that a "*fully integrated solution is inherently lower risk than a partnership*".[87] The Commission also observes that, albeit bidding in consortia might facilitate, over time, the emergence of new credible stand-alone providers of managed services in the EEA (by allowing players unable to bid on their own to progressively gain expertise and build a track record), this would necessarily take time and depend on the ability of these players to develop the missing managed service capabilities in-house.

70. In view of the foregoing, the Commission considers that the existence of consortia is not sufficient to compensate the limited number of credible competitors currently able to bid on their own for the provision of managed services in the EEA.

71. *Third*, the Commission found that the Parties are **strong competitors in the EEA**. Market participants perceive Mastercard as the most competitive player in the EEA, while the Target's competitiveness is similar to or slightly better than the other main players (*i.e.* Equens, SIA and SET).[88]

72. This is also supported by the Parties' internal documents. For example, an internal presentation of the Target reads: […].[89] Similarly, another internal presentation refers to […] and to the fact that […].[90]

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83 See replies to Questionnaires Q1 to competitors (questions 28 and 29), and Q2 to customers (question 22).

84 See replies to Questionnaires Q1 to competitors (questions 28 and 29), and Q2 to Customers (question 22).

85 See replies to Questionnaires R1, questions 9.1.

86 See replies to Questionnaires Q1 to competitors (questions 28 and 29) and Q2 to customers (question 22). For instance, a competitor stated that, in managed services, it is "*more likely to partner with local players knowledgeable about country regulations and providing local services*".

87 See replies to Questionnaire Q1 to competitors (question 28), and Q2 to Customers (question 22).

88 See replies to Questionnaire Q1 to competitors (question 26), and Q2 to Customers (question 20).

89 See Annex 5.4.3-56 to the Form CO, pp. 4, 10 and 13 (emphasis added).

73. In fact, as detailed in Table 2 below, the bidding data submitted by the Parties[91] shows that Mastercard and the Target are the two suppliers in EEA most often shortlisted in tenders for the provision of managed services.[92] The Target has won most of the managed service tenders in the EEA. According to internal documents and competitors, this success can be explained by the fact that the Target has developed a state-of-the-art A2A CIS solution that can easily be customised (to meet specific customers and/or local requirements).[93] Mastercard has recently won one tender only (the pan-Nordic P27) but the latter has the highest value compared to all other tenders in the EEA referred to in the Parties' bidding database.

TABLE 2 – Tenders for the provision of managed services in the EEA (since March 2014)

N° of tenders	Shortlisted bidders	Winner
17	[…]	- Target *2 tenders (Italy and Slovenia)* - Mastercard *1 tender (Nordics)* - STET *1 tender (Belgium)* - SIA *1 tender (pan-European)* - Equens *1 tender (the Netherlands)* *(+ 2 ongoing tenders & 9 aborted tenders)*

Source: Annex 6.3 to the Form CO

74. The Parties are particularly strong in the Nordics and the UK where their activities currently overlap or overlapped pre-Transaction.

75. *In the UK*, where Mastercard is the incumbent provider,[94] the Commission found that the Transaction has already had a negative impact on the market. At the end of 2018, Pay.UK (*i.e.* the UK scheme owner) launched a tender process for the provision of managed services in relation to the New Payment Architecture ("NPA").[95] Prior to the announcement of the Transaction, the Parties were competing in this tender, which is still ongoing at the time of the present decision.[96] The Target was bidding in consortium with […]. Several market participants regard Mastercard (*i.e.* the incumbent provider) as being the strongest bidder in the NPA tender,[97] while internal documents reveal that […].[98] However, following the announcement of the Transaction, the Target withdrew from the NPA tender. In its referral request, the British Competition and Market Authority (the "UK CMA") claimed that the Target's withdrawal

90 See Annex 5.4.3-36 to the Form CO, p.10 (emphasis added).

91 See Annex 6.3 to the Form CO.

92 The same applies with EEA tenders for the provision of software-only solutions.

93 The Parties' claim according to which […], is expressly contradicted (i) by internal documents, which state that the Target has […] (see Annex 5.4-56 to the Form CO, p.11) and (ii) by the feedback received from the market. For instance, a competitor explained that: "*at worldwide level, there are not many companies which can provide A2A CIS services capable of matching Nets' proposal*. […] *Nets offers an A2A CIS system, which is modularised and configurable. Depending on the rules of each national (or supra-national) scheme, Nets is able to configure its software. As a result, Nets can mix and match different elements of its product and comply with the rules of its scheme "going live" in a matter of months.*" See non-confidential version of the minutes of a conference call with a competitor dated 21 April 2020, para. 11; see also replies to Questionnaire Q1 to competitors (question 27).

94 MasterCard, through VocaLink, currently operates three of the four existing domestic A2A core infrastructures in the UK, namely, Bacs (interbank system for high-volume, regular payments), Faster Payments Service ("FPS") (interbank system providing near real-time payments) and LINK ATM Network (UK's main ATM network).

95 The NPA aims to consolidate several existing domestic A2A core infrastructures (including FPS and Bacs) within one single clearing and settlement platform.

96 The UK NPA tender has been paused in June 2020.

97 A competitor even suggested that Mastercard being the incumbent provider had the possibility to influence the process of the NPA tender, "*wonder[ing] whether the fact that the tender became unstructured and confused cannot be attributed to underlying pressure exercised by Mastercard/Vocalink over Pay.UK as an attempt to remain in the game*" (see non-confidential version of the minutes of a conference call with a competitor, dated 24 April 2020, para. 9).

98 See Annex 5.4.3-1, pp. 12 and 24. See also an internal presentation of the Target stating that […] (Annex 5.4.3-56 to the Form CO, p.4) (emphasis added).

weakened […], which had to find an alternative partner (namely […]), at short notice in the middle of the tender process.[99] The Parties challenge this view, which is however corroborated by their internal documents. For instance, […].[100]

76. *In the Nordics*, the Target is the incumbent provider of the existing domestic A2A core infrastructures in Norway and Denmark, whereas Mastercard won in 2019 the P27 Layer 1 tender for the future provision of managed services at pan-Nordic level. The market participants […] confirm that the market in the Nordics is expected to migrate within a few years from existing domestic A2A core infrastructures (including the ones operated by the Target) to the new P27 pan-Nordic A2A core infrastructure,[101] which is expected to be more innovative and cheaper (owning to economies of scale). In this respect, the Commission notes that the above tender has been awarded prior the Transaction and that the progressive phasing out of the domestic A2A core infrastructures currently managed by the Target largely reflects the "*winner-takes-all*" feature of the A2A CIS markets, and that there is thus no merger specificity in this respect. That being said, the Commission also notes that (i) there is an intrinsic degree of uncertainty as to whether the P27 project, which is not operational yet, will go forward for the entire Nordic region, including Norway and that (ii) the launch of P27 is subject to a merger filing and clearing licence approval. In this context, the Commission considers that the reduction in the number of credible providers of managed services for future A2A CIS tenders in the EEA could potentially affect the Nordics region.

77. *Fourth*, albeit the market investigation suggests a certain complementarity between the Parties' activities (Mastercard is characterised by a large geographic footprint and a rather dated technology, while the Target is perceived by the market as an innovative and regional player),[102] market participants consider that the Parties are **close competitors** (and potentially each other's closest competitors according to their rivals).[103] This conclusion is also supported by the Parties' (i) internal documents, where Mastercard and the Target are identified as […],[104] and (ii) bidding data (see Table 2 above).

78. *Fifth*, the elements in the Commission's file suggest that one of the three credible competitors active in the EEA, namely STET, exerts limited competitive constraints on the market. This is notably illustrated by […].[105] Several competitors share the above view, submitting that *STET "focuses its activities in France and Belgium and is reluctant to bid in other EEA/UK countries*".[106] One competitor even indicated that it "*does not consider STET […] as [a] real competitor[]*" since the latter "*does not show a strong appetite to compete outside of French*

99 The UK CMA considers that the Target's withdrawal decision could be part of a strategy aimed at foreclosing […] in the NPA tender and, more generally, weakening the competitive constraints over Mastercard. This is strongly contested by the Parties, which submit that the Target's decision to withdraw from the consortium with […] was taken unilaterally and not motivated by any foreclosure strategy. The Parties admitted that the withdrawal decision was related to the Transaction but claimed that it was a measure of competition law compliance, *i.e.* to avoid having access to sensitive commercial information on […]'s bid. In other words, absent the Transaction, the Target would still compete against Mastercard in the UK NPA tender.

100 See Annex 6-40.13 to the Form CO (emphasis added). See also para. 78 below.

101 See *e.g.* non-confidential version of the minutes of a conference call with a competitor, dated 24 April 2020, para.8: "*P27 will constitute an alternative to the Target's solutions in Denmark and Norway and that the A2A markets in these two countries will progressively migrate from the Target's solutions to P27, both with respect to Layer 1 (A2A CIS) and Layer 2 (overlay services)*".

102 See replies to Questionnaire Q1 to competitors (question 27).

103 See replies to Questionnaires Q1 to competitors (questions 36-38) and Q2 to customers (questions 27-29). See also non-confidential version of the minutes of a conference call with a competitor dated 21 April 2020, para. 17: "*Nets and the vertically-integrated Mastercard are close competitors (if not each other's closest competitor) and are the two major players in the RTP core infrastructure space, both in the EU and worldwide, having competed head-to-head as the most credible bidders in various jurisdictions*". Other competitors cited as equally close (or closer) to the Parties by customers include Equens, STET, and SIA/EBA Clearing.

104 See *e.g.* Annex 5.4.3-1, pp. 12 and 24 (Mastercard) and Annex 5.4.3-36 to the Form CO, slide 23.

105 See Annex 5.4.3-1, pp. 12 and 24.

106 See non-confidential version of the minutes of a conference call with a competitor, dated 24 April 2020, para. 15.

speaking countries".[107] The above does not mean that STET never participates in tenders outside of France and Belgium ([…]) but that its participation in A2A CIS tender across the EEA is much more limited than the Parties, SIA and Equens.

79. *Sixth*, the market investigation largely confirmed that **barriers to entry are high** for the provision of managed services, requiring "*capabilities (expertise, track record, security…) that cannot be acquired either easily or in the short-term"*.[108] In addition to the track record and expertise, the main barriers to entry appear to be the need to have local or regional footprint depending on the tenders' requirements (*e.g.* some tenders require to have datacenters at national, others at regional level), the investments required and the duration of the contracts.[109] Moreover, although customers may impose transitional arrangements in their contracts, switching A2A CIS provider remains difficult. In fact, virtually all competitors and customers consider that **switching is either difficult or very difficult** and very few customers have switched suppliers in the last 10 years (including as a result of a new tender).[110]

80. *Seventh*, the market investigation did not support the Parties' claim that A2A CIS customers have significant countervailing buying power. In particular, a large majority of customers indicated that they are not able to develop A2A CIS solutions in house.[111]

81. *Finally*, many competitors expressed competition concerns regarding the impact of the Transaction in the EEA, especially in the Nordics where most of them anticipate a negative impact of the Transaction.[112]

82. Competitors are notably concerned by the fact that the market is "*already, pre-Transaction, quite concentrated with a limited number of providers and that the Transaction would further reduce the number of players in the EEA*".[113] One of them also stressed that "*the Transaction already had a negative impact on the market, distorting competition in Europe*", in particular in the UK as a result of the Target's withdrawal from the ongoing NPA tender (see paragraph 75 above).[114]

83. In addition to the above, several players raised a **risk of foreclosure** explaining that the combination of Mastercard's financial strength and card payment activities with the Target' state of the art A2A solution (see footnote 93 above), and the Parties' respective track records, will significantly strengthen the leading player (Mastercard) and that "*post-Transaction, it might be difficult for the rival […] to be as competitive as the Parties*".[115]

84. In particular, one competitor stressed that, post-Transaction, it will very difficult to "*successfully bid […] especially in the Nordics*", where "*the combination of the Target's A2A payment activities and Mastercard's card payment activities would enable the new entity to control the whole financial infrastructure in the Nordics and, thus, to potentially foreclose its competitors.*" This respondent considers that the Transaction constitutes a "*dangerous move for the market*" on

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107 See non-confidential version of the minutes of a conference call with a competitor, dated 23 April 2020 (5:15pm), paras 10-11.

108 See replies to Questionnaire Q1 to competitors (question 34.5).

109 See replies to Questionnaire Q1 to competitors (questions 34 and 35).

110 See replies to Questionnaires Q1 to competitors (question 39) and Q2 to customers (questions 30-31).

111 See replies to Questionnaire Q2 to customers (question 24).

112 See replies to Questionnaire Q1 to competitors (question 41).

113 See non-confidential version of the minutes of a conference call with a competitor, dated 23 April 2020 (3pm), paras 25-26. See also non-confidential version of the minutes of a conference call with a competitor, dated 23 April 2020 (5:15pm), paras 15-16: "*in the EEA, the Transaction will lead to the reduction in the number of players in a market, which is already pre-Transaction characterised by a limited number of competitors*". See also replies to Questionnaire Q1 to competitors (question 40).

114 See non-confidential version of the minutes of a conference call with a competitor, dated 23 April 2020 (5:15pm), paras 15-16.

115 See non-confidential versions of the minutes of conference calls with competitors (i) dated 23 April 2020 (3pm), paras 25-26; and (ii) dated 23 April 2020 (5:15pm), para. 16.

the ground that, post-Transaction, "*Mastercard might offer price below cost in the A2A space, by using its card payment revenues to cross-subsidize its A2A activities*", which would allow the Notifying Party to "*end up dominating both the card-based and A2A payment systems*". In other words, according to this player, Mastercard has the ability and incentive to leverage its strong market position on the card payment markets to expand its activities in the A2A space. According to this player, this is notably illustrated by the fact that, already pre-Transaction, *"Mastercard is very aggressive in the A2A payment space, acquiring A2A companies (such as Vocalinks and the Target) at a very high price (above market price) and bidding at very low price (and potentially below costs) ([…]) to gain strong market positions*" in the A2A payment space in order to "*preempt the decline of card payments*".[116] In this respect, the Commission notes that […].[117]

85. Although most customers did not complain about the Transaction, some of them share the competitors' views. In particular, one customer stated that (i) apart from the Parties, "*the other suppliers that participated in [its] tendering process [for managed services] do not offer a suitable alternative*" and that (ii) Mastercard's expansion into the A2A space could be detrimental for competition, suggesting that Mastercard could potentially "*give priority*" to cards over instant payments, "*making the latter less attractive as the method for displacing cash*". [118]

86. In view of the above considerations, the Commission concludes that the Transaction raises serious doubts as to its compatibility with the internal market and the functioning of the EEA Agreement with respect to the overlaps between the Parties' activities in the market for the provision of A2A CI managed services under any plausible geographic markets (*i.e.* national, regional or EEA-wide).

(C) Market for the provision of software-only solutions

87. Albeit some of the findings described in the previous section also apply to the provision of software-only solutions (*i.e.* the Parties are strong players and perceived as close competitors also in the provision of software-only solutions), the results of the market investigation revealed that the provision of such solutions presents different features allowing the Commission to exclude serious doubts on this potential market.

88. *First*, the market investigation confirmed that a sufficient number of credible providers of software-only solutions would remain active in the EEA post-Transaction. Indeed, the Commission found that the number of players in the software-only market is higher than in the market for managed services. The differences in the competitive landscape are confirmed by the market investigation results, in which the majority of competitors indicated that A2A CIS providers do not have typically the ability to provide both managed services and software-only solutions.[119] One customer mentioned that "*based on [its] experience […], very few providers offer Managed Services while all of them have software-only solutions available*",[120] explaining that "*during [its] tender process [for the provision of managed services], big majority of participating tenderers only had the capability of Software-only solutions*".[121] Another customer confirmed that "*there are more providers in the software-only solutions market segment than in the managed services market*".[122] In the software market, the Parties face several credible players, including Equens, SIA/EBA Clearing, but also players that are not active (or not perceived as credible) in the market for managed services, such as Montran, ACI and, to a more

116 See non-confidential version of the minutes of a conference call with a competitor dated 24 April 2020, paras. 18-22.

117 See Annex 8.c to RFI 6, "P27_Revised Bus_Case_15_Jan_2019", p.3.

118 See replies to Questionnaire Q2 to customers (questions 32 and 33).

119 Questionnaire Q1 to competitors (question 11).

120 Questionnaire Q2 to customers (question 15.5).

121 Questionnaire Q2 to customers (question 10.1).

122 Questionnaire Q2 to customers (question 10.1).

limited extent, IBM.[123] For instance, according to the Parties' bidding data, which underestimate the winning rates of some competitors,[124] IBM and Montran were able to win tenders for software-only solutions in, respectively, Spain and Portugal (IBM) and Bulgaria and Romania (Montran). In addition to these players, other providers (such as ACI)[125] have the capability to offer software-only solutions in the EEA and are perceived by market participants as being credible. As a result of the above, the competitive landscape for A2A CI software-only solutions appears more dynamic than for managed services, with a sufficient number of competitors remaining post-Transaction.[126]

89. *Second*, the market investigation revealed that barriers to entry are lower in software-only solutions. Market participants explained that providing software-only solutions requires less expertise and responsibilities. In comparison with providing managed service solutions and referring to the provision of software-only solutions, one competitor mentioned that "*managing a service implies much wider responsibilities and different type of expertise than just delivering a product*".[127] The need for a local (national or regional) footprint also appears to be less prominent, having a local footprint being not considered essential for a credible bid in tenders for software-only solutions.[128] For instance, a competitor explained that there was no requirements for a local footprint in the recent Bulgarian tender for the provision of software-only solution.[129] Another competitor added that "*it is easier to supply software-only solution as track-record and experience in managing the solution will not be a factor in the tender.*[130]" Moreover, A2A CIS providers generally indicated that their respective software solutions could be easily customized to be adapted to different geographies and requirements. Therefore, barriers to entry in this market appear lower than in the market for managed services, allowing more players to present credible offers and, eventually, win tenders for the provision of software-only solutions.

90. The higher number of current credible players for A2A CI software-only solutions and the lower barriers to entry render this market more dynamic and competitive compared to the market for managed services.

91. In view of the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market and the functioning of the EEA Agreement with respect to the overlaps between the Parties' activities in the market for the provision of A2A CI software-only solutions in the EEA, under any plausible geographic market definition (*i.e.* national, regional and/or EEA-wide).

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123 According to competitors, IBM is more an IT integrator than an A2A CIS provider, since it does not have a specialised A2A software solution. That said, by exception, in some instances, IBM has implemented small A2A clearing solutions based on its generic software solution Financial Transaction Manager ("FTM"), which is an industry software product that can be used to create integrated applications that manage, orchestrate and monitor financial transactions. IBM's FTM product employs data models and message models that are based on the ISO 20022 industry standard . IBM participates in A2A CIS tenders but usually in consortia with third parties (including SIA in Canada). See non-confidential version of the minutes of a conference call with a competitor dated 23 April 2020 (5:15pm), para. 11.

124 See replies to questionnaire Q1 to competitors (question 9).

125 Although ACI does not currently provide A2A CIS in the EEA, it (i) currently provides software solutions in several countries outside the EEA, (ii) regularly participates in EEA tenders for the provision of software-only solutions (for instance, –[…] see Annex 6.3 to the Form CO), and (iii) is perceived by customers and competitors as a credible provider of A2A CI software in the EEA (see replies to questionnaires Q1 (question 25) and Q2 (question 19)), which is also corroborated […]. The Commission notes that also CMA Small Systems AB ("CMA"), a Swedish-based A2A CIS provider, can be considered as a credible player with the capability to offer software-only solutions in the EEA, despite the fact that it does currently not provide A2A CIS in the EEA.

126 Questionnaires Q1 to competitors (questions 5 and 6) and Q2 to customers (question 10).

127 Questionnaire Q1 to competitors (question 12.1).

128 Questionnaire Q1 to competitors (question 25).

129 See non-confidential version of the minutes of a conference call with a competitors dated 23 April 2020 (5:15pm), para. 14.

130 Questionnaire Q1 to competitors (question 25.5).

3.1.3.3. Conclusion

92. In view of the above considerations, taking into account the market investigation and all the evidence available, the Commission concludes that the Transaction raises serious doubts as to its compatibility with the internal market and functioning of the EEA Agreement with respect to overlaps between the Parties' activities in the EEA market(s) for the provision of A2A CI managed solutions in the EEA under any plausible geographic market definition (*i.e.* national, regional and/or EEA-wide).. The Commission notes that, in relation to the market for the provision of A2A CI software-only solutions, due to the presence of a sufficient number of competitors post-Transaction and the lower barriers to entry, no serious doubts arise. In any event, the final commitments offered by the Parties fully address the competition concerns identified in the decision in relation to the provision of A2A CI managed services in the EEA (see Section 4 below).

3.2. A2A Payment Services

3.2.1. Overview of the market and the Parties' activities

93. A2A payment services are end-user services/applications, using an A2A core infrastructure, to transfer money from one bank account to another.[131] A2A payments are typically made from consumers to businesses ("C2B") or between businesses ("B2B"). A2A payment services are mainly used for payments that are recurring (*e.g.* monthly utilities bill) but can also be used for the payment of one-off invoices.[132]

94. In this area, the Target offers several A2A payments solutions:

- in Denmark it offers solutions including (i) *BetalingsService*, a direct debit payments solution designed for one-off and recurring invoice payments from consumers to businesses (C2B); (ii) *LeverandørService*, a direct debit payments solution designed for one-off and recurring payments from business debtors (B2B); as well as ancillary services, and

- in Norway it offers solutions including (i) *eFaktura*, a corporate e-billing service (i.e. designed to receive and pay bills electronically) covering both B2C and B2B transactions (in partnership with Vipps, a Norwegian mobile payment application); (ii) *AvtaleGiro*, a consumer bill payment and direct debit payments solution; (iii) *Autogiro*, a corporate bill payment and direct debit payment solution for B2B; as well as ancillary services.

95. In these countries, the Target is the incumbent player, having provided the dominant A2A payment services solutions for over 40 years in Denmark and over 30 years in Norway. In addition, the Target offers *OmniBilling*, an e-billing solution for end-customers both on the creditor and debtor side, […].

96. Mastercard does not currently offer A2A payments services in Denmark, Norway or more generally in the Nordics. However, Mastercard does offer certain A2A payment

97. The Parties are currently competing for the ongoing P27 tender for A2A payment services in the Nordics (the "P27 Layer 2 tender"). The P27 project currently aims at covering Denmark, Finland and Sweden. Norwegian banks were also initially part of the project but withdrew from

131 A2A payment services can also be referred as "overlay services". However, the Commission understands that the latter category is broader as it encompasses end-user services/applications to make A2A payments (A2A payment services) but also to provide ancillary services (*e.g.* proxy services).

132 For the purposes of this decision A2A payment services refer to services for the payment of invoices and excludes payments between consumers ("C2C" or "P2P" for peer-to-peer).

it in 2018. However, the Parties still expect that […].[133] The P27 Layer 2 tender intends to capture use cases currently covered by the different (national) bill payment legacy solutions throughout the Nordics (including A2A payment solutions such as *BetalingsService* in Denmark), such as direct debit payments for B2B and C2B transactions. It also aims at covering additional payment scenarios such as: (i) invoices currently not processed through an end-to-end bank-served solution; (ii) recurring payments processed via card-on-file solutions (e.g. online subscriptions); and (iii) one-off e-commerce and Point-of-Sale ("POS") payments currently addressed primarily by card payment services providers (merchant acquirers). […] The tender process was put on hold in June 2020 and the RFP may be sent out in the late autumn of 2020.

3.2.2. Market definition

3.2.2.1. Product market definition

(A) Commission's precedents

98. The Commission has not specifically assessed the relevant product market definition for A2A payment services in the past. However, in case M.2567 – *Nordbanken/Postgirot*, the Commission assessed a market for "services provided by payment systems", including A2A domestic payment services, by way of so-called "giro payment systems services" in Sweden. The Commission considered the market for such services as potentially distinct from bilateral bank transactions.[134]

(B) The Parties' views

99. In the absence of Commission precedents, the Parties submit that, under the narrowest possible market delineation, A2A payment services would be part of the market for invoice payment services (*i.e.* services enabling remote payments of invoices), including both A2A payment services and recurring card payments, as they are both used interchangeably by individuals and businesses to pay bills.[135]

100. Recurring card payments cover both withdrawals at regular intervals and payments that recur when the customer decides to use the relevant service, and are used for periodic payments or subscriptions, for instance towards telecom operators, transport companies and streaming services providers. Such services are usually provided by merchant acquirers (such as Adyen, Worldpay, Worldline, or Nets).[136]

(C) The Commission's assessment

101. The market investigation did not fully support the Parties' claims that recurring card-based payment services and A2A payment services form part of a single product market for invoice payment services. Competitors and customers expressed differing views on this part. To the contrary, some elements of the market investigation clearly suggest that A2A payment services form part of a distinct product market from recurring card payment services.

102. While responding competitors indicated that A2A payment services and recurring card-based payment services are interchangeable for EEA customers (financial institutions or end users), this was contradicted by a large majority of responding customers.[137] One customer notes, for

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133 This is reflected both in the Parties' submissions and their internal documents. Also see Annex 20 to Form CO according to which […].

134 See case M.2567 – *Nordbanken/Postgirot*, paras. 25-34.

135 Form CO, paras. 280 and ff.

136 None of the Parties provides card-based invoice payment services.

137 See replies to Questionnaires Q1 to competitors (question 44) and Q2 to customers (question 36).

instance, that "*cards are rarely used for payment of invoices (e.g. monthly utilities) - A2A payment instruments (SCT and SDD) are the preferred methods*". [138]

103. A significant share of responding customers highlight that competitive dynamics are different between A2A and recurring card-based payment services, in particular due to differences in terms of technologies, prices and the role of international card schemes.[139] Only a minority of responding competitors indicate competitive dynamics differ between these segments, and one of them notes there is increased convergence across segments, stating that "*dynamics are different today, but with the increasing demand and availability of instant payments, open banking and mobile payments solutions, they are becoming more blurred*".[140]

104. Regulatory requirements may also vary between recurring card-based payment services and A2A payment services, in particular in terms of fees regulation. For instance, one competitor notes that "*providers of A2A-based IPS (such as direct debit solutions, payment slips) are allowed to apply a surcharge freely, which is not the case for card-based IPS for which the application of surcharge is banned*".[141] Another competitor notes that "*some A2A payments are today subject to deeper checks like sanction screening and transaction monitoring*".[142]

105. The market investigation also indicated that a segmentation based on the type of transactions concerned (B2B, C2B, or C2C) or A2A payment methods (direct debit, payment slips, account-to-account payments provided by banks, and mobile payment solutions) could be relevant. Indeed, the feedback received from the market and the review of the Parties' internal documents suggest that the competitive landscape and dynamics for the provision of A2A payment services differ significantly depending on the type of transactions concerned or A2A payment method.[143]

(D) Conclusion

106. For the purpose of this decision, the exact product market definition for the provision of A2A payment services and the question of whether they are part of a wider market for invoice payment services including recurring card-based payments, or segmented based on the types and methods of A2A transactions concerned can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition.

3.2.2.2. Geographic market definition

(A) Commission's precedents

107. The Commission has not specifically assessed the relevant geographic market definition for A2A payment services in the past.

138 See replies to Questionnaire Q2 to customers (question 36).

139 See replies to Questionnaire Q2 to customers (question 38).

140 See replies to Questionnaire Q1 to competitors (question 46).

141 See non-confidential version of the minutes of a conference call with a competitor dated 24 April 2020 (9:30am), para. 21.

142 See replies to Questionnaire Q1 to competitors (question 44).

143 See *e.g.* the Parties' reply to RFI 17 (question 5) showing that the competitive landscape differs significantly on the potential B2B and C2B segments (with many more players on the B2B segment); and Annex 5.4.3-56 to the Form CO (pp. 4 and 10) providing the Target's market share on the "A2A C2B market". See also non-confidential version of the minutes of a conference call with a competitor dated 24 April 2020 (9:30am), paras. 12 to 22. As the competitive assessment would not differ when taking into account these potential segments, and as the Parties' solutions relate primarily to direct debit solutions for B2B and C2B payments, they will not be further discussed in this decision.

108. In its past decisional practice relating to services provided by payment systems, the Commission has consistently considered markets to be national or wider in scope, but ultimately left the decision open.[144]

(B) The Parties' views

109. In the present case, the Parties argue that the market for invoice payment services is no longer national but regional, covering the entire Nordic region (where the Parties' A2A payment service activities overlap). In particular, the Parties submit that the Nordic region is increasingly integrated with the progressive removal of national regulatory and technical barriers and increasing cross-border activities, as illustrated by the P27 project.[145]

(C) The Commission's assessment

110. The market investigation did not fully support the Parties' claims that the markets for A2A payment services were regional in scope. In fact, the market investigation indicated that markets for A2A payment services (regardless of the type of transaction or A2A payment method concerned) are likely national in scope.

111. The market investigation indicated that there is a relatively low level of standardisation of invoice payment services at supra-national level, both in the EEA and in the Nordic region.[146] The typical geographic scope of invoice payment services is national according to a large majority of respondents, meaning such solutions can only be used in a given country.[147] Providers of payment solutions indicate that their solutions are largely standardised, but require local customisation. This may require providers of invoice payment solutions to work together with local financial services institutions such as banks. One provider of such services in the Nordic stated for instance that "*[their] A2A solution has been developed specifically and requires an initial collaboration with banks operating in the country where [they] offer [their] services […]*."[148]

112. Trans-border competition is perceived by most market participants (customers and competitors alike) as limited, including competition from neighbouring countries.[149] As a result, the markets are unlikely to be EEA-wide in scope. Some respondents note that the situation may be different in the Nordics. One competitor notes that "*[i]n large economies, there is little competition across invoice payment services. In smaller nations, such as the Nordics and Central Eastern Europe, there is more competition across national boundaries*", another one that "*[t]he Nordics are more harmonized as a region*". However, cross-border transactions are considered as more complex, in particular among different currencies,[150] and all Nordic countries currently use different currencies. Going forward, the pan-Nordic scope of the P27 project, which will include A2A payment services in its scope, may indicate that A2A payment services in the Nordics will become increasingly regional in scope.

113. For card-based invoice payment services specifically, the market investigation indicates that competitive dynamics are usually more homogenous at supranational level, as they follow the rules set by international card schemes, such as Mastercard or Visa. One competitor notes for instance that "*[e]nd user UX [User Experience] seems more standardised with card based payments*", a customer states that "*the level of standardisation is higher on a cross country level for card based payments services, as these services are regulated by one common set of rules set*

144 See case M.2567 – *Nordbanken / Postgirot*, para. 37.

145 Form CO, paras. 313 and ff.

146 See replies to Questionnaires Q1 to competitors (question 47) and Q2 to customers (question 39).

147 See replies to Questionnaires Q1 to competitors (question 48) and Q2 to customers (question 40).

148 See replies to Questionnaire Q1 to competitors (question 43).

149 See replies to Questionnaires Q1 to competitors (question 49) and Q2 to customers (question 41).

150 See non-confidential version of the minutes of a conference call with a competitor dated 24 April 2020 (9:30am), para. 12.

by the scheme", and another one that "*[c]ard payments are very standardized and users can rely on the fact that they will be able to make a payment with their card regardless of the country they are in and country where the card was issued*".[151]

(D) Conclusion

114. For the purpose of this decision, the exact geographic market definition for the provision of A2A payment services can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition (national or regional at the Nordic level).

3.2.3. Competitive assessment

115. The Transaction gives rise to affected markets for invoice payment services and A2A payment services in the Nordics where horizontal overlaps arise.

116. As none of the Parties is active in recurring card-based payments, the Commission's assessment will primarily focus on the narrower markets for A2A payment services.

- In Denmark, where the Target is the incumbent provider of A2A payment services, in particular with its *BetalingsService* and *Leverandørservice* solutions. Moreover, both the Target and Mastercard submitted a bid for the ongoing P27 Layer 2 tender.

- In Norway, where the Target is the incumbent provider of A2A payment services, in particular with its *eFaktura*, *AvtaleGiro*, and *Autogiro* solutions. Moreover, both the Target and Mastercard submitted a bid for the ongoing P27 Layer 2 tender, […].

- In the Nordic region, including Denmark, Norway, Sweden and Finland (all at least potentially included within the scope of the P27 project) due to the Target's incumbent position in Denmark and Norway, and the Parties' bids for the P27 Layer 2 tender. At Nordic level, the Target's market share is currently below 20%, i.e. technically below the affected market threshold. However, the competitive assessment will consider the Nordic region in light of the P27 Layer 2 tender.

3.2.3.1. The Parties' views

117. The Parties indicate that Mastercard does not currently compete in the Nordics in the area of invoice payment services, and there is therefore no overlap between the Parties' activities. The Parties also consider that the Transaction would not give rise to significant anti-competitive effects on the invoice payment services markets, even if Mastercard was to be considered as a (potential) competitor to the Target in invoice payment services. The Parties argue in particular that (i) competitors, including providers of A2A payment transfers such as banks, will maintain sufficient competition on the merged entity post Transaction; (ii) […]; (iii) […].[152]

118. In a supplementary submission focusing specifically on the impact of the Transaction in Denmark,[153] the Parties further argue that (i) […], and that (ii) […].

151 See replies to Questionnaires Q1 to competitors (question 47.2) and Q2 to customers (question 39.3).

152 Form CO paras. 394 and ff.

153 See the Parties' Supplemental submission on the impact of P27 on Danish segments of the A2A CIS and A2A Payment Services markets (the "Supplemental submission on Denmark"), dated 22 July 2020.

3.2.3.2. The Commission's assessment

(A) Market structure

119. Based on the information provided by the Parties, prior to the outcome of the P27 Layer 2 tender and the potential roll out of the P27 project, the following A2A payment services are currently available to end users in Denmark and Norway:

- Denmark: (i) the Target's solutions including *BetalingsService* and *LeverandørService*; (ii) Mobile payments, including in particular via MobilePay, a mobile wallet relying on both the A2A and card infrastructures;[154] (iii) A2A payments offered by Danish banks (including via slips); (iv) A2A via other third party providers ("TPPs"), such Klarna, Viabill, Reepay, or Nordic API Gateway.

- Norway: (i) the Target's solutions including *eFaktura*, *AvtaleGiro*, and *Autogiro* (the former in partnership with Vipps); (ii) A2A payments offered by Norwegian banks (including PDF and paper based); (iii) A2A via TPPs such as Klarna, Lunar Way, Sofort and Trustly; and (iv) Mobile payments, including in particular via Vipps, which has recently started offering integration with eFaktura.

120. The Parties' market shares in potential markets for A2A payment services in Denmark, Norway, and the Nordics are provided in the table below.

TABLE 3 – Market shares – A2A payment services – 2019[155]

Geography	Target	MasterCard	Other competitors
Denmark	[30-40]%	0	Banks, Klarna, Viabill, Reepay, or Nordic API Gateway, MobilePay
Norway	[30-40]%	0	Banks, Klarna, Lunar Way, Sofort, Trustly, MobilePay, Vipps
Nordics	[10-20]%	0	Banks, Bankgirot, MobilePay, Swish, Vipps, Tieto/Evry, and others

Source: Parties' reply to RFI 18 and Form CO

121. The Transaction does not lead to any increment in terms of market shares, as Mastercard does not currently offer A2A payment services, in Denmark, Norway or anywhere else in the Nordics. For the same reasons, the Transaction does not lead to any change in the Herfindahl-Hirschman Index ("HHI") levels on any of the relevant markets.

122. However, the Commission considers that these market shares likely underestimate the Target's position in A2A payment services. Some respondents note that the Target is the sole provider of A2A direct debit solutions, which is the primary A2A transfer modality for invoice payment in the Nordics.[156] One competitor notes that the Target has "*90%+ market share in [Denmark] and [Norway] Direct Debits including invoices*",[157] another one notes that "*in relation to Nets' BetallingService in Denmark, this has a very high market penetration (>90%)*". In addition, banks, which support the Parties' payment services solutions cannot be considered as full fledged competitors.[158] Similarly, internal documents of the Parties highlight the Target's

154 The Target does not offer mobile payment solutions in Denmark.

155 Market shares provided by the Parties relate to 2018, in the absence of more recent official data to compute estimates. However, the Parties indicated that 2018 market shares can be used as a proxy for 2019 market shares.

156 See non-confidential version of the minutes of a conference call with a competitor dated 24 April 2020 (9:30am), paras. 10-12.

157 See replies to Questionnaire Q1 to competitors (question 54).

158 Nordic banks are behind the P27 project and organize the P27 Layer 2 tender, which implies that their own offering is not sufficient for market participants. See replies to Questionnaire Q1 to competitors (question 56).

market share of [70-80]% and [50-60]% in Denmark and Norway respectively for A2A payment services for C2B transactions.[159]

(B) A2A payment services markets present some characteristic of natural monopolies

123. Markets for A2A payment services are largely "winner-takes-all" markets. In addition to the payment services offered directly by the banks or new services, such as mobile payments, offered by fintech providers (which currently concern a much more limited number of transactions in the Nordics), there is typically one dominating provider of A2A payment services per EEA country, besides banks that provide A2A transfer services. The Target is the incumbent provider for such services in Denmark and Norway, where it is currently the only market player offering specific transfer modalities such as direct debit in Denmark and Norway.

124. A2A payment solutions are two-sided in nature, connecting creditors and debtors. As a result, individuals and businesses favour using the solutions with the widest target base, which complicates the development of multiple similar solutions in parallel. The market investigation, as well as the Parties' own submissions, confirm that A2A payment services are characterized by strong network effects.[160]

125. In that respect, bank support and integration has proven important historically to the development and adoption of successful A2A payment services. A2A payment services sponsored by banks typically expand quickly to become the *de facto* standard. For instance, MobilePay exited the Norwegian market after the launch of Vipps, which was supported by Norwegian banks and gained more traction in the country.[161] Similarly, the Target's successful position in Denmark results from its cooperation with local banks. In 2014, Nets entered into a cooperation agreement with around 21 Danish and foreign banks under which Nets committed to […]. These same banks are largely expected to support the P27 initiative, and some of them are even driving the project.

126. Markets are also tender-driven, with procedures typically involving RFIs and RFPs to multiple service providers as the standard procurement modalities according to the majority of respondents to the market investigation. However, vendors may be selected based on long-term vendor relationships.[162] The markets also involve long product lifecycles, as the retained solution becomes a *de facto* standard for A2A payment services. One competitor notes for instance that it is "*[d]ifficult to replace something which is already accepted and all kind of interfaces are already in place (e.g. ERP system)*", another one qualifies A2A payment services as "*bid-driven market with long selling lifecycle*".[163] This implies that, similarly as for A2A CIS, competition for A2A payment services largely takes place for the market, as opposed to in the market (even if some competition takes place at the latter level, primarily with bank and fintech players).

127. These characteristics of A2A markets explain why the markets, including in Denmark, Norway and the Nordics are not perceived by a significant number of competitors as involving a sufficient number of suppliers or a large degree of competition,[164] and characterized by important barriers to entry or expansion.[165]

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159 Annex 5.4-56 to the Form CO, pp. 4 and 10. See also Annex 5.4.3-35 to the Form CO, p.4, according to which the Target's has a [40-50]% market share in the Danish and Norwegian "*BillPay markets*" (including recurring card payment solutions).

160 See replies to Questionnaires Q1 to competitors (question 59) and Q2 to customers (question 42). See non-confidential version of the minutes of a conference call with a competitor dated 24 April 2020 (9:30am), paras. 4 and 12.

161 See non-confidential version of the minutes of a conference call with a competitor dated 24 April 2020 (9:30am), para. 4.

162 See replies to Questionnaire Q2 to customers (question 35).

163 See replies to Questionnaire Q1 to competitors (question 59).

164 See replies to Questionnaire Q1 to competitors (questions 52 and 61).

165 See replies to Questionnaire Q1 to competitors (question 59).

(C) The Parties are competitors on the market as evidenced by their participation in the P27 Layer 2 tender

128. Contrary to the Parties' claim, Mastercard cannot be considered only as a potential competitor of the Target. The Parties both currently compete in the P27 Layer 2 tender. As mentioned above, A2A payment services markets are largely characterized by markets with competition for the market. As a result, Mastercard and the Target should be considered as actual competitors for the provision of A2A services in the Nordics (including Denmark and potentially Norway).

129. Mastercard is not perceived as one of the top players in the A2A payment services field by customers. Locally, the main market players mentioned include (i) the Target, Tieto/Evry and Bankgirot in the Nordics, (ii) the Target and MobilePay in Denmark, as well as (iii) the Target, Tieto/Every and Vipps in Norway. Mastercard is not mentioned by any customer as a national or regional player in the Nordic.[166] However a significant number of competitors see Mastercard as a top supplier of A2A payment services at EEA level, and a material number of competitors (who participated in the P27 Layer 2 tender) consider the company to be an important player in either Denmark, Norway or the Nordics more broadly.[167]

130. The market investigation indicated that the Parties are perceived as having different commercial profiles. While the perceived key strength of Mastercard is its global card presence and related brand recognition, the key strengths of the Target include primarily its strong presence in A2A solutions in Denmark and Norway.[168] However, Mastercard and the Target are perceived as particularly close competitors, in particular by competing A2A players, primarily as a result of the head-to-head competition between the Parties in the context of the P27 Layer 2 tender, in which both Parties are particularly credible bidders.[169]

(D) The competitive landscape is expected to change drastically following the award of the P27 Layer 2 tender

131. The P27 A2A payment services solution is expected to benefit from the network effects described above, potentially even more so than national solutions due to its wider geographic reach. Adoption of the P27 A2A payment services solution will necessarily take place to the detriment of national solutions, including the Target's in Denmark (and potentially Norway).

132. […]. An overwhelming majority of respondents to the market investigation indicate that providing A2A CIS is an advantage to succeed in a tender for A2A payment services by the same tender authority. Reasons cited include primarily the ease of integration into the A2A CIS platform as well as "*keep[ing] the contractual relationship simpl*e", or "*cost, functionality and operations*".[170] […].[171] Internal documents also indicate that A2A CIS and A2A payment services form part of the same ecosystem and are closely linked products, both technically and commercially.[172] […][173] […][174] Mastercard's internal documents also estimate that […],[175]

166 See replies to Questionnaire Q2 to customers (question 45).

167 See replies to Questionnaire Q1 to competitors (question 53).

168 See replies to Questionnaires Q1 to competitors (question 54) and Q2 to customers (question 46).

169 See replies to Questionnaires Q1 to competitors (question 60) and Q2 to customers (question 50).

170 See replies to Questionnaire Q1 to competitors (question 23) and Q2 to customers (question 17).

171 See Annex 22 to the Form CO which reads that […].

172 See Annex 61 to Form CO, slides 10 and ff.

173 See Annex 110.3 to Form CO. Mastercard requested […] (see Annex 110.1 to the Form CO).

174 See Annex 110.3 to Form CO, which explains that Mastercard […].

175 See annex 163 to Form CO.

[…]. Furthermore, […].[176] Considering […], it further evidences Mastercard's position as a frontrunner for the provision of A2A payment services in the Nordics.

133. […]. The Target would indeed be able to facilitate (or hinder) the transition from the national A2A payment services (in particular in Denmark) to the pan-Nordic ones following the tender. Internal documents of the Parties reveal that […].[177]

134. As explained below, while competition between the Parties exists, the Transaction does not appear to restrict effective competition significantly on the relevant markets for A2A payment services, due to the lack of merger-specificity in relation to the tender, and in light of the number of participants involved in the process, as mentioned in Section 3.2.3.2(E) below.

135. The award of the P27 Layer 2 tender to Mastercard […], would lead the Transaction to combine the legacy incumbent player for A2A payment services in Denmark ([…]) and the new solution provider at pan-Nordic level. Both the Parties and respondents to the market investigation expect the pan-Nordic A2A services to be offered following the P27 Layer 2 tender to compete with the domestic A2A payment solutions currently available in the Nordic region, such as the Target's *BetalingsService* solution in Denmark.[178]

136. While competition between the P27 Layer 2 laureate (potentially Mastercard) and the Target's solutions in Denmark ([…]) may occur, such competition would only take place for a limited period of time, and would unavoidably be resolved in favour of the P27 Layer 2 laureate. While respondents to the market investigation indicate that the precise impact of the P27 Layer 2 tender on the market for payment services remains uncertain at this stage,[179] the market features (characterized by strong network effects) and statements by various players indicate that P27 will become the preferred solution for market participants in the Nordics. All respondents to the market investigation expect the P27 Layer 2 services to compete effectively with the A2A payment solutions currently available in the Nordic region (including *BetalingsService* in Denmark) and *in fine* replace them.[180] This also seems to be the intent of the banks involved in the P27 tender, according to […].[181] The same banks currently support the use of *BetalingsService* in Denmark. This is particularly relevant in light of the importance of network effects and bank support for the provision of successful A2A payment services as detailed in paragraphs 123 to 127 above.

137. In addition, a material number of respondents to the market investigation indicate that Nets' technology in A2A payment services is dated and that the company is not a strong innovator.[182] *BetalingsService* itself is over 40 years old. Based on the information on the Commission's file it is likely that customers would switch to the new P27 solutions which is expected to be cheaper (in particular due to economies of scale), more innovative, and include additional features, compared to the legacy Target solutions,[183] to the extent that they will remain available.

138. In any event, with regard to Denmark specifically, […]. Internal documents of the Target indeed state that, […][184] […][185] As market dynamics are largely similar in both countries, the same

176 While the Parties mention the initiative as pan-European, this is contradicted by information received in the course of the market investigation.

177 See Annexes 121 and 124 to the Form CO. Internal documents note for instance that […].

178 See replies to Questionnaires Q1 to competitors (question 56) and Q2 to customers (question 48).

179 See non-confidential version of the minutes of a conference call with a competitor dated 24 April 2020 (9:30am), para. 31.

180 See replies to Questionnaires Q1 to competitors (question 56) and Q2 to customers (question 48).

181 See Annex 5.4-63 to the Form CO which reads: […].

182 See replies to Questionnaire Q1 to competitors (question 54).

183 See *e.g.* Annex 1-3 to the Form CO. P27 mentioned in a meeting with the Danish Competition authority that "*[t]he rationale behind P27 is the benefit of economies of scale and the improvement of customer experiences across the Nordic countries*".

184 See Annexes 124 and 126 to the Form CO. The documents reads that […].

scenario would most likely materialise in Norway should the P27 project cover the Norwegian market.

Figure 1 – Market share projections – P27 and domestic schemes

[…]
Source: Annex 124 to Form CO

139. In that respect, the Commission notes that the award of the P27 Layer 2 to Mastercard, […] would also potentially generate synergies, as it would facilitate operational and technical integration between the different A2A layers (A2A CIS and A2A payment services respectively), which is particularly attractive to financial institutions relying on the platform.[186] Furthermore, in that scenario, the Transaction would also generate efficiencies in the sense that it would likely facilitate migration from the legacy national solutions, at least in Denmark (and potentially Norway). Internal documents of the Parties indicate that the Target […].[187]

(E) There are multiple competitors for A2A payment services in the Nordics

140. There are multiple competitors to the Parties active on the A2A payment services segment.

141. This includes in particular competition for the market, as outlined by the P27 Layer 2 tender process. P27 indicated that this tender is "*very competitive*" with many credible bidders.[188] In addition to the Parties, several other bidders were […] by the tendering authority, and can thus be considered as credible competitors. There is therefore a significant pool of credible players competing against the Parties in the P27 Layer 2 tender.

142. In addition to the core competition for the market for A2A payment services, by way of participation in tenders to operate the main national service, some more limited degree of competition will remain in the market. Such competition results from the activities of fintech players and banks, which are expected to continue offering A2A payment solutions competing with the Target's in Denmark and Norway, as well as P27's in the Nordics should it materialise. This is for instance the case of MobilePay in Denmark or Vipps in Norway. Regardless of the P27 Layer 2 tender outcome, more generally, EEA markets for invoice payment services are considered dynamic. The market investigation confirms that there has been recent entry, in particular by fintech players including in the Nordics (with MobilePay in Denmark and Finland, Vipps and Klarana in Norway Swish in Sweden, and Nordic API Gateway in all these jurisdictions).[189] Open banking and the implementation of the Directive (EU) 2015/2366 on payment services (so-called "PSD2") will likely further facilitate entry in this segment. The PSD2 regulatory technical standards, which came into force on 14 September 2019, set out the terms on which financial institutions must provide third parties access to information based on customer payment accounts for a defined set of services (also known as open banking), which should lead to the emergence of additional payment methods and market players.

143. All respondents to the market investigation expect the A2A payment service market to significantly evolve in the next five years, including in terms of competitive landscape and the technology used, in particular due to the expected growth of the markets,[190] which may attract additional players to compete at the margin with the merged entity.

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185 See Annex 124 to the Form CO, slide 5. Mastercard also shares the same expectation. See Annex 22 to form CO that reads that […] .

186 See replies to Questionnaires Q1 to competitors (questions 22 and 23) and Q2 to customers (questions 16 and 17). See Annex 29 to Form CO.

187 See Annexes 121 and 124 to the Form CO. The Target's considers that they […].

188 See non-confidential version of the minutes of the conference call with a customer dated 22 April 2020, para. 16.

189 See replies to Questionnaires Q1 to competitors (question 57) and Q2 to customers (question 49).

190 See replies to Questionnaires Q1 to competitors (question 55) and Q2 to customers (question 47).

(F) Limited concerns expressed by market participants

144. Most respondents to the market investigation expect the Transaction to have a neutral or positive impact on competition for A2A payment services.

145. A material number of competitors expect a negative impact of the Transaction, but these concerns are either not substantiated or do not appear to be merger-specific.[191]

- Out of the competitors expecting a negative impact in A2A payment services, one considers that the Transaction "*may discourage new solutions to establish in Denmark, Norway - as Mastercard will be a huge and very strong competitor*". However, the Commission notes that the network effects identified in the relevant market, and the outcome of the P27 Layer 2 tender necessarily entail that market players will be discouraged from establishing a competing A2A payment service in the Nordics, and that competition is currently primarily taking place for the market.

- Another competitor notes that "*[w]ith wider client base, the Target will be providing further standardised services that are easier to exploit by innovators within the ecosystem, reducing cost rather than having to create country and group specific solutions*", which appears to be a concern relating to potential synergies and efficiencies brought about by the Transaction.

- Lastly, another one mentions it is "*unable to provide a clear answer to this question [on the impact of the Transaction] as this will depend on the plans that Mastercard has for Nets, and the results of the P-27 overlay services tender in the Nordics*". However, as mentioned above, even in the case Mastercard were to be awarded the P27 Layer 2 tender, the Transaction would give rise to a certain number of synergies and efficiencies.

146. In contrast, customers who responded to the market investigation unanimously consider that the Transaction will have a neutral or positive impact in the Nordic region, as well as in Denmark and Norway.[192] Responding customers unanimously consider that there will remain sufficient alternative suppliers of invoice payment services to obtain competitive offers at Nordics level, as well as in Denmark and Norway.[193]

3.2.4. Conclusion

147. Based on the above considerations, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the potential market for the provision of A2A payment services (or the wider market for invoice payment services) in Denmark and Norway or the wider Nordic region.

4. COMMITMENTS

4.1. Framework for the assessment of the Commitments

148. Where a concentration raises serious doubts as regards its compatibility with the internal market, the parties may undertake to modify the concentration to remove the grounds for the serious doubts identified by the Commission. Pursuant to Article 6(2) of the Merger Regulation, where the Commission finds that, following modification by the undertakings concerned, a notified

191 See replies to Questionnaire Q1 to competitors (question 62).

192 See replies to Questionnaire Q2 to customers (question 52).

193 See replies to Questionnaire Q2 to customers (question 51). The only customer indicating that there would not remain sufficient alternative suppliers at EEA level did not substantiate its claim.

concentration no longer raises serious doubts, it shall declare the concentration compatible with the internal market pursuant to Article 6(1)(b) of the Merger Regulation.

149. As set out in the Commission's Remedies Notice,[194] the commitments have to eliminate the competition concerns entirely, and have to be comprehensive and effective from all points of view.[195]

150. In assessing whether commitments will maintain effective competition, the Commission considers all relevant factors, including the type, scale and scope of the proposed commitments, with reference to the structure and particular characteristics of the market in which the transaction is likely to significantly impede effective competition, including the position of the parties and other participants on the market.[196]

151. In order for the commitments to comply with those principles, they must be capable of being implemented effectively within a short period of time. Concerning the form of acceptable commitments, the Merger Regulation gives discretion to the Commission as long as the commitments meet the requisite standard. Structural commitments will meet the conditions set out above only in so far as the Commission is able to conclude with the requisite degree of certainty, at the time of its decision, that it will be possible to implement them, and that it will be likely that the new commercial structures resulting from them will be sufficiently workable and lasting to ensure that the serious doubts are removed.[197] Divestiture commitments are normally the best way to eliminate competition concerns resulting from horizontal overlaps.

4.2. Proposed Commitments

152. In order to render the concentration compatible with the internal market, the Parties submitted a set of commitments under Article 6(2) of the Merger Regulation on 27 July 2020, which were slightly amended on 29 July 2020 (the "Initial Commitments"). The Commission market tested the Initial Commitments to assess whether they are sufficient and suitable to remedy the serious doubts identified in Section 3 of this decision.

4.2.1. Description of the Initial Commitments

153. Under the Initial Commitments, the Parties offered a perpetual, EEA-wide (or global at the option of the remedy taker), irrevocable, transferable, assignable, (conditionally) sub-licensable, fully paid up, sole licence to distribute, supply, sell, develop, modify, upgrade or otherwise use Nets' Realtime 24/7 technology, with which the Target currently participates in A2A CIS tenders (the "Licensed Technology") to a suitable remedy taker (the "Remedy Taker"). The Licensed Technology includes the relevant software, the corresponding source code and related documentation, as well as all versions and sub-components of the technology.

154. The Initial Commitments provide that the Remedy Taker shall have the exclusive benefit of supplying the Licensed Technology within the EEA (and, at the Remedy Taker's discretion, on a non-exclusive basis outside the EEA). The Parties shall not distribute, supply, sell, develop, modify or otherwise use the Licensed Technology in competing for new A2A CIS opportunities within the EEA (the "non-compete" clause). However, the Parties would retain the rights to supply the Licensed Technology within the EEA to support existing customers of the Target (that are not transferred to the Remedy Taker) and meet contractual commitments.

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194 Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004, the "Remedies Notice" (OJ C 267, 22.10.2008, p. 1-27).

195 Remedies Notice, paragraph 9.

196 Remedies Notice, paragraph 12.

197 Remedies Notice, paragraph 10.

155. In addition to the benefit of the Licensed Technology, the assets covered by the Initial Commitments (the "Assets") include transitional agreements, specifically:

- *Consultancy Services Agreement*. This agreement would cover the provision of consultancy services to the Remedy Taker ([…]), for technical support (including education and training of staff and application maintenance and operations) and non-technical support (including product support, programme management and business operations) for a period of up to […]. The Remedy Taker would obtain access to key personnel of the Target's A2A CIS business ("Key Personnel") under this agreement. More specifically, the Consultancy Services Agreement would offer the Remedy Taker access to […] full time equivalents ("FTEs") on a consultancy basis.

- *Transitional Support Services Agreement ("TSSA")*. This agreement would cover updates, relating to regulatory updates and new functional updates ([…]) for the period necessary to cover updates committed as of the date of the present decision.

156. Conversely, the Assets in the Initial Commitments would **not** include the transfer of:

- *Current A2A CIS customer contracts of the Target*. According to the Parties, retention of the customer contracts by the new entity avoids the complications, delay and uncertainty. Such hurdles arise from the contractual obligation to obtain the consent from customers to transfer the contract. In addition, customers themselves may be subject to their own regulatory notification and consent requirements.

- *Personnel currently involved in the Target's A2A CIS business*. The Parties argued that (i) the transfer of personnel would be challenging since no legal entity would be transferred and that (ii) they need to keep personnel to deal with the retained customer contracts. The Parties also submitted that the Remedy Taker would have access to the Key Personnel on a consultancy basis and that Consultancy Services Agreement would not include a non-solicitation obligation on the Remedy Taker who will be entitled to interview and offer employment to the Key Personnel.

- *Additional components required to provide managed services* (such as datacentres and networks). The Parties consider them as ancillary and commodity services readily available on the market and thus not needed to ensure the viability and competitiveness of the Assets.

157. In addition to the standard purchaser requirements contained in the Commission's template for divestiture remedies,[198] the Initial Commitments provide that the Remedy Taker should have (i) experience in providing financial services in a regulated environment to individual banks or to banking communities and a strategic desire to build long term business relationships in the sector; (ii) experience in operating relevant business and IT services to deliver, operate and develop software and operational processes (ideally including a proven record of delivering IT ecosystems in areas such as the processing of payment transactions, securities or other financial instruments, telecommunications or the provision of other mission critical infrastructure); and (iii) access to sufficient financial resources to support the provision of long term A2A CIS contracts including participation in lengthy contract tender processes (typically lasting one to two years) (together the "Remedy Taker Criteria").

198 Which include (i) independence, (ii) sufficient financial resources, proven expertise and incentive to use, develop and maintain the Assets as a viable and active competitive force, and (iii) lack of *prima facie* competition concerns. See Model text for divestiture commitments, available from the Commission's official website at https://ec.europa.eu/competition/mergers/legislation/template_commitments_en.pdf.

4.2.2. Results of the market test

158. The market test was launched on 29 July 2020 and sought to assess the scope and effectiveness of the Initial Commitments, the viability and attractiveness of the assets, the appropriateness of the remedy taker suitability criteria and the implementation risks.

159. Overall, and subject to the shortcomings detailed below, most respondents indicated that the Initial Commitments include all necessary assets for the Remedy Taker to effectively compete on the EEA market(s) for the provision of managed services.[199] In particular, respondents generally confirmed that (i) the sole licence to use the Target's A2A CI technology (RealTime24/7)[200] and (ii) the consultancy services provided under the Consultancy Services Agreement[201] were sufficient to ensure the viability and competitiveness of the Assets. A majority of respondents also considers that the Initial Commitments would solve potential competition concerns arising from the Transaction with respect to the provision of A2A CI managed services.[202]

160. However, respondents to the market investigation also identified the following main shortcomings in relation to the Initial Commitments.

161. *First*, a significant number of respondents to the market test indicated that some qualified personnel would need to transfer to the Remedy Taker for the latter to become a viable a competitive force.[203] One responding competitor notes for instance that "*know-how related to personnel is critical to the successful functioning of the services*", another one that "*the lack of experience on the Target's system will represent a greater challenge in the integration of the licensed and new components as well potentially extending the time required to achieve a competitive system to offer the market*". Similarly one customer notes that "*[a]t least part of the team that developed and maintains the product should move to the new company. This is essential for the success of the operation, because of the non formal knowledge and "environmental" related assets that are always involved in these cases*", and another one that "*[t]ransfer just technology without the due experts, both in the technical and business side, might not be effective*".[204] Some respondents provided additional elements as to the functions and roles of the personnel that should transfer. One respondent notes in particular that "*Key Personnel must be existing direct employees of the Target with the relevant technical and operational knowledge and expertise • Key Personnel must include key architects, product managers, commercial managers, development leads and operations leaders • We estimate that the remedy taker will require 15-20 (depending on the identity of the individuals in question and their seniority) subject matter experts in the Licensed Technology product and business and 15-30 (depending on the identity of the individuals in question and their seniority) IT/development engineers in a dedicated or permanent basis. • Key personnel to be named and/or level of skill/experience to be specified in the proposed Commitments and agreement*".[205] […][206]

162. *Second*, the market test indicates that the additional components required for the provision of managed service (as opposed to software-only) should be offered to the Remedy Taker or already available to it in-house. Contrary to the Parties' claims, while some of these components are commodity (including for example data centre services), others, such as core gateway services (see footnote 17 above), are "*proprietary"* or *"complex*" and thus cannot be easily

199 See replies to Questionnaire R1 (question 3).

200 See replies to Questionnaire R1 (question 4).

201 See replies to Questionnaire R1 (question 5).

202 See replies to Questionnaire R1 (question 22).

203 See replies to Questionnaire R1 (question 8).

204 See replies to Questionnaire R1 (question 8.1).

205 See replies to Questionnaire R1 (question 5.1).

206 See Annex 26 to Form CO.

sourced on the market.[207] Moreover, one respondent notes that even if the remedy taker could source some of these components on the market, it "*will need to have access to the relevant knowledge and expertise on how the components need to be arranged to work with the software in order for it to have a viable offer*".[208] Respondents note that whether the transfer of such components is required ultimately depends on the identity of the Remedy Taker and its in-house capabilities.[209]

163. *Third*, a significant number of respondents to the market test indicated that transferring existing customer contracts would be important for the viability of the remedy. According to them, this would allow the remedy taker to effectively gain experience and build up a track record of successfully operating an A2A CIS system.[210] However, the market test also confirmed that transferring such contracts would lead to implementation risks and delays, due to the consent rights of customers. In particular, this was expressly confirmed by the current customers of the Target who responded to the market test. One of them explicitly mentions that he would not transfer its contract to the Remedy Taker, stating that they *"would anyway quite likely not go for it*".[211]

164. *Fourth*, regarding the TSSA and Consultancy Agreement, feedback from the market investigation suggests that their duration should be extended to […].[212] One respondent notes that "*[i]t takes significant time to build up in-house knowledge so […] is our best estimate*", another one mentions that "*the time needed to establish a new and similar clearing service to the service provided by Nets today, [is estimated to be] between […]*", while a competitor notes that "*[w]ith a sales cycle potentially taking […]*".[213] Relatedly, the market test results indicate that the scope, terms and conditions of the Consultancy Services and TSSA should be further detailed, including in particular a non-discriminatory provision to ensure that the Remedy Taker would not be treated less favourably than the merged entity's own business, and the agreements should include additional safeguards to limit the risk of exchange of commercially sensitive information.[214]

165. *Fifth*, the non-compete provision included in the Initial Commitments should be strengthened. Indeed, some respondents indicated that, under the wording of the Initial Commitments, there is a risk that the Parties would be able to use the Licensed Technology (or part of it in combination with Mastercard's technology) to bid in future EEA tenders.[215]

166. *Sixth*, the market test indicates that, in order to ensure the viability and competitiveness of Assets, the Remedy Taker Criteria set out in the Initial Commitments should be supplemented. In particular, a majority of respondents indicated that a suitable Remedy Taker should:

- Have expertise in A2A CIS (but not necessarily in the EEA);[216]
- Have a footprint in the EEA;[217]

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207 See replies to Questionnaire R1 (question 9).

208 See replies to Questionnaire R1 (question 9.1).

209 See replies to Questionnaire R1 (question 10.1).

210 See replies to Questionnaire R1 (questions 3.1 and 21.2).

211 See replies to Questionnaire R1 (question 21.2).

212 See replies to Questionnaire R1 (question 6).

213 See replies to Questionnaire R1 (question 6.1).

214 See replies to Questionnaire R1 (question 3.1). One respondent notes for instance that "*conditions for the new functionalities to be included in the licensed SW might be non acceptable or non favourable in relation to [Mastercard] conditions*".

215 See replies to Questionnaire R1 (question 18.1). One respondent notes for instance that "*restrictions on Mastercard being able to use the Licensed Technology to develop an entire new product that is then launched in the EEA would also be important and required to prevent undermining the viability of the Assets in the hands of the Purchaser*".

216 See replies to Questionnaire R1 (question 16.1).

- Offer complementary overlay services (such as fraud management, analytics, etc.);[218] and

- Be able to offer the additional components of managed services in-house.[219]

167. *Lastly*, the market test results indicate that an upfront buyer clause is warranted in the present case. Most of the interest for the Initial Commitments arose from players who do not *prima facie* meet the Remedy Taker Criteria,[220] including those which appear necessary in light of the market test feedback as summarised in the previous paragraph. Moreover, a majority of respondents to the market test foresee implementation risks (irrespective of the transfer of customer contracts).

4.2.3. The Final Commitments

168. In order to take into account the results of the market tests, the Parties submitted revised commitments on 11 August 2020 (the "Final Commitments").

169. The Final Commitments differ from the Initial Commitments on the following points:

- *Personnel currently involved in the Target's A2A CIS business*. The Final Commitments provide for the transfer of Key Personnel, defined as all personnel necessary for the Remedy Taker to compete effectively in the market for the provision of A2A CIS services in the EEA and identified in the Schedule to the Final Commitments. The Parties commit to use their best efforts to obtain the Key Personnel's consent to be transferred to the remedy taker and to facilitate such transfer; [221]

- *Consultancy Services Agreement and additional components required to provide managed services.* In addition to the Consultancy Services already described in the Initial Commitments, the Final Commitments also include the Parties' undertaking to provide services relating to the provision of managed solutions ([…]). These services will consist in advising on the selection, specification, procurement and arrangement of the components (including hardware, sofrware, and services) that may be required to allow the remedy taker to incorporate the Licensed Technology as part of a managed service offering;[222] Consultancy Services under the Consultancy Services Agreement will be made available during […]. The Final Commitments also add a non-discriminatory provision and additional safeguards to limit the risk of exchange of commercially sensitive information between the Parties and the remedy taker to the Consultancy Services Agreement; [223]

- *TSSAs and additional components required to provide managed services*. The Final Commitments provide for an additional TSSA between the Remedy Taker and Nets. This additional TSSA provides access, for a period of up to […], to managed services capabilities currently offered by the Target and sourced from Nets directly in the provision of a managed service offering under a separate TSSA. The Final Commitments also add a non-

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217 See replies to Questionnaire R1 (question 16.2). One respondent notes for instance that "*EEA footprint/knowledge of EEA payments would typically be important in tenders*".

218 See replies to Questionnaire R1 (question 16.3). One respondent notes for instance that "*[c]reating a business case only with basic A2A payment services without any value added services would be extremely difficult*", and another one that "*this will give options and possibilities for purchasing additional services related to A2A CIS*".

219 See replies to Questionnaire R1 (question 16.4). One respondent notes for instance that "*[t]he more managed services [a company offers], the easier to build a business case*".

220 See replies to Questionnaire R1 (question 12).

221 Final Commitments, para. 6(ii) and para. 75.

222 Final Commitments, para. 6 (iii) and para. 78.

223 Final Commitments, paras. 76-78.

discriminatory provision and additional safeguards to limit the risk of exchange of commercially sensitive information between the Parties and the remedy taker to the TSSAs;[224]

- *Additional safeguards accompanying the Licensed Technology – Non-compete provision*. The Final Commitments strengthen the Remedy Taker's protection for its exclusive use of the Licensed Technology within the EEA, by providing that the Parties not only will not distribute, supply, sell, develop, modify or use the Licensed Technology in the EEA but also any updates or improved versions thereof nor any parts or components for the purposes of competing for new A2A CIS tender opportunities in the EEA; [225]

- *Geographic scope of the License*. Under the Final Commitments, the License to the Licensed Technology outside of the EEA is no longer optional but included by default in the scope of the remedy (on a non-exclusive basis). The extension of the geographic scope of the License ensures that the Remedy Taker will be able to participate in the upcoming A2A CIS tenders on a global basis (and not only in the EEA) and, thus, to gain experience and build up a track record.

- *Remedy Taker Criteria*. The Final Commitments strengthen the Remedy Taker Criteria, by adding that the remedy taker shall have (i) a presence and business activities in the EEA, (ii) expertise in the provision of A2A CIS including by way of consortia, (iii) the ability to offer complementary overlay services, including by way of consortia, and (iv) have at its disposal sufficient and sufficiently capable staff in order to compete effectively in the market for the provision of A2A CI software and managed solutions in the EEA, including by way of outsourcing agreements;[226]

- *Upfront buyer requirement*. The Final Commitments include an upfront buyer requirement, meaning that the Transaction will not be implemented before the Parties have entered into a final and binding sale and purchase agreement for the implementation of the Final Commitments and the Commission has approved the Remedy Taker. [227]

170. As regards the current A2A CIS customer contracts of the Target, they will not be transferred to the Remedy Taker in order to avoid complications, which may hamper the implementation of the Final Commitments. The market test and additional submission by the Parties indeed confirmed that the transfer of such contracts would trigger contractual change of control consent requirements, causing significant delays (at least 8 to 11 months) and uncertainty in the execution of the Final Commitments.[228]

4.2.4. Commission's assessment

171. The Commission considers that the amendments described in Section 4.2.3 adequately address the concerns raised by the market test respondents and the Commission itself in relation to the Initial Commitments and contributes to the viability and competitiveness of the Assets.

172. On the basis of the above, the Commission concludes that the Final Commitments encompass all necessary assets to ensure the viability and competitiveness of the Assets, including the RealTime24/7 technology and high-skilled Key Personnel, which constitute the core elements of the Target's A2A CIS business. The Final Commitments also provide for transitional agreements, which are sufficient, both in terms of scope and duration, to ensure a smooth transfer of the Assets to the Remedy Taker.

224 Final Commitments, para. 6(iv) and para. 79 (i) and (ii).

225 Final Commitments, para. 70.

226 Final Commitments, para. 14 (ii) (c) and (e).

227 Final Commitments, para. 4.

228 Form RM, paras. 2.24-2-25.

173. The Commission also observes that the market test largely confirmed the uncertainty as to the transferability of the Target's existing customer contracts to the Remedy Taker. This is due to the existence of strict mechanisms applicable in case of change of control under the relevant contracts and the reluctance expressed by customers in relation to such transfer. Consequently, the Commission considers that the inclusion of these contracts in the scope of the remedy could jeopardize the effective implementation of the Final Commitments.

174. The strengthening of the non-compete provision, which will effectively prevent the Parties from using the Licensed Technology (or part of it) for upcoming tenders in the EEA ensures the viability and competitiveness of the Asset.

175. Furthermore, the revised Remedy Taker Criteria set forth in the Final Commitments will ensure that the Assets will be transferred to a suitable Remedy Taker. Such Remedy Taker will not only have a presence in the EEA, allowing it to readily participate in any A2A CIS tender in the region, but also expertise in A2A CIS, complementary overlay services and the required staff to provide managed services, ensuring a smooth transition of the assets to a knowledgeable market player.

176. Finally, the upfront buyer requirement mitigates implementation risks and ensures that the Assets will be transferred to a suitable Remedy Taker.

177. In view of the foregoing, the Commission concludes that the Final Commitments would allow the Remedy Taker to effectively and credibly compete for the provision of A2A CIS as managed services in the EEA. The Final Commitments thus fully address the competition concerns identified in the decision resulting from the reduction in the number of credible providers of A2A CI managed services in the EEA.

178. For the reasons outlined above, the Commission concludes that the Final Commitments are sufficient in scope and suitable to eliminate the serious doubts as to the compatibility of the Transaction with the internal market on all plausible markets.

5. CONDITIONS AND OBLIGATIONS

179. Under the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering a notified concentration compatible with the internal market.

180. The achievement of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the Parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the internal market no longer stands. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 8(6) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.

181. In accordance with the distinction described above, the Decision in this case is conditioned on the full compliance with the requirements set out in Section B of the Final Commitments (including the Schedule), which constitute conditions. The remaining requirements set out in the other section of the Final Commitments constitute obligations on the Parties.

182. The detailed text of the Final Commitments is annexed to this decision. The full text of the Final Commitments (including the Schedule) forms an integral part of this Decision.

6. CONCLUSION

183. For the above reasons, the Commission has decided not to oppose the notified operation as modified by the Final Commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in Section B of the Final Commitments annexed to the present decision and with the obligations contained in the other sections of the said Final Commitments. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President

CASE M.9744 – MASTERCARD INCORPORATED / PARTS OF THE CORPORATE SERVICES ASSETS OF NETS A/S

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2), of Council Regulation (EC) No 139/2004 (the "**Merger Regulation**"), Mastercard Incorporated ("**Mastercard**") and Nets A/S ("**Nets**") hereby enter into the following Commitments (the "**Commitments**") *vis-à-vis* the European Commission (the "**Commission**") with a view to rendering the acquisition of parts of the corporate services business of Nets ("**Target**") compatible with the internal market and the functioning of the EEA Agreement.

The Commitments shall take effect upon the date of adoption of the Decision. The overall purpose of the Commitments is to restore effective competition in the market for the supply of account to account ("**A2A**") core infrastructure ("**CIS**") software and managed services by making available to the Remedy Taker such assets and tools as to enable the Remedy Taker to operate on the market immediately and compete effectively in future competitive tenders for A2A CIS contracts.

This text shall be interpreted in light of the Commission's decision pursuant to Article 6(1)(b) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the "**Decision**"), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the "**Remedies Notice**").

SECTION A. DEFINITIONS

1. For the purpose of the Commitments, the following terms shall have the following meaning:

A2A: Account-to-account.

Access to Personnel: Personnel made available including under the Consultancy Agreement which shall include such staff as may be necessary in order to ensure the viability and competitiveness of the Assets in accordance with these Commitments. The Consultancy Agreement will not include the imposition of an employee non-solicit obligation on the Remedy Taker who will be entitled to interview and offer employment to Personnel engaged in the development, provision or management of the Licensed Technology at any time.

Affiliated Undertakings: undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the "**Consolidated Jurisdictional Notice**").

Agreements: the Licence Agreement, the Consultancy Agreement and the TSSAs.

Assets: the benefit of the Licensed Technology, Key Personnel Transfer Commitment and Consultancy Services (including Access to Personnel) as well as the Transitional Services as described in more detail in Section B and in the Schedule which Mastercard commits to provide.

CIS: core infrastructure software and managed services.

Closing: the provision of the Assets to the Remedy Taker.

Closing Period: the period of […] from the approval of the Remedy Taker and the terms of provision of the Assets by the Commission.

Confidential Information: any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

Conflict of Interest: any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.

Consultancy Agreement: the agreement under which the Remedy Taker will be provided with the Consultancy Services.

Consultancy Services: The technical and non-technical consultancy services as defined in Section B and in the Schedule, which shall include such services as may be necessary in order to ensure the viability and competitiveness of the Assets in accordance with these Commitments, the benefit of which Mastercard commits to provide to the Remedy Taker under the Consultancy Agreement.

Divestiture Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by Mastercard and who has/have received from Mastercard the exclusive Trustee Mandate to provide the Assets to a remedy taker at no minimum price.

EEA: the United Kingdom and those other countries participating in the European Economic Area as of the Effective Date.

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of […] from the Effective Date, subject to any extension granted by the Commission under the procedure set out in paragraph 39.

ICC: International Chamber of Commerce

Identified Staff: the list of Target employees, as further specified in Table 2 in the Schedule, from among which the Remedy Taker may recruit Key Personnel to be transferred pursuant to the Key Personnel Transfer Commitment.

Key Personnel: all personnel necessary for the Remedy Taker to compete effectively in the market for the provision of A2A CIS services in the EEA on the basis of the Commitments, as further specified in the Schedule and to be transferred to the Remedy Taker pursuant to the Key Personnel Transfer Commitment.

Key Personnel Transfer Commitment: the commitment set out in paragraph 75 below.

Licence Agreement: the agreement under which the Parties agree to licence the Licensed Technology to the Remedy Taker.

Licensed Technology: the technology as defined in Section B and in the Schedule which Mastercard commits to license to the Remedy Taker under the Licence Agreement (including committed updates thereto as at Closing).

Licensor: the licensor of the Licensed Technology.

Mastercard: Mastercard Incorporated, incorporated under the laws of the United States of America, with its registered office at Wilmington, State of Delaware.

Monitoring Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by Mastercard, and who has/have the duty to monitor the Parties' compliance with the conditions and obligations attached to the Decision.

Parties: Mastercard and Nets.

Personnel: all staff currently involved in the Target's A2A CIS business.

Remedies Notice: Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004.

Remedy Taker: the entity approved by the Commission as the licensee for the Licensed Technology in accordance with the criteria set out in Section D.

Remedy Taker Criteria: the criteria laid down in paragraph 13 of these Commitments that the Remedy Taker must fulfil in order to be approved by the Commission.

Schedule: the schedule to these Commitments describing more in detail the Assets.

Target: those parts of the corporate services business of Nets A/S to be purchased by Mastercard.

Trustee(s): the Monitoring Trustee and/or the Divestiture Trustee as the case may be.

Trustee Divestiture Period: the period of […] from the end of the First Divestiture Period.

Transitional Services: the transitional services as defined in Section B and in the Schedule, the benefit of which the Parties commit to provide to the Remedy Taker under the TSSAs.

TSSAs: the transitional support services agreements as defined in Section B and in the Schedule which the Parties commit to enter into with the Remedy Taker.

SECTION B. THE COMMITMENTS

Commitment to provide the Assets

2. In order to maintain effective competition, Mastercard commits to provide, or procure the provision of the Assets by the end of the Trustee Divestiture Period to a remedy taker and on terms of provision of the Assets approved by the Commission in accordance with the procedure described in paragraph 14 of these Commitments. Mastercard commits to find a remedy taker and to enter into final binding Agreements within the First Divestiture Period. If Mastercard has not entered into such Agreements at the end of the First Divestiture Period, Mastercard shall grant the Divestiture Trustee an exclusive mandate to provide the Assets in accordance with the procedure described in paragraph 24 in the Trustee Divestiture Period.

3. Mastercard shall be deemed to have complied with this commitment if:

   (i) by the end of the Trustee Divestiture Period, Mastercard or the Divestiture Trustee has entered into final binding Agreements and the Commission approves the proposed remedy taker and the terms of provision of the Assets as being consistent with the Commitments in accordance with the procedure described in paragraph 14; and

(ii) the Closing of the provision of the Assets to the Remedy Taker takes place within the Closing Period.

4. The proposed concentration shall not be implemented before the Parties or the Divestiture Trustee have entered into a final binding sale and purchase agreement for the implementation of these Commitments and the Commission has approved the Remedy Taker and the terms of the agreement with the Remedy Taker in accordance with paragraph 15.

5. In order to maintain the structural effect of the Commitments, Mastercard shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Remedy Taker, unless, following the submission of a reasoned request from Mastercard showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 39 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the Remedy Taker is no longer necessary to render the proposed concentration compatible with the internal market.

Structure and definition of the Assets

6. The Assets, which are described in more detail in Schedule 1, include the following:

(i) A perpetual, global irrevocable, transferable, assignable, sub-licensable, fully paid up, sole licence of those intangible assets which comprise the Licensed Technology.

(ii) The Key Personnel Transfer Commitment.

(iii) Consultancy Services (to be provided by the Parties to the Remedy Taker, unless the Remedy Taker demonstrates that it does not need those in whole, or in part, in order to compete effectively in the market for A2A CIS services in the EEA on the basis of the Commitments) including the following core elements relating to technical support for a period of up to […], provided […] and otherwise on terms and conditions to be approved by the Commission:

(a) education and training of staff; and

(b) application maintenance and operations.

(c) product support (support with customer on-boarding and configuration);

(d) programme management (providing in-depth support for the operation of the product and customer implementation);

(e) business operations (monitoring of business operational activities); and

(f) advice on the selection, specification, procurement and arrangement of all the components that may be required to allow the Remedy Taker to incorporate the Licensed Technology as part of a managed service offering.

(iv) Transitional support services agreements (provided […] and otherwise on terms and conditions to be approved by the Commission) ("**TSSAs**") providing:

(a) Updates relating to regulatory updates and new functional updates which will be made available until such period as may be necessary to implement the updates to which the Licensor is committed as at Closing, to a potential remedy taker without undue delay;

(b) Access (supplied directly by Nets) to managed service capabilities to the extent that these are currently offered by the Target (all of which are sourced by the Target from Nets) in the provision of a managed service offering (including, in particular, supply of any components of a managed service, such as datacentres, network and professional services as provided under the transitional services agreement between Nets and the Target) for a period of up to […].

7. In providing services to the Remedy Taker under the Consultancy Agreement and the TSSAs the Parties shall apply the same standards of service as they apply in providing comparable services to their own A2A CIS business activities or to the Target and, in providing those services under the Consultancy Agreement and the TSSAs, the Parties shall not act with the purpose of favouring Mastercard's and/or the Target's own A2A CIS business activities to the detriment of the Remedy Taker's A2A CIS business activities.

8. The Parties shall put in place strict firewall procedures to prevent any exchange of competitively sensitive information between the Remedy Taker and either of the Parties by virtue of the services provided as part of the Consultancy Agreement or the TSSAs.

9. The Remedy Taker shall have the exclusive benefit of supplying the Licensed Technology within the EEA and on a non-exclusive basis outside the EEA. Mastercard and its Affiliated Undertakings (including the Licensor) shall not distribute, supply, sell, develop, modify or otherwise use (i) the Licensed Technology or (ii) any updated or somehow improved versions of the Licensed Technology or (iii) any parts or components of the Licensed Technology used in combination with other technology, at any time in competing for new A2A CIS opportunities within the EEA. Mastercard and its Affiliated Undertakings shall retain rights to supply the Licensed Technology within the EEA only in order to enable the Licensor to support the existing customers of the retained business and to meet the contractual commitments of the retained business as at Closing.[1] For the avoidance of doubt, nothing provided in these Commitments shall be construed as limiting any right of Mastercard and its Affiliated Undertakings to also distribute, supply, sell, develop, modify or otherwise use the Licensed Technology outside of the EEA. Subject to the above, Mastercard and its Affiliated Undertakings shall also retain the ability to compete in future A2A CIS contract tenders within the EEA using technology that it owns, develops or modifies, or sources from a third party provided that this does not involve the use of (i) the Licensed Technology or (ii) any updated or somehow improved versions of the

1 As described in **Annex** 1 to the Schedule.

Licensed Technology or (iii) any parts or components of the Licensed Technology used in combination with other technology.[2]

SECTION C. RELATED COMMITMENTS

Preservation of viability, marketability and competitiveness

10. From the Effective Date until Closing, the Party with control of the Licensed Technology shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Assets, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Assets. In particular, the Party with control of the Licensed Technology undertakes not to carry out any action that might have a significant adverse impact on the value or competitiveness of the Assets or that might alter the nature and scope of activity of the Assets.

Due diligence

11. In order to enable potential remedy takers to carry out a reasonable due diligence of the Assets, Mastercard shall, subject to customary confidentiality assurances and dependent on the stage of the licensing process:

    (a) provide to potential remedy takers sufficient information as regards the Assets;

    (b) provide to potential remedy takers sufficient information relating to the Personnel and Key Personnel and allow them reasonable access to the Personnel and Key Personnel.

Reporting

12. Mastercard shall submit written reports in English on potential remedy takers of the Assets and developments in the negotiations with such potential remedy taker to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request). Mastercard shall submit a list of all potential remedy takers having expressed interest in the Assets to the Commission at each and every stage of the process, as well as a copy of all the offers made by potential remedy takers within five days of their receipt.

13. Mastercard shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential remedy takers.

SECTION D. THE REMEDY TAKER

14. In order to be approved by the Commission, the Remedy must fulfil the following criteria:

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[2] This includes the ability for Mastercard to use the Licensed Technology in any renewal or extension of any or all existing contracts listed in **Annex 1** to the Schedule within the EEA. If a contract tender process is commenced by a customer to replace such an existing A2A CIS contract within the EEA, Mastercard shall not use the Licensed Technology in competing in such tender, but shall not be precluded from agreeing an extension or renewal of such existing contract involving the use of the Licensed Technology if that is the customer's preference.

(i) The Remedy Taker shall be independent of and unconnected to Mastercard and its Affiliated Undertakings (this being assessed having regard to the situation following the licensing).

(ii) The Remedy Taker shall have the financial resources, proven expertise and incentive to use, develop and maintain the Assets as a viable and active competitive force in competition with Mastercard and other competitors. The Remedy Taker should have a presence and business activities in the EEA and should have the following attributes:

(a) experience in providing financial services in a regulated environment to individual banks or to banking communities and a strategic desire to build long term business relationships in the sector;

(b) experience in operating relevant business and IT services to deliver, operate and develop software and operational processes. This should include a proven record of delivering IT ecosystems in areas such as the processing of payment transactions, securities or other financial instruments, telecommunications or the provision of other mission critical infrastructure;

(c) expertise in the provision of A2A CIS, as evidenced, for example, through participation in A2A CIS tenders by way of consortia;

(d) access to sufficient financial resources to support the provision of long-term A2A CIS contracts including participation in lengthy contract tender processes (typically of 1-2 years in duration); and

(e) an ability to offer complementary overlay services such as A2A payment services or other value added services (e.g. fraud management and analytics) including by way of consortia, outsourcing or other commercial arrangements

(iii) The provision of the Assets to the Remedy Taker must neither be likely to create, in light of the information available to the Commission, prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed.

(iv) By virtue of the Personnel Transfer Commitment in light of its own resources, the Remedy Taker shall have at its disposal (including by virtue of outsourcing arrangements) sufficient and sufficiently capable staff in order to compete effectively in the market for the provision of A2A CIS services in the EEA.

15. The final binding Agreements relating to the provision of the Assets shall be conditional on the Commission's approval. When Mastercard has reached an agreement with a remedy taker, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee. Mastercard must be able to demonstrate to the Commission that the Remedy Taker fulfils the Remedy Taker Criteria and that the Assets are being provided in a manner consistent with the Commission's Decision and the Commitments. For the approval, the Commission shall verify that the Remedy Taker fulfils the Remedy Taker Criteria and that the Assets are being provided in a manner consistent with the Commitments including their objective to bring about a

lasting structural change in the market. The Commission may approve the transfer of the benefit of the Assets without one or more Assets or by substituting one or more Assets with one or more different assets, if this does not affect the viability and competitiveness of the Assets after the transfer.

SECTION E. TRUSTEE

I. Appointment procedure

16. Mastercard shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. Mastercard commits not to close the Concentration before the appointment of a Monitoring Trustee.

17. If Mastercard has not entered into binding Agreements regarding the provision of the Assets one month before the end of the First Divestiture Period or if the Commission has rejected a remedy taker proposed by Mastercard at that time or thereafter, Mastercard shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

18. The Trustee shall:

(i) at the time of appointment, be independent of the Parties and their Affiliated Undertakings;

(ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and

(iii) neither have nor become exposed to a Conflict of Interest.

19. The Trustee shall be remunerated by Mastercard in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final transfer value of the Assets, such success premium may only be earned if the licensing takes place within the Trustee Divestiture Period.

Proposal by Mastercard

20. No later than two weeks after the Effective Date, Mastercard shall submit the names of at least two natural or legal persons whom Mastercard proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period or on request by the Commission, Mastercard shall submit a list of one or more persons whom Mastercard proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 17 and shall include:

(i) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;

(ii) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks; and

(iii) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

21. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, Mastercard shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Mastercard shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by Mastercard

22. If all the proposed Trustees are rejected, Mastercard shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 19 and 20 of these Commitments.

Trustee nominated by the Commission

23. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom Mastercard shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

24. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Mastercard, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

25. Monitoring Trustee shall:

(i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision;

(ii) propose to Mastercard such measures as the Monitoring Trustee considers necessary to ensure Mastercard's compliance with the conditions and obligations attached to the Decision;

(iii) review and assess potential remedy takers as well as the progress of the licensing process and verify that, dependent on the stage of the licensing process potential remedy takers receive sufficient and correct information relating to the Assets in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process;

(iv) act as a contact point for any requests by third parties, in particular potential remedy takers, in relation to the Commitments;

(v) provide to the Commission, sending Mastercard a non-confidential copy at the same time, a written report within 15 days after the end of every month so that the Commission can assess whether the conduct of Mastercard is consistent with the Commitments and the progress of the licensing process as well as potential remedy takers;

(vi) promptly report in writing to the Commission, sending Mastercard a non-confidential copy at the same time, if it concludes on reasonable grounds that Mastercard is failing to comply with these Commitments;

(vii) within one week after receipt of the documented proposal referred to in paragraph 19 of these Commitments, submit to the Commission, sending Mastercard a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the proposed remedy taker and as to whether the Assets are provided in a manner consistent with the conditions and obligations attached to the Decision in particular, if relevant, whether the transfer of the benefit of the Assets without one or more of Assets affects the viability of the Assets after taking account of the proposed remedy taker;

(viii) appoint an expert in the payments and financial infrastructure industry to assist the Trustee, in agreement with the Commission and at the expense of Mastercard . Only the Trustee shall be entitled to issue instructions to the expert; and

(ix) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

26. If the Monitoring and Divestiture Trustee are not the same legal or natural persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

Duties and obligations of the Divestiture Trustee

27. Within the Trustee Divestiture Period, the Divestiture Trustee shall provide at no minimum price the Assets to a licensee, provided that the Commission has approved both the Remedy Taker and the final binding Agreements as in line with the Commission's Decision and the Commitments in accordance with paragraphs 13 and 12 of these Commitments. The Divestiture Trustee shall include in the Agreements (as well as in any ancillary agreements) such terms and conditions as it considers appropriate for an expedient provision of the Assets in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the Agreements such customary representations and warranties and indemnities as are reasonably required to effect the provision of the Assets. The Divestiture Trustee shall protect the legitimate financial interests of Mastercard, subject to Mastercard's unconditional obligation to provide the Assets at no minimum price in the Trustee Divestiture Period.

28. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly

report written in English on the progress of the licensing process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to Mastercard.

III. Duties and obligations of Mastercard

29. Mastercard shall provide and shall cause their advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of the Target's books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and Mastercard shall provide the Trustee upon request with copies of any document. Mastercard shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

30. Mastercard shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request. Mastercard shall provide and shall cause their advisors to provide the Monitoring Trustee, on request, with the information submitted to potential remedy takers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential remedy takers in the due diligence procedure. Mastercard shall inform the Monitoring Trustee on possible remedy takers, submit lists of potential remedy takers at each stage of the selection process, including the offers made by potential remedy takers at those stages, and keep the Monitoring Trustee informed of all developments in the licensing process.

31. Mastercard shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the provision of the Assets (including ancillary agreements), the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the provision of the Assets and the Closing, including the appointment of advisors to assist with the process. Upon request of the Divestiture Trustee, Mastercard shall cause the documents required for effecting the provision of the Assets and the Closing to be duly executed.

32. Mastercard shall indemnify the Trustee and its employees and agents (each an "**Indemnified Party**") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Mastercard for, any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.

33. At the expense of Mastercard, the Trustee may appoint advisors (in particular for corporate finance or legal advice or advice in the payments and financial infrastructure industry), subject to Mastercard's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Trustee Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Mastercard refuse to approve the advisors proposed by

the Trustee the Commission may approve the appointment of such advisors instead, after having heard Mastercard. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 36 of these Commitments shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Mastercard during the First Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient provision of the benefit of the Assets.

34. Mastercard agrees that the Commission may share Confidential Information proprietary to the Target with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply mutatis mutandis.

35. Mastercard agrees that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential remedy takers, of the identity and the tasks of the Monitoring Trustee.

36. For a period of 10 years from the Effective Date the Commission may request all information from Mastercard that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. Replacement, discharge and reappointment of the Trustee

37. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:

(i) the Commission may, after hearing the Trustee and Mastercard, require Mastercard to replace the Trustee; or

(ii) Mastercard may, with the prior approval of the Commission, replace the Trustee.

38. If the Trustee is removed according to paragraph 36 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 19 to 22 of these Commitments.

39. Unless removed according to paragraph 36 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

SECTION F. THE REVIEW CLAUSE

40. The Commission may extend the time periods foreseen in the Commitments in response to a request from Mastercard or, in appropriate cases, on its own initiative. Where Mastercard requests an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the

Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to Mastercard. Only in exceptional circumstances shall Mastercard be entitled to request an extension within the last month of any period.

41. The Commission may further, in response to a reasoned request from Mastercard showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to Mastercard. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

SECTION G. FAST TRACK DISPUTE RESOLUTION

42. In the event that the Remedy Taker claims that Mastercard or an Affiliated Undertaking is failing to comply with the requirements of the Commitments vis-à-vis the Remedy Taker, the fast track dispute resolution procedure as described herein shall apply. Such fast track dispute resolution mechanism will be an additional option to the benefit of the Remedy Taker and not an obligation for it.

43. If the Remedy Taker wishes to avail itself of the fast track dispute resolution procedure, it shall send a written request to Mastercard (with a copy to the Trustee) setting out in detail the reasons leading that party to believe that Mastercard is failing to comply with the requirements of the Commitment. The Remedy Taker and Mastercard will use their best efforts to resolve all differences of opinion and to settle all disputes that may arise through co-operation and consultation within a reasonable period of time not exceeding fifteen 15 working days after receipt of the request.

44. The Trustee shall present its own proposal (the "**Trustee Proposal**") for resolving the dispute within eight 8 working days, specifying in writing the action, if any, to be taken by Mastercard or an Affiliated Undertaking in order to ensure compliance with the commitments vis-à-vis the Remedy Taker, and be prepared, if requested, to facilitate the settlement of the dispute.

45. Should the Remedy Taker and Mastercard (together the "**Parties to the Arbitration**") fail to resolve their differences of opinion in the consultation phase, the Remedy Taker shall serve a notice (the "**Notice**"), in the sense of a request for arbitration, to the International Chamber of Commerce (the "**ICC**"), with a copy of such Notice and request for arbitration to Mastercard.

46. The Notice shall set out in detail the dispute, difference or claim (the "**Dispute**") and shall contain, inter alia, all issues of both fact and law, including any suggestions as to the procedure, and all documents relied upon shall be attached, e.g. documents, agreements, expert reports, and witness statements. The Notice shall also contain a detailed description of the action to be undertaken by Mastercard (including, if appropriate, a draft contract comprising all relevant terms and conditions) and the Trustee Proposal, including a comment as to its appropriateness.

47. Mastercard shall, within 10 working days from receipt of the Notice, submit its answer (the "**Answer**"), which shall provide detailed reasons for its conduct and set out, inter alia, all issues of both fact and law, including any suggestions as to the procedure, and all documents relied upon, e.g. documents, agreements, expert reports,

and witness statements. The Answer shall, if appropriate, contain a detailed description of the action which Mastercard proposes to undertake vis-à-vis the Remedy Taker (including, if appropriate, a draft contract comprising all relevant terms and conditions) and the Trustee Proposal (if not already submitted), including a comment as to its appropriateness.

Appointment of the Arbitrators

48. The Arbitral Tribunal shall consist of three persons. The Remedy Taker shall nominate its arbitrator in the Notice; Mastercard shall nominate its arbitrator in the Answer. The arbitrator nominated by the Remedy Taker and by Mastercard shall, within five working days of the nomination of the latter, nominate the chairman, making such nomination known to the parties and the Arbitral Institution which shall forthwith confirm the appointment of all three arbitrators.

49. Should the Remedy Taker wish to have the Dispute decided by a sole arbitrator it shall indicate this in the Notice. In this case, the Remedy Taker and Mastercard shall agree on the nomination of a sole arbitrator within five working days from the communication of the Answer, communicating this to the Arbitral Institution.

50. Should Mastercard fail to nominate an arbitrator, or if the two arbitrators fail to agree on the chairman, or should the Parties to the Arbitration fail to agree on a sole arbitrator, the default appointment(s) shall be made by the Arbitral Institution.

51. The three-person arbitral tribunal or, as the case may be, the sole arbitrator, are herein referred to as the "**Arbitral Tribunal**".

Arbitration Procedure

52. The Dispute shall be finally resolved by arbitration under the ICC rules, with such modifications or adaptations as foreseen herein or necessary under the circumstances (the "**Rules**"). The arbitration shall be conducted in London, England in the English language.

53. The procedure shall be a fast-track procedure. For this purpose, the Arbitral Tribunal shall shorten all applicable procedural time-limits under the Rules as far as admissible and appropriate in the circumstances. The Parties to the Arbitration shall consent to the use of e-mail for the exchange of documents.

54. The Arbitral Tribunal shall, as soon as practical after the confirmation of the Arbitral Tribunal, hold an organisational conference to discuss any procedural issues with the Parties to the Arbitration. Terms of Reference shall be drawn up and signed by the Parties to the Arbitration and the Arbitration Tribunal at the organisational meeting or thereafter and a procedural time-table shall be established by the Arbitral Tribunal. An oral hearing shall, as a rule, be established within two months of the confirmation of the Arbitral Tribunal.

55. In order to enable the Arbitral Tribunal to reach a decision, it shall be entitled to request any relevant information from the Parties to the Arbitration, to appoint experts and to examine them at the hearing, and to establish the facts by all appropriate means. The Arbitral Tribunal is also entitled to ask for assistance by the Trustee in all stages of the procedure if the Parties to the Arbitration agree.

56. The Arbitral Tribunal shall not disclose confidential information and apply the standards attributable to confidential information under the Merger Regulation. The Arbitral Tribunal may take the measures necessary for protecting confidential information in particular by restricting access to confidential information to the Arbitral Tribunal, the Trustee, and outside counsel and experts of the opposing party.

57. The burden of proof in any dispute under these Rules shall be borne as follows: (i) the Remedy Taker must produce evidence of a prima facie case and (ii) if the Remedy Taker produces evidence of a prima facie case, the Arbitral Tribunal must find in favour of the Remedy Taker unless Mastercard can produce evidence to the contrary.

Involvement of the Commission

58. The Commission shall be allowed and enabled to participate in all stages of the procedure by:

    (i) receiving all written submissions (including documents and reports, etc.) made by the Parties to the Arbitration;

    (ii) receiving all orders, interim and final awards and other documents exchanged by the Arbitral Tribunal with the Parties to the Arbitration (including Terms of Reference and procedural time-table);

    (iii) giving the Commission the opportunity to file amicus curiae briefs; and

    (iv) being present at the hearing(s) and being allowed to ask questions to parties, witnesses and experts.

59. The Arbitral Tribunal shall forward, or shall order the Parties to the Arbitration to forward, the documents mentioned to the Commission without delay.

60. In the event of disagreement between the Parties to the Arbitration regarding the interpretation of the Commitment, the Arbitral Tribunal may seek the Commission's interpretation of the Commitment before finding in favour of any Party to the Arbitration and shall be bound by the interpretation.

Decisions of the Arbitral Tribunal

61. The Arbitral Tribunal shall decide the dispute on the basis of the Commitment and the Decision. Issues not covered by the Commitment and the Decision shall be decided (in the order as stated) by reference to the Merger Regulation, EU law and general principles of law common to the legal orders of the Member States without a requirement to apply a particular national system. The Arbitral Tribunal shall take all decisions by majority vote.

62. Upon request of the Remedy Taker, the Arbitral Tribunal may make a preliminary ruling on the Dispute. The preliminary ruling shall be rendered within one month after the confirmation of the Arbitral Tribunal, shall be applicable immediately and, as a rule, remain in force until a final decision is rendered.

63. The Arbitral Tribunal shall, in the preliminary ruling as well as in the final award, specify the action, if any, to be taken by Mastercard or an Affiliated Undertaking in order to comply with the commitments vis-à-vis the Remedy Taker (e.g. specify a

contract including all relevant terms and conditions). The final award shall be final and binding on the Parties to the Arbitration and shall resolve the Dispute and determine any and all claims, motions or requests submitted to the Arbitral Tribunal. The arbitral award shall also determine the reimbursement of the costs of the successful party and the allocation of the arbitration costs. In case of granting a preliminary ruling or if otherwise appropriate, the Arbitral Tribunal shall specify that terms and conditions determined in the final award apply retroactively.

64. The final award shall, as a rule, be rendered within six months after the confirmation of the Arbitral Tribunal. The time-frame shall, in any case, be extended by the time the Commission takes to submit an interpretation of the Commitment if asked by the Arbitral Tribunal.

65. The Parties to the Arbitration shall prepare a non-confidential version of the final award, without business secrets. The Commission may publish the non-confidential version of the award.

66. Nothing in the arbitration procedure shall affect the power to the Commission to take decisions in relation to the Commitment in accordance with its powers under the Merger Regulation.

SECTION H. ENTRY INTO FORCE

67. The Commitments shall take effect upon the date of adoption of the Decision.

SCHEDULE

(a) **The Assets as operated to date have the following legal and functional structure:**

The remedy proposed involves the provision of the Assets, as described in more detail in Section B. These are not stand alone businesses. As such, the Assets do not have a "**legal and functional structure**".

(b) **Following paragraph 3 of these Commitments, the Assets include, but are not limited to:**

(a) the following main tangible assets;

(b) the following main intangible assets;

68. There are no tangible assets

69. Intangible assets include copies of and a perpetual global, irrevocable, transferable, assignable, sub-licensable, fully paid up, sole license[3] to distribute, supply, sell, develop, modify, upgrade or otherwise use, the relevant software (including source code and all documentation) for the Nets' Realtime 24/7 (RTP) provision. This is comprised of the next-gen modular instant payment solution developed by Nets (all versions and sub-components - […][4] […]) – real time clearing applications and committed updates thereto as at Closing ("**Licensed Technology**")[5] . The Licensed Technology shall include all related application-programming interfaces ("APIs"), which are necessary and used, previously used or planned to be used by Nets or the Target as at the Closing to connect the Nets Realtime 24/7 (RTP) provision with financial institutions and/or overlay services, including core gateway APIs.

70. The Remedy Taker shall have the exclusive benefit of supplying the Licensed Technology within the EEA and on a non-exclusive basis outside the EEA. Mastercard and its Affiliated Undertakings (including the Licensor) shall not distribute, supply, sell, develop, modify or otherwise use (i) the Licensed Technology or (ii) any updated or somehow improved versions of the Licensed Technology or (iii) any parts or components of the Licensed Technology used in combination with other technology, in competing for new A2A CIS opportunities within the EEA. Mastercard and its Affiliated Undertakings shall retain rights to supply the Licensed Technology within the EEA only in order to enable the Licensor to support the existing customers of the retained business and to meet the contractual commitments of the retained business as at Closing[6]. For the avoidance of doubt, nothing provided in these Commitments shall be construed as limiting any right of Mastercard and its Affiliated Undertakings to also distribute, supply, sell, develop, modify, upgrade or otherwise use the Licensed Technology outside of the EEA. Mastercard shall also retain the ability to compete in future A2A CIS contract tenders within the EEA using technology that it owns, develops or modifies, or sources from a third party provided that this does not involve the use of (i) the Licensed Technology or (ii) any updated or

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3 Licensor may only license/ sublicense to support its own use and that of its customers and the customers' service providers.

4 […].

5 The licence excludes any trademark rights but the Remedy Taker may provide positive attributions with regards to the source of the original development of the Licensed Technology (i.e. the Remedy Taker may refer to the fact that the Licensed Technology was developed by Nets).

6 As described in **Annex 1** to this Schedule.

somehow improved versions of the Licensed Technology or (iii) any parts or components of the Licensed Technology used in combination with other technology,.

(c) **The following main licences, permits and authorisations**:

71. The following is a list of all licenses currently used by the Target to exploit the Licensed Technology:

(i) Service Licences. […];

(ii) Application Licences. […];

(iii) Infrastructure Licences. […]:

(a) Database: […];

(b) Operating Systems: […].

72. For completeness, a number of other paid and Open-Source tools are used by the Target (e.g. for network, file transfer, etc.), but these are standard commodity services that would typically be provided by a security outsourcer provider, such as […].

(d) **the following main contracts, agreements, leases, commitments and understandings**

73. None.

(e) **the following customer, credit and other records**:

74. No customer, credit or other records will be included within the Assets.

(f) **the following personnel**:

75. The Key Personnel will be transferred to the Remedy Taker as part of the Assets, subject to their consent. The Parties shall use their best efforts to the extent permitted by law, to obtain such consent and to facilitate the transfer to the Remedy Taker of Key Personnel on the basis set out below (the **Key Personnel Transfer Commitment**):

(a) The Parties have identified the Key Personnel as set out in Table 1 below:

Table 1: Key Personnel

Area of business	Role	Number of employed staff (Group A Key Personnel)	Number of outsourced (Group B Key Personnel)[7]
Business	[…]	[…]	
	[…]	[…]	
	[…]	[…]	
Tech Application	[…]	[…]	
	[…]	[…]	
	[…]	[…]	[…]
	[…]	[…]	[…]
	[…]	[…]	[…]
Tech Managed Services	[…]	[…]	
	[…]	[…]	
	[…]	[…]	
	[…]	[…]	
	[…]	[…]	
	[…]	[…]	
	[…]	[…]	

7 As listed in Annex 4 to the Schedule

The Remedy Taker may recruit Target employees to make up the composition of Group A Key Personnel from among the identified staff in Table 2 below **("Identified Staff"):**

Table 2: Identified Staff

Area of business	**Role**	**Number of employed staff** [8]
Business	[…]	[…]
	[…]	[…]
	[…]	[…]
Tech Application	[…]	[…]
	[…]	[…]
	[…]	[…]
	[…]	[…]
	[…]	[…]
Tech Managed Services	[…]	[…][9]
	[…]	[…]
	[…]	[…]
	[…]	[…]
	[…]	[…]
	[…]	[…]
	[…]	[…]

8 As listed in Annex 4 to the Schedule

9 […].

Group A Key Personnel

(b) The following provisions shall apply to the recruitment by the Remedy Taker of Group A Key Personnel from among the Identified Staff. The Parties shall provide relevant contact details for the Identified Staff to the Remedy Taker or otherwise make the Identified Staff available to the Remedy Taker for interview subject to compliance with applicable laws.

(c) The Parties shall promptly facilitate interviews between the Identified Staff and the Remedy Taker, and the Parties shall encourage the Identified Staff from participating in such interviews, and shall not interfere in employment negotiations between the Identified Staff and the Remedy Taker.

(d) The Remedy Taker shall recruit such members of the Identified Staff as are required to make up the composition of Group A Key Personnel as listed in Table 1 above. To the extent that (i) the Remedy Taker is not able to identify and recruit a Key Personnel member from amongst the Identified Staff, or for such other Role that it considers reasonably necessary in order to compete effectively using the Assets; or (ii) the Remedy Taker reasonably considers, and the Monitoring Trustee agrees after reviewing the Remedy Taker's written explanation and consulting with the Parties, that the number and/or roles of the Key Personnel listed in Table 1 are insufficient to enable the Remedy Taker to compete effectively using the Assets in the market for the provision of A2A CIS services in the EEA, then the Parties shall promptly put forward a reasonable proposal to the Monitoring Trustee and the Commission identifying such further staff within their respective businesses as would be relevant to the business need identified by the Remedy Taker (and should identify to the Monitoring Trustee and the Commission that the replacement or addition, as the case may be, is well suited to carry out the functions required by the Remedy Taker), and this paragraph shall apply *mutatis mutandis* with respect to such further relevant staff, or any alternative solution suitable to the Monitoring Trustee and the Commission.

(e) Subject to the provisions of sub-paragraph (d), with respect to each such Identified Staff member who receives an offer of employment from the Remedy Taker (conditional on or following the Closing) (an **Employee Receiving an Offer**), the Parties shall do the following: (i) not prevent, prohibit or restrict such Employee Receiving an Offer from being employed by the Remedy Taker, and shall not offer any incentive to such Employee Receiving an Offer to decline employment with the Remedy Taker; if the Employee Receiving an Offer accepts such offer of employment with the Remedy Taker, the Parties shall cooperate with the Remedy Taker in effecting the transfer of such Employee Receiving an Offer to the employment of the Remedy Taker, and the Parties shall waive or amend the relevant provisions of such Employee Receiving an Offer's agreements, stock options and other employee benefit arrangements so that they do not suffer adverse

consequences as a result of their negotiations with, or acceptance of an offer from, the Remedy Taker.

(f) The Parties shall, at their own cost, put in place an incentivisation scheme to be agreed promptly with the Monitoring Trustee and on the basis of industry practice in order to incentivise the Key Personnel identified above (and any other employees identified pursuant to sub-paragraph (c)) that have received offers of employment from the Remedy Taker to accept such offers. In addition the Parties will work loyally with the Remedy Taker to identify relevant incentive schemes for the Remedy Taker to consider when offering employment.

(g) Each of the Parties undertakes, subject to customary limitations, that in relation to Key Personnel that are hired by the Remedy Taker pursuant to this paragraph, that it will not solicit, and will procure that its Affiliated Undertakings will not solicit, such employees for a period of […] after Closing or after the date of termination of employment of such employee by the Parties (as applicable).

Group B

The Parties shall use reasonable best efforts to facilitate negotiations between the outsourced service providers providing the Group B Key Personnel and the Remedy Taker, in order to procure outsourcing agreements on no less favourable terms than the existing outsourcing agreements such that the Remedy Taker shall continue to have access to the Group B Key Personnel.

Consultancy

76. The Parties shall provide consultancy services under the Consultancy Agreement, as described further in sub-paragraph (g) below unless the Remedy Taker demonstrates that it does not need those in whole, or in part, in order to in order to compete effectively in the market for A2A CIS services in the EEA on the basis of the Commitments. The Consultancy Agreement, to be approved by the Commission, will not include the imposition of an employee non-solicit obligation on the Remedy Taker who will be entitled to interview and offer employment to such employees at any time.

(g) **the arrangements for the supply with the following products or services by the Parties or Affiliated Undertakings for a transitional period of up to […] after Closing**:

77. Consultancy Services shall be made available, within the […] transitional period for up to a total number of hours as may be agreed between the Parties and the Monitoring Trustee in order to ensure that the Remedy Taker can compete effectively in the market for A2A CIS services.

78. The Parties shall put in place strict firewall procedures to prevent any exchange of competitively sensitive information between the Remedy Taker and either of the Parties by virtue of the services provided as part of the Consultancy Agreement or the TSSAs.

The Consultancy Agreement shall be available and shall include the following core elements relating to technical support:

- Education and training of staff including how to design, build, deploy and run the application.

- Application Maintenance & Operations: the maintenance of current product / application through "bug fixing" and upgrades of components

In addition to the above technical elements, the consultancy services shall also address the following non-technical areas (together the "**Consultancy Services**"):

Product support	Support customer on-boarding and product configuration.
Programme management	Dedicated programme manager with in-depth knowledge of the software to support product operation and customer implementations.
Business operations RT 24/7	Monitoring of business operations, (i.e. ensuring quality of services and management of contractual commitments). This includes customer reporting, SLA reporting, managing incoming change requests and maintaining a proactive operational dialogue with customers.
Managed services	Advice on the selection, specification, procurement and arrangement of the components that may be required to allow the Remedy Taker to incorporate the Licensed Technology as part of a managed service offering.

79. Furthermore: under the TSSAs (provided […] and otherwise on terms and conditions to be approved by the Commission):

(i) Updates relating to regulatory updates and new functional updates will be made available until such period that may be necessary to implement the updates to which the Licensor is committed as at Closing, to a potential remedy taker;[10]

(ii) Access (supplied directly by Nets) to managed service capabilities to the extent that these are currently offered by the Target and sourced from Nets in the provision of a managed service offering (including, in particular, supply of any components of a managed service, such as datacentres, network and

[10] A list of committed updates is contained in **Annex 2** to the Schedule. To the extent that Mastercard commits to proceed with any of the non-committed updates in **Annex 3** to the Schedule (which are neither funded nor fully defined as at the date of these Commitments) in the period of implementation of the committed updates in **Annex 2** to the Schedule, they shall be deemed to be committed updates for the purposes of these Commitments.

professional services as provided under the transitional services agreement between Nets and the Target) for a period of up to […].

80. The Assets shall not include:

Customer contracts, accounts or pricing; existing operations and operational assets; hardware or software acquired by the Parties on the open market; trademarks, service marks or brands or any licenses thereto (including without limitation any rights to use the names "Nets", or "Mastercard" alone or in connection with any of the Assets); any IP rights or customer contracts relating to other product offerings, platforms or delivery mechanisms of the Parties; land and buildings; goodwill;; any obligation to support or maintain any software or other IP transferred to the Remedy Taker except as set forth herein or in the TSSAs

ANNEX 1

Target Contractual Commitments

[…]

ANNEX 2

Committed Updates (Confidential)

[…]

ANNEX 3

Non-Committed Updates (Confidential)

[…]

ANNEX 4

Details of (i) Identified Staff for potential recruitment as Group A Key Employees and (ii) Group B Key Employees (Confidential)

[…]