

Anticipated acquisition by Mastercard UK Holdco Limited of VocaLink Holdings Limited

Decision that undertakings might be accepted

ME/6638/16

The CMA's decision under section 73A(2) of the Enterprise Act 2002 that undertakings might be accepted, given on 18 January 2017. Full text of the decision published on 30 January 2017.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

Introduction

1. Mastercard International Incorporated (**Mastercard**) through its subsidiary Mastercard UK Holdco Limited has agreed to acquire VocaLink Holdings Limited (**VocaLink**) (the **Merger**). Mastercard and VocaLink are together referred to as the **Parties**.
2. On 4 January 2017, the Competition and Markets Authority (**CMA**) decided under section 33(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger consists of arrangements that are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, and that this may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (the **SLC Decision**).
3. On the date of the SLC Decision, the CMA gave notice pursuant to section 34ZA(1)(b) of the Act to the Parties of the SLC Decision. However, the CMA did not refer the Merger for a phase 2 investigation pursuant to section 33(3)(b) on the date of the SLC Decision in order to allow the Parties the opportunity to offer undertakings to the CMA in lieu of such reference for the purposes of section 73(2) of the Act.
4. Pursuant to section 73A(1) of the Act, if a party wishes to offer undertakings for the purposes of section 73(2) of the Act, it must do so within the five

working day period specified in section 73A(1)(a) of the Act. On 11 January 2017, the Parties offered undertakings to the CMA for the purposes of section 73(2) of the Act.

5. The CMA now gives notice, pursuant to section 73A(2)(b) of the Act, to the Parties that it considers that there are reasonable grounds for believing that the undertakings offered, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act and that it is considering the offer.

The undertakings offered

6. Under section 73 of the Act, the CMA may, instead of making a reference, and for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept from such of the merger parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.
7. The SLC Decision found that the Merger gives rise to a realistic prospect of an SLC in relation to the supply of central infrastructure services (**CIS**) to the LINK ATM network (**LINK**). To address this SLC, the Parties have offered to give undertakings in lieu of a reference. The proposed undertakings comprise a package of three measures which are described in more detail below. Together these are referred to as the **Proposed Undertakings**.

LIS5 Messaging Standard Remedy

8. The LIS5 messaging standard, which is used for all transactions which take place under the LINK ATM scheme, is currently owned by VocaLink. LINK is contractually entitled to sub-license both the brand and the messaging standard to any potential competitor of VocaLink. However, under the existing contract, any future new supplier of CIS to LINK (a **New Processor**) would have to pay VocaLink to license the LINK LIS5 messaging standard.
9. Under the Proposed Undertakings, VocaLink would transfer the intellectual property rights related to the LINK LIS5 messaging standard to Link Scheme Limited (**LSL**) (the **LIS5 Remedy**).¹
10. In order to transfer the relevant intellectual property rights to LSL, the Parties proposed either:

¹ LSL is the operator of the LINK system as set out in the Financial Services (Banking Reform) Act 2013.

- (a) an unconditional transfer of the ownership of the relevant standard to LSL (with LSL licensing use of this back to both VocaLink and LINK members);
or
 - (b) a licence to LSL on a perpetual, irrevocable, world-wide, royalty-free basis.
11. The LIS5 Remedy would apply to the messaging standard used for all transactions made within the LINK scheme, but not to the messaging standard used by VocaLink outside of this. VocaLink and LSL would enter into a legally binding agreement for the transfer of LIS5 prior to the CMA's decision on the acceptance of the Proposed Undertakings.

Network Access Remedy

12. Under the Proposed Undertakings, VocaLink would give any future New Processor access to VocaLink's communications infrastructure, including connectivity with all LINK members (the **Network Access Remedy**).² The Network Access Remedy would, therefore, allow a New Processor the option of using the VocaLink connectivity to the LINK members, rather than having to build their own.
13. VocaLink would act as a subcontractor to the New Processor, passing through the relevant costs of third party telecommunications supply, and charging a portion of the shared costs incurred, along with direct, reasonable, and substantiated internal costs associated with the LINK connectivity.³ VocaLink would commit to provide service level agreements equivalent to those received from the telecommunications supplier.
14. In the event of a New Processor being awarded the LINK contract, VocaLink would also suspend the minimum volume requirements under its contract with LSL for a 6-month transition period in order to reduce costs to LSL associated with running two CIS suppliers in parallel.
15. Prior to the CMA's decision on the acceptance of the Proposed Undertakings, Mastercard and VocaLink would agree a legally binding and definitive framework agreement with LSL, setting out the terms on which the Network Access Remedy will be implemented. The Network Access Remedy would be

² The VocaLink communication infrastructure provides connectivity between the VocaLink switch and the LINK members' point of access.

³ These costs would arise from VocaLink's provision of the following services: 24/7 monitoring of all circuits, monitoring any alerts, and managing the supply contract.

time-limited, and for its duration VocaLink would be maintained as a separate legal entity within the Mastercard group.

Switching Fund Remedy

16. Under the Proposed Undertakings, VocaLink would commit £[~~5~~] million for the purposes of contributing to the costs that may be incurred by LINK members' associated with a change in central infrastructure provider (**Switching Fund Remedy**).
17. The Switching Fund Remedy would allow LINK members to seek a contribution to the costs they have incurred as a result of LSL awarding the LINK CIS contract to a provider other than VocaLink. The categories of cost covered and the governance structure will be specified in advance, in consultation with LSL (which runs the LINK scheme).
18. The Switching Fund Remedy would also be time-limited.

The CMA's provisional views

19. The CMA considers that undertakings in lieu of a reference are appropriate when they are clear-cut and capable of ready implementation. The CMA's starting point when assessing undertakings is to seek an outcome that restores competition to the level that would have prevailed absent the merger.⁴
20. The SLC Decision found that the Merger gives rise to a realistic prospect of an SLC in the supply of CIS to LINK, as there is a real risk that if the Merger went ahead LINK would not be able to obtain credible bids from a wide range of suppliers due to the incumbency and cost advantages that VocaLink and, to a lesser extent, Mastercard and Visa have over other possible bidders. The SLC Decision described a number of capability and cost disadvantages that other potential suppliers face.⁵ The CMA therefore considers that, in the absence of effective remedies, the Merger would result in a reduction from three to two in the number of credible bidders for the supply of CIS to LINK.

⁴ *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance (OFT1122)*, December 2010, Chapter 5 (in particular paragraphs 5.7–5.8 and 5.11). This guidance was adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2)*, January 2014, Annex D).

⁵ SLC Decision, paragraphs 127, 133 and 154.

21. The CMA believes that the Proposed Undertakings, or a modified version of them, might be acceptable as a suitable remedy to the SLC identified by the CMA.
22. The Proposed Undertakings tackle the underlying causes of incumbency and cost advantages arising from VocaLink and Mastercard's connectivity with LINK members and ensure that potential CIS providers are well placed to bid for LINK's next CIS contract(s). The CMA's current view is that the Proposed Undertakings would therefore result in the increase of the number of alternative providers potentially being credible competitors and, therefore, provide a remedy to the SLC identified by the CMA which the CMA might be able to accept.
23. In particular, the Proposed Undertakings in combination are capable of addressing the key switching costs highlighted in the SLC Decision, reducing the cost of switching to a New Processor to a level equal to or below that of switching to Mastercard absent the Merger. These costs included:
 - (a) LIS5 licencing costs,⁶ which could be addressed by the LIS5 Remedy;
 - (b) Connectivity costs to the New Processor and to LINK members, and parallel running costs, which could both be addressed by the Network Access Remedy.⁷ The Network Access Remedy would avoid the need for the New Processor to replace the network routers at LINK members' sites and replicate the current network connecting the LINK members, and would also reduce the level of testing required by the New Processor and, therefore, the LINK members' switching costs; and
 - (c) LINK members' costs of switching,⁸ which could be reduced by each component of the Proposed Undertakings (including the Switching Fund Remedy).
24. The CMA considers it relevant to its evaluation of the Proposed Undertakings that the Merger affects a regulated sector. The regulation of participants in regulated payment systems, including VocaLink, is central to the functions of the Payment Systems Regulator (**PSR**).⁹ This gives the CMA greater confidence in the effectiveness of the Proposed Undertakings than it might

⁶ SLC Decision, paragraph 160.

⁷ SLC Decision, paragraphs 155-160.

⁸ SLC Decision, paragraphs 161-164.

⁹ Furthermore, the ongoing investigation of PSR into the ownership and competitiveness of infrastructure provision and continued cooperation between the CMA and the PSR has provided the CMA with greater confidence that the proposed remedies are as comprehensive a solution to the SLC as is reasonable and practicable. See [Market review into the ownership and competitiveness of infrastructure provision \(PSR MR15/2\)](#).

have if the sector were unregulated, particularly regarding the specification and monitoring of the Network Access Remedy.¹⁰ The PSR's oversight of the sector will supplement the CMA's own powers to ensure ongoing compliance with the Proposed Undertakings.

25. In addition, the proposed contractual obligations on the Parties would give LSL the ability to monitor the actions of the Parties and take action in the event of breach by the Parties.
26. The CMA considers that any risks of longer-term distortions from the remedy are reduced by the time-limited nature of the Network Access Remedy and Switching Fund Remedy and ongoing supervision of the sector by the PSR.
27. The CMA therefore currently believes that the Proposed Undertakings might be capable of remedying the SLC that would otherwise result from the Merger, and could amount to a sufficiently clear-cut and effective resolution of the CMA's competition concerns.
28. The CMA also believes at this stage that the Proposed Undertakings might be capable of ready implementation, in particular because:
 - (a) key parts of the Proposed Undertakings are structural (in particular, the LIS5 Remedy);
 - (b) the Parties and LSL have already achieved significant progress in agreeing the terms of the Network Access Remedy and Switching Fund Remedy (signed Heads of Terms); and
 - (c) the Parties propose to appoint a Monitoring Trustee for the duration of the Proposed Undertakings to help monitor ongoing compliance, and potentially to have a wider oversight role.
29. For these reasons, the CMA currently thinks that there are reasonable grounds for believing that the Proposed Undertakings, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act.
30. The CMA's decision on whether to ultimately accept the Proposed Undertakings or refer the Merger for a phase 2 investigation will be informed by, among other things, third party views (including those of LINK members and those of other relevant stakeholders) on whether the Proposed

¹⁰ Non-structural remedies may be more suitable in markets experiencing a significant degree of regulation; *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance (OFT1122)*, December 2010, paragraphs 5.43. This guidance was adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2)*, January 2014, Annex D).

Undertakings are suitable to address the competition concerns identified by the CMA.

31. In particular, before accepting the Proposed Undertakings, the CMA must be confident that the Proposed Undertakings are effective at reducing alternative providers' cost disadvantages such that the competitive constraint provided by Mastercard absent the Merger is replaced to a sufficient extent.

Consultation process

32. Full details of the undertakings offered will be published when the CMA consults on the undertakings offered as required by Schedule 10 of the Act.¹¹

Decision

33. The CMA therefore considers that there are reasonable grounds for believing that the Proposed Undertakings offered by the Parties, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act. The CMA now has until **15 March 2017** pursuant to section 73A(3) of the Act to decide whether to accept the undertakings, with the possibility to extend this timeframe pursuant to section 73A(4) of the Act to **15 May 2017** if it considers that there are special reasons for doing so. If no undertakings are accepted, the CMA will refer the Merger for a phase 2 investigation pursuant to sections 33(1) and 34ZA(2) of the Act.

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¹¹ [CMA2](#), paragraph 8.29.