

Anticipated acquisition by Mastercard UK Holdco Limited of VocaLink Holdings Limited

Notice under paragraph 2(1) of Schedule 10 to the Enterprise Act 2002 (the Act) – consultation on proposed undertakings in lieu of reference pursuant to section 73 of the Act

ME/6638/16

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**). The text of the SLC Decision is available on the CMA webpages.¹
3. As set out in the SLC Decision, the CMA found a realistic prospect of an SLC in relation to the supply of central infrastructure services (**CIS**) to the LINK ATM network (**LINK**), as there is a real risk that if the Merger went ahead there would be a reduction in the limited number of suppliers from which LINK would be able to obtain credible bids 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:

¹ See [Mastercard/VocaLink case page](#).

- (a) The incumbency advantage derived from existing network connectivity, which limits other potential suppliers from being able to offer competitive bids.²
 - (b) The cost associated with licencing the LIS5 messaging standard, and for parallel running costs during the migration period.³
 - (c) The higher level of cost to LINK members of changing to a CIS provider (other than VocaLink, Mastercard, or Visa) as a result of requirements such as change projects and testing.⁴
4. The CMA therefore considered 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.⁵
5. On 11 January 2017, the Parties offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act.
6. On 18 January 2017, the CMA gave notice to the Parties, pursuant to section 73A(2)(b) of the Act, 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 Parties' offer (the **UILs Provisional Acceptance Decision**).

The undertakings offered

7. As set out in the UIL Provisional Acceptance Decision, to address the SLC identified by the CMA the Parties have offered undertakings consisting of a package of three measures to remedy, mitigate or prevent the SLC concerned or any adverse effect which has or may have resulted from it or may be expected to result from it. The text of these undertakings is available on the CMA webpages (the **Proposed Undertakings**),⁶ and is summarised below.

Network Access Remedy

8. Under the Proposed Undertakings, VocaLink would give any other future new supplier of CIS to LINK (a **New Processor**) access to VocaLink's communications infrastructure, including connectivity with all LINK members

² SLC Decision, paragraph 170.

³ SLC Decision, paragraph 160.

⁴ SLC Decision, paragraphs 161 and 164.

⁵ SLC Decision, paragraph 171.

⁶ See [Mastercard/VocaLink case page](#).

(the **Network Access Remedy**).⁷ The Network Access Remedy would, therefore, allow a New Processor the option of using the VocaLink connectivity to the LINK members for a limited period of time rather than having to build their own immediately.

9. VocaLink would, in effect, act as a subcontractor to the New Processor, providing sufficient capacity at equivalent service levels to those it currently receives from its external communications provider (ie VocaLink's telecoms provider).⁸ VocaLink would commit to providing monthly reporting on both the service level agreements and key performance indicators to the New Processor. VocaLink would also provide network monitoring and management services, and would implement any change requests from the New Processor in a reasonable time.
10. As part of the Network Access Remedy, VocaLink would charge the New Processor the following:
 - (a) **External communication provider costs:** the costs incurred in providing the network from the external communications provider, including both direct costs and an allocation of common costs (eg any management fees). This is calculated based on the directly identifiable cost of any circuits⁹ exclusively used for LINK transactions, and an equal share of costs for any circuits which are used by LINK and other payment services (eg 50% of a circuit which is used by both LINK and the Faster Payments System). Any relevant common costs are allocated to LINK on the same basis;
 - (b) **VocaLink monitoring and maintenance costs:** direct, reasonable, and substantiated costs in return for VocaLink providing the monitoring and maintaining of the network (capped at a maximum of 10% of the external communication provider costs described above). This is calculated based on the internal costings of the VocaLink connectivity support team, again apportioned between payment systems based on circuit count; and
 - (c) **Change costs:** costs associated with connecting the New Processor initially, implementing change requests, and refreshing/upgrading the network when needed. A portion of these would be allocated to the New

⁷ The VocaLink communication infrastructure provides connectivity between the VocaLink switch and the LINK members' point of access.

⁸ This would be implemented through 'back-to-back' (ie at the same levels as the external communication provider) service level agreements and key performance indicators.

⁹ 'Circuits' refers to the external communication provider's managed network connections between VocaLink and the scheme members.

Processor using the same principles as above for the external communication provider costs (described in paragraph 10(a)).

The use of circuits in this cost allocation methodology reflects VocaLink's existing internal accounting approach.

11. Based on 2015 and 2016 estimates, the total ongoing cost to the New Processor of using the Network Access Remedy would be in the region of £[£750k-£1.25m] per annum, with additional change costs of roughly £[£100k-£150k] per annum.¹⁰
12. In the event of a dispute around the level of, or need for, any of these costs, an independent arbiter would be in place to provide a determination (discussed in more detail in paragraph 55 below).
13. In the event of a New Processor being awarded the LINK contract, VocaLink would also waive the minimum contractual financial commitments¹¹ under its contract with Link Scheme Limited (**LSL**)¹² for a transition period of between 6 and 12 months¹³ immediately preceding the date on which VocaLink ceases to provide services, in order to reduce costs to LSL associated with running two CIS suppliers in parallel.
14. Under the Proposed Undertakings, VocaLink would strengthen its existing contractual obligations with LSL around restricting the flow of LINK information, to ensure confidentiality. This includes restricting access to network-level LINK information to a list of named VocaLink personnel who can only use this data for the purposes of providing the network access services.
15. The Network Access Remedy would terminate on the earliest of:
 - (a) the start of the first tender cycle, if a New Processor wins the first LINK contract and chooses not to use the Network Access Remedy; or
 - (b) the start of the second tender cycle, if a New Processor wins the second LINK contract and chooses not to use the Network Access Remedy, or if VocaLink wins the second LINK contract; or

¹⁰ Based on an average of Parties' estimations of the change costs allocated to LINK under the proposed approach (including both change projects, and refreshes/upgrades) over the past three years.

¹¹ This clause requires LINK members to continue to pay a pre-defined minimum fee to VocaLink, even if LINK transaction volumes fall to the extent which would otherwise have resulted in the fees being below this level.

¹² LSL is the operator of the LINK system as set out in the Financial Services (Banking Reform) Act 2013.

¹³ The Proposed Undertakings specify this period as being 6 months, with the possibility of an extension of up to an additional 6 months at the request of the CMA if the CMA (having due regard to the views of VocaLink, LSL and the New Processor) considers it necessary for the migration of transactions to the New Processor.

- (c) the end of the second tender cycle; or
 - (d) the date on which the New Processor notifies VocaLink that it no longer requires the Network Access Remedy; or
 - (e) 15 years from the start of the first tender cycle; or
 - (f) 20 years from the date at which the CMA accepts the Proposed Undertakings.
16. The Proposed Undertakings also provide for a CMA review of the ongoing necessity of the Network Access Remedy, no later than two years prior to the expected end of the first tender cycle. In its review, the CMA would seek advice from the Payment Systems Regulator (**PSR**) as appropriate.

LIS5 messaging standard remedy

17. 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 sublicense both the brand and the messaging standard to any potential competitor of VocaLink. However, under the existing contract, the New Processor would have to pay VocaLink to sublicense the LIS5 messaging standard.
18. Under the Proposed Undertakings, VocaLink would transfer to LSL the intellectual property rights related to the messaging standard used for all transactions made within the LINK scheme (**LINK LIS5 Standard**). The transfer would not include the messaging standard VocaLink uses for non-LINK scheme transactions such as mobile phone top-up (**VocaLink LIS5 Standard**).
19. The LINK LIS5 transfer would be implemented in the form of a free, unconditional transfer of all relevant intellectual property rights for the LINK LIS5 Standard from VocaLink to LSL (the **LIS5 Remedy**). LSL would then be free to develop, use, sublicense and exploit the LINK LIS5 Standard as it wishes within its ATM business, and would be free to specify the use of LINK LIS5 Standard as a condition of any subsequent retendering of the processing contract.
20. This approach would result in an effective split of the existing messaging standard into one which is controlled by LSL (ie the LINK LIS5 Standard), and one which is controlled by VocaLink (ie the VocaLink LIS5 Standard), although some common parts would be overlapping and therefore used by both LSL and VocaLink.

Switching Fund Remedy

21. Under the Proposed Undertakings, VocaLink would commit up to £5 million (inflation-linked)¹⁴ for the purposes of contributing to the costs that may be incurred by LINK members associated with a change in CIS provider (**Switching Fund Remedy**).
22. The Switching Fund Remedy would allow LINK members to seek a contribution to any increased network connectivity costs which they incur as a result of LSL awarding the LINK CIS contract to a New Processor. It is proposed in the undertakings that the level of funds available to each individual member would be capped based on the minimum core switching and settlement fee in the VocaLink contract,¹⁵ or as may be requested by LSL and approved by the Monitoring Trustee.
23. In order to access their allocated contribution (or a share of it), the LINK member would need to demonstrate to the Monitoring Trustee that the costs were incurred as a direct result of transitioning to a New Processor (or New Processor's replacement network), and cannot be recovered from another third party.
24. The Switching Fund Remedy would have the same duration as the Network Access Remedy, subject to the availability of total funds and the allocation process described above.

Implementation provisions

25. The Proposed Undertakings offered would be implemented through a Framework Agreement which the Parties would enter into with LSL on behalf of the LINK scheme. The Proposed Undertakings would also result in consequential amendments to the contract between LINK and VocaLink.¹⁶
26. The commercial agreement to implement the Network Access Remedy would take the form of a direct agreement (ie between LSL and the New Processor, and an equivalent agreement between LSL and VocaLink) unless LSL chooses that a tripartite agreement (ie between LSL, the New Processor, and VocaLink) should be used instead.

¹⁴ Indexed to the Consumer Price Index, up to a maximum of £5.75m (equivalent to a 15% increase).

¹⁵ This represents the share of the LINK contractual costs that each member is obliged to pay if minimum volume thresholds are not met.

¹⁶ Both of these contractual changes are subject to approval by LINK's Network Members' Council.

27. There are certain technical and operational aspects which would be implemented subsequent to any CMA acceptance of the Proposed Undertakings. These include:
- (a) Within 6 months of the CMA's acceptance of the Proposed Undertakings, the LINK LIS5 Standard would be transferred to LSL;
 - (b) Within 6 months of the CMA's acceptance of the Proposed Undertakings, VocaLink would develop the technical and operational arrangements for the Network Access Remedy (to be revised annually), and agree this with LSL within a further 30 days. This will include details such as the approaches to connect a New Provider's ATM switch into VocaLink's network, and defining connectivity testing;
 - (c) Within 6 months of the CMA's acceptance of the Proposed Undertakings, VocaLink would develop a detailed implementation plan to enable the separation of LINK scheme and non-LINK scheme transactions into two separate destinations over the VocaLink network, and agree this with LSL within a further 30 days; and
 - (d) 60 days prior to LINK issuing a tender, VocaLink would provide a network access agreement form for LINK to include in its tender, which would include binding provisions for the Network Access Remedy for consideration by potential bidders.
28. The Proposed Undertakings include provisions for the appointment of an independent person, who would carry out the following functions:
- (a) Act as a Monitoring Trustee to ensure that the Parties are compliant with their obligations under the Proposed Undertakings. This includes investigating any aspects it deems necessary, and providing regular compliance reports to the CMA and the PSR, as well as implementing any instructions or directions the CMA (advised by the PSR as appropriate) may give.
 - (b) Act as an independent arbiter for disputes associated with issues such as the level of costs which can be charged to the New Provider, performance issues (eg breaches of the key performance indicators or service level agreements), any delays in the implementation process, as well as claims for payments from the Switching Fund Remedy.

Suitability of the Proposed Undertaking to address the competition concerns identified by the CMA

29. As described in paragraphs 3 and 4 above, the SLC identified relates to the risk that the Merger would result in the loss of competition between VocaLink and Mastercard for the provision of CIS, and that LINK may be unable to attract credible bidders other than Visa and the merged party for the provision of these services.
30. Since VocaLink is the incumbent provider, the merger may result in a loss of competitive constraint from Mastercard acting as an alternative bidder. The SLC therefore relates to any potential advantages that Mastercard (absent the transaction) has over other potential bidders, rather than any advantage VocaLink may have over any other bidder (including Mastercard and/or Visa). The aim of the Proposed Undertakings is therefore to restore the level of competitive constraint which Mastercard would have exercised on VocaLink absent the transaction.¹⁷
31. The CMA currently considers that, subject to responses to the consultation required by Schedule 10 of the Act, the Proposed Undertakings would resolve the SLC identified in the SLC Decision in a clear-cut manner, ie the CMA currently does not have material doubts about the overall effectiveness of the Proposed Undertakings or concerns about their implementation.¹⁸ The reasoning for this is explained below.

Effectiveness of the Proposed Undertakings

32. In assessing the effectiveness of the Proposed Undertakings, we have considered:
 - (a) the extent to which the Proposed Undertakings would be expected to address the SLC we have identified;
 - (b) the duration and timing of the Proposed Undertakings; and
 - (c) the extent to which the Proposed Undertakings are capable of effective implementation, monitoring and enforcement.

¹⁷ The CMA examines the effect of a merger against a relevant counterfactual which considers what would have happened absent the proposed merger. In the SLC Decision, paragraph 55 states that: 'the relevant counterfactual in this case is one in which VocaLink is acquired by an alternative purchaser which does not raise substantial competition concerns'.

¹⁸ *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) (**UIL Guidance**).

Impact on the SLC and the resulting adverse effects

33. For their duration, the Proposed Undertakings appear to address the key underlying causes of incumbency and cost advantages (as described in paragraph 3) and ensure that other potential CIS providers are well placed to bid for LINK's next CIS contracts. The CMA's current view is that for the duration of the Proposed Undertakings, there would be an increase of the number of alternative providers potentially being credible competitors, to remedy to the SLC identified by the CMA, as described below:
- (a) The incumbency advantage over a New Processor arising from existing connectivity, as well as parallel running cost differences, would appear to both be addressed by the Network Access Remedy. The Network Access Remedy would avoid the need for a New Processor to replace the network routers at LINK members' sites and replicate the current network connecting the LINK members. It would also reduce the level of testing required by the New Processor and, therefore, the LINK members' costs of changing CIS provider.
 - (b) LIS5 licensing costs would appear to be directly addressed by the LIS5 Remedy.
 - (c) LINK members' costs of changing CIS provider would appear to be reduced by each component of the Proposed Undertakings (including the Switching Fund Remedy).
34. The cost allocation methodology for the Network Access Remedy appears to be well defined, and would rely on objective criteria. This should ensure that it accurately reflects the operational costs to VocaLink, and is difficult to manipulate inappropriately. The functions of the Monitoring Trustee would include monitoring compliance with the cost allocation methodology. **The CMA would welcome third party views on the appropriateness of this cost allocation approach.**
35. The VocaLink monitoring and maintenance costs aim to fairly reflect the costs associated with the provision of a necessary service which any provider of CIS services to LINK would incur. The Parties told the CMA that this approach would avoid the duplication of these costs, as the New Processor would no longer need to provide these services itself.
36. The removal of the minimum contractual financial commitments for a transition period of six to twelve months (as described in paragraph 13) is intended to cover the expected migration period for which there would be two

processors in place. **The CMA would welcome third party views on the proposed duration for this migration period.**

37. The confidentiality undertakings mentioned in paragraph 14 are also intended to ensure that VocaLink and Mastercard do not have access to commercially sensitive information of LINK members or the New Processor that would give them an advantage over other bidders in future tenders.
38. Following the split of the LIS5 messaging standard into the LINK LIS5 Standard and the VocaLink LIS5 Standard, the Parties stated that their incentives are aligned with LSL to cooperate with each other to ensure that any services which rely on both standards would continue to function and develop well.
39. The SLC Decision stated that LINK members found it difficult to estimate the likely cost of changing provider, but provided a very wide range from [£200,000 to £50 million].¹⁹ However, the CMA notes that these estimates were unlikely to account for the continued use of the VocaLink connectivity or the LIS5 messaging standard. The Parties estimated that the cost to LINK members of changing to a New Processor, but using the VocaLink connectivity and LIS5 messaging standard (ie using the Network Access Remedy under the Proposed Undertakings) would be approximately [£20k-£30k] each, implying a total of [£750k-£1.25m] for all of the 39 LINK members.
40. The relevant cost advantage identified in the SLC Decision for LINK members relates to any difference in these members costs of changing to Mastercard (absent the transaction) compared with another provider (which is not VocaLink or Visa).²⁰ Although LINK members were not able to quantify the exact level, a change to Mastercard would still have incurred a cost. By allowing a New Processor to use VocaLink's existing connectivity, the level of costs which LINK members would incur could be at or below that of changing to a different connectivity network such as Mastercard's. Given that some uncertainty remains around the exact level of these costs, the Switching Fund Remedy then provides additional assurance that any cost differences which do remain to the LINK members would be covered at the Parties' expense.
41. The Parties, following a CMA request, are conducting a proof of concept exercise (**POC Exercise**) to test the viability of the Network Access Remedy. To conduct this POC Exercise VocaLink chose a subset of LINK members which it considered capable participating in the time available.²¹ The POC

¹⁹ SLC Decision, paragraph 162.

²⁰ SLC Decision, paragraph 164.

²¹ [REDACTED].

Exercise consists of building an external test network environment onto VocaLink's existing network. This external environment includes a test VocaLink ATM switch and a simulated New Processor ATM switch connected via an external telecommunications link. Members then test a series of cash withdrawals and balance enquiries across a combination of these switches in order to validate that both processors can coexist during any migration activity, and that the New Processor can independently handle transactions post-migration. The interim findings of the POC Exercise provide additional evidence around the efficacy of the Proposed Undertakings, and are as follows:

- (a) The simulated New Processor was successfully able to use VocaLink's connectivity to process transactions from the LINK members.
 - (b) During the transition period, transactions were able to be correctly routed between migrated and non-migrated LINK members.
 - (c) The migration period for the LINK members took place in two weeks or less which, assuming capacity to commence three to six migrations per week, supports the view that the migration period of 6 to 12 months is sufficient, even accounting for contingency requirements.²²
 - (d) The costs for a LINK member to connect to a New Processor using the VocaLink network can be completed for less than [£10k] per member. The Parties noted that during a 'live' migration, the costs are likely to be somewhat higher (eg due to tighter change management, additional network-level proving, back-up connections and additional fallback planning in case of change failure), but should not exceed the funds available in the Switching Fund Remedy.
42. For the reasons set out in paragraphs 45 to 52 below, the CMA currently believes that after the duration of the Proposed Undertakings, there are no material doubts that the SLC would be addressed.
43. The CMA has also taken into account in 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 PSR. The ongoing investigation of the PSR into the ownership and competitiveness of infrastructure provision²³ has provided the

²² This appears to be based on commencing an average of 4.5 migrations per week, with each migration taking 2 weeks would result in $(39/4.5)+1 = 10$ weeks (2.5 months) for all of LINK's 39 members.

²³ See [Market review into the ownership and competitiveness of infrastructure provision \(PSR MR15/2\)](#).

CMA with greater confidence that the proposed remedies are as comprehensive a solution to the SLC as is reasonable and practicable.

44. Furthermore, the increased regulatory scrutiny that can be expected as a result of the PSR's ongoing role in the sector gives the CMA greater confidence in the effectiveness of the Proposed Undertakings than it might have if the sector were unregulated,²⁴ as well as providing the opportunity for the CMA to seek advice from the PSR as appropriate (eg on technical aspects of the cost allocation approach and technicalities of the Network Access Remedy).

Duration and timing

45. The duration of the Network Access Remedy and Switching Fund Remedy aims to balance the need to provide sufficient time for LINK to attract additional credible bidders, against the potential costs of longer-term intervention including the risk of distortions to the market. The CMA also notes that there is a review clause within the Proposed Undertakings which enables it to consider the effectiveness of the remedy before the expiry of the first tender cycle.
46. The LIS5 Remedy is a one-off structural change, and so does not require specifying a duration. The implementation timing requires the transfer of all the relevant intellectual property within 6 months of the CMA's acceptance, which would appear to allow LINK sufficient time to provide clarity around its use by potential bidders during its next tender.
47. The CMA's current view is that the Network Access Remedy and Switching Fund Remedy would be in place for the first LINK tender for CIS, and would address the SLC identified through increasing the number of credible bidders available. Subsequently, there are a range of circumstances in which these provisions may no longer be necessary, including (but not limited to):
- (a) a New Processor building its own network connectivity, and demonstrating it is a credible competitor by winning the LINK tender outright;
 - (b) a New Processor using the Network Access Remedy to facilitate entry to the market by winning a LINK tender, and subsequently builds its own

²⁴ 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).

network connectivity so as to remove VocaLink from its supply chain during the lifetime of the contract;

- (c) changes in the market (eg through technological innovation) removing or reducing the reliance of a New Processor on pre-existing network connectivity;
- (d) LSL having been able to implement changes to its tendering process to allow potential New Processors to compete more effectively (eg using a layered architecture to separate the provision of connectivity from the provision of processing, as appears to be under consideration for other payment systems);²⁵ or
- (e) the PSR's ongoing work in the market resulting in greater levels of competition, introducing competitive constraints equivalent to those imposed by the Proposed Undertakings.

- 48. In such circumstances, the CMA considers that the Proposed Undertakings may no longer be appropriate, and so should be removed either through automatically lapsing, or through the formal CMA review which would take place no later than two years prior to the end of the first tender cycle.
- 49. In order to ensure the effectiveness of the Proposed Undertakings in addressing the SLC, safeguards regarding the duration of the Network Access Remedy form part of this remedy package. Therefore, where necessary, the duration of the Proposed Undertakings would extend to cover a second tender cycle, as described in paragraph 15. This would ensure that LSL has sufficient time to fully implement any necessary changes to its procurement approach to enable a competitive bidding process for the supply of CIS to LINK.
- 50. The use of long-stop dates aims to limit the risk from any long-term intervention beyond the foreseeable future, for the supply of CIS to LINK. The inclusion of the up-front date for the CMA to review the ongoing necessity of the undertakings provides a further safeguard against the risk of market distortion.
- 51. The CMA has taken account of the PSR's review of payment systems, and their resulting approach to remedies in reaching these views.

²⁵ Payment Strategy Forum (November 2016), [A Payments Strategy for the 21st Century](#).

52. The timings for the implementation provisions (described in paragraphs 25 to 28 above) appear to allow LINK to provide sufficient clarity around the aspects of the Proposed Undertakings to potential bidders during its next tender.
53. **The CMA would welcome third party views on the durations currently included in the Proposed Undertakings.**

Practicality

54. The CMA believes at this stage that the Proposed Undertakings would be capable of ready implementation, in particular because:
- (a) The LIS5 Remedy is structural, with a pre-defined acquirer (ie LSL) similar in nature to situations which include an identified, suitable upfront buyer.²⁶
 - (b) The implementation timelines (as described in 25-28 above) have been defined, with the majority completing within 6 months of any CMA acceptance of the Proposed Undertakings. To the extent that there were any implementation delays, such delays are subject to both dispute resolution through the Monitoring Trustee and/or intervention by the CMA as a result of potential breaches of the Proposed Undertakings.
 - (c) The primary customer (LSL) has indicated its support of this approach, and any associated contractual changes (including the Framework Agreement, and any changes to VocaLink's existing contract with LINK) will be voted on by the LINK members prior to any acceptance decision.
55. The inclusion of an independent arbiter would provide additional assurance to the CMA in this case as to the practicality of the remedy. The CMA recognises that aspects of the Proposed Undertakings may result in future disagreement between the Parties and any New Processor, for example, around the level of cost associated with the Network Access Remedy which can be charged to the New Processor. Having an independent body in place, in advance, which provided verification and a dispute resolution mechanism in relation to these costs would ensure a more effective and efficient process.
56. As regards monitoring compliance with the Proposed Undertakings, the CMA also notes that the Proposed Undertakings would appear to be capable of effective monitoring to ensure that there are no breaches. In this case, there is a particularly high level of scrutiny around the Parties' behaviour which would

²⁶ [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance \(OFT1122\)](#), December 2010, paragraphs 5.31–5.37. This guidance was adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2\)](#), January 2014, Annex D).

be expected to identify any breaches or potential breaches. The CMA's own compliance monitoring function would be supplemented by:

- (a) The Monitoring Trustee, which has the specific role of monitoring compliance.
- (b) The New Processor, which may be relying on inputs provided by the Parties as part of its critical supply chain.
- (c) LSL, which would have very strong incentives to closely monitor the behaviour of one of its key supplier.
- (d) LINK members who rely on these services.
- (e) The existence of a highly engaged sectoral regulator (the PSR), with explicit competition duties and powers which would inform the CMA, as appropriate, if it identifies any concerns around possible breaches of the undertakings in the exercise of its regulatory functions.

Alternative approaches and proportionality

57. The CMA notes that an alternative approach, consisting of the divestiture of VocaLink's LINK business (including the LINK contract and a range of supporting infrastructure) may be possible to address the SLC identified.

58. However, the CMA does not currently believe that this would be any more effective than the Proposed Undertakings, because:

- (a) The Proposed Undertakings appear to address each aspect of the SLC identified, as described above.
- (b) The Parties also stated that the Proposed Undertakings would facilitate entry for and potentially encourage a greater number of potential participants in future tenders for the LINK CIS contract than could have been achieved by the divestment of the LINK business to a single third party provider, potentially introducing more competition than a divestiture would.
- (c) A divestment remedy would have its own associated risks. For example, the CMA was told that transferring the LINK CIS processing contract to a New Processor could risk destabilising the infrastructure services provided to the LINK scheme.
- (d) The CMA understands that a divestment of the LINK business on a standalone basis would be very difficult, given that the relevant

infrastructure is also used by VocaLink for a number of services other than the provision of CIS to LINK. In this regard, the Parties have informed the CMA that such divestment may not be feasible.

59. The Proposed Undertakings would also represent a less onerous approach than a divestment remedy for the Parties, particularly where the divestment would be likely to have a major negative impact on unrelated parts of the existing VocaLink business.
60. Therefore, the CMA currently considers that the Proposed Undertakings are at least as effective as, and are less onerous than, a divestiture, and so represent the most appropriate and proportionate approach to addressing the SLC identified.

Proposed decision and next steps

61. The Framework Agreement and any changes to VocaLink's existing contract with LINK, which are necessary to implement the Proposed Undertakings, require the approval of LINK's Network Members' Council. The CMA's decision to accept the Proposed Undertakings is therefore contingent on the Parties securing such approval.
62. Notwithstanding this, and for the reasons set out above, the CMA currently considers that the Proposed Undertakings are, in the circumstances of this case, appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision and form as comprehensive a solution to these concerns as is reasonable and practicable.
63. The CMA therefore gives notice that it proposes to accept the Proposed Undertakings in lieu of a reference of the Merger for a phase 2 investigation. The text of the proposed undertaking is available on the CMA web pages.²⁷
64. Before reaching a decision as to whether to accept the Proposed Undertakings, the CMA invites interested parties to make their views known to it. The CMA will have regard to any representations made in response to this consultation and may make modifications to the Proposed Undertakings as a result. If the CMA considers that any representation necessitates any material change to the Proposed Undertakings, the CMA will give notice of the proposed modifications and publish a further consultation.²⁸

²⁷ See [Mastercard/VocaLink case page](#).

²⁸ Under paragraph 2(4) of Schedule 10 to the Act.

65. The CMA notes that this consultation is only in respect to the Proposed Undertakings, and the extent to which these remedy, mitigate or prevent the competition concerns identified in the SLC Decision. It is not seeking representation on the SLC Decision itself, or any other matters affecting the sector.

66. Representations should be made in writing to the CMA and be addressed to:

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Remedies, Business and Financial Advisor
Competition and Markets Authority
Victoria House
37 Southampton Row
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WC1B 4AD

Email: David.Hansen@cma.gsi.gov.uk

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And

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Deadline for comments: 11 March 2017