

Anticipated acquisition by Mastercard Incorporated of Parts of the Corporate Services Business of Nets A/S

Request pursuant to article 22 of Council Regulation (EC) 139/2004

ME/50824-19

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

Introduction

1. On 27 February 2020, the Danish Competition and Consumer Authority (**DCCA**) requested the European Commission (the **Commission**) to examine the acquisition by Mastercard Incorporated (**Mastercard**) of Parts of the Corporate Services Business of Nets A/S (**Nets**) (the **Merger**) pursuant to Article 22(1) of Council Regulation 139/2004 (**EUMR**) (**the Initial Request**). Mastercard and Nets are together referred to as the **Parties**.
2. The CMA was informed by the Commission of the Initial Request on [27] February 2020. Therefore, the 15 working days deadline set out in Article 22(1) of the EUMR by which the CMA had to decide whether to join the DCCA's referral request is 19 March 2020.
3. The Competition and Markets Authority (**CMA**) submits this request to the Commission pursuant to Article 22(1) of the EUMR,¹ thereby joining the Initial Request. It requests that the Commission examines the UK aspects of the Merger.

¹ Following the withdrawal of the United Kingdom from the European Union on 31 January 2020, Article 22 of the EUMR continues to apply during the implementation period by virtue of Articles 1A and 1B of the European Union (Withdrawal Agreement) Act 2018 (as amended by the European Union (Withdrawal Agreement) Act 2020). See also [Guidance on the functions of the CMA under the Withdrawal Agreement](#) (CMA 113, 28 January 2020) ('CMA Guidance'), paragraph 4.1. For the purposes of this decision, the UK, in keeping with the continued application of Article 22, is referred to as a 'Member State'.

4. This request sets out the evidence and issues that the CMA considered in making a preliminary assessment as to whether the criteria for joining a referral request under Article 22 of the EUMR have been met.
5. The CMA has based this request on the information it has received from the Parties and third parties during pre-notification discussions. For the avoidance of doubt, the Parties have not (as yet) formally notified the Merger in the UK.

Parties and Transaction

6. On 6 August 2019, Mastercard agreed to acquire, through its indirect wholly owned subsidiary Mastercard/Europay U.K. Limited, 100% of the shares of companies owning parts of the corporate services business of Nets.² The agreement entered into by the Parties indicated that the Merger was subject to clearance by the DCCA and the Norwegian Competition Authority.
7. Mastercard is active in the supply of alternative payment solutions through its New Payments Platform division. This division includes VocaLink Holdings Limited (**VocaLink**). VocaLink focuses on providing central infrastructure services (**CIS**) to payment schemes. VocaLink designed, built and operates the payment infrastructure for certain UK interbank fund transfer schemes in the UK.³ Mastercard also provides Account to Account (**A2A**) CIS in the UK, the Nordic countries (Denmark, Sweden, Norway and Finland), Peru and the Philippines.⁴
8. Nets is currently a business unit within Nets A/S. It operates as a global payment business, providing payment services and technology solutions, mainly in the Nordic region, as well as within the Single Euro Payment Area. Its activities are focused on A2A CIS provided to interbank payment schemes and invoice payment services in Denmark and Norway. Nets currently provides A2A CIS in Denmark, Hungary, Italy, Norway and Slovenia.
9. Both Parties currently offer or compete to offer, alone or in partnership with other providers, A2A CIS to interbank payment schemes or specific components for these A2A CIS across Europe. A2A CIS providers supply interbank schemes with the technology required to effect the authorisation, clearing and settlement of payments between issuing and acquiring accounts. A2A CIS providers can also be involved with the ongoing operation of the technology

² Draft Merger Notice dated 21 October 2019 (**DMN**), Paragraph 1.

³ Including FPS, BACs and Link.

⁴ DMN, Paragraph 2.

10. In the UK, prior to the announcement of the Merger, the Parties were in the process of competing for the supply of an important component of an A2A CIS solution known as real-time payment capability (**RTPC**), within the context of the ongoing tender for a new CIS in the UK, the New Payment Architecture (**NPA**)⁵. This is the technology that allows payments to take place in ‘real-time.’

Industry background

11. The NPA is an architectural model for the delivery of new payment capabilities for the UK. The NPA aims to consolidate the UK’s existing domestic payments infrastructure (Faster Payments, the Bacs interbank payment system (**Bacs**), and potentially Cheque and Credit Clearing)⁶ within one single clearing and settlement platform.
12. Mastercard (through Vocalink) is the current infrastructure provider to Pay.UK and it operates three of the four existing domestic payments infrastructures in the UK.⁷
13. At the end of 2018, Pay.UK launched a procurement process, seeking to appoint a strategic partner to build and operate a single clearing and settlement NPA core platform for a 10-year term. At the time of this request, the NPA procurement process is still ongoing. At the end of this procurement process, Pay.UK will select a single prime bidder, or a consortium led by a prime bidder, that will be responsible for all obligations under a contractual agreement with Pay.UK to build and operate the NPA core platform.

Article 22 EUMR requirements

14. In considering whether to make a referral request to the Commission under Article 22 EUMR, the CMA has considered whether the Merger satisfies the following criteria:
 - (a) it is a concentration that does not have a European Union dimension;
 - (b) it affects trade between Member States; and

⁵ For further details on the NPA, see paragraphs 11 to 13 below and <https://www.wearepay.uk/new-payments-architecture-programme/>.

⁶ In 2017, the CMA approved the consolidation of the Faster Payments, BACS, and Cheque and Credit Clearing scheme operators to form Pay.UK. Pay.UK is the payment operator and was established to take forward the delivery of the NPA.

⁷ Mastercard (through VocaLink) provides CIS to three UK interbank payment systems (namely, Bacs, the Faster Payments Service (FPS) and the LINK ATM network (LINK)).

(c) it threatens to significantly affect competition within the territory of the Member State (or States) making the request.⁸

15. For the reasons set out below, the CMA believes that each of these criteria is met.

Concentration that does not have a European dimension

16. The CMA believes that the Merger is a concentration under Article 3 EUMR. A concentration occurs where two or more undertakings merge, or where one or more undertakings acquires ‘control’ over the whole or parts of one or more undertakings. For these purposes, ‘control’ is defined as the ability to exercise ‘decisive influence’ over one or more undertakings.⁹
17. The CMA believes that the Merger creates a ‘concentration’ as defined in Article 3(1) EUMR. Mastercard will acquire all shares in and sole control over Nets, each of which constitutes an ‘undertaking’ for the purposes of the EUMR.
18. However, the Merger does not have a European dimension as it does not meet the thresholds set out in Articles 1(2) or 1(3) of the EUMR. In particular, Nets does not have turnover of over EUR 25 million in each of three or more member states.¹⁰

Transaction subject to UK jurisdiction

19. While not a requirement under the EUMR for the making of an Article 22 referral request to the Commission, the CMA’s guidance states that it ‘would be unlikely, absent unusual circumstances, to make such a request under Article 22 of the EUMR unless the merger would qualify for investigation under the [Enterprise Act 2002].’¹¹
20. The CMA is satisfied that the Merger qualifies for review under the merger control provisions of the Enterprise Act 2002 (the **Act**). In any case, and without prejudice to this position, the CMA considers that the circumstances of

⁸ As set out in paragraph 44 of the Commission Notice on Case Referral, ‘a referring Member State or States is/are required in essence to demonstrate that, based on a preliminary analysis, there is a real risk that the transaction may have a significant adverse impact on competition, and thus that it deserves close scrutiny. Such preliminary indications may be in the nature of *prima facie* evidence of such a possible significant adverse impact but would be without prejudice to the outcome of a full investigation.’

⁹ Article 3(2) EUMR.

¹⁰ DMN dated 21 October 2019, paragraph 36.

¹¹ [Mergers: Guidance on the CMA’s jurisdiction and procedure \(CMA2\)](#), paragraph 18.49.

this case are such that joining the referral request would be justified even if the Merger did not qualify for review under UK national competition law.

Relevant framework

21. In the context of an anticipated transaction, a relevant merger situation exists where it is or may be the case that:¹²
- (a) two or more enterprises will cease to be distinct; and
 - (b) either:
 - (i) the value of the target enterprise's UK turnover exceeded £70 million in its last fiscal year (the turnover test); or
 - (ii) the enterprises ceasing to be distinct have a share of supply in the UK, or in a substantial part of the UK, of 25% or more in relation to goods or services of any description (the **share of supply test**).

Enterprises ceasing to be distinct

22. Mastercard and Nets are both enterprises and will cease to be distinct as a result of the Merger.

The turnover test

23. Nets has no turnover in the UK, nor did it generate any turnover in the UK in the previous financial year and therefore the turnover test under section 23(1) of the Act is not met.

Share of supply test

24. Section 23(3) of the Act and the guidance on the CMA's jurisdiction and procedure in mergers cases (**J&P Guidance**) sets out that the share of supply test is satisfied if the merged enterprises both either supply or acquire goods or services of any description, and will, after the merger, supply or acquire 25% or more of those goods or services in the UK.¹³
25. The overall purpose of merger control is to regulate the conduct of companies in the market and to enable competition authorities to examine whether mergers will have a detrimental effect on competition. The CMA's well-

¹² Section 23 of the Act.

¹³ [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2, January 2014), paragraph 4.53.

established approach in carrying out its statutory duties in relation to merger control is to consider the commercial realities and results of transactions, focussing on the substance rather than the legal form of arrangements.¹⁴

26. Within this context, the CMA will have regard to any reasonable description of a set of goods or services to determine whether the share of supply test is met. In this regard, section 128(3) of the Act explicitly provides that the supply of services includes:
- (a) performing for gain or reward any activity other than the supply of goods;
 - (b) rendering services to order; and
 - (c) the provision of services by making them available to potential users.
27. Section 23(8) of the Act and the J&P Guidance set out that the CMA has a wide discretion in describing the relevant goods or services and that, in applying the share of supply test, the CMA may have regard to value, cost, price, quantity, capacity, number of workers employed and any other criterion in determining whether the 25% threshold is met. The J&P Guidance further makes clear that the share of supply test is not an economic assessment of the type used in the CMA's substantive assessment and need not amount to a relevant economic market.¹⁵

Parties' submission

28. The Parties submitted¹⁶ that Nets has no assets in the UK, no current business activities and no plans for future business activities in the UK. The Parties further submitted that the share of supply test, under section 23(2) of the Act, is therefore not met because no increment to any share of supply of goods or services in the UK results from the Merger.
29. The Parties consider that the CMA's margin of discretion in section 23(5) of the Act, to apply whatever criterion, or combination of criteria, it considers appropriate in order to determine merging parties share of supply, only becomes relevant once the CMA has established that there has been actual supply by both merging parties.

¹⁴ [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2, January 2014), paragraphs 4.7 and 4.21.

¹⁵ [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2, January 2014), paragraph 4.56.

¹⁶ DMN Paragraphs 27-31.

CMA's assessment

30. The CMA believes the share of supply test under section 23(2)(b) of the Act is or may be satisfied for the reasons outlined below.

Making services available

31. Nets registered as an 'ecosystem partner'¹⁷ for the supply of RTPC in the NPA tender.¹⁸ [redacted].¹⁹ [redacted].
32. VocaLink was also registered as an ecosystem partner. VocaLink participated in the NPA tender at Pre-Qualification Questionnaire (PQQ) stage to provide A2A CIS, including RTPC, as a prime bidder. In any case, the CMA notes that that intra-group sales can give rise to an overlap for the purposes of the share of supply test, even where those 'captive' sales might be treated differently in the CMA's substantive assessment.²⁰
33. As registered ecosystem partners for the supply of RTPC for A2A CIS, the CMA considers that the Parties should be considered to be 'making services available', within the definition of section 128(3) of the Act, to prime bidders in the NPA tender. This position is consistent with contemporaneous internal documents relating to the tender that were provided to the CMA by Pay.UK.
34. The CMA notes that the market for RTPC in A2A CIS is a bidding market and that competition between suppliers primarily takes place during a tender. The CMA therefore considers that considering both Parties to be active in the supply of RTPC for A2A CIS in the UK, for the purposes of the share of supply test, appropriately reflects the commercial realities of the sector in which the Parties are active.
35. Accordingly, the CMA considers that the participation of both Nets and Mastercard (through VocaLink) in the NPA tender means that they both should be considered to be active in the 'provision of services by making them available to potential users' within the meaning of section 128(3) of the Act.

¹⁷ Annex 2.1 - Prime and ecosystem partners NPA, see Annex for Vocalink's EcoSystem submission. An 'ecosystem partner' refers to a specialist third-party supplier that could provide specific technical overlay services in cooperation with a prime bidder, who would retain end-to-end accountability. Overlay services refer to applications that will 'plug' into the NPA system to provide 'core' and 'additional' services. The additional services are likely to be tailored to particular payment use cases and end-users.

¹⁸ Annex s109-1-046-NPA ecosystem partners Form Nets.

¹⁹ Annex 3.1(a)(i) - [redacted] Response to PQQ.

²⁰ [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2, January 2014), paragraph 4.56.

The scope of services provided

36. Pay.UK sought, as part of the NPA tender, for prime bidders to submit bids for the supply of A2A services including an RTPC solution. The RTPC solution proposed by prime bidders could be based on their own internal capabilities or could, alternatively, be sought from one of the ecosystem partners that had registered in the NPA tender. The CMA notes, however, that the available evidence indicates that not all of the ecosystem partners that registered in the NPA tender were, in fact, capable of providing RTPC, and may therefore not have been effective partners for any of the prime bidders.
37. The CMA considers that it is reasonable, for the purposes of the application of the share of supply test, to distinguish the supply of RTPC in A2A CIS by suppliers that have previously implemented this service from supply by suppliers that have not previously implemented this service, for the reasons explained below.

- *RTPC for A2A CIS*

38. The CMA's preliminary investigation indicated that the supply of RTPC for the purposes of A2A CIS is materially different to the supply of RTPC for other applications. While some solution providers focus on offering real-time payment software solutions that are aimed at banks and/or fintechs, others provide the RTPC input intended to be the core component of an A2A CIS solution for a national CIS. Indeed, tenders for A2A CIS are likely to require a solution provider to support a very high throughput of real-time transactions (eg billions of transactions per year, as it is the case with the NPA tender²¹), and to have processes specific to central clearing and settlement activities, as part of their offering. In order to meet this requirement, a supplier would have to offer RTPC specifically developed to meet A2A CIS requirements.
39. Third party responses and internal documents²² produced by the Parties are consistent with the position that RTPC for the purposes of A2A CIS is a specific application that not all suppliers provide.²³

²¹ Response to informal RFI – Pay.UK – 13 November 2019 - Annex 1.8.

²² For example: a) a Net's internal document outlines [x]; b) a Mastercard's internal document states [x]; and c) an internal document produced by a competitor identifies possible partners by reference to the offer of an 'RTP Central Infrastructure (CI) solution', listing seven suppliers that offer this service including the Parties (see RTP - CEO Day (18Dec18) - 1216 v7).

²³ One supplier active at the PQQ stage of the NPA tender told the CMA that it provides connectivity and messaging solutions for RTPC but does not provide central clearing and settlement applications. As a result, it considered that it 'did not offer RTPC in the NPA tender'. Another supplier active at the PQQ stage of the NPA tender told the CMA that it enables participant banks to process instant payments compliant with the scheme guidelines/rulebook but does not provide A2A CIS solutions.

40. The CMA therefore considers that it is reasonable, for the purposes of the application of the share of supply test, to distinguish between RTPC for A2A and RTPC for other purposes.

- *Implementation of RTPC for A2A CIS*

41. The CMA found that the suppliers of RTPC in A2A CIS that have implemented this service previously have established their credibility as a supplier and are widely considered to present a meaningfully different competitive threat to other suppliers.

42. RTPC is considered to be an essential element within the NPA tender and, because any platform instability could present very serious risks, the ability of a supplier to demonstrate that it has successfully implemented and operated the service is a key criterion for selection within the tender process. This position is also reflected in the third party evidence and the Parties' internal documents received to date by the CMA.²⁴

43. Internal documents produced by Mastercard and Nets also emphasise the importance of [redacted].²⁵

44. The CMA therefore considers that it is reasonable, for the purposes of the application of the share of supply test, to distinguish supply by suppliers that have already implemented A2A CIS from supply by other suppliers.

Share of supply

45. As noted above, the Act gives a wide discretion to the CMA to apply whatever measure, or combination or measures, it considers appropriate to calculate the merging parties' share of supply or procurement and to determine whether the 25% threshold is satisfied. Section 23(5) of the Act provides that the CMA shall apply such criterion as it considers 'appropriate' and, in doing so, specifically cites several criteria ('value, cost, price, quantity, capacity, number of workers employed or some other criterion, of whatever nature') as examples of an appropriate approach.

²⁴ Third parties told the CMA that having implemented RTPC in A2A CIS will enhance a competitors' offering. For example: a) the majority of competitors told the CMA that experience of rolling out RTPC in A2A CIS was an important consideration when rating the strength/capability of a supplier and that experience of rolling out RTPC in A2A CIS in more than one country was a relevant factor when evaluating the strength of a supplier.

²⁵ For example: a) in a document produced by Mastercard [redacted]; b) in Nets' document which includes a briefing on [redacted]; c) [redacted]; and d) an internal document produced by a competitor identifies possible partners that offer RTPC and those partners as 'best in class' depending on whether they have evidenced multiple 'deployments.' (Document 14_RTP - CEO Day (18Dec18) - 1216 v7).

46. The CMA currently considers that the Parties to the Merger supply RTPC services by making them available to prime bidders in the NPA tender. The CMA notes that no clear value can yet be assigned to the provision of services by making them available as part of the NPA tender (and that other metrics identified in section 23(5) of the Act, such as cost, price or capacity, are not readily measurable within this context).
47. Given the nature of bidding markets, the CMA notes that the 'quantity' of provision of services by making them available can be measured by the number of suppliers bidding to supply such services. The CMA currently considers that there are [5-8] suppliers of RTPC to prime bidders in the NPA tender²⁶ (ie ecosystem partners that have made their RTPC services available to prime bidders) that offer RTPC services for A2S CIS and that have implemented RTPC in A2A CIS.
48. On this basis, the Merger would result in the Parties having a combined share of supply of [20-30]% in the supply of RTPC of A2A CIS by suppliers with experience of implementing A2A CIS to prime bidders in the NPA tender (with an increment of [10-20]%. In this case, the CMA therefore considers that the share of supply test is or may be satisfied by the number of bidders active in the provision of services by making them available in relation to supply of RTPC of A2A CIS by suppliers with experience of implementing A2A CIS.

Conclusion on UK jurisdiction

49. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation for the purposes of the Act.

Circumstances of the case absent jurisdiction under UK national competition law

50. The CMA notes that the Parties have submitted that the Merger does not qualify for investigation under the Act. While the CMA considers that the Merger does qualify for investigation under the Act, for the reasons set out above, the CMA has also considered, for the avoidance of doubt (in light of the Parties' position), whether joining the referral request would be justified even if the Merger did not qualify for review under the Act.

²⁶ [redacted].

51. The CMA considers that the circumstances of this case are such that joining the referral request would be justified even if the Merger did not qualify for review under UK national competition law.²⁷
52. In particular, the CMA believes that the Merger (irrespective of the position taken on jurisdiction) meets all three criteria set out in the J&P Guidance that the CMA will examine in considering whether to make or join a referral request, namely that: (a) it is a concentration; (b) it affects trade between Member States; and (c) it threatens to significantly affect competition within the UK (particularly given the serious implications that the merger might have for the ongoing NPA tender, notwithstanding Nets not currently having activities in the UK).

The Merger threatens to significantly affect competition in the UK

53. As set out in more detail below, based on the information currently available, the CMA's preliminary analysis indicates that the Merger threatens to significantly affect competition in the UK. In particular, the CMA believes that the Merger *prima facie* give rises to concerns relating to vertical effects, as a result of input foreclosure, and the of loss of potential competition in the UK, and therefore warrants careful scrutiny.

Relevant markets

Product scope

54. The CMA's market definition exercise started with the products which the Parties were actively bidding to provide in the context of the UK's NPA tender. The outcome of a market definition exercise may be different in other jurisdictions, where the overlapping products of the Parties may vary (or where there may be commercial or regulatory differences to the UK).

- *The supply of RTPC services*

55. For the purposes of the share of supply test, the CMA considers that the Parties should be considered to be both active in the supply of RTPC (by making these services available to customers). In particular, Nets was supplying [X] to [X] (the [X] consortium), while Mastercard supplied RTPC

²⁷ In accordance with [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2\)](#), paragraph 18.49.

internally, through its Vocalink business.²⁸ (As noted above, the J&P Guidance specifically notes that intra-group sales may be treated differently for the purposes of jurisdictional and substantive assessment.)²⁹

56. When bidding for contracts where the tender requires payments to take place in 'real-time', the Parties' internal documents and evidence from third parties indicate that RTPC will be a particularly important upstream input to the downstream market for the provision of A2A CIS – the supply of which typically includes other services requested by the customer, such as access to local data centres, enable innovation both technically and commercially by engaging with innovation providers and supply chain management.
57. The NPA will bring together multiple interbank payment schemes, including schemes that already use real-time payments,³⁰ and all services covered by the NPA will take place in real-time.³¹ RTPC is a key input in the effective delivery of the NPA A2A CIS. This is supported by third party views, which confirm that a bidder/consortium of bidders could not win the tender without providing RTPC.
58. As noted at paragraph 40 above, there are different activities within real-time payments services, with some providers offering real-time payment software solutions that are aimed at banks and fintechs rather than being aimed at providing the A2A CIS for a national real-time payment system.
59. Moreover, as outlined in paragraphs 42 to 45, the supply of RTPC in A2A CIS can be distinguished from other RTPC services. Similarly, there is a recognised distinction between services by suppliers that have implemented this service and suppliers that have not. RTPC is particularly important to the NPA tender and bidders are assessed based on whether they have 'deep and relevant expertise' in this area.³²
60. The evidence received to date, including from third parties and the Parties' internal documents, also shows that the movement to real-time payments is a

²⁸ In tenders for A2A CIS, bidders can either bid as standalone entities or in consortia with other bidders. Consortia allow bidders providing only part of the services requested in the tender to outsource these services by other members of the consortium.

²⁹ [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2, January 2014), paragraph 4.56).

³⁰ The CMA notes that the NPA will bring together the processing of Bacs, Faster Payments (i.e. a real-time payment system) and, potentially in the future, cheque payments.

³¹ As noted on [Pay UK's website](#): 'The backbone of the New Payments Architecture (NPA) will be a new core clearing and settlement layer, which will enable money to move every time we pay a bill, pay back a friend, or a business pays its supplier – regardless of whether it's an online banking payment, Direct Debit or a cheque'.

³² Response to informal RFI – Pay.UK – 13 November 2019 - Annex 1.6.

significant trend in the global payment systems sector, further suggestion that demand-side substitution is likely to be limited.

61. In the round, the CMA did not find any basis to broaden the appropriate frame of reference. Accordingly, for the purpose of considering whether the criteria to join the DCCA's referral request are met, the CMA has assessed the Merger by reference to an upstream market for the supply of RTPC in A2A CIS to prime bidders by suppliers that previously implemented this service.
62. While the information available to the CMA at present suggests that Mastercard may not be active in the merchant basis within this market (with Vocalink's activities limited to servicing the Mastercard business),³³ there is a vertical relationship between Nets' merchant activities in the upstream market, and both Parties' downstream activities in the supply (or potential supply) of A2A CIS services.
 - *The supply of A2A CIS services*
63. The CMA has also conducted its preliminary assessment of the effects of the Merger in the downstream market for the supply of CIS for of A2A real-time payments (ie that require RTPC as an input) ('real-time A2A CIS'), in which the Parties overlap (or at least potentially overlap), as well as being vertically-linked to the Parties' upstream activities in the supply of RTPC in A2A CIS.
64. As noted above, competition for the supply of A2A CIS services occurs when these services are being procured by a payment scheme, normally in the context of a formal tender. When a payment scheme specifically procures real-time A2A CIS services, there is no or limited demand-side substitution with the supply of other types of A2A CIS (eg A2A CIS for the operation of non-real-time A2A batch-based automated payments used by customers and financial institutions) or other CIS (eg CIS used by card payment schemes).³⁴
65. Prime bidders in the NPA tender, like [§<] and Mastercard, are offering A2A CIS services for the operation of the A2A real-time infrastructure (eg access to local data centres, important relationships with key stakeholders etc.). [§<].

³³ As noted above, the J&P Guidance specifically notes that intra-group sales may be treated differently for the purposes of jurisdictional and substantive assessment. [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2, January 2014), paragraph 4.56.

³⁴ The Parties submitted that it is appropriate to assess the Merger against a broader market for the supply provision of A2A CIS to all interbank payment schemes on the basis of supply-side substitutability considerations. However, each type of A2A CIS is subject to its own distinct technical and contractual requirements. For example, the requirements of the A2A CIS for the NPA are specific to this tender, and there are inherently no obvious substitutes. When competition occurs at the moment of the tender and the tender sets out specific requirements, supply-side substitution factors would not generally support widening the relevant product market.

66. In other A2A CIS tenders for the operation of A2A real-time payments in the EEA, Nets has provided both RTPC and downstream services ('real-time A2A CIS').
67. Accordingly, in the round, the CMA did not find any basis to broaden the appropriate frame of reference. The CMA has therefore conducted its preliminary assessment of the effects of this Merger by reference to the supply of A2A real-time CIS.

Geographic scope

68. The CMA considered the appropriate geographic scope for its preliminary assessment of the effects of Merger in the supply of RTPC for A2A CIS by suppliers that previously implemented this service (upstream) and the supply of real-time A2A CIS (downstream). Given the inter-related nature of these services, the analysis set out below applies to both services.
69. The Parties submitted that the supply of A2A CIS was at least EEA-wide and potentially global in scope. The Parties noted that, while the nature of the contracts may present certain characteristics of a national market, international suppliers impose a strong cross-border competitive constraint and the location of the bidder did not prevent it from taking part in (and winning) a tender.³⁵
70. On the demand-side, the customer of these services in the UK (Pay.UK) is seeking a highly bespoke solution for the supply of A2A real-time CIS suitable for UK commercial and regulatory purposes.
71. In light of such limited demand-side substitution, the CMA has considered whether supply-side factors might support a wider frame of reference including, in particular:
 - (a) whether suppliers would be able to use their existing production assets (staff, technology, reputation, etc.) to compete for tenders in various countries; and
 - (b) whether the same firms compete to supply these different services in different countries.
72. During its preliminary investigation the CMA received mixed views in relation to the response to these questions

³⁵ Draft Merger Notice, para 65.

73. Some of the evidence provided to the CMA to date suggests that there is a degree of supply-side substitution in the supply of A2A real-time CIS across the EEA. For example:
- (a) Tenders attract a mix of suppliers, many of which do not operate in the country where the tender is taking place when the tender takes place. While group of bidders and their competitive strength may vary between different countries, at least some of the same bidders compete against each other in different tenders across the EEA;
 - (b) Some third parties told the CMA that there are tenders in other Member States that are broadly similar to the NPA tender, with comparable complexity and requirements regarding the implementation of A2A CIS real-time services; and
 - (c) Furthermore, as noted above, in most EEA countries, the rules for the steps and processes which financial transactions must follow (message standards) are the same for all interbank payment types. This has resulted largely from the creation of the SEPA and the emergence of the internationally recognised messaging standard, ISO 20022.
74. By contrast, other evidence provided to the CMA to date suggests that there is limited supply-side substitution between the supply of A2A real-time CIS in the UK and other Member States. For example:
- (a) Some bidders do not compete in all the tenders for the supply of these services in the EEA. This may be driven by capacity constraints, or specific requirements in individual tenders that potential bidders may be better able or less able to satisfy. In particular, some of the bidders that have competed in tenders for A2A real-time CIS in other Member States are not participating in the NPA tender (eg FIS);
 - (b) With reference to the NPA tender, Nets submitted that [redacted];³⁶
 - (c) Although the lack of local experience might be overcome by bidding in partnership with another provider with a stronger local presence, the CMA received evidence to suggest that if a partner is not available, the lack of presence in the UK could prevent a provider from credibly taking part in the tender;
 - (d) Pay.UK confirmed to the CMA that it regards UK experience as being relevant in the selection of a central infrastructure provider. Bidders were

³⁶ The Parties' response to RFI 2.

requested to provide both UK and non-UK hosted solutions, and in one of the PQQ questions Pay.UK asked bidders to provide evidence of experience in the CIS management either globally or in the UK;

- (e) Some third parties outlined differences between the NPA tender and other tenders in the EEA, and noted that while rolling out a real-time solution across different countries is important, 'global providers need to configure in-country specifics as required';
- (f) Further, other third parties submitted that 'while the A2A CIS core functionality is potentially very similar in every implementation, the challenges to successfully implement it can be different';
- (g) This is consistent with the CMA's position in *Mastercard/Vocalink*,³⁷ in which the CMA considered that the supply of services related to payment services infrastructure was national in scope, primarily because of specific national regulatory requirements.

- 75. In light of the factors above, the CMA has not concluded on whether the upstream market for the supply of RTPC and the downstream market for A2A real-time CIS are national or EEA-wide (but notes the EEA-wide presence of the Parties and their competitors).
- 76. However, notwithstanding the EEA-wide presence of the Parties and their competitors, the CMA considers that there is evidence that competitive conditions vary between national tenders, in particular because the competitor set may differ from tender to tender. This is mainly because different partnerships are involved and because different tenders taking place at different times may mean that some potential competitors are capacity constrained and therefore there may be fewer alternatives for individual tenders.
- 77. The CMA therefore considers that the assessment of the Merger should take into account not only the factors of competition that are common across countries, but also the specificities of the competition framework and of the competition effects of the Merger in the NPA tender.
- 78. Therefore, the CMA has conducted its preliminary assessment of the effects of the Merger:
 - (a) in the supply of RTPC for A2A CIS in the UK and at EEA level; and

³⁷ [Mastercard/Vocalink merger inquiry](#) (2016).

(b) in the supply of real-time A2A CIS the UK and at EEA level.

Significant adverse impact on competition

79. Based on the information currently available, the CMA's preliminary analysis indicates that the Merger may threaten to have a significant adverse impact on competition in the UK as a result of: (i) [X] and (ii) the loss of potential competition for future tenders for RTPC.

Foreclosure [X] in the NPA tender

80. Nets sought to pre-qualify in a consortium with [X] to bid to provide A2A CIS in the NPA tender. As part of this arrangement, [X] was [X] and Nets entered [X]. Mastercard is also taking part in the tender through its subsidiary, Vocalink. Vocalink is the incumbent provider. There are currently four prime bidders from those shortlisted in the NPA tender: Mastercard (though Vocalink); [X].³⁸

81. When the Merger was announced, Nets withdrew from its consortium [X] and from the NPA tender entirely.³⁹

82. The CMA's preliminary concern is that the withdrawal of Nets from the NPA tender as a result of the Merger might [X]. The effect of this may be to weaken the overall competitive constraints faced by Mastercard in the context of the NPA tender. The CMA's preliminary analysis considered whether this could result in higher prices or worsened terms for Pay.UK in the NPA tender.

83. The CMA's preliminary analysis used the framework of ability, incentive and effect to assess whether the Merger gives rise to foreclosure concerns. In practice, the analysis of these questions may overlap, and many relevant factors may affect more than one question.⁴⁰

- *Ability*

84. In assessing ability to harm [X] competitiveness through foreclosure, the CMA's preliminary analysis considered whether the removal of Nets would harm [X] ability to compete in the NPA tender, including whether access to RTPC was an important element for the competitiveness of [X] offer.

³⁸ Annex 2.1 - Prime and ecosystem partners NPA. [X]. The CMA understands that [X] is currently partnering with [X].

³⁹ Nets submitted that [X].

⁴⁰ See Merger Guidelines, paragraph 5.6.7.

85. The CMA notes that Nets has already withdrawn from the NPA tender,⁴¹ and [X].⁴²
86. For the reasons set out below, the CMA considers that Mastercard had the ability to harm [X] competitiveness through foreclosure, as the removal of Nets [X].
87. First, the CMA evaluated the importance of RTPC (and, in particular, the quality of a bidder's RTPC offering) as a factor affecting the competitiveness of bids in the NPA tender.
88. The evidence collected is consistent with RTPC being an important input (if not essential) in the NPA tender. Any deterioration in the quality of such a significant component would be likely to feed through to the quality of the overall offer. Mastercard submitted that RTPC is important in any tender requesting a Real-Time system, and the NPA tender requests a Real-Time payment system (eg FPS).⁴³ Other internal documents and all competitors' responses to the CMA's market testing are in line with the view that RTPC is a core component in the NPA tender, and that the quality of RTPC offering plays a fundamental role to make the bidder's offer attractive.⁴⁴
89. Accordingly, through Nets' withdrawal from the tender as a result of the Merger, Mastercard had the ability to affect the competitiveness of the [X] offer, subject to the cost and strength of any alternative provider available to replace Nets.
90. [X] has recently selected [X] as alternative RTPC provider. The CMA has therefore considered to what extent [X].
91. To this end, [X]. The evidence gathered by the CMA to date indicates that past experience in implementing RTPC in different countries is a significant competitive strength for RTPC providers. The CMA therefore currently gives particular weight to this factor in [X].
92. The CMA's current view is that [X] in particular for the following reasons:
 - (a) [X]⁴⁵ [X].⁴⁶ [X] confirms this view, explaining that, [X]. Nets would have been able to compete closely with Vocalink, given its experience as

⁴¹ Annex 3 to the DMN.

⁴² Nets submitted that [X].

⁴³ Together with a Batch payment system (e.g. Bacs).

⁴⁴ See paragraphs 42 and 43 above.

⁴⁵ 087 - ACH Competitive Landscape; IPS Product Summary 13February2019; 101. Nets2019v2.

⁴⁶ As the RFI evaluation phase is ongoing, Pay.UK did not comment on changes in the strength of [X]'s offering.

a proven provider of RTP platforms that are live in a number of markets. [X]. Thus, [X].⁴⁷

(b) [X] submitted that [X]. Thus [X] believes that [X].⁴⁸

93. Other than [X], there [X], as some are already partnering with other bidders and others have decided not to take part in the tender. In the context of Nets representing [X], the CMA considers that Nets would be an important competitive constraint on [X]. To the extent the Merger leads to [X], the CMA considers that this would [X], resulting in a greater impact on [X].

- *Incentive*

94. The CMA has also considered the extent to which the Merger gives Mastercard the incentive to withdraw Nets from [X].

95. Nets has already withdrawn from [X] as a result of the Merger.⁴⁹ The Parties submit that Nets' decision to withdraw from [X] was taken unilaterally and not motivated by an intention to foreclosure (and therefore to commercially harm) [X]. The Parties submit that [X].⁵⁰

96. The CMA considers that whether the specific intent of the merged entity is to weaken a given competitor is only of limited relevance to the objective assessment of whether the incentive exists to pursue an input foreclosure strategy (and whether that strategy would have the *effect* of weakening competition).

97. The CMA considers that the available evidence at this stage is consistent with Mastercard having an incentive to foreclose [X] in the NPA tender on the basis that weakening of [X] competitiveness would be profitable.

98. First, Mastercard (incorporating its subsidiary, Vocalink) is a strong competitor, both in the NPA tender and in other tenders across Europe. Most third parties told the CMA that all bidders were considered to have broadly the same chance of ultimately winning the tender [X].

99. Moreover, some third parties ranked Mastercard as a particularly strong or close competitor or told the CMA that it had greater chances of success than other bidders because it had an incumbency advantage. Data on past tenders

⁴⁷ Notes of meeting between the CMA and [X] on 12 December 2019.

⁴⁸ [X]'s views, third party views and internal documents on the time needed to set up a consortium and the value of having partnered in the past.

⁴⁹ Nets admit [X].

⁵⁰ See Submission By Nets to CMA dated 2.09.2019.

submitted by the Parties indicate that Nets has [redacted]. Therefore, the evidence received by the CMA at this stage shows that Mastercard [redacted].

100. Given the evidence on Mastercard's strength as a competitor, the CMA considers that there are *prima facie* reasons to consider that any weakening of rivals in the NPA tender would benefit Mastercard. The CMA notes, in particular, that some of the available evidence suggests that the benefits of foreclosing [redacted] might be expected to accrue disproportionately to Mastercard compared to other bidders.
101. Second, [redacted] (supplied by Nets) was a strong competitor in the NPA tender. Mastercard's internal documents indicate [redacted]'⁵¹ ⁵². [redacted].⁵³ [redacted].⁵⁴ This is consistent with [redacted] (supplied by Nets) being a strong competitor to Mastercard.
102. The CMA considers that this evidence shows that there are *prima facie* reasons to consider that [redacted] and, [redacted].
103. Third, there are two possible reasons to expect that the profitability to the merged entity of winning the NPA tender with a wholly-owned Mastercard offering would be greater than the profitability to the merged entity of winning the NPA tender with a Mastercard-owned Nets (in partnership with [redacted]). This is because if the merged entity won the tender through a bid by Nets, it would have to share some of the profits with [redacted]. This is not the case if it won the tender through a bid by Mastercard. This is also because Mastercard, as an incumbent, may not incur certain one-off costs associated with setting up a new solution for the UK. These two factors may contribute to an incentive for the merged entity to foreclose [redacted] of access to the services provided by Nets.⁵⁵
104. In light of the above, the CMA considers that its preliminary analysis is consistent with Mastercard having an incentive to foreclose [redacted].
 - *Effect*
105. As noted above in paragraph 84, Nets has already withdrawn from the NPA tender and the CMA considers that reasons for that were merger linked to the Merger. The CMA also considers that there is *prima facie* evidence that:

⁵¹ [redacted].
⁵² [redacted].
⁵³ [redacted].
⁵⁴ [redacted].
⁵⁵ [redacted].

(a) Mastercard is a strong bidder in the NPA tender, and potentially the strongest. Only two bidders were left at the RFI stage, besides [REDACTED] and Mastercard;

(b) [REDACTED] was potentially a strong alternative to Mastercard; and

(c) [REDACTED] it may have weakened Mastercard's closest competitor.

106. The short timeframe within which the NPA tender in the UK is expected to take place means that the ability of some bidders to respond to any impact of the Merger will be more limited than in other tenders in the EEA.

107. The CMA therefore considers that the foreclosure of [REDACTED] is likely to have the effect of weakening the overall competitive constraints faced by Mastercard in the NPA tender.

108. As a result, the CMA considers that the Merger may threaten to have a significant adverse impact competition in the UK as a result of the foreclosure of [REDACTED] in the supply of real-time A2A CIS in NPA tender.

Horizontal Unilateral Effects in other Member States

109. Although the CMA has not directly assessed the scope for effects on competition in other European countries, the CMA understands that the Parties would have been likely to compete in future tenders in other Member States, which would potentially also affect trade between these Member States.

110. The CMA considers that the removal of Nets as a competitor, either as a standalone entity or in partnership, could potentially reduce choice in future EEA tenders for real-time A2A CIS, allowing the Parties to increase prices or lower quality of their service.

111. Both Mastercard and Nets provide real-time A2A CIS throughout the EEA,⁵⁶ and [REDACTED].⁵⁷ [REDACTED].

112. Evidence from Nets' internal documents [REDACTED].⁵⁸ Internal documents from Mastercard [REDACTED].⁵⁹

⁵⁶ Mastercard currently provides A2A CIS in the UK and Sweden and has won the P27 A2A CIS contract in the Nordics. Nets currently provides A2A CIS in Denmark, Hungary, Italy, Norway and Slovenia.

⁵⁷ [REDACTED].

⁵⁸ [REDACTED].

⁵⁹ See [REDACTED].

113. Furthermore, Mastercard submitted that [X].⁶⁰
114. Although Mastercard does [X]. Further, Mastercard might impose a perceived competitive constraint on Nets even when not bidding against it.
115. The CMA considers that the evidence above is enough to raise *prima facie* concerns that the merger could have a significantly adverse impact on competition in future and upcoming EEA tenders⁶¹ for real-time A2A CIS.

The Merger affects trade between Member States

116. The Merger is considered to affect trade between Member States where a merger is liable to have some discernible influence on the pattern of trade between Member States.⁶²
117. As explained above in paragraphs 72 to 78, the CMA, at this stage, has received mixed evidence on whether the markets affected by the Merger are national or EEA-wide. The Parties submitted that the market for the provision of A2A CIS to interbank payment systems more broadly is international (at least EEA-wide and potentially global) in scope,⁶³ due to the strong cross-border competitive constraint provided by these international suppliers.
118. The CMA considers that the Merger may affect trade between Member States by foreclosing access to the NPA tender to [X] for the reasons described in paragraphs 82-109. Trade between Member States may be affected in cases where the relevant market is national,⁶⁴ if the reduction in competition at that level affects trade between Member States.⁶⁵ In addition, the CMA considers that the Merger may lead to a loss of potential competition in the EEA for the reasons outlined above,⁶⁶ which would affect the competitive structure of trade in the Community. Similarly, the Merger may lead to loss of competition in the EEA because of the vertical concerns identified.⁶⁷
119. Based on the information currently available, the CMA therefore considers that the Merger affects trade between Member States.

⁶⁰ [X].

⁶¹ Including but not limited to the following EEA tenders: Austria, Bulgaria, Ireland and Finland. Furthermore, the CMA understand there will also be one or more tenders for the European Payment Initiative (EPI), to ensure handling of various payment types on a Pan-European scale.

⁶² Commission Notice on Case Referral in respect of concentrations (2005/C 56/02), paragraph 43.

⁶³ DMN, paragraph 63.

⁶⁴ See paragraph 74 above.

⁶⁵ [Commission Notice, Guidelines on the effect of trade concept contained in Articles \[101 and 102 TFEU\] \(2004/C101/07\)](#), paragraph 20 and 21.

⁶⁶ See paragraphs 109 to 115 above.

⁶⁷ See paragraphs 82 to 108.

Conclusion on article 22 requirements

120. On the basis of this preliminary analysis, the CMA therefore believes that there is a material prospect that the Merger may have a significant adverse impact on competition in the UK, and potentially more widely in the EEA - affecting the trade between Member States - as a result of vertical effects and loss of potential competition in future tenders for the supply of real-time A2A CIS.

Further reasons for using Article 22 EUMR

121. According to the Commission Notice on Case Referral in respect of concentrations (the **Commission's Notice on Case Referral**), in making a request, Member States should take account of the principle of subsidiarity, and, in particular, which is the more appropriate authority for carrying out the investigation, the benefits inherent in a 'one-stop shop' system and the importance of legal certainty with regard to jurisdiction.⁶⁸ The CMA has also had due regard to the factors outlined in its own guidance on making an Article 22 EUMR request (which overlap significantly with the Commission's Notice on Case Referral).⁶⁹
122. The CMA notes, in this regard, that the Merger has been notified to the DCCA and qualifies for an investigation under UK law (or, in the alternative, that circumstances are present which warrant the referral being made). The evidence cited above⁷⁰ suggests that the Merger may have an impact in other Member States. Therefore, the locus of any impact on competition may well be in other Member States in addition to the UK.
123. The CMA considers that a review by the Commission would be useful and proportionate, offering the efficiencies of a 'one-stop-shop' for both the notifying parties and the national competition authorities (**NCAs**). In particular:
- (a) During the Transition Period, pursuant to the Withdrawal Agreement and the Withdrawal Agreement Act, the UK broadly continues to be treated as if it were a Member State under the EUMR;⁷¹
 - (b) Given that the Parties and their competitors appear to be active in, and customers procure from suppliers across, multiple Member States, it is more effective for a single authority to undertake the substantive

⁶⁸ Commission Notice on Case Referral, paragraph 8.

⁶⁹ CMA2, paragraphs 18.48-58.

⁷⁰ See 'Horizontal Unilateral Effects in other Member States' section

⁷¹ CMA Guidance, paragraph 3.1.

assessment of the Merger⁷² (with appropriate input from the other NCAs as appropriate). In the absence of an Article 22 EUMR referral, it is likely that competitors will receive similar information requests from multiple NCAs;

- (c) Given the potential cross-border effects of the Merger in the EEA, the European Commission is currently better placed to assess and enforce any suitable remedies that may be necessary.

124. Therefore, the CMA believes that the Commission is better placed to examine the Merger.

Conclusion

125. The CMA's view is based on its preliminary assessment for the purposes of Article 22 EUMR and on the information before it at this stage of its pre-notification discussions with the Parties. The CMA has not yet come to a view on whether a referral to a Phase 2 investigation in the UK would be likely and its preliminary view is without having conducted a full merger investigation.

126. For the reasons set out above, the CMA considers that the conditions set out in Article 22 EUMR, the Commission's Notice on Case Referral,⁷³ and its own guidance on handling Article 22 EUMR requests,⁷⁴ indicate that a referral of jurisdiction to the Commission in this case is appropriate.

127. In line with its own guidance and the Commission's Notice on Case Referral, and for the reasons set out above, the CMA therefore joins the existing Article 22 Initial Request by the DCCA to accept the case referral and to investigate the Merger.

128. Following the withdrawal of the United Kingdom from the European Union on 31 January 2020, Art. 22 of Council Regulation 139/2004 continues to have effect by virtue of Clause 1 of the European Union (Withdrawal Agreement) Bill 2019 during the implementation period.

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16 March 2020

⁷² This is notwithstanding the fact that the competitive assessment may vary in each Member State.

⁷³ 2005/C 56/02.

⁷⁴ Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2), paragraphs 18.48-58.