

***Case No COMP/M.6967 - BNP PARIBAS FORTIS/  
BELGACOM/ BELGIAN MOBILE WALLET***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION

Date: 11/10/2013

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Brussels, 11.10.2013  
C(2013) 6846 final

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

**To the Notifying Parties:**

Dear Sir/Madam,

**Subject: Case No COMP/M.6967 – BNP Paribas Fortis/ Belgacom/ Belgian Mobile Wallet JV  
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004<sup>1</sup>**

1. On 6 September 2013, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which BNP Paribas Fortis SA/NV ("BNP Paribas Fortis") and Belgacom SA/NV ("Belgacom") acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control over a newly created company constituting a joint venture (the "Belgian Mobile Wallet JV", or the "BMWallet JV") by way of purchase of shares. BNP Paribas Fortis and Belgacom are designated hereinafter as the "Notifying Parties".

**I. THE PARTIES**

2. **BNP Paribas Fortis** is the Belgian subsidiary of the French financial group BNP Paribas. It provides banking and financial services in Belgium. It is organised around four core activities: Retail & Private Banking, Corporate & Public Banking, Corporate & Investment Banking; and Investment Solutions.
3. **Belgacom** is a telecommunications operator in Belgium providing wholesale and retail services, fixed and mobile telecommunications, voice, and data services. Belgacom is an autonomous public-sector company listed on the Brussels stock exchange.

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

4. **BmWallet JV** will be active in the creation, operation and maintenance in Belgium of a mobile wallet solution specifically for smartphones (the BmWallet).
5. The BmWallet will exist online (as a programme / web service) or consist of a mobile application (App) accessible to any smartphone user with a mobile data subscription from a Mobile Network Operator (MNO) or a Mobile Virtual Network Operator (MVNO) (together M(V)NOs) active in Belgium. Within the BmWallet there will be one or several retail payment wallets which in turn will give access to payment cards stored within each payment wallet. The consumer will be able to use these cards to transact mobile payments through the payment wallets.
6. The payment wallets can be operated by financial institutions (for example BNP Paribas Fortis, ING or Belfius) using wholesale payment wallet platforms such as MasterPass or V.me or using independent retail wallets, over the top ("OTT") players (such as Google), payment schemes (such as PayPal), M(V)NOs in Belgium or others. The cornerstone of the BmWallet is a Mobile ID that will be securely stored on a web-based server (and in a second phase, on the SIM card) and through which end users will have access to a range of services (mobile payments, couponing, ticketing and loyalty programmes).
7. The BmWallet does not enable mobile payments in itself. In order to enable mobile payments, the BmWallet will have to be linked with a retail payment wallet. At the initial phase, the BmWallet will accept retail payment wallets that have been developed on the basis of the MasterPass wholesale wallet platform of MasterCard. BNP Paribas Fortis has expressed its intent to launch a BNP retail payment wallet on the basis of the MasterPass platform. In the future, the BmWallet is also expected, according to the Notifying Parties, to be connected to other retail payment wallets.<sup>2</sup>

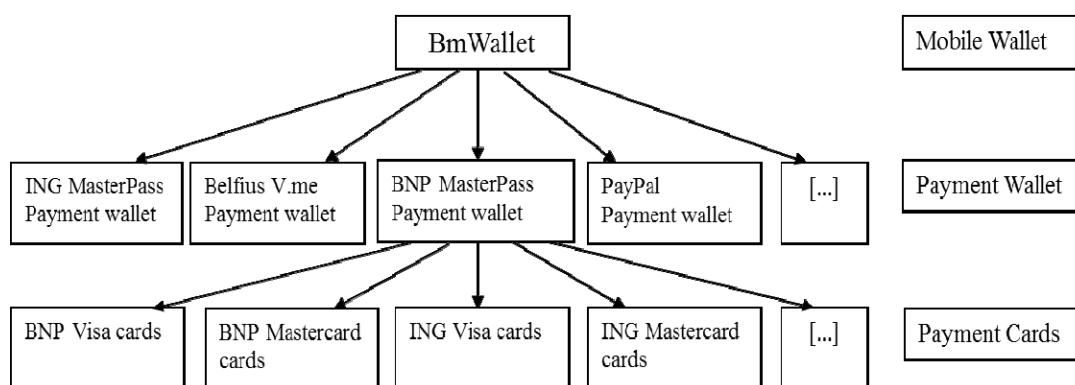


Figure 1: Structure of BmWallet JV

8. The BmWallet ecosystem will connect three main sets of market players:
  - i. The end-users ("Consumers"), who may download the BmWallet App for free<sup>3</sup> on their smartphones and who will connect the App to the retail payment wallet

<sup>2</sup> The BmWallet can be considered as a "container" wallet, which will have to be filled in with several applications in order to offer customers a range of services such as mobile payment, couponing, ticketing and loyalty programs. For the processing of payments, the Bmwallet will need to be connected to one or more retail payment wallets offered by banks, such as a MasterPass-based retail payment wallet of BNP Paribas Fortis, or a MasterPass-based retail payment wallet of ING, or Belfius, etc. Customers will be able to upload their payment card details into one or more of these retail payment wallets.

<sup>3</sup> The BmWallet JV will not generate any revenue from offering its App to Consumers.

(for example a BNP Paribas Fortis retail payment wallet or a Belfius or ING retail payment wallet created on the basis of the MasterPass wholesale platform). Downloading the App will allow Consumers to obtain a user account, a secure PIN code for completing transactions, information on stored tickets and coupons, information on loyalty programmes and the possibility to manage their user profile and preferences.

- ii. The merchants and retailers (for example restaurants, transport companies, cinemas, M(V)NOs, banks, etc) (together the "Service Users"), that will pay a fee to the BmWallet JV in order to transact with the Consumers via the BmWallet App, use the Apps storage facility or couponing service. These will obtain access to the BmWallet App's secure infrastructure through an open Application Programming Interface ("API") to be embedded in their individual mobile App.
  - iii. The payment providers such as banks, advertising / marketing service providers such as coupon companies, other online ticketing and loyalty service providers (together the "Service Providers"), that will be offering their services through the App to both Consumers and Service Users. Service Providers can be described as partners of the BmWallet JV within the mobile wallet ecosystem. Service Providers will not be paying a fee to the BmWallet.
9. The Notifying Parties provide a concrete example: Supermarket Delhaize and fast food restaurant Quick can be characterised as Service Users. They will use the BmWallet to offer their products / services and will pay a fee to the BmWallet in order to transact with Consumers on a per transaction basis. In that context, Consumers may use the BmWallet to redeem coupons distributed, for instance, by Coca-Cola (so called open coupons). In addition, Service Users, such as Delhaize and Quick could also offer closed coupons (that is coupons that could only be used, respectively, within the Delhaize or Quick environment). In that case, Delhaize or Quick could either use one of the coupon Service Providers in the BmWallet ecosystem or create their own coupon themselves. Even in the latter case, they would not be considered a Service Provider as they would only be creating coupons for their own purposes.
10. In order to begin enjoying the services offered by the BmWallet, Consumers will have to do the following:
- i. create a mobile payment wallet on which they store their payment card details;
  - ii. download for free the standalone BmWallet App and create a user account with a secure ID;
  - iii. link their BmWallet to their payment wallet and;
  - iv. download the App of the merchant with whom they wish to transact.
11. The BmWallet APIs will also be embedded in participating merchant's Apps, as such allowing to complete a full shopping progress "in-App" in a convenient and safe way.

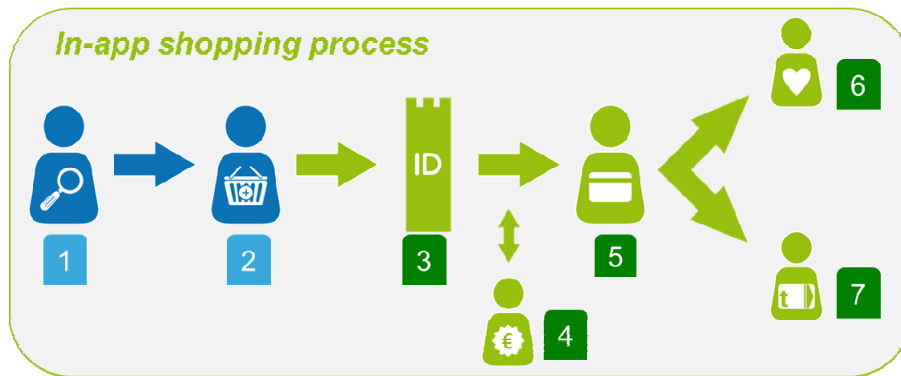


Figure 2: In-app shopping process (source: Notifying Parties)

12. Today, the following transaction steps are already possible in merchant Apps:
  - i. Consumers can browse for products / services (step 1 in Figure 2)
  - ii. Consumers can confirm a shopping cart (step 2 in Figure 2).
13. According to the Notifying Parties, the BmWallet will enable to complete the entire shopping process, including:
  - i. Mobile ID to be verified: the Mobile ID allows a user to be identified once and for all services in his or her mobile wallet and enables identification across multiple services (steps 3 and 5 in Figure 2).
  - ii. Coupons to be used: coupons that the user has downloaded or received will be automatically deducted during the purchase (step 4 in Figure 2).
  - iii. Payments to be executed: the user will be able to monitor the status of the loyalty programmes to which he has subscribed, including adding, consulting and using loyalty points (step 6 in Figure 2).
  - iv. Tickets to be distributed and stored: tickets purchased for later user (such as "jump" ticket from the Brussels public transport company STIB) can be stored within the merchant App and / or within the ticketing module of the BmWallet App. (step 7 in Figure 2)
14. According to the Notifying Parties, the BmWallet process will operate as follows:
  - i. The Service User App's server calls the BmWallet's JV server and the BmWallet's App server.
  - ii. The BmWallet App's server in turn calls the BmWallet JV's server, then receives information from the BmWallet JV that allows it to display a PIN entry screen.
  - iii. When the Consumer enters his PIN, the BmWallet App sends the PIN to the BmWallet JV server.
  - iv. The JV's server verifies the PIN (authentication stage).
  - v. This launches a Masterpass transaction, which involves several steps:
  - vi. The BmWallet JV server calls the payment services provider (such as Ogone):

- a. The transaction is routed through the credit card service provider (such as MasterCard);
  - b. The transaction is communicated to the financial institution (such as BNP Paribas Fortis);
  - c. BNP Paribas Fortis requests BmWallet JV's confirmation that the PIN (linking the Consumer to the payment wallet) is correct;
  - d. BNP Paribas Fortis sends instruction to MasterCard to open the wallet page on MasterPass;
  - e. The BmWallet JV then receives a URL to open the MasterPass cards page via a built-in browser.
15. According to the Notifying parties, the BmWallet can be described to operate in a two sided market. Service Providers will provide services that are aimed to attract Consumers. The widespread adoption of the wallet by Consumers will in turn attract Service Users (such as merchants) which will pay a transaction fee to the BmWallet JV.

## **II. THE OPERATION**

16. The proposed concentration consists of the creation of a joint venture, the BmWallet JV, by BNP Paribas Fortis and Belgacom.

### **1. Joint control**

17. Each of the Notifying Parties will own 50% of BmWallet JV's shares. They will each appoint an equal number of directors of the board (2 each, 4 in total). Decisions of the board will require the approval of all directors (present or represented), [...].<sup>4</sup> Similarly, decisions at the level of the shareholders' meeting will require the unanimous consent of all shareholders present or represented.
18. Accordingly, the Commission concludes that the Notifying Parties will exercise joint control over the BmWallet JV.

### **2. Full functionality**

19. The BmWallet JV will perform all of the functions of an autonomous economic entity with respect to the provision of various services addressed to businesses and final consumers in Belgium. The BmWallet JV will have its own management dedicated to its day-to-day operations and its own staff. The BmWallet JV is expected to employ [...] Full Time Employees in 2014. Initially, the employees will be seconded to the BmWallet JV [...]. The BmWallet JV will be able to replace any seconded employees who chose to return to their previous position with external employees. In addition, the BmWallet JV will have direct access to external sources of funding, and will be the owner of the assets needed to conduct its business activities. Moreover, it will have sufficient resources to operate independently on the market, and its activities will go beyond the execution of specific functions within the Notifying Parties business

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<sup>4</sup> [...].

activities. Finally, the BmWallet JV will generate its own revenue independently from the Notifying Parties.

20. Its contemplated services will be mainly offered to third parties. Any services that the BmWallet JV may be offering to the Notifying Parties will be minor in comparison to its overall activities (for instance advertising and data analytics services to the Notifying Parties) and will be provided at [...]. Finally, the BmWallet JV's shareholders agreement is concluded for a [...].
21. Accordingly, the Commission concludes that the BmWallet JV is a full-function joint venture performing on a lasting basis all the functions of an autonomous economic entity.

### **3. Conclusion**

22. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

### **III. EU DIMENSION**

23. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million<sup>5</sup> [BNP Paribas Fortis: EUR [...]; Belgacom: EUR 6 415 million]. Each of them has an EU-wide turnover in excess of EUR 250 million [BNP Paribas Fortis: EUR [...]; Belgacom: EUR [...]], but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.
24. The proposed concentration therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

### **IV. THE RELEVANT MARKETS**

25. The transaction takes place in the new but fast growing sector of Mobile Commerce ("MCommerce"), which encompasses retail mobile payments, mobile advertising, data analytics and ticket storage services.
26. According to the Commission's Green Paper *"Towards and integrated European market for card, internet and mobile payments"*<sup>6</sup>, mobile payments are payments for which the payment data and the payment instruction are initiated, transmitted or confirmed via a mobile phone or device. This can apply to online or offline purchases of services, digital or physical goods.
27. Mobile payments can be classified into two main categories:
  - i. Remote mobile payments mostly take place through internet / wireless application protocol (WAP) or through premium SMS services which are billed to the payer through the MNO. Most remote mobile payments through the internet are currently based on card payment schemes. Other solutions, based on

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<sup>5</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.04.2008, p. 1).

<sup>6</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0941:FIN:EN:PDF> (the "Green Paper").

credit transfers or direct debits, are technically feasible and possibly as secure, efficient and competitive, but seem to have difficulties entering the market.

- ii. Proximity payments generally take place directly at the point of sale. Using Near Field Communication ("NFC"), the leading proximity technology at this stage, payments require specifically equipped phones which can be recognised when put near a reader module at the point of sale (such as stores, public transport, parking spaces).<sup>7</sup>

## **1. Market for the retail distribution of mobile wallet services**

### **1.1 Product market definition**

#### *The Notifying Parties' view*

28. First, the Notifying Parties consider that the BmWallet JV will not be active in the potential wholesale market for the supply of platform services for digital (online / mobile) wallets.<sup>8</sup> Instead, the BmWallet JV will be active on the retail level as it will provide mobile wallet services to end users. As a result, according to the Notifying Parties, the BmWallet JV will compete in the market for the retail distribution of mobile wallet services.
29. Second, the Notifying Parties explain that the BmWallet JV will not in and of itself offer Consumers the ability to transact payments. Rather, the BmWallet technology will enable payments via one or several retail payment wallets. The Notifying Parties have stated that they intend to accept a number of retail payment wallets. Initially, these will be based on the MasterPass wholesale wallet platform but in the future, they might be based on different wholesale platforms, such as the V.me wholesale wallet platform of Visa. BNP Paribas Fortis expects to launch a retail payment wallet on the basis of the wholesale MasterPass platform.<sup>9</sup> The Notifying Parties consider that the BmWallet, connected to a payment wallet, will be a viable substitute for other similar mobile wallet solutions.
30. Third, the Notifying Parties consider that the BmWallet JV will compete with companies that are already established in the provision of online / mobile wallet payment solutions, including PayPal, Google and Visa or MasterCard. The Commission notes that Visa's V.me and MasterCard's MasterPass are both wholesale mobile wallet platforms. Therefore it will be the retail payment wallets of banks or other players that will compete with the BmWallet JV.
31. The Notifying Parties submit that a consumer wishing to make purchases from its mobile handset in a convenient and secure way will have the choice between completing its transaction online within a payment website and doing so from mobile App of a mobile wallet, where such an option is available. According to the Notifying Parties, both solutions offer the same speed and convenience of payment. Furthermore, from a supply-side perspective, the Notifying Parties are of the opinion that the majority of companies currently offering online payment solutions (such as

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<sup>7</sup> Green Paper, section 2.4.

<sup>8</sup> See Paragraph 36 below.

<sup>9</sup> Notifying Parties' replies of 27 September 2013 to the Commission's email of 26 September 2013 in relation to the operation of the MasterPass wallet platform and the BNP Paribas Fortis retail payment wallet.



wallets) already also offer an equivalent mobile payment solution or are in the process of developing one (for instance PayPal).

32. While the Notifying Parties do not exclude that mobility may play a role in the substitutability between static online and mobile methods of payment, they submit that mobility is not, as such, a factor that prevents any substitutability between mobile and static payment solutions. In essence, wallet based payment solutions in a mobile environment allow consumers to pay in advance, and / or on the go. Whilst payment solutions in a static environment do not allow for a payment on the go, they still allow consumers to pay in advance under the same conditions as in a mobile environment, and are to that extent substitutable.
33. Hence, according to the Notifying Parties, the market for the retail distribution of mobile wallets to consumers is part of a wider market including online wallet services. Nevertheless, for the purpose of the present concentration, they consider that it can be left open whether online wallet solutions are part of the same market as mobile wallet solutions, as the proposed concentration would not significantly impede effective competition under any alternative product market definition.
34. Finally, the Notifying Parties submit that the BmWallet will not allow for offline proximity payments using NFC technology at points of sale such as inside shops, but will allow for in-app payment, wherever the customer is located (that is to say not necessarily inside a shop).
35. In any event, the Notifying Parties submit that it can be left open whether these different types of mobile payments are part of the same relevant market, as the proposed concentration would not significantly impede effective competition under any alternative product market definition.

#### *The Commission's assessment*

36. **Commission precedents.** The Commission reviewed the mobile payments markets in its decision in the case of *Telefonica UK/ Vodafone UK/ Everything Everywhere/ JV* (the "*MCommerce*" decision)<sup>10</sup> and more recently in the Spanish mobile wallet decision, *Telefónica / Banco Santander / CaixaBank JV*<sup>11</sup>(the "*Spanish mobile wallet*" decision). The wallets in these precedents have similarities but also important differences to the BmWallet. The Commission has considered these in its assessment.
37. In the *MCommerce* decision, the Commission considered the existence of two separate, vertically related markets: (i) the market for the wholesale supply of platform services for digital wallets, and (ii) the market for the retail distribution of mobile wallet services. The *MCommerce* decision involved the wholesale supply of platform services for digital wallets, contrary to the BmWallet JV which is a retail mobile wallet. The Commission finally left open the exact product market definition, since the operation did not lead to any significant impediment to effective competition under any of the alternative market definitions.

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<sup>10</sup> See Commission decision of 4 September 2012 in Case No COMP/M.6314 - *Telefonica UK/Vodafone UK/Everything Everywhere/JV*, paragraphs 91 to 102.

<sup>11</sup> See Commission decision of 14 August 2013 in Case No COMP/M.6956 - *Telefónica / Banco Santander / CaixaBank / JV*, paragraphs 15 to 55.

38. In the same decision, the Commission also examined whether the retail distribution of mobile wallet services (including both offline and online mobile payments) constitutes a market separate from existing online payment services (through credit / debit cards / PayPal etc), via the internet on a static PC, tablet, or on a mobile handset. While it considered that current existing methods of online payments and mobile payments may belong to different relevant product markets, the Commission ultimately left the question open.<sup>12</sup> Similarly, in the *Spanish mobile wallet* decision, the Commission considered that the retail distribution of digital wallet services can be distinguished as a separate market, or at least, as a separate segment from other existing (online and offline) means of payment but ultimately left the precise product market definition open.
39. In addition, the Commission examined in the *MCommerce* decision whether the retail distribution of mobile wallet services (including both offline and online mobile payments) constitutes a separate market from existing offline payment services (NFC-enabled credit and debit cards and traditional means of payment such as credit, debit cards and cash). The *MCommerce* wallet platform involved both remote and proximity services, whereas the BmWallet will only have a remote functionality. While it considered that mobile payments are likely to continue to coexist in the foreseeable future with non-mobile means of payment including NFC and non NFC-enabled credit and debit cards, the Commission ultimately left the question open.<sup>13</sup>
40. Finally, the Commission examined in the *MCommerce* decision whether the market for the retail distribution of mobile wallet services should itself be further subdivided between offline and online mobile payments services. While it considered that online and offline mobile payments are likely not part of the same relevant product market, at least at present, and while the evolution in the short to medium term is not entirely clear, the Commission ultimately left the question open.<sup>14</sup>
41. The Commission notes that the *MCommerce* wallet had the ability to transact payments, whereas the BmWallet will only allow payments through an independent mobile payment wallet. Despite the factual differences, a number of findings in the *MCommerce* decision are relevant for the present decision too.
42. ***Results of the market investigation in the present case.*** As a general remark, the Commission considered at the time of the *MCommerce* decision that the retail distribution of mobile wallet services is a nascent market whose main features and borderlines are still to be defined. This finding was confirmed by the result of the market investigation conducted for the purpose of the present concentration. A number of respondents expressed the view that it is difficult to define the exact scope of the rapidly evolving payment landscape with new innovative technologies and platforms being developed all the time. As a result, the Commission notes that no clear consensus cutting across the different types of respondents (financial institutions, card schemes, mobile network operators or competing mobile wallet providers) emerges as concerns the definition of the relevant markets. Nonetheless, the results of the market investigation is summarised in the following paragraphs.

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12 See Commission decision of 4 September 2012 in Case No COMP/M.6314 – *Telefonica UK/Vodafone UK/Everything Everywhere/JV*, paragraph 127.

13 See Commission decision of 4 September 2012 in Case No COMP/M.6314 - *Telefonica UK/Vodafone UK/Everything Everywhere/JV*, paragraph, 135.

14 See Commission decision of 4 September 2012 in Case No COMP/M.6314 - *Telefonica UK/Vodafone UK/Everything Everywhere/JV*, paragraph 139.

43. ***Mobile payments versus existing online payments.*** A slight majority of respondents considered that mobile payments (including both offline and online mobile payments) constitute a separate market from existing online payments (that is to say payment through credit and debit cards, PayPal, via the internet on a static PC, tablet, or mobile handset).<sup>15</sup> The Green Paper states that the definitions of the different types of payments, in particular for remote mobile payments, suggest that the line between electronic payments and mobile payments is blurred and may become even more so in the future.<sup>16</sup>
44. On one hand, a number of these respondents explained that the specific characteristics of mobile payments (such as the ease of use, user friendliness and convenience for shoppers) as opposed to the other means of payment, including existing online payments, placed mobile payments into a separate market. Also from a merchant perspective, a number of respondents explain that all these different types of payments are likely to continue to co-exist in the foreseeable future. Hence, they should be seen as complementary rather than substitutable.
45. On the other hand, a minority of the respondents considered that the different technologies for payment that are available will further blur the distinctions between traditional and non-traditional means of payment, and eventually converge over time.
46. ***Mobile payments versus existing offline payments.*** The results of the market investigation were mixed as regards the question whether mobile payments (including both offline and online mobile payments) constitute a separate market from existing offline payments (traditional or NFC-enabled credit and debit cards or cash at the point of sale).<sup>17</sup> Mobile wallets facilitate mobile payments by allowing virtual cards to be uploaded and stored safely on them and by processing the transactions through a payment service provider (PSP), such as Ogone. Again, the same arguments as the ones used in paragraphs 44 and 45 above as regards a possible distinction between the markets for mobile payments and existing online payments were considered by respondents to apply to the possible distinction between the markets for mobile payment and existing offline payments.
47. ***Offline versus online mobile wallet services.*** A slight majority of respondents considered that offline mobile wallet services (via NFC-enabled mobile devices at the point of sale) and online mobile wallet services (via mobile wallets such as the retail applications of the MasterPass and V.Me wallets, or Google Wallet) are part of the same market.<sup>18</sup>

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<sup>15</sup> See Responses to Questionnaire Q1 to competing mobile wallet providers of 6 September 2013, question 5; to Questionnaire Q2 to competing MNOs of 6 September 2013, question 5; to Questionnaire Q3 to competing Financial Institutions of 6 September 2013, question 5; and to Questionnaire Q4 to suppliers of 6 September 2013, question 5.

<sup>16</sup> Green paper, section 2.4

<sup>17</sup> See Responses to Questionnaire Q1 to competing mobile wallet providers of 6 September 2013, question 6; to Questionnaire Q2 to competing MNOs of 6 September 2013, question 6; to Questionnaire Q3 to competing Financial Institutions of 6 September 2013, question 6; and to Questionnaire Q4 to suppliers of 6 September 2013, question 6.

<sup>18</sup> See Responses to Questionnaire Q1 to competing mobile wallet providers of 6 September 2013, question 7; to Questionnaire Q2 to competing MNOs of 6 September 2013, question 7; to Questionnaire Q3 to competing Financial Institutions of 6 September 2013, question 7; and to Questionnaire Q4 to suppliers of 6 September 2013, question 7.

48. As one respondent explained, consumer demand is towards one integrated solution whereby different payment methods (such as the physical Europay, MasterCard, Visa card ("EMV"), physical NFC card, NFC-enabled smartphones, online and even Quick Response ("QR") based systems) link to one single mobile wallet. Another respondent explained that although the technology allowing online payments through a mobile wallet in stores remains in its infancy, a number of pilot projects are being carried out and as this technology develops, it will be likely regarded as belonging to the same market as making offline payment through an NFC-enabled mobile wallet. A third respondent submitted that both payment methods belong to different markets because offline mobile wallet services require NFC-enabled point of sale terminals, unlike online mobile wallet services. However, a fourth respondent explained that the price of point of sale terminals is rapidly decreasing and that merchants will soon be able to buy point of sale terminals which will allow them to choose how customers can pay in their stores (via either offline or online mobile wallet services).
49. ***Mobile wallets versus payment wallets.*** The results of the market investigation were mixed as regards the question whether mobile wallets such as the BmWallet (which do not by themselves enable payments but instead need to be connected to a payment wallet to do so) and payment wallets are part of the same product market.<sup>19</sup>
50. On one hand, a number of respondents argue that the scope of services offered by a mobile wallet is wider than the one offered by a pure payment wallet, as it also offers additional services such as the storage and offering of loyalty cards, tickets, coupons, etc. Furthermore, according to these respondents, whereas a payment wallet will need to be linked to one "banking company", the mobile wallet can contain multiple payment wallets.
51. On the other hand, a number of respondents argued that from the perspective of merchants, to the extent that a mobile wallet does offer a payment functionality (which is the case of the BmWallet which will be connected to retail MasterPass payment wallets for example), it would likely to be the same market as payment wallets.
52. ***Conclusions.*** In any event, for the purposes of the present decision, the exact delineation of the relevant product market for the retail distribution of mobile wallet services can be left open since the proposed concentration does not raise competition concerns under any possible market definition.

## 1.2 Geographic market definition

### *The Notifying Parties' view*

53. The Notifying Parties submit that the geographic market is at least national in scope, although they state that some of the most important online players are multinational companies (such as Google, PayPal, Amazon and Apple) which are offering – or could easily offer – mobile wallets worldwide.

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<sup>19</sup> See Responses to Questionnaire Q1 to competing mobile wallet providers of 6 September 2013, question 8; to Questionnaire Q2 to competing MNOs of 6 September 2013, question 8; to Questionnaire Q3 to competing Financial Institutions of 6 September 2013, question 8; and to Questionnaire Q4 to suppliers of 6 September 2013, question 8.

*The Commission's assessment*

54. In the *MCommerce* decision, the Commission indicated that the market for the retail distribution of mobile wallet services to customers seems to be at least national in scope, but it ultimately left the geographic market definition open.<sup>20</sup>
55. In the present case, the results of the market investigation were mixed.<sup>21</sup> On one hand, several respondents explained that the geographic scope was wider than national. Notably, one respondent explained that to the extent that at least one international payment instrument is stored within the mobile wallet, it could be used for international payments. Others explained that they were not aware of any material specific national or regional differences for the use of mobile payments in Belgium.
56. On the other hand, other respondents explained that that the geographic scope was national. In particular, one respondent pointed out that the profile and activities of Belgacom and BNP Paribas/Fortis as JV partners imply a strong national focus of the offer of mobile wallet services by the BmWallet JV. Another respondent stated that there is no uniform European tariff for mobile payments, which can therefore differ from Member State to Member State.
57. In any event, for the purposes of the present decision, the exact delineation of the relevant geographic market for the retail distribution of mobile wallet services can be left open since the proposed concentration does not raise competition concerns under any possible market definition.

## **2. Digital advertising services**

### **2.1 Product market definition**

*The Notifying Parties' view*

58. According to the Notifying Parties, the BmWallet JV will act as an intermediary for the sale of mobile advertising inventory. In particular, the BmWallet JV will be active in the distribution of mobile coupons, thus connecting Consumers to advertisers and other merchants (the Service Users) on one hand, and to couponing companies (the Service Providers) on the other hand.
59. The types of advertising services to be offered by the BmWallet JV will include push coupon offers, that is to say opt-in offers distributed to Consumers based on their prior consent to receive such offers; and pull coupon offers, that is to say offers made through a "coupon wall" where consumers can go and "pull" out the offers they want to add to their wallets for future use. Service Users whose coupons are being distributed (for instance Coca Cola, Quick, etc.) will be charged per coupon by the BmWallet JV. The BmWallet JV will not be active in targeted marketing messages.
60. The Notifying Parties submit that the relevant product market is the market for digital (online and mobile) advertising. They consider that mobile and online advertising are

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<sup>20</sup> See Commission decision of 4 September 2012 in Case No COMP/M.6314 – *Telefonica UK/Vodafone UK/Everything Everywhere/JV*, paragraph 224.

<sup>21</sup> See Responses to Questionnaire Q1 to competing mobile wallet providers of 6 September 2013, question 9; to Questionnaire Q2 to competing MNOs of 6 September 2013, question 9; to Questionnaire Q3 to competing Financial Institutions of 6 September 2013, question 9; and to Questionnaire Q4 to suppliers of 6 September 2013, question 9.

more and more substitutable, such convergence being promoted by the increasingly blurred distinction between portable electronic devices connected to the internet and smartphones in terms of screen size and other features such as their usage and the availability of the same type of Apps for the two categories of devices.

61. However, for the purpose of the proposed concentration, the Notifying Parties submit that it can be left open whether online advertising is part of the same market as mobile advertising as the proposed concentration would not significantly impede effective competition under any alternative product market definition.

*The Commission's assessment*

62. The Commission has in the past examined the market(s) for advertising services in a number of cases.
63. In relation to the advertising medium, in *Google/DoubleClick*,<sup>22</sup> the Commission distinguished between the provision of online and offline advertising space. In *Microsoft/Yahoo! Search Business*,<sup>23</sup> the Commission also considered the existence of a possible sub-market for mobile (search) advertising but left it open whether it is a separate market or falls within the wider market for online advertising. Similarly, in the *MCommerce* decision,<sup>24</sup> the Commission acknowledged that the differences between mobile and online advertising may diminish at some point in the future and left open whether both services belonged to separate product markets.
64. As regards direct versus indirect sales, in *Google/DoubleClick*,<sup>25</sup> the Commission defined a separate market for intermediation in online advertising in view of the fact that direct sales are not a substitute for the sales provided by intermediaries. The Commission acknowledged that ad networks are progressively becoming very close to the direct sales channels but concluded that these developments are still at a very initial stage and cannot be considered to be an established market trend. In the *MCommerce* decision,<sup>26</sup> the Commission found that direct sales of mobile advertising constrain the sale through intermediaries to a significant extent but left open the decision whether there were separate or whether they were part of the same market.
65. Another potential sub-division relates to the type of advertising message. In *Google/DoubleClick*,<sup>27</sup> the Commission left open the question whether the market for online advertising could be sub-segmented into search and non-search services. In the same case, the Commission also considered but left open whether mobile marketing messaging is a separate market from search and non-search mobile advertising. In the

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<sup>22</sup> See Commission decision of 11 March 2008 in Case No COMP/M.4731 – *Google/DoubleClick*, paragraphs 44 to 47.

<sup>23</sup> See Commission decision of 18 February 2010 in Case No COMP/M.5727 – *Microsoft/Yahoo! Search Business*, paragraphs 61 to 81.

<sup>24</sup> See Commission decision of 4 September 2012 in Case No COMP/M.6314 – *Telefónica UK/Vodafone UK/Everything Everywhere/JV*, paragraphs 143 to 181.

<sup>25</sup> See Commission decision of 11 March 2008 in Case No COMP/M.4731 – *Google/DoubleClick*, paragraphs 44 to 56.

<sup>26</sup> See Commission decision of 4 September 2012 in Case No COMP/M.6314 – *Telefónica UK/Vodafone UK/Everything Everywhere/JV*, paragraphs 174 to 181.

<sup>27</sup> See Commission decision of 11 March 2008 in Case No COMP/M.4731 – *Google/DoubleClick*, paragraphs 48 to 56.

*MCommerce* decision,<sup>28</sup> the Commission considered whether within mobile advertising, targeted marketing messaging (including push messages) constitutes a separate market from search and non-search advertising but left the market definition open.

66. The BmWallet JV will be active in the provision of online advertising services as an intermediate (ie not through direct sales). On the other hand, Belgacom offers limited digital advertising services directly. Therefore, if the provision of online advertising intermediation services constitutes a separate market to online advertising services through direct sales, then there will be no overlap between the activities of the BmWallet JV and the Notifying Parties.
67. The market investigation conducted for the purpose of the present concentration did not provide any element that would substantiate a change to the previous findings of the Commission as regards the definition of the digital advertising services market(s).
68. In any event, for the purposes of the present decision, the exact delineation of the relevant product market(s) for digital advertising services can be left open since the proposed concentration does not raise competition concerns under any possible market definition.

## 2.2 Geographic market definition

### *The Notifying Parties' view*

69. The Notifying Parties submit that the market(s) for digital advertising services are at least national in scope given that Service Users are active at least on a national level.

### *The Commission's assessment*

70. In the *MCommerce* decision, the Commission left open the exact geographic market definition as regards digital advertising services, although it indicated that some factors, such as customers' purchasing preferences and the presence of publishers through intermediaries located at national level, militate in favour of a national geographic dimension.<sup>29</sup>
71. The market investigation conducted for the purpose of the present concentration did not provide any element that would substantiate a change to the previous findings of the Commission as regards the geographic scope of the digital advertising services market(s).
72. In any event, for the purposes of the present decision, the exact delineation of the relevant geographic market(s) for digital advertising services can be left open since the proposed concentration does not raise competition concerns under any possible market definition.

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<sup>28</sup> See Commission decision of 4 September 2012 in Case No COMP/M.6314 – *Telefónica UK/Vodafone UK/ Everything Everywhere/JV*, paragraphs 160 to 165.

<sup>29</sup> See Commission decision of 4 September 2012 in Case No COMP/M.6314 – *Telefónica UK/Vodafone UK/ Everything Everywhere/JV*, paragraphs 225 to 229.

### 3. Data analytics services

#### 3.1 Product market definition

##### *The Notifying Parties' view*

73. The Notifying Parties submit that as part of its advertising intermediation services, the BmWallet JV will be providing basic data analytics services to its Service Users (for example data on the activation and redemption of coupons, etc.). No separate fee will apply for such services; rather the cost will be part of the advertising intermediation fee.
74. According to the Notifying Parties, the BmWallet JV may in future also offer data analytics services to Service Users for a fee and as a standalone service. The BmWallet JV's data analytics activities would likely comprise two main elements:
- i. reporting analytics such as aggregated statistical reports on the profile of shoppers; and
  - ii. business development analytics, such as prospecting analytics that enable Service Users to increase their customer base by identifying new potential customers.
75. On one hand, the Notifying Parties submit that a segmentation of the market for data analytics services on the basis of the type of service (market research services and marketing information services) is not appropriate. On the other hand, the Notifying Parties consider that a distinction according to the type of channel or media (mobile or online data analytics) is warranted.

##### *The Commission's assessment*

76. In previous decisions, the Commission considered that marketing data services ("data analytics services") could be further segmented into
- i. a market for marketing information services comprising the supply of data on individual consumers (for example age, social group, activities, consuming habits, address) for direct marketing purposes;
  - ii. a market for market research services (which aims at measuring and understanding consumer attitudes and actual purchasing behaviour and patterns), that could be further sub-divided by research type (consumer panel services, retail measurement services and customized market research); and
  - iii. a market for media measurement services, which are aimed at measuring the audience of specific media, such as television and internet.<sup>30</sup>
77. In the *MCommerce* decision,<sup>31</sup> the Commission also assessed whether the provision of data analytics services for mobile advertising constitutes a separate product market. It considered that in principle the provision of data analytics services for static online

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<sup>30</sup> See Commission decision of 12 February 2001 in Case No COMP/M.229 – *VNU/ACNielsen*, paragraphs 10 to 12.

<sup>31</sup> See Commission decision of 4 September 2012 in Case No COMP/M.6314 – *Telefónica UK/Vodafone UK/Everything Everywhere/JV*, paragraphs 197 to 203.



advertising cannot be substituted by the provision of data analytics services for mobile advertising, both from the point of view of the advertisers buying these services and the data analytics providers. The Commission ultimately left open the exact product market definition in relation to data analytics services.

78. The market investigation conducted for the purpose of the present concentration did not provide any element that would substantiate a change to the previous findings of the Commission as regards the definition of the digital advertising services market(s).
79. In any event, for the purposes of the present decision, the exact delineation of the relevant product market(s) for data analytics services can be left open since the proposed concentration does not raise competition concerns under any possible market definition.

### 3.2 Geographic market definition

#### *The Notifying Parties' view*

80. The Notifying Parties submit that the market for data analytics services is at least national in scope. However, the Notifying Parties state that not only most data analytics suppliers are global companies and the services are often provided on a cross-border basis, but global companies are also increasingly purchasing local companies. The market is thus being increasingly globalised.

#### *The Commission's assessment*

81. In the *MCommerce* decision,<sup>32</sup> the Commission left open the relevant geographic market definitions. On one hand, the Commission took into account the relevance of local presence, knowledge of the local markets and language as factors that could justify a national geographic definition. On the other hand, the Commission stated that most data analytics suppliers are multinational companies which offer cross-border services.
82. The market investigation conducted for the purpose of the present concentration did not provide any element that would substantiate a change to the previous findings of the Commission as regards the geographic scope of the market(s) for data analytics services.
83. For the purposes of the present decision, the exact delineation of the relevant geographic market(s) for data analytics services can be left open since the proposed concentration does not raise competition concerns under any possible market definition.

## **4. Ticket storage services**

### 4.1 Product market definition

#### *The Notifying Parties' view*

84. According to the Notifying Parties, the BmWallet JV will offer ticket storage services to Service Users (that is to say merchants) for a fee. This service will be offered on a

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<sup>32</sup> See Commission decision of 4 September 2012 in Case No COMP/M.6314 – *Telefónica UK/Vodafone UK/Everything Everywhere/JV*, paragraphs 236 to 240.

standalone basis also to Service Users that do not have an App compatible with the BmWallet. The BmWallet JV may be offering its storage service through the intermediary of ticketing service providers (for instance Ticketmaster). Service providers would not be paying a fee.

85. This service will allow Service Users (and Ticketing Service Providers) that may not have their own App, or that cannot handle mobile ticket storage, to send electronic tickets to their customers for storage on the BmWallet. From a consumer's perspective, electronic tickets purchased from various Service Users can be securely stored in the single BmWallet App. It is intended that the digital tickets saved in the consumer's BmWallet would then be accessible at any point by the consumer (online or offline).
86. In contrast to Consumers who will not be charged for using the ticket storage service, Service Users will be charged. The fee to the Service Users will include delivery, storage and deletion of the ticket, the latter according to the Service User's instructions. The BmWallet JV intends to apply a fee only where storage is requested by the Service User within the ticketing module of the BmWallet App (as opposed to storage within the merchant App, to which a fee would not apply).
87. The Notifying Parties consider that a distinct market could exist for the provision of mobile ticket storage services and that this market is at least national in scope. In the potential market for the provision of mobile ticket storage services, the Notifying Parties consider that the BmWallet JV would compete with companies that are already active (albeit to a limited extent as the segment is nascent) on this market. These are for example Passbook by Apple which offers ticket storage services and Google Wallet by Google which has made public its intention to enter the ticket storage market in the near future.
88. In any event, for the purposes of the present decision, the exact delineation of the relevant product market(s) for ticket storage services can be left open since the proposed concentration does not raise competition concerns under any possible market definition.

#### 4.2 Geographic market definition

##### *The Notifying Parties' view*

89. The Notifying Parties consider the geographic scope of the ticket storage services market to be at least national in scope.

##### *The Commission's assessment*

90. The Commission has not so far analysed in its past precedents the existence of a specific separate market for the provision of mobile ticket storage services. Furthermore, in the present case, the market investigation did not allow drawing conclusions on the existence or not of a separate market for the provision of mobile ticket storage services, and on the geographic scope of this market.
91. In any event, for the purposes of the present decision, the exact delineation of the relevant geographic market(s) for ticket storage services can be left open since the proposed concentration does not raise competition concerns under any possible market definition.

92. Furthermore, as none of the Notifying Parties offer such ticket storage services, this market is not affected by the transaction and will, as a result, not be discussed any further in the present decision.

## **5. Retail mobile telephony services**

### **5.1 Product market definition**

#### *The Notifying Parties' view*

93. The Notifying Parties submit that in order to access the mobile wallet offered by the BmWallet JV, Consumers will need a retail mobile telephony services contract with an MNO. On this market, MNOs sell national and international voice calls, SMS (including MMS), mobile internet with data services and access to content via the mobile network to end customers. The provision of retail mobile telephony services therefore constitutes a complementary, neighbouring market to the retail provision of mobile wallet services or a vertical market in the case when the mobile wallets require access to the SIM-based SE.
94. The Notifying Parties consider that the retail mobile telephony services market constitutes one market, without any segmentation on the basis of the type of customer, the type of data or voice services provided, or the payment modalities (prepaid or post-paid).

#### *The Commission's assessment*

95. In its previous decisions,<sup>33</sup> the Commission has recognised the existence of a separate market for the provision of retail mobile telephony services. The Commission stated that the provision of retail mobile telephony services includes voice calls, SMS (including MMS), mobile internet with data services and access to content via the mobile network to end customers.<sup>34</sup> However, the Commission has not defined separate markets by type of customers (corporate or private, post-pay subscribers or pre-paid customers) or by type of network technology (2G / GSM or 3G / UMTS).
96. The market investigation conducted for the purpose of the present concentration did not provide any element that would substantiate a change to the previous findings of the Commission as regards the definition of the product market for the provision of retail mobile telephony services to end customers.
97. Therefore, in line with its past decisions, the Commission considers for the purpose of the present decision that the retail provision of mobile telephony services to end customers constitutes a separate product market.

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<sup>33</sup> See Commission decision of 12 December 2012 in Case No COMP/M.6497 - *Hutchison 3G Austria / Orange Austria*, paragraphs 32 to 46; Commission decision of 4 September 2012 in Case No COMP/M.6314 - *Telefónica UK/Vodafone UK/ Everything Everywhere/ JV*, paragraph 206; Commission decision of 1 March 2012 in Case No COMP/M.5650 - *T-Mobile/Orange*, paragraph 24; Commission decision of 27 November 2007 in Case No COMP/M. 4947 - *Vodafone/Tele2 Italy/Tele2 Spain*, paragraph 14; Commission decision of 26 April 2006 in Case No COMP/M.3916 - *T-Mobile Austria/Tele ring*, paragraph 18; Commission decision of 24 September 2004 in Case No COMP/M.3530 - *TeliaSonera/Orange*, paragraph 13; and Commission decision of 16 September 2003 in Case No COMP/M.3245 - *Vodafone/Singlepoint*, paragraph 12.

<sup>34</sup> See Commission decision of 4 September 2012 in Case No COMP/M.6314 - *Telefónica UK/Vodafone UK/ Everything Everywhere/ JV*, paragraph 204.

## 5.2 Geographic market definition

### *The Notifying Parties' view*

98. The Notifying Parties did not discuss further the exact geographic scope of the market for the provision of retail mobile telephony services.

### *The Commission's assessment*

99. In its previous decisions, the Commission has concluded that the market for the retail provision of mobile telephony services is national in scope.<sup>35</sup>
100. The results of the market investigation conducted for the purpose of the present concentration did not provide any element that would substantiate a change to the previous findings of the Commission as regards the geographic scope of the market for retail mobile telephony services.
101. Therefore, in line with its past decisions, the Commission considers for the purpose of the present decision that the geographic scope of the market for the retail provision of mobile telephony services to end customers is national.

## **6. Provision of card payment services**

### 6.1 Product market definition

#### *The Notifying Parties' view*

102. The Notifying Parties explain that BNP Paribas Fortis is active in the issuing of payment cards. As a result, the services provided by BNP Paribas Fortis and the BmWallet JV may be considered complementary as the use of the BmWallet App for the purpose of transacting purchases necessarily implies the use of payment cards.
103. Nevertheless, because they consider that no vertical or conglomerate concerns can arise from the activity of BNP Paribas Fortis in the issuing of payment cards in the context of the proposed concentration, they do not discuss further the exact scope of the product market for the provision of card payment services.

#### *The Commission's assessment*

104. In previous decisions, the Commission identified separate markets for payment card issuing market and for merchant acquiring.<sup>36</sup>

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<sup>35</sup> See Commission decision of 12 December 2012 in Case No COMP/M.6497 - *Hutchison 3G Austria / Orange Austria*, paragraph 73; Commission decision of 4 September 2012 in Case No COMP/M.6314 - *Telefónica UK/Vodafone UK/ Everything Everywhere/ JV*, paragraph 240; Commission decisions in Case No COMP/M.5734 - *Liberty Global Europe/ Unitymedia* of 25 January 2010, paragraph 42; and Commission decision of 27 November 2007 in Case No COMP/M.4947 - *Vodafone/Tele2 Italy/Tele2 Spain*, paragraph 16.

<sup>36</sup> See Commission decision of 3 October 2008 in Case No COMP/M.5241 - *American Express/Fortis/Alpha Card*, paragraph 23; Commission decision of 3 October 2007 in Case No COMP/M.4844 - *Fortis/ABN AMRO Assets*, Commission decision of 2 June 2005 in Case No M.3740 - *Barclays Bank/Foreningssparbanken/JV*, paragraph. 11. In the context of antitrust proceeding see Commission decision of 19 December 2007 in Cases No COMP/34.579 - *MasterCard*, COMP/36.518 - *EuroCommerce* and COMP/38.580 - *Commercial Cards*.

105. As regards the market for payment card issuing, in previous decisions, the Commission considered, but ultimately left open the question of whether the market should be further sub-divided into the following markets: (i) cards issued to households and cards issued to commercial customers; (ii) international and national cards; (iii) debit and credit cards; (iv) selective and general cards.<sup>37</sup>
106. As regards the merchant acquiring market, in previous decisions, the Commission indicated that the merchant acquiring market may be further subdivided according to the type of scheme organisation (international / domestic), customer type (consumer / commercial), type of card (debit / credit) or according to the brand (American Express Personal Green Card/Personal Gold Card / Personal Platinum Card / Corporate Card / Visa / Visa electron / V pay / MasterCard / Maestro, etc.).<sup>38</sup>
107. The market investigation conducted for the purpose of the present concentration did not provide any element that would substantiate a change to the previous findings of the Commission as regards the definition of the markets for the provision of card payment services.
108. Therefore, in line with its past decisions, the Commission considers for the purpose of the present decision that the markets for the provision of card payment services constitutes a separate product market.

## 6.2 Geographic market definition

### *The Notifying Parties' view*

109. The Notifying Parties did not discuss further the exact geographic scope of the markets for the provision of card payment services.

### *The Commission's assessment*

110. As regards the market for payment card issuing, in previous decisions, the Commission has previously defined the market as being likely national in scope.<sup>39</sup>
111. As regards the merchant acquiring market, in previous decisions, the Commission has previously defined the market as being likely national in scope.<sup>40</sup>

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<sup>37</sup> See Commission decision of 3 October 2008 in Case No COMP/M.5241 –*American Express/Fortis/Alpha Card*; Commission decision of 29 September 2006 in Case No COMP/M.4316 –*Atos Origin/Banksys/BCC*, paragraphs 22 to 23; Commission decision of 18 October 2005 in Case No COMP/M.3894 – *Unicredito/HVB*, paragraph 13; Commission decision of 8 November 2001 in Case No COMP/M.2567 – *Nordbanken/Postgirot*, paragraphs 15 to 16.

<sup>38</sup> See Commission decision of 3 October 2008 in Case No COMP/M.5241 –*American Express/Fortis/Alpha Card* ; Commission decision of 29 September 2006 in Case No COMP/M.4316 –*Atos Origin/Banksys/BCC*; Commission decision of 2 June 2005 in Case No M.3740 – *Barclays Bank/Foreningssparbanken/JV*; Commission decision of 8 November 2001 in NO Case COMP/M.2567 – *Nordbanken/Postgirot*.

<sup>39</sup> See Commission decision of 3 October 2007 in Case No COMP/M.4844 – *Fortis/ABN AMRO Assets*, paragraph 87; Commission decision of 2 June 2005 in Case No M.3740 – *Barclays Bank/Foreningssparbanken/JV*, paragraph 16; Commission decision of 8 November 2001 in Case No COMP/M.2567 – *Nordbanken/Postgirot*, paragraph 37.

112. The market investigation conducted for the purpose of the present concentration did not provide any element that would substantiate a change to the previous findings of the Commission as regards the geographic scope of the provision of card payment services.
113. Therefore, in line with its past decisions, the Commission considers for the purpose of the present decision that the geographic scope of the markets for the provision of card payment services is likely to be national.

## **7. Provision of web hosting services**

### **7.1 Product market definition**

#### *The Notifying Parties' view*

114. According to the Notifying Parties, Belgacom will provide the BmWallet JV with web hosting services in the form of the supply of managed services and support infrastructure, including "front-end" and "back-office" applications hosted on Belgacom's hosting services platforms.
115. The Notifying Parties state that the general web-hosting sector can be subdivided into four sub-segments. In particular, the Notifying Parties take the view that there are distinct markets for (i) the supply of basic co-location services such as connectivity, power, and the facilities, (ii) the supply of shared and dedicated hosting consisting of hosting a customer's web-site on the web host's servers and providing the necessary support applications, (iii) the supply of managed services to outsource complex enterprise applications and support infrastructure, including "front-end" and "back-office" applications hosted on the providers' platforms (so-called ASP) and (iv) the supply of content delivery services (CDS) such as Streaming Content Delivery Services and Static Content Delivery Products.
116. As regards to the supply of shared and dedicated web hosting, the Notifying Parties submit that the market generally distinguishes between shared and dedicated web hosting services. The latter type covers tailored services essentially for major corporate clients, whereas shared web hosting services offer packages to a broad client base. Dedicated web hosting services represent a smaller volume of sales as opposed to shared web hosting services.

#### *The Commission's assessment*

117. The Commission has analysed the market for web-hosting services in its decisions *MCI-WorldCom/Sprint* and *Kpnqwest/Ebone/Gts*.<sup>41</sup>
118. In *MCI-WorldCom/Sprint*, the Commission defined web hosting services as essentially providing Internet space for websites in data centres. In that decision, a web hosting provider was held to offer "*web hosting centres (or data centres)*"

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<sup>40</sup> See Commission decision of 29 September 2006 in Case No COMP/M.4316 – *Atos Origin/Banksys/BCC*, paragraph 30; Commission decision of 2 June 2005 in Case No M.3740 – *Barclays Bank/Foreningssparbanken/JV*, paragraph 16; Commission decision of 8 November 2001 in Case No COMP/M.2567 – *Nordbanken/Postgirot*, paragraph 37.

<sup>41</sup> See Commission decision of 28 June 2000 in Case No COMP/M.1741 *MCI-WorldCom/Sprint*, paragraph 32 and 33; Commission decision of 16 January 2002 in Case No COMP/M.2648 – *KPNQWEST/EBONE/GTS*, paragraph 19 and 20.

*featuring access-controlled buildings with servers that are monitored from a central, webhosting operations centre. The data centres are specially built to house Internet servers and equipment. Customers of the data centres connect to the data centre and the webhost then ensures the connection to the Internet through its own servers that are directly connected to the Internet backbones".*

119. In *Kpnqwest/Ebone/Gts*, the Commission noted that the results of the market investigation broadly confirmed the views of the Notifying Parties stated above in paragraphs 115 and 116. However, the Commission ultimately left open the exact product market definition since no competition concerns arose irrespective of the market definition used.
120. The market investigation conducted for the purpose of the present concentration did not provide any element that would substantiate a change to the previous findings of the Commission as regards the definition of the web hosting services market(s).
121. In any event, for the purposes of the present decision, the exact delineation of the relevant product market(s) for web hosting services can be left open since the proposed concentration does not raise competition concerns under any possible market definition.

## 7.2 Geographic market definition

### *The Notifying Parties' view*

122. The Notifying Parties submit that there are no physical boundaries to offer or purchase web hosting services and the relevant geographical market is most probably wider than national. However, for the purpose of the present case, they provide data on the narrowest possible geographical market, that is to say the Belgian market for web hosting services.

### *The Commission's assessment*

123. In *Kpnqwest/Ebone/Gts*, the Commission noted that the market investigation suggested that the market for web hosting services was national, but ultimately left open the geographic market definition, since the proposed concentration did not raise competition concerns under any possible market definition.
124. The market investigation conducted for the purpose of the present concentration did not provide any element that would substantiate a change to the previous findings of the Commission as regards the geographic scope of the web hosting services market(s).
125. In any event, for the purposes of the present decision, the exact delineation of the relevant geographic market(s) for web hosting services can also be left open since the proposed concentration does not raise competition concerns under any possible market definition.
126. As Belgacom has a modest market share on the web hosting market in general in Belgium ([0-5]%) and its market share in Belgium is less than 5% irrespective of any further market definition (that is to say on a shared and dedicated web hosting market, shared web hosting market only, or dedicated web hosting market only), the proposed concentration will therefore not lead to any affected markets in relation to the vertical

link between Belgacom's activities for the provision of web hosting services in Belgium and the BmWallet activities.

127. As a result, this market is not affected by the transaction and will, as a result, not be further discussed in the present decision.

## **V. COMPETITIVE ASSESSMENT**

### **1. Background information**

128. The operation takes place in the new but fast growing mobile commerce (MCommerce) sector, which encompasses retail mobile payments, mobile advertising, data analytics and ticket storage services.

#### **1.1 The rise of smartphones and tablets**

129. The development of MCommerce has been made possible by the rapid market penetration of smartphones and tablets (such as Apple's iPhone and iPad, handsets and tablets supporting Google's Android mobile OS, Research in Motion's Blackberry, and Nokia's mobile handsets supporting Microsoft's Windows Phone platform) in Belgium, and the consequent supply of new services for mobile handsets and tablets.
130. The functionalities available through mobile handsets and tablets have been gradually increasing for many years. However, they have increased exponentially since the introduction of smartphones, with consumers increasingly expecting their mobile handsets to perform more functions.
131. Smartphones and tablets can be differentiated from traditional mobile phones because they are operated through an advanced OS (such as Apple iOS or Google Android) that enables various features that are similar to PCs, including easier internet connectivity by enabling the use of open browsers that are similar to those used on PCs and not restricted to the websites they can browse, the ability to download and install a very wide variety of Apps, multiple communication options including emails, internet protocol ("IP") based notifications through Apps ("IP-based push notifications"), greater processing power, and larger screens. These attributes enable consumers to use their mobile phones and tablets for a variety of tasks that could previously only be performed on static PCs in an even more convenient manner because most consumers carry their smartphone with them at all times and, because the device is always powered on, it makes it much simpler to use for everyday tasks such as checking emails than using a PC (which requires booting up, etc.). This also includes carrying out functions that, until recently, would have been seen as involving information too sensitive to be sent by or kept on a mobile handset.<sup>42</sup>

#### **1.2 Mobile transactions**

132. Accompanying the rise of smartphones has been the growth of mobile transactions: allowing consumers to carry out financial and other transactions using their mobile handsets online via the Internet.

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<sup>42</sup> For instance, an increasing number of airlines offer the option of a "mobile ticket", sent to the consumer's mobile handset and used, without printing, to access airports and board flights.



133. A number of Internet companies (or over the top ("OTT") players - companies with no traditional mobile networking capability but with the ability to provide services using data connectivity over mobile handsets) and financial services entities have announced plans to become active in providing mobile payment wallets worldwide, such as Google with its Google Wallet and Apple.
134. In addition, PayPal currently provides a mobile payment wallet in Belgium through an App that is available to consumers through App stores.
135. Furthermore, two wholesale mobile wallet platforms are planned to be launched imminently in Belgium:
- i. Visa announced in April 2012 the launch of V.me, a wholesale mobile platform (otherwise called a white label mobile wallet) available to its members.<sup>43</sup> The V.me wallet will be tailored by banks which choose to take it up and offer it to their customers. It will allow customers in Belgium to store one or more of their payment cards on a V.me account.
  - ii. MasterCard is also launching its MasterPass mobile wallet platform.<sup>44</sup> Similar to V.me, MasterPass is a wholesale mobile wallet platform (white label wallet). MasterPass provides the underlying technology and platform and makes it available as a wholesale platform to parties who are interested to offer it, such as banks.
136. Any members of Master Card and Visa (such as banks) that are interested in adopting the MasterPass or V.me platforms (also known as "the Wallet Partners") can customise the payment wallets and offer them to their own customers. Both the MasterPass and V.me platforms are designed by MasterCard and Visa respectively as open platforms and technically accept all types of payment cards, such as Visa, Mastercard, American Express and Bancontact / Mistercash, whether credit, debit or prepaid. However, it is for each retail issuer of a MasterPass or V.me wallet (for each bank) to decide which cards their own retail payment wallet will accept. When ready to pay at a merchant website, Consumers will be able to access the card they want to use by entering their V.me or MasterPass email address and password during the checkout process, rather than their credit card details.
137. In the context of the BmWallet JV, banks will be Service Providers, acting as issuers of the MasterPass wallet (and later of the V.me wallet) on a retail basis. BNP Paribas Fortis has indicated that it intends to offer a retail payment wallet using the MasterPass platform. The Notifying Parties have also indicated that each bank that subscribes to the MasterPass wallet services will operate its own customised retail wallet.

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43 See <https://www.ve.me/> and <http://www.zdnet.com/blog/london/visa-to-launch-vme-digital-wallet-by-late-2012/4470>.

44 [https://paypass.com/tap\\_and\\_go/index.html](https://paypass.com/tap_and_go/index.html).

### 1.3 The Secure Element (SE)

138. The SE is a piece of hardware and software capable of securely hosting Apps and their confidential and cryptographic data.<sup>45</sup>
139. There are several possible locations for an SE in the case of a payment transaction performed via a mobile handset:
- i. On the Subscriber Identification Module ("SIM") card;<sup>46</sup>
  - ii. On a (micro)Secure Digital ("SD") card which can be integrated in some mobile handsets;
  - iii. On an external device such a Universal Serial Bus ("USB") key;
  - iv. In the chip which is embedded in the mobile handset's hardware ("embedded SE");
  - v. In the cloud, that is to say saved on a remote server.
140. The SE is provided by an issuer. The SE issuer is a trusted party responsible for the issuance and maintenance of an SE. Typically it will be the MNO for SIM-based SEs, the Original Equipment Manufacturer (OEM) or OS provider for embedded SEs, and the SE supplier for external SEs. The issuer has control over access to the SE.
141. SIM based SEs, microSD and USB SEs (or "external SEs") and embedded SEs are placed on hardware which renders them secure. On the other hand, cloud based SEs are software based, and information needs to travel from the server (where the secure information is stored) to the user's handset, which renders them less secure. Therefore, cloud-based SEs are considered by some market participants as being less reliable than hardware based solutions.
142. The use of an SE for a mobile wallet is related to the level of security requested for a particular service. This aspect is particularly sensitive when it is necessary to store the consumer payment credentials.
143. Thus, SEs are an essential element for mobile wallets which use proximity (NFC) payments, such as the *MCommer*ce wallet in the UK. However, they are not essential for online transactions such as the ones that will be done via the BmWallet because of the difference in the technical characteristics of the two types of payments.<sup>47</sup> Online

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<sup>45</sup> <http://www.globalplatform.org/mediaguideSE.asp>. GlobalPlatform is a cross industry, non-profit association which identifies, develops and publishes specifications that promote the secure and interoperable deployment and management of multiple applications on secure chip technology.

<sup>46</sup> A Universal Integrated Circuit Card ("UICC") is used in the mobile communications industry, as defined in ETSI TS 102 221. UICC is a new generation SIM card included in mobile phones or laptops used in some high speed wireless 3G networks. The UICC can store contacts and enables a secure and reliable voice and multi-media data connection, global roaming and remotely adds new Apps and services. Smaller in size than a full card, it contains a computer, or microprocessor, its own data storage and software. It is an evolution of the SIM used to identify subscribers in GSM networks. As UICC is still often referred to as a SIM card in the industry, the term SIM card will be used throughout the present decision for ease of reference.

<sup>47</sup> Agreed minutes of telephone conference call of 26 September 2013 with a mobile wallet provider.

wallets may use other security methods which do not require an SE, such as software, or cloud based solutions using usernames and passwords, verification systems (such as the Visa verification) and dongle authentication.

144. Currently, the Commission understands that online payment wallets do not use SEs. The BmWallet JV during a first phase will rely on software-based security for the processing of in-app purchases, and one respondent to the market investigation stated that it is not aware of any online only (that is to say non-NFC) wallets which rely on a SE.<sup>48</sup>

## **2. Preliminary Remarks**

### **2.1 Horizontal assessment**

145. In the present case, the proposed concentration gives rise to limited horizontal overlaps:
- i. in the market(s) for retail distribution of mobile wallet services in which the BmWallet JV and the Notifying Parties, that is to say Belgacom and BNP Paribas Fortis, will be present; and
  - ii. in the market(s) for digital advertising services in which both the BmWallet JV and Belgacom will be present.

### **2.2 Non-horizontal assessment**

146. According to the Guidelines on the assessment of non-horizontal mergers,<sup>49</sup> a vertical merger is said to result in foreclosure where actual or potential rivals' access to supplies or markets is hampered or eliminated as a result of the merger, thereby reducing these companies' ability and incentive to compete. Such foreclosure is regarded as anticompetitive where, as a result of the merger, the merging companies and possibly also some of its competitors are able to profitably increase the price charged to consumers.<sup>50</sup>
147. In relation to conglomerate mergers, whereas it is acknowledged that in the majority of circumstances they will not lead to any competition problems, in certain cases there may be harm to competition.<sup>51</sup> The main concern in the context of conglomerate mergers is that of foreclosure. The combination of products in related markets may confer on the merged entity the ability and incentive to leverage a strong market position from one market to another by means of tying or bundling or other exclusionary practices.<sup>52</sup>
148. In assessing the likelihood of foreclosure, the Commission examines, first, whether the merged firm would have the ability to foreclose its rivals, second, whether it would have the economic incentive to do so and, third, whether a foreclosure strategy would have a significant detrimental effect on competition, thus causing harm to consumers.<sup>53</sup>

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48 Agreed minutes of telephone conference call of 26 September 2013 with a mobile wallet provider.

49 See Guidelines on the assessment of non-horizontal mergers under the Council regulation on the control of concentrations between undertakings, (2008/C 265/07) (the "Non-Horizontal Merger Guidelines").

50 See Non-Horizontal Merger Guidelines, paragraph 29.

51 See Non-Horizontal Merger Guidelines, paragraph 92.

52 See Non-Horizontal Merger Guidelines, paragraph 93.

53 See Non-Horizontal Merger Guidelines, paragraph 94.

149. When assessing the likelihood of such an anticompetitive foreclosure scenario, it must be examined "*first, whether the merged entity would have, post-merger, the ability to substantially foreclose access to inputs, second, whether it would have the incentive to do so, and third, whether a foreclosure strategy would have a significant detrimental effect in the competition downstream*".<sup>54</sup>
150. In the present case, the proposed concentration gives rise to certain non-horizontal links. The Notifying Parties are active in markets that are vertically-related or neighbouring to the market for the retail distribution of mobile wallet services in Belgium, in which the BmWallet JV will be active. In relation to any non-horizontal effects, the Commission examined:
- i. the vertical or conglomerate links with the retail mobile telephony services of Belgacom; and
  - ii. the vertical links with the provision of retail banking services and in particular the markets for the provision of card payment services by BNP Paribas Fortis.
151. The provision of retail mobile telephony services constitutes a complementary, neighbouring market to the retail provision of mobile wallet services or a vertical market in the case when the mobile wallets require access to the SIM-based SE.
152. Similarly, the markets for the provision of card payment services constitute a vertical input in the BmWallet.

### **3. Horizontal Assessment**

#### **3.1 Retail distribution of mobile wallet services**

153. The BmWallet JV will be a new entrant in the nascent and quickly-evolving market for the retail distribution of mobile wallet services in Belgium. Both Notifying Parties currently have limited activities in the retail distribution of mobile wallet services in Belgium.
154. BNP Paribas Fortis distributes its mobile payment applications for smartphones and tablets under the "Easy Banking" commercial name. These Android and IOs Apps propose the typical services offered by retail banking Apps (balance, transfer, account history, card history) as well as a simple P2P (Peer to Peer) credit transfer optimised for smartphones ("Easy Transfer"). Easy Transfer allows users to execute a transfer between two Belgian mobile phone numbers that are each linked to a current account number. A total of [...] people have downloaded the different versions of the Easy Banking App. Easy Banking can only be used by BNP Paribas Fortis customers and is the only App that has access to mobile banking services for BNP Paribas Fortis customers.
155. Belgacom, through its subsidiary Mobile-for has launched Ping Ping, a mobile micro-payment platform in Belgium which enables users to pay for small daily expenses up to a limit of EUR 25 per transaction relying on a pre-paid account. Ping Ping is a free-standing tag allowing users to make purchases from approved merchants / vending machines using NFC. Unlike the BmWallet, Ping Ping is prepaid only, not directly linked to any mobile wallet or online bank account, limited to proximity payments

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<sup>54</sup> See Non-Horizontal Merger Guidelines, paragraph 32.

only, does not always need a mobile phone (in the case of paying for parking meter or bus ticket with an SMS) to function and only available to closed user-groups for purchases, for example, in offices, bars, canteens as well as from vending machines.

*The Notifying Parties' view*

156. In relation to Easy Banking and Easy Transfer, the Notifying Parties argue that these are mobile banking applications and not mobile payment wallets. The Notifying Parties also argue that there is currently no relation between the mobile banking Apps and the BmWallet JV. For the sake of completeness, in the future, the Notifying Parties also note that BNP Paribas Fortis could decide to authenticate access to its mobile banking Apps via the BmWallet PIN. The bank would become a customer (Service User) of the mobile authentication service offered by the BmWallet JV.
157. In relation to the Belgacom mobile payment service Ping Ping, according to the Notifying Parties, Ping Ping competes with other pre-paid card payment services but not with mobile wallet services.<sup>55</sup>
158. The Notifying Parties consider that mobile wallets are in a take-off phase and their activities generally concern nascent but rapidly expanding markets. They argue that it is hard at this stage to foresee how demand will be structured. Based on publicly available information, a variety of mobile payment solutions currently exist or are under development in the world. Overall, the worldwide mobile payments context is extremely competitive and characterised by a race between companies, joint ventures and start up projects, each of which aims to become a successful model. In that context, whilst it may be anticipated that the solutions developed will in many cases present common features, developers will in all likelihood, as in any other market, develop specific options and possibilities that may render their solutions more appealing to potential customers.
159. The Notifying Parties argue that switching costs are expected to be minimal and should not constitute an obstacle to end users or merchants moving from one platform to another. The concentration of demand is minimal as these solutions will be offered to individual end users and merchants. No specific exclusive distribution contracts are planned either.

*The Commission's assessment*

160. The Commission considers that post-transaction the BmWallet JV will face competition from a number of well-established players.
161. As concerns actual competitors, Ogone, a Belgian payment service provider, launched in August 2013 a smartphone App enabling iPhone users to purchase tickets on Belgian Railways (NMBS/SNCB). Moreover, PayPal has already launched a mobile App on the Belgian market. In addition, Google has launched Google Wallet which is available in Belgium as a web-based electronic money account that is created by the user and is funded by payment instruments (such as credit cards).<sup>56</sup> Google

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<sup>55</sup> See Notifying Parties' response to the Commission's Request for Information of 19 September 2013, question 1.

<sup>56</sup> See Responses to Questionnaire Q1 to competing wallet providers of 6 September, question 10.

Wallet is the branded name for the payment service used for Google Play and InApp transactions in Belgium.

162. There are also a number of players that are about to launch operations in Belgium. Currently MasterCard is launching its wholesale MasterPass payment wallet platform in Belgium. Visa is also launching in Belgium "V.me", a white labelled service which will be offered as a wholesale platform to Visa Europe's members. The market investigation has shown that these wholesale initiatives may lead to new entry on the retail level.
163. The market investigation respondents have indicated that a number of banks and M(V)NOs in Belgium are either already actively planning the launch of a mobile wallet service, either using these wholesale platforms or independently. Others are at an earlier stage and are still contemplating and researching the commercial and technical elements for such launch.<sup>57</sup> Finally, a number of multinational players such as Google currently offer mobile wallets in other countries and may choose to enter the Belgian market in the near future.
164. Respondents to the market investigation have confirmed that in the future, there will be a multitude of mobile wallets: *"Wallet services can be offered by many parties located in Belgium as the distribution of such services can be made relatively easy."* It is expected that consumers will have the choice between merchants mobile wallets, banks mobile wallets, payment companies mobile wallets (using the Visa, the MasterCard wholesale wallet platforms or PayPal), M(V)NO wallets, the JV's mobile wallet and potentially other wallets coming on to the market. Visa Europe offers on a wholesale basis the V.me wallet platform service to all its members who in turn would offer it to their merchants and consumers. Similarly, the MasterPass platform is made available on a wholesale basis to parties interested to leverage it.<sup>58</sup>
165. One mobile wallet provider respondent to the market investigation considers that *"on the assumption that the JV's mobile wallet is an open ecosystem, [the BmWallet JV] should not prevent [a card scheme] from working with its members for the development and launch of [competing wallets] in Belgium, nor should it prevent [competing wallets] from being part of the JV's mobile wallet if a [payment wallet provider] so wished."* Another respondent explained that *"wallet services can be offered by many parties located in Belgium (other telecom operators, financial institutions, retailers, e-commerce service providers...) as the distribution of such services can be made relatively easily. In addition Belgian consumers can be offered wallet services by international players as well (e.g. Google, Paypal, etc)."*<sup>59</sup>
166. However, a few respondents expressed concerns about the market strength and resources of the Notifying Parties in their respective upstream markets for mobile

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<sup>57</sup> See Responses to Questionnaire Q1 to competing mobile wallet providers of 6 September 2013, questions 10 to 11, 20 and 20.1; to Questionnaire Q2 to competing MNOs of 6 September 2013, questions 14, 20 and 20.1; to Questionnaire Q3 to competing Financial Institutions of 6 September 2013, questions 10 to 11, 14, 20, 23 and 23.1; and to Questionnaire Q4 to suppliers of 6 September 2013, questions 17 and 17.1.

<sup>58</sup> See Responses to Questionnaire Q1 to competing mobile wallet providers of 6 September 2013, questions 14, 15, 18, 18.1, 19 and 19.1; and to Questionnaire Q2 to competing MNOs of 6 September 2013, questions 16 and 16.1.

<sup>59</sup> See Responses to Questionnaire Q1 to competing mobile wallet providers of 6 September 2013, question 20.

telephony services and banking. One supplier respondent to the market investigation<sup>60</sup> commented that *"it would be hard to match the distribution network of these two incumbents"*. Similarly, three competing M(V)NOs expressed their concerns that the Proposed Transaction concerns two very large players in the market, making it impossible for an M(V)NO to compete, even in a JV with a bank. Another competing M(V)NO stated that *"as BNP and Belgacom are (national) market leaders in their sector in Belgium, it will be difficult to enter in a later stage the market and compete"*.<sup>61</sup> Finally, a competing financial institution expressed its concern that in Belgium there is no credible alternative next to Belgacom in terms of network coverage for the set-up of a mobile wallet having the same functionalities and scale as the BmWallet JV's mobile wallet.<sup>62</sup>

167. The Commission considered these statements and the position of the Notifying Parties in the upstream markets for the provision of retail telephony services and banking services. Despite the strength of the Notifying Parties and their extensive distribution network, the Commission considers that there are other market players that will be in a position to enter the market, both on the basis of similar national distribution networks (such as other Belgian MNOs or Belgian banks) or on the basis of similar initiatives in Europe.
168. On this basis, if the market is the market for the retail distribution of mobile wallet services in Belgium, the Commission considers that the proposed concentration will not remove an important competitor by creating the BmWallet JV, and that a number of alternatives will remain available to customers post-transaction. As a result, the Commission concludes that it is not likely that the proposed concentration will significantly impede effective competition in the market for the retail distribution of mobile wallet services in Belgium, irrespective of the exact market definition.
169. Moreover, if the product market is wider and includes not only mobile wallet services but also existing offline payments (such as credit and debit card transactions in proximity payments or online), then the Commission considers that the proposed concentration will not significantly impede effective competition in this wider market for payments, as the BmWallet JV is a new entrant and does not have any share of the market at the moment. In addition, the BmWallet JV will compete in that wider market with a number of established and active players, such as the financial institutions and payment providers in Belgium.

### 3.2 Digital advertising services

170. The BmWallet JV will be a new entrant in the Belgian market for digital advertising services and its sub-segments. The BmWallet JV will sell digital advertising inventory. The BmWallet JV could be active on the possible market for the distribution of mobile coupons, thus connecting consumers to advertisers and other merchants (the Service Users) on one hand, and to couponing companies (the Service Providers) on the other hand.

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<sup>60</sup> See Responses to Questionnaire Q4 to suppliers of 6 September 2013, question 14.

<sup>61</sup> See Responses to Questionnaire Q2 to competing M(V)NOs of 6 September 2013, questions 14, 21 and 22.

<sup>62</sup> See Responses to Questionnaire Q3 to competing financial institutions of 6 September 2013, question 14.

171. As was mentioned in paragraph 59, the types of advertising services to be offered by the BmWallet JV will include (i) push coupon offers: opt-in offers distributed to Consumers based on their prior consent to receive such offers, and (ii) pull coupon offers: offers made through a "coupon wall", a location where consumers would be encouraged to visit and "pull" out the offers they want to add to their wallets for future use. The coupon offers will include both open coupons (that is to say coupons that can be redeemed in any store, for example a Coca Cola coupon) and closed coupons (that is to say coupons that can be redeemed only for services offered directly by the Service User issuing the coupon). All coupons will be stored in the BmWallet if the Service User so chooses by "activating" them. Service Users whose coupons are being distributed (for example Coca Cola, Quick, etc.) will be charged per coupon on the basis of an incremental success fee.
172. Belgacom offers limited digital advertising services. In particular, it offers advertising inventory as online display formats and banners on its mobile website m.skynet.be and advertising messaging sold by aggregators. Belgacom also sends targeted messaging to Belgacom users, but only in relation to offers relating to Belgacom services.

*The Notifying Parties' views*

173. The Notifying Parties note that in Belgium, on the basis of the advertising rankings, otherwise called "saleshouse ratecards", Belgacom's m.skynet.be site ranks sixth, behind the mobile websites of Netlog, HLN.be, Standaard.be, Sporza, Nieuwsblad.be / Lavenir.net.

*The Commission's assessment*

174. On the narrowest potential market on which the BmWallet JV will be active, that is to say the market for the provision of intermediation services for mobile advertising messaging (through push and pull messages) in Belgium, there would be no horizontal overlap with the Notifying Parties, since neither BNP Paribas Fortis, nor Belgacom are currently active in this market.
175. On the wider market for mobile advertising services in Belgium, there is a limited overlap between the BmWallet JV and Belgacom. However, the Notifying Parties estimate that Belgacom represents maximum [0-5]% of the Belgian market for mobile advertising. Furthermore, the BmWallet JV would face strong global competitors, such as Yahoo!, which is active in Belgium, or others such as Google, which controls around 80% of the mobile advertising market globally, or others such as Millennial Media, InMobi, Madvertise, Amobee and Smaato which operate on a worldwide basis.
176. On this basis, the Commission considers that the proposed transaction is not likely to significantly impede effective competition in the market for digital (online and mobile) advertising services in Belgium irrespective of the exact market definition.

#### **4. Non-Horizontal Assessment**

##### **4.1 Vertical and conglomerate links with retail mobile telephony services.**

177. Belgacom is active in the provision of retail mobile telephony services in Belgium, and the BmWallet JV will be active in the market for the retail distribution of mobile wallet services. In order to access the mobile wallet, users need to connect via a mobile Internet connection (3G) or via a fixed broadband Internet connection through



Wi-Fi. Hence, there is a conglomerate relationship between the retail mobile telephony services of Belgacom on one hand and the retail distribution of mobile wallet services by the BmWallet JV on the other hand.

178. In addition, if a mobile wallet relies on a SIM-based SE, then access to the SIM card can be an input for the functioning of the mobile wallet. This is particularly true for mobile wallets with NFC functionality, as they require some type of SE. This relationship creates a potential vertical link between the mobile telephony services of Belgacom on one hand, and the retail distribution of mobile wallet services of the BmWallet JV on the other hand.
179. In Belgium, the M(V)NOs provide and own the SIM cards which are inserted into their customers' mobile handsets. Accordingly, the M(V)NO as issuer has content management rights, that is to say rights which allow the holder to load the initial keys governing access, their application code, confidential data for personalisation, or to update data or code.
180. The Commission has examined the following two foreclosure theories:
  - i. Whether Belgacom, through its presence in the retail market for mobile telephony services in Belgium would have the ability and incentive to foreclose competing mobile wallets from operating on its network (by either impeding the download of competing mobile wallet Apps on a mobile phone, or by refusing access to Belgacom's SIM cards for competing mobile wallets which require access to SIM cards for their security solutions) and whether such foreclosure strategy would have a significant detrimental effect on competition in the market for the retail distribution of mobile wallets; and
  - ii. Whether the BmWallet JV would have the ability and incentive to foreclose other M(V)NO networks in Belgium from offering the BmWallet to their customers and whether such foreclosure strategy would have a significant detrimental effect on competition in the retail market for mobile telephony services in Belgium.

*Risk of foreclosure of competing mobile wallets from Belgacom's network*

The Notifying Parties' view

181. The Notifying Parties state that there are several other significant financial institutions and / or M(V)NOs active on the Belgian market that would have the financial resources and the technical capabilities to develop a mobile wallet similar to the BmWallet. These players are free to develop such competing platforms (themselves, or through third party developers), and the BmWallet JV could not constitute a technical or commercial obstacle to their development (beyond the competitive constraint that the presence of a competitor always represents for any potential new entrant on any market).
182. According to the Notifying Parties, Belgacom will not have the technical ability to impede the download of competing mobile wallet Apps on a mobile phone (whether or not the BmWallet has already been downloaded on that mobile phone). After the download, Belgacom would not have the technical ability to prevent its customers from relying on the Belgacom network to use these competing mobile wallets.

183. The Notifying Parties note, however, that in the future SIM-based SE environment, mobile operators will need to define a business process to allow third parties to use the SE on the SIM card. In practice, they need to reserve some memory space (the secure domain) on the SIM card for an external party to use and provide a technical interface for the external party to securely access this space.
184. In this regard, the memory of a SIM card is limited and additional access to the Trusted Service Manager Platform ("TSM") is needed. However, since the investment for enabling the secure domains is significant, Belgacom will have an incentive to sell this service to third parties. Moreover, the number of interested parties for these security domains is expected to be very limited.
185. In any event, the Notifying Parties submit that in view of the fierce competition on the Belgian market for retail mobile telephony services, Belgacom would not have any incentive, from a commercial point of view, to impede other potential competing mobile wallets from being accessible through the Belgacom network, as this may weaken its competitive positions vis-à-vis these other players.

#### The Commission's assessment

186. As regards the ability to foreclose competing mobile wallets, the Commission examined firstly whether Belgacom would have the ability to foreclose competing wallets by blocking the downloading, functioning and updating of a competing mobile wallet.
187. To make a payment with their mobile handsets, consumers would have to either use a mobile wallet App which is pre-installed by OEMs on the mobile handset, or download an App from an App store (such as Google Play or iTunes).
188. The Commission concluded in the *MCommerce* decision that MNOs cannot technically prevent mobile wallets to be based and / or installed by a third party. It is not possible for MNOs to prevent the downloading of a competing mobile wallet App without blocking access to the entire App store. Furthermore, it is not possible to stop a consumer using their 3G or Wi-Fi connection to download Apps from App stores such as Google Play or iTunes. Similarly, access to a mobile broadband connection can be used to initially activate an embedded SE but alternatively, this activation can also be done with USB or a Wi-Fi connection. The same holds true for software upgrades and services. Finally, it is not possible to block or degrade the service offered by competing wallets over the mobile network of Belgacom.
189. These past findings were confirmed by the results of the market investigation in the present case. As one mobile wallet provider confirmed, *"the BmWallet application would be downloaded from the Apple store or the Android store; and as per the iOS or Android specifications, applications should function seamlessly and independently"*.<sup>63</sup>
190. Therefore, in line with its finding in the *MCommerce* decision, the Commission concludes that there is no ability by Belgacom to restrict a competing mobile wallet

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<sup>63</sup> See Responses to Questionnaire Q1 to competing mobile wallet providers of 6 September 2013, question 21.

from being downloaded, updated or from functioning, irrespective of the MNO network.<sup>64</sup>

191. Secondly, the Commission examined whether Belgacom would have the ability to foreclose competing mobile wallets by refusing to grant them access to the SIM-based SE of Belgacom's SIM cards.
192. As discussed in paragraph 139 above, there are a number of possibilities to place the SE: (i) in the SIM card (SIM-based SEs); (ii) as an external chip, such as MicroSDs, USBs or stickers with a microchip (external SEs); (iii) embedded on a mobile handset (embedded SEs) or (iv) stored remotely on the cloud (cloud-based SEs).
193. If the SE of a mobile wallet is placed on an external hardware (such as a MicroSD) or is embedded on a mobile handset or is stored on the cloud, then the mobile wallet is not dependent on any specific network or M(V)NO. If, on the other hand, the SE is placed on the SIM card, then access to the SIM will need to be authorised by the M(V)NO for each network.
194. The Commission notes that access to an SE by competing mobile wallet providers is not an essential input if the mobile wallet has only online functions and does not use NFC technology for proximity payments.<sup>65</sup> Mobile wallet transactions can use security solutions which are cloud or software based, such as a username and password security, verification systems and dongle authentication.
195. In particular, one respondent who is launching a competing mobile wallet informed the Commission that its planned wallet would function without any SE, on the basis of other security systems. An M(V)NO commented that it is also considering launching a competing mobile wallet which would rely on a cloud based security. Finally, one respondent to the Commission's investigation informed the Commission that it is not aware of any online-only mobile wallets which use an SE.<sup>66</sup>
196. For competing mobile wallets that use NFC technology for proximity payments, access to some type of SE is essential.
197. SIM-based SEs are one type of SE. If competitors can access other types of SEs, then there is no risk of foreclosure on the basis of refusal of access to the SIM-based SEs of Belgacom.
198. The other types of SEs are the following:
  - i. Embedded SEs: The most likely alternative to the SIM-based SE would be the embedded SE. Several OEMs already have, or are starting to release new smartphones with dual SE architecture (including one SE directly embedded in the mobile handset and one SE which would be inside the SIM card). The

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<sup>64</sup> See Responses to Questionnaire Q1 to competing mobile wallet providers of 6 September 2013, questions 21 to 21.7; to Questionnaire Q2 to competing MNOs of 6 September 2013, questions 22 to 22.7; to Questionnaire Q3 to competing Financial Institutions of 6 September 2013, questions 24 to 24.7; and to Questionnaire Q4 to suppliers of 6 September 2013, questions 21 to 21.7.

<sup>65</sup> Agreed minutes of telephone conference call of 26 September 2013 with a mobile wallet provider.

<sup>66</sup> Response from a card scheme to additional questions from the Commission of 23 September 2013, page 1, question 1 a).

availability of dual architecture smartphones opens the way for competitors to offer their products to consumers using embedded SE.<sup>67</sup>

- ii. External SEs: Although external SEs may appeal less to some consumers wishing to have ultimate security in their payments, they are nonetheless alternatives that are available to other consumers. For external SEs using a MicroSD card, their take-up will depend on the availability of MicroSD slots on mobile handsets and the seamless functioning of MicroSD hardware in terms of securing a mobile handset's radio performance. Others such as stickers with a microchip attached to the back of mobile handset will not have such card slot availability issue.<sup>68</sup>
- iii. Cloud based SEs:<sup>69</sup> Cloud based SEs are SEs where the payment credentials are stored in the cloud, that is to say stored remotely on a server. Although cloud based SEs are considered by some banks to be less secure or too slow and may hence appeal less to consumers wishing ultimate security, they are nonetheless available to store payment credentials.<sup>70</sup>

- 199. On this basis, the Commission notes first that online wallets can function without an SE, although a number of mobile wallets might want to have NFC functionality in the future and second, that there are alternative SEs to the SIM-based SE for NFC wallets.
- 200. A foreclosure of access to the SIM would affect the customer base of Belgacom, which represents approximately [30-40]% of Belgian subscribers to retail mobile telephony services. All non-Belgacom customers would not be affected by any decision of Belgacom to restrict access of competing mobile wallets to the Belgacom SIM card.
- 201. Therefore, based on the above, the Commission considers that while Belgacom seems to have the ability to refuse competing mobile wallets access to its SIM cards such strategy could be circumvented, even by its own subscribers who could use competing mobile wallets not using a SIM-based SE, and would only have a limited effect in relation to the operation of competing mobile wallets. As a result, Belgacom's ability to potentially refuse access to its SIM for the placement of the SE would not give it the ability to foreclose competing mobile wallets from operating on the Belgian market for retail mobile wallet services.
- 202. The Commission nonetheless also investigated the incentive of the BmWallet JV to restrict Belgacom customers' access to competing mobile wallets, and concludes that

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<sup>67</sup> For instance, Visa will preload its PayWave mobile payments applet onto embedded secure elements on some of Samsung's devices such as the Galaxy S4 (<http://pressreleases.visa.com/phoenix.zhtml?c=215693&p=irol-newsarticlePR&ID=1788782>).

<sup>68</sup> For instance, drivers in Metz, France can now register online to get an NFC sticker that they attach to the back of their phone to pay for their stay at a 2,100 place underground car park without a ticket or cash.

<sup>69</sup> Cloud based SEs should not be confused with cloud based security solutions. A cloud based SE is software capable of securely hosting Apps and their confidential and cryptographic data. Cloud based security solutions are other security systems on the cloud, such as a username / password system, a verification system or a dongle authentication system.

<sup>70</sup> For instance, the Dutch software company BellID, a provider of lifecycle management solutions for tokens (smart cards, mobile NFC phones) and smartcards, has launched an SE in the Cloud software that enables mobile NFC transactions to be made by storing and accessing NFC credentials in a remote environment rather than on the mobile device. This gives application issuers independence and direct control to manage their credentials without any third party involvement.

it is not likely that it would have such incentive. The Commission considers that restricting access to alternative mobile wallets could have a counter-effect in relation to Belgacom's retail mobile telephony services. If a customer of Belgacom is refused access to a successful competing mobile wallet which is available on the Mobistar or BASE networks in Belgium, he / she may switch away from Belgacom to another MNO.

203. This finding was supported by respondents to the market investigation, which confirmed that the availability of a multitude and variety of mobile wallets may become a key differentiating factor in the future for retail mobile telephony operators. Furthermore, a number of respondents explained that in the nascent mobile wallet market, customers want to use and test any mobile wallet and the incentive is to allow open access to all of them, so that the uptake towards mobile wallets is higher. One mobile wallet provider commented that *"today most consumers who regularly shop online already use several digital wallets (e.g. iTunesstore, Amazon "one click" payments, Paypal etc). Tomorrow, we expect that consumers will use even more digital wallets, depending on their needs and habits."* Another competitor argued that *"digital wallets are in their infancy and it is not possible to fully predict consumer behaviour as the market develops. Consumers are likely to have more than one digital wallet. For example, a consumer may have a relationship with an MNO which offers a digital wallet, as well as a relationship with a bank which also offers digital wallet with distinct (online banking) functionalities."*<sup>71</sup>
204. Therefore, the Commission considers that the Notifying Parties would not have the incentive to foreclose access to competing mobile wallets.
205. In the event that such foreclosure strategy were to be adopted, it would furthermore not have any significant detrimental effect on the competition downstream, as competing mobile wallet providers would be able to circumvent the foreclosure and still offer their competing mobile wallets.

*Risk of foreclosure of competing M(V)NOS in Belgium from offering the BmWallet to their customers*

The Notifying Parties' view

206. With regards to mobile telephony services, the Notifying Parties point out that the functioning of the BmWallet as an open platform will not depend on the identity of the MNO offering the mobile telephony service to end consumers. Any customer of an MNO competing with Belgacom will be able to download the BmWallet App on his / her smartphone, and to rely on the services it offers. The BmWallet will also not force consumers to opt for Belgacom as the BmWallet is not a "must have" product.
207. The Notifying Parties state that, once the SIM-based SEs become available, Belgacom will potentially be active as a supplier of secure SIM card storage (like any other MNO) to the BmWallet. The BmWallet would then offer two security options (that is to say software-based, and SIM card-based) in parallel. In the cases where Mobile ID on the SIM card is not yet supported (for example if the handset or the M(V)NO is not

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<sup>71</sup> See Responses to Questionnaire Q1 to competing mobile wallet providers of 6 September 2013, questions 16 and 16.1; to Questionnaire Q2 to competing MNOs of 6 September 2013, questions 16 and 16.1; to Questionnaire Q3 to competing Financial Institutions of 6 September 2013, questions 15 and 15.1; and to Questionnaire Q4 to suppliers of 6 September 2013, questions 15 and 15.1.

yet ready for a SIM-based SE) there is still the possibility of downloading the BmWallet App which would continue to rely on a software-based Mobile ID. Belgacom would therefore not be in a technical position to use the SIM-based SE to prevent other M(V)NOs from offering access to the BmWallet.

208. The Notifying Parties also stress that the success of the BmWallet will ultimately be a function of the number of consumers using the wallet. Therefore, the BmWallet JV will not have the incentive to limit the access to the BmWallet to Belgacom customers since such strategy would not be rational from a commercial perspective.

#### The Commission's assessment

209. As regards the ability to foreclose, according to the Notifying Parties, the BmWallet will use in the first stage a security solution that will be software based, rather than an SE. Therefore, customers with any mobile connection will be able to download the BmWallet App to their mobile devices, irrespective of the MNO providing the mobile connection.
210. However, the Commission notes that the BmWallet JV plans in a second stage to transfer the SE from the cloud to the SIM card. SIM cards are owned and controlled by MNOs and therefore agreements will need to be made between the BmWallet JV and each MNO issuing SIM cards in Belgium for access to the SIM in order to place the SE. The BmWallet JV could potentially only agree to be installed on Belgacom's SIM cards, and hence refuse to be installed on other SIM cards. One financial services respondent to the Commission's investigation expressed concern that too much control is given to a single stakeholder, Belgacom and that the BmWallet JV would be able technically to exclude other MNOs from making available the BmWallet to their customers.<sup>72</sup>
211. On this basis, the Commission considers that the BmWallet JV would have the ability to foreclose access to the BmWallet only to Belgacom customers, if it operates a SIM-based SE and discontinues its software based security. The result of this foreclosure strategy would be that consumers of other M(V)NOs in Belgium would no longer have access to the BmWallet.
212. However, such strategy would have limited success, as customers of other M(V)NOs would still have access to other competing mobile wallets, such as the retail MasterPass and V.me wallets branded by other Belgian banks.
213. As regards incentives, such foreclosure strategy would be detrimental to the uptake of the BmWallet, as it would limit it to a relatively small share of the population (that is to say only to Belgacom customers). The foreclosure would prevent more than 60% of the market (who are not Belgacom subscribers) from using the BmWallet.
214. The market investigation has shown that in order for a mobile wallet to get end-user acceptance and widespread use of the product, the wallet should be accessible to any person in Belgium who has a payment card and a smartphone. Given the nascent nature of mobile wallets, consumers are still not used to them and want to try as many different wallets as possible in order to decide which ones offer the features that they need, as well as to have access to the widest possible variety of offers, coupons and

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<sup>72</sup> See Responses to Questionnaire Q3 to competing financial institutions of 6 September 2013, question 25.

vouchers in order to compare the services (and quality of promotions and loyalty programmes) offered by each mobile wallet. Therefore, consumers will not choose a new entrant in this market that would restrict the availability of its wallet.

215. This is confirmed by almost all respondents in the market investigation. One wallet provider commented that *"it would seem reasonable to expect that the JV / parents would want to encourage participation of the non-participating M(V)NOs and non-participating financial institutions in order to develop and expand the number of cardholders and merchants who can access the JV's container wallet."* Another wallet provider confirmed that *"the BmWallet will only be successful if it benefits from a very wide consumer adoption. This would also ensure that many merchants would support the wallet. It is therefore important for the JV that the BmWallet is open to as many consumers as possible, i.e. non-Belgacom customers and non-BNPPF customers. It would be preferable to assume that commercially it would be preferable for the JV / parents to expand that ecosystem as much as possible and to include more cardholders and merchants."*<sup>73</sup>
216. This view is supported by every financial institution respondent and M(V)NO respondent. For instance, as one respondent explained, *"By making the BmWallet accessible to everyone, the JV will become more attractive to merchants and retailers to participate in. This will increase return."*<sup>74</sup>
217. On this basis of the above, it is most likely that the Notifying Parties would also not have the incentive to foreclose competing M(V)NOs from offering the BmWallet to their customers.
218. Furthermore, in the event that such foreclosure strategy were to be adopted, it would not have any significant detrimental effect on the competition downstream, as non-Belgacom customers could turn to competing mobile wallets, such as the retail MasterPass and V.me wallets of banks, possible future entrants of banks and M(V)NOs wallets, established online payment wallets (such as PayPal and Apple) and mobile wallets already functioning in other countries (such as the Google Wallet), which could enter the Belgian market.
219. Finally, the Commission considers that also given the low likelihood that a foreclosure strategy would be successful, it is unlikely that BNP Paribas Fortis, the other parent of the BmWallet JV, would favour such a foreclosure strategy as it would undermine the potential revenues of the BmWallet JV. BNP Paribas Fortis would not have any incentive to agree to it. As the BmWallet JV is a jointly controlled venture, it is unlikely that such strategic decision would be agreed upon.

#### 4.2 Vertical links with banking services and card issuing services in particular

220. The proposed transaction will give rise to vertical links between the activities of the BmWallet JV in the retail distribution of mobile wallet services and the banking activities of BNP Paribas Fortis, mainly in relation to payment card issuing services. The BmWallet does not transact payments. The BmWallet JV will contract with

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<sup>73</sup> See Responses to Questionnaire Q1 to competing mobile wallet providers of 6 September 2013, question 9 and question 24.

<sup>74</sup> See Responses to Questionnaire Q1 to competing mobile wallet providers of 6 September 2013, questions 12, 12.1, 13 and 13.1; and to Questionnaire Q3 to competing Financial Institutions of 6 September 2013, questions 12 and 12.1.

providers of retail payment wallets (that is to say banks such as BNP Paribas Fortis or others) to authorise their retail payment wallets to operate within the BmWallet for payments. These retail payment wallets may be based on wholesale platforms created by the card schemes, such as V.me and MasterPass, for their members (that is the banks). Retail payment wallets may also be independent solutions.

221. In order for a retail payment wallet to be accepted into the BmWallet as a payment wallet, each issuer of a retail payment wallet (such as banks utilising the MasterPass or V.me wallet platforms) will need to enter into a free "Service Provider" agreement with the BmWallet JV, to make its service accessible to BmWallet end users.<sup>75</sup>
222. Any credit institution established in Belgium is free to join the MasterPass platform, create its customised retail mobile payment wallet and allow its customers to upload its payment cards on it.
223. The Notifying Parties consider that the BmWallet will make it easier to use the retail MasterPass wallets in a mobile environment and that the BmWallet integrates other aspects of the payment experience that MasterPass is not offering at this stage (such as couponing and loyalty programmes).
224. The wholesale MasterPass wallet platform is designed as an open environment and allows the bank which issues the retail Masterpass payment wallet to accept a number of different payment cards of different card schemes (for example MasterCard, Visa, American Express) and different banks (for example Belfius, ING, BNP Paribas Fortis). However, the ultimate decision on which cards will be accepted on each payment wallet rests alone on each provider of the retail payment wallet, that is on each bank.
225. Therefore, the banks operating their customised retail MasterPass payment wallet can specify which cards their MasterPass wallet will accept and can limit the cards to only the cards that their bank issues. This means that a customised BNP Paribas Fortis payment wallet could restrict the cards only to BNP Paribas Fortis cards. Similarly, other banks could do the same for their own customised wallets. The same applies for other wholesale wallets such as the V.me wallet and for independent solutions.
226. The Commission has examined the following two foreclosure theories:
  - i. Whether the (a) BmWallet JV would have the ability and incentive to foreclose other payment wallets (such as a retail MasterPass and / or V.me payment wallets of other banks) from being accepted into the BmWallet and (b) whether BNP Paribas Fortis would have the ability and incentive to foreclose the payment cards of other banks from being accepted into the BNP Paribas Fortis retail MasterPass wallet or prioritise its own payment cards over the payment cards of other banks in the BNP Paribas Fortis retail MasterPass wallet, and whether such foreclosure strategies would have a significant detrimental effect in the competition downstream on the markets for the provision of card payment services in Belgium; and
  - ii. Whether BNP Paribas Fortis would have the ability and incentive (a) to foreclose the BNP Paribas Fortis MasterPass retail payment wallet from being

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<sup>75</sup> See Notifying Parties' Replies on 27 September 2013 to the Commission's questions of 26 September 2013.



used in other mobile wallets and (b) to foreclose the BNP Paribas Fortis payment cards from being used in the payment wallets of other banks and whether such foreclosure strategies would have a significant detrimental effect in the competition downstream on the market for the retail distribution of mobile wallets services in Belgium.

*Risk of foreclosure of competing banks in Belgium from having their retail payment wallets accepted by the BmWallet JV and from having their payment cards accepted by the BNP Paribas Fortis payment wallet*

The Notifying Parties' view

227. In relation to the risk of foreclosure of other retail payment wallets (for instance an ING payment wallet or a Belfius payment wallet, etc.) from the BmWallet, the Notifying Parties have declared that the BmWallet will be connected to any retail payment wallet as there would be no technical reason preventing such connection. Furthermore, connection of the BmWallet with more than one retail payment wallet would be in the BmWallet JV's interest as it would increase its potential customer base. The Notifying Parties would consider positively a partnership with additional payment wallets if an interest were raised in the future.
228. In relation to the risk of foreclosure of payment cards of other banks from the BNP Paribas Fortis payment wallet (based on the wholesale MasterCard platform), the Notifying Parties state that MasterPass is independent of BNP Paribas Fortis, and so is MasterCard (for example in terms of share capital, composition of the board and latitude to set payment card rules). Therefore, the BmWallet JV would not be in a position to instruct MasterPass (or, more generally, MasterCard) not to accept cards issued by other financial institutions. Once these cards are issued on MasterPass, they may be used to transact via the BmWallet. The BmWallet JV does not have the technical ability to refuse transactions through non-BNP Paribas Fortis cards on MasterPass as it will not be able to see the card number nor the card issuer in each transaction. The BmWallet will only be able to see an alias, and therefore is not able to treat card issuers differently.
229. In addition, according to the Notifying Parties, it would run against their commercial interest to limit access to the BmWallet (for instance, by excluding clients of competing banks) as this would significantly reduce the potential consumer base of the BmWallet, and would be detrimental to its commercial success.

The Commission's assessment

230. The Commission understands however that the operation and control of the retail payment wallet rests on each retail wallet provider, that is to say on each bank. This means that the BNP Paribas Fortis payment wallet (using the wholesale MasterPass platform) will be controlled and operated by BNP Paribas Fortis and not by MasterCard.
231. In relation to the ability to restrict the BmWallet to the BNP Paribas Fortis (MasterPass) payment wallet as the only retail payment wallet, it is clear that the Notifying Parties will have such ability, as they control the BmWallet JV and thus they control who the BmWallet JV enters into contractual agreements with.
232. Similarly, in relation to the ability to restrict the payment cards available on the retail BNP Paribas Fortis payment wallet, BNP Paribas Fortis will be in a position to

determine which payment cards it wants to accept on its customised retail MasterPass (or in the future on its customised retail V.me) payment wallet. The MasterPass platform has been designed as an open platform and it is possible for a bank to accept a variety of payment cards, including the payment cards of other banks. However, this is for each issuer of the retail payment wallet to decide. Some respondents to the market investigation expressed concerns that the BmWallet JV could prioritise one payment card over another,<sup>76</sup> for example by selecting by default the BNP Paribas Fortis payment card. The Commission understands that each bank can decide how to prioritise the payment cards on its own retail payment wallets.

233. Thus, BNP Paribas Fortis can determine which payment cards will be accepted on its payment wallet and how they will be prioritised. It cannot determine which cards the retail payment wallets of other banks will choose to accept.
234. However, the BmWallet JV is a new entrant into the dynamic market for mobile wallet services. Mobile payment wallets do not necessarily need to be placed inside mobile wallets such as the BmWallet and sometime retail payment wallets incorporate on their own some of the functions of the BmWallet (such as links with rewards and advertising / data analytics services). Moreover, there are other alternatives in the market, including other current and potential mobile wallets. Therefore, competing banks will find an alternative solution both for their competing payment wallets and for their competing payment cards.
235. Therefore, the Commission considers that the BmWallet JV would have the ability to foreclose access to the BmWallet only to the BNP Paribas Fortis payment wallet(s) and in turn that BNP Paribas Fortis would have the ability to foreclose the payment cards of other banks from being accepted on the BNP Paribas Fortis retail payment wallet. However, the BmWallet JV and BNP Paribas Fortis would not have the ability to foreclose competing payment wallet providers and competing banks from the market, as there are a number of alternative options available.
236. In relation to the incentives to restrict the payment wallets of other banks from working with the BmWallet, the Commission considers that neither the BmWallet JV nor Belgacom have such incentives.
237. The Commission considers that the BmWallet JV would have an incentive to keep the system open and accept as many payment methods as possible, as this would ensure that the BmWallet finds wide acceptance among users who may prefer different types of retail payment wallets. The respondents to the market investigation have indicated that the more open the BmWallet JV is, the easier it will be to find widespread acceptance both from consumers and from merchants.<sup>77</sup>
238. Respondents to the market investigation confirmed that *"the MasterPass wallet is by nature an open wallet which enables consumers to upload any payment cards into it without constraints. Registering a payment card in the MasterPass wallet can be compared to registering a card in an internet merchant's wallet (e.g. the Amazon "one click" wallet). Although it could technically be possible for the issuer of a MasterPass*

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<sup>76</sup> See Responses to Questionnaire Q3 to competing financial institutions of 6 September 2013, question 12.

<sup>77</sup> See Responses to Questionnaire Q1 to competing mobile wallet providers of 6 September 2013, questions 12 to 14; to Questionnaire Q2 to competing MNOs of 6 September 2013, questions 12 and 12.1

*wallet to block the upload of cards by competing issuers, the interest of the JVC will be to attract as many users as possible to establish an attractive market position. In such a context, it is not in the interest of the JV to limit the consumers' enrolment e.g. to Belgacom customers and / or BNP Paribas customers."*<sup>78</sup>

239. As regards the incentives of BNP Paribas Fortis to foreclose payment cards of other banks from its retail payment wallet, all financial institutions who responded to the Commission's market investigation agreed that the BmWallet would not have an incentive to restrict the use of the retail payment wallet only to BNP Paribas Fortis customers.<sup>79</sup> Both the BmWallet JV and BNP Paribas Fortis have an interest that both the BmWallet but also the retail BNP Paribas Fortis payment wallet can be accessed by customers of any financial institution, whether or not customers of BNP Paribas Fortis, so that merchants can accept cards from all customers and not only those that are offered by BNP Paribas Fortis.<sup>80</sup>
240. If such foreclosure strategy were to be adopted, it would likely not have any significant detrimental effect either on the competition downstream, as competing banks would be able to circumvent the BmWallet JV and still offer their cards either in competing mobile wallets or as stand-alone payment wallets.
241. On the basis of the above, it is most likely that the Notifying Parties and the BmWallet JV have no incentive to block competing banks' payment wallets from being accepted in the BmWallet wallet and no incentive to block competing banks' payment cards from being accepted in the BNP Paribas Fortis payment wallet.
242. Finally, given the low likelihood that a foreclosure strategy would be successful, it is unlikely that Belgacom, the other parent of the BmWallet JV, would favour such a foreclosure strategy, as it would undermine the potential revenues of the BmWallet JV. Belgacom would not have any incentive to agree to it. As the BmWallet JV is a jointly controlled venture, it is unlikely that such strategic decision would be agreed upon.

*Risk of foreclosure of the BNP Paribas Fortis retail payment wallet from competing mobile wallets and of the BNP Paribas Fortis payment cards from competing retail payment wallets of other banks*

The Notifying Parties' view

243. In relation to the risk of foreclosure of the BNP Paribas Fortis retail payment wallet from other mobile wallets, the Notifying Parties state that BNP Paribas Fortis would not be in a position to instruct MasterPass not to offer its services to competing mobile wallets.
244. In relation to the risk of foreclosure of the BNP Paribas Fortis' payment cards from payment wallets of competing banks, the Notifying Parties state that BNP Paribas

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<sup>78</sup> See Responses to Questionnaire Q1 to competing mobile wallet providers of 6 September 2013, question 13.

<sup>79</sup> The Notifying Parties estimate that BNP Paribas Fortis has a [20-30]% market share in the market segment for the issuing of debit cards in Belgium, and [20-30]% in the market segment for the issuing of credit cards in Belgium (2011 estimates).

<sup>80</sup> See Responses to Questionnaire Q3 to competing Financial Institutions of 6 September 2013, questions 12 and 12.1.

Fortis' payment cards issued on MasterPass will be available for use on any competing mobile wallet that would rely on the MasterPass wallet platform. From a technical perspective, depending on the wallet, BNP Paribas Fortis does not necessarily see the enrolment transaction (and cannot stop it) and / or BNPPF does not necessarily see that the payment transaction comes from a wallet (and cannot treat it differently). From a business and contractual perspective, BNP Paribas Fortis has no interest in blocking its payment cards from being used via a competing retail payment wallet.

245. The Notifying Parties point out that in view of the presence of significant competitors in Belgium for the issuing of debit or credit cards (for example KBC, ING, Belfius), it would not be in the commercial interest of BNP Paribas Fortis to restrict the use of its credit and debit cards to the BmWallet, as this may weaken its competitive positions vis-à-vis these other players.

The Commission's assessment

246. The Commission understands that MasterPass is a wholesale payment platform developed by MasterCard which each bank can customise and offer to the banks' customers on a retail basis. Therefore, the operation of each retail MasterPass wallet will be in the control of each bank.
247. In relation to the ability to restrict the BNP Paribas Fortis payment wallet only to the BmWallet, it is clear that BNP Paribas Fortis will have such ability, as it will control its own retail payment wallet and thus will control the contractual arrangements in relation to all mobile wallets.
248. Similarly, in relation to the ability to restrict the availability of the BNP Paribas Fortis payment cards only to the BmWallet, BNP Paribas Fortis will be in a position to determine which retail payment wallets it wishes to make its payment cards available to. It is technically possible for a bank to authorise its cards to be available to all payment wallets or to be restricted to only a few. This is for each issuer of payment cards to decide.
249. Thus, BNP Paribas Fortis can determine which mobile wallets its payment cards will be available in. It cannot of course determine which wallets the payment cards of other banks will choose.
250. However, there are alternative payment cards and alternative payment wallets which operate on the market or may enter in the future. Therefore, competing mobile and retail payment wallets will be able to resort to another bank for card payment and mobile payment wallet services. Therefore, the Commission considers that BNP Paribas Fortis would have the ability to foreclose access to its payment wallet only for the BmWallet and in turn that BNP Paribas Fortis would have the ability to foreclose the payment wallets of other banks from processing BNP Paribas Fortis retail payment cards. However, the BmWallet JV and BNP Paribas Fortis would not have the ability to foreclose competing mobile and payment wallets from finding alternative retail payment wallets and alternative payment cards. Therefore, BNP Paribas Fortis would not have the ability to foreclose competitors from the market.
251. In relation to the incentives to restrict the retail payment wallets of BNP Paribas Fortis from working with other mobile wallets, the Commission considers that it is unlikely that BNP Paribas Fortis would have such incentives.

252. The Commission considers that BNP Paribas Fortis would have an incentive to keep the system open and allow its retail payment wallet to be included in as many mobile wallets as possible, as this would ensure that the BNP Paribas Fortis retail payment wallet finds wide acceptance among users who may prefer different types of mobile wallets.
253. Moreover, even if this strategy has some advantages to the BmWallet JV, it would disadvantage BNP Paribas Fortis, as it would restrict the use of its retail payment wallet. Since it is for BNP Paribas Fortis to decide the availability of its retail payment wallet, it is unlikely that BNP Paribas Fortis would favour such a foreclosure strategy that would marginally favour the BmWallet JV but undermine the BNP Paribas Fortis core business activity.
254. If such foreclosure strategy were to be adopted, it would likely not have any significant detrimental effect either on the competition downstream, as competing mobile wallets to the BmWallet would be able to circumvent the BNP Paribas Fortis retail payment wallet and accept retail payment wallets of other banks.
255. As regards the incentives of BNP Paribas Fortis to foreclose the retail payment wallets from other banks from accepting its payment cards, BNP Paribas Fortis has an interest that its payment cards can be accessed by customers using any payment wallet, whether or not the retail payment wallet of BNP Paribas Fortis.
256. If such strategy were to be adopted, it would not have any significant detrimental effect on the competition downstream, as competing payment wallets would be able to circumvent the foreclosure and offer the payment cards of other banks on their retail payment wallets.
257. On this basis of the above, it is most likely that BNP Paribas Fortis have no incentive to block their retail payment wallets from being used on competing mobile wallets and to block their payment cards from being used on competing retail payment wallets of other banks.

## **VI. CONCLUSION**

258. For the above reasons, the Commission has decided not to oppose the proposed concentration and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

*For the Commission*

*(signed)*

*Joaquín ALMUNIA*

*Vice-President*