EUROPEAN COMMISSION
DG Competition

Case M.7873 - WORLDLINE / EQUENS / PAYSQUARE

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) in conjunction with Art 6(2)
Date: 20/04/2016

In electronic form on the EUR-Lex website under document number 32016M7873

EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 20.4.2016
C(2016) 2470 final

PUBLIC VERSION

To the notifying parties:

Dear Madam(s) and/or Sir(s),

Subject: Case M.7873 – Worldline / Equens / Paysquare
Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

(1) On 26 February 2016, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Worldline S.A. ("Worldline" France), ultimately controlled by Atos S.E. ("Atos", France) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of Equens S.E., including its subsidiary PaySquare (together "Equens", the Netherlands), by way of purchase of shares.[3] (the 'Transaction'; Atos and Worldline are hereinafter referred as the 'Notifying Party' and Atos, Worldline and Equens collectively as the 'Parties'.)

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

2 OJ L 1, 3.1.1994, p.3 ("the EEA Agreement").

3 Publication in the Official Journal of the European Union No C 089, 05.03.2016, p. 10.

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I. THE PARTIES

(2) Worldline is a *société anonyme à conseil d'administration* incorporated under the laws of France and listed on the Paris Euronext market. Worldline is active in the payments and transactional services industry. Its activities are organised around three business lines: (i) Merchant Services & Terminals, which primarily targets merchants and is organized in four business divisions, namely merchant acquiring, online services, private label card & loyalty programs and terminals; (ii) Financial Processing & Software Licensing ("FPLiS") targeting banks and financial institutions, which is comprised of Worldline's acquiring processing, online banking, issuing processing and payment software licensing business divisions and (iii) Mobility & e-Transactional Services, with its three business divisions, i.e. e-Ticketing, e-Government collection and e-Consumer and mobility. Worldline is active in the EEA and in emerging markets such as India, China and certain countries in Asia and Latin America. Worldline is solely controlled by Atos.[4]

(3) Atos is a global digital service provider, incorporated as a *Societas Europea* under the laws of France and listed on the Euronext Paris market. Atos provides Consulting & Systems Integration services, Managed Services & Business Process Outsourcing, Cloud operations, Big Data & Cyber-security solutions, as well as transactional services through Worldline.

(4) Equens is a payment service provider, active in Finland, Germany, Italy, the Netherlands and the United Kingdom as a *Societas Europea* incorporated under the laws of the Netherlands. Equens offers a complete service portfolio covering the full value of chain of both payments processing and cards processing services.

(5) PaySquare, a fully-owned subsidiary of Equens, is a provider of merchant acquiring services active in Belgium, Germany, Luxembourg, the Netherlands, Poland, Switzerland and the United Kingdom. In particular, merchants can use PaySquare to accept, process and make payments for payment cards. As its parent company Equens, PaySquare is also organised as a *Societas Europaea* incorporated under the laws of the Netherlands. PaySquare owns a 100% subsidiary, BD-POS GmbH, focusing on payment terminal management and services.

II. THE OPERATION

(6) The Transaction, implemented through two interrelated[5] transactions, consists in the acquisition by Worldline, through one of its fully-owned subsidiaries in the Netherlands (Atos group), of:

a) sole control over Equens' fully owned subsidiary, PaySquare;

b) sole control (63.6% of the share capital and voting rights) over Equens[6] in consideration of the contribution by Worldline of part of its Financial Processing & Software Licensing business line ("FPLiS") and of the team and activities related to the processing of Worldline Benelux card payment

4 Atos has a 70.34% share in Worldline.

5 […].

6 Equens S.E., excluding PaySquare, once FPLiS and the team and activities related to the processing of Worldline Benelux card payment merchant acquiring have been contributed to Equens.

merchant acquiring. The remainder of Equens' shares will be held by Equens' current shareholders.[7]

(7) Following the Transaction, and as illustrated in Figure 1 below, Atos will be the ultimate controlling entity of Equens.

Figure 1 – Overview of the Transaction

[...]

Source: Notifying Party, Form CO

(8) Therefore, the Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. EU DIMENSION

(9) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[8] (Worldline/Atos: EUR […] million, Equens including Paysquare EUR 357 million). Each of them has a EU-wide turnover in excess of EUR 250 million (Worldline/Atos: EUR […] million, Equens including Paysquare EUR 357 million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation has therefore a EU dimension.

IV. COMPETITIVE ASSESSMENT

IV.1. Introduction and the Parties' activities

(10) The Transaction combines two large operators in the payment systems space. The Parties' activities mainly[9] overlap in relation to card payment systems. This section therefore aims to provide a brief description of those.

(11) Card payment systems allow a cardholder to use a card (e.g. a credit or debit card) in order to pay for a product or a service without using cash. They connect merchants to financial institutions to cover the whole transaction from the moment the client pays at the point of sale ("POS") until the moment the merchant account is credited.

(12) The chart below illustrates some of the key steps and the main players involved in a typical card payment transaction.

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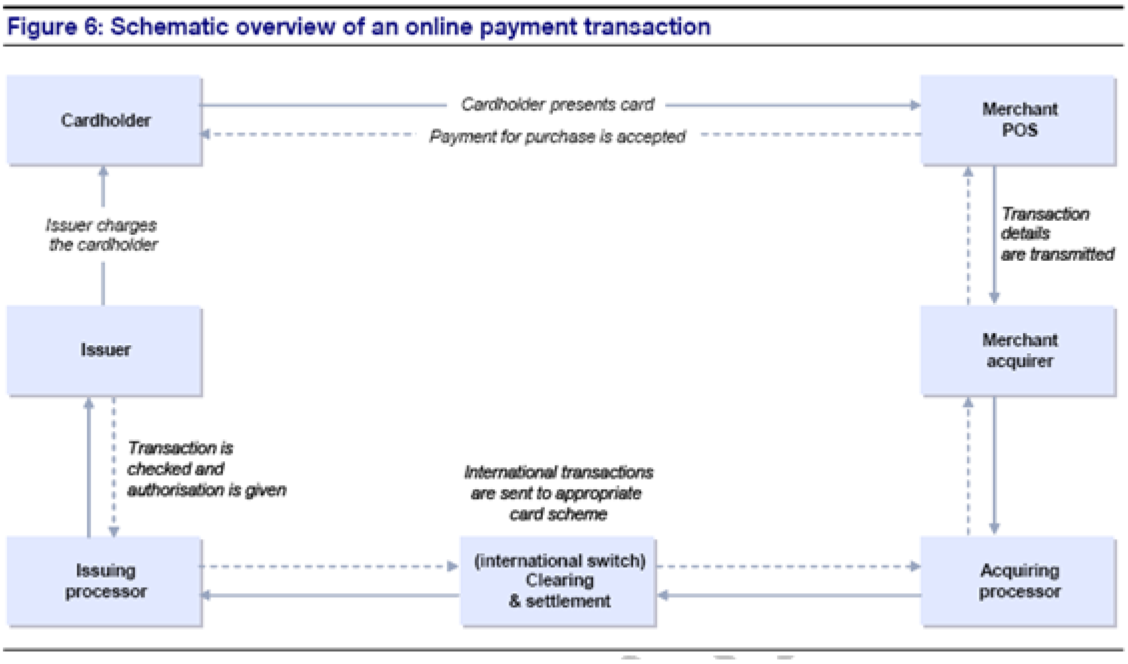
7 […].

8 Turnover calculated in accordance with Article 5 of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

9 Further overlaps arise for example as regards the Parties' activities as processors for SEPA direct debit and credit transfer transactions. As no affected markets arise in this regard, unless if the processing of iDEAL transaction would form part of these markets, these will not be assessed in the present Decision, except for in the section on iDEAL processing (section IV.2.3.1) .

Figure 2 – Overview of a payment transaction



Source: Notifying Party

(13) An electronic card payment transaction usually begins with cardholders using a card to purchase goods or services from a merchant, which seeks the merchant acquirer's authorization for the transaction. The authorisation request is initiated from the merchant's card reader (a POS terminal) and is transmitted to the acquiring processor via an electronic network. The acquiring processor identifies the card payment system to which the card belongs and transmits the authorization request to the issuing processor, which checks if the card is valid and sometimes the limit on the card holder's account. The answer is transmitted back to the terminal within seconds via the network. If the transaction is authorised, the merchant can be sure of payment and will hand over the merchandise or deliver the service to the client.

(14) With some variations across countries, (card) payment systems, and companies, most players in this space are active in various stages of this process. With respect to the Transaction, the Parties' activities overlap in particular with regard to the following steps:

- **Merchant acquiring:** these services essentially enable merchants to accept payment cards at their POS terminals. Merchant acquirers sign contracts with merchants/retailers (who are thus customers of merchant acquirers), maintain the merchant-customer relationship and ensure that merchants are paid for their sales through cards;

- **acquiring processing:** the merchant-oriented side of technically processing a transaction. It includes the network routing of payments toward the corresponding issuing entity and the POS authorisation. Merchant acquirers either provide acquiring processing in house, or outsource it to third party processors;

- **issuing processing:** the issuer-oriented side of technically processing a payment transaction. It includes the financial and technical request for payment authorisation from the issuing entity, maintenance and management of local and international blocking lists, verification of card limits, management of card accounts, generation of cardholder statements and invoicing.

(15) In addition, Equens is also active in **clearing & settlement**, and Worldline is a leading **terminal manufacturer and provider**, selling or renting and providing maintenance services to customers (i.e. merchants/retailers). It also provides acquiring processing services for iDEAL transactions, a card-less payment method existing in the Netherlands and provided by online merchants to their customers that allows direct access to the customers' bank accounts for the payment of goods or services sold by these merchants.

(16) Finally, Worldline is also active as a provider of **application software for the banking sector**.

IV.2. Product markets

(17) In previous Commission decisions[10], the relevant product markets were in essence defined along the lines of the key functions/services involved in a payment card transaction described above in recital (14). In particular, the Commission distinguished three main card related activities: (i) the issuing of payment cards to individuals and companies, (ii) payment card processing and (iii) the acquiring of merchants for card payment acceptance (merchant acquiring).

(18) In view of the overlaps of the Parties' activities resulting from the Transaction, the potential markets for (1) merchant acquiring, (2) card processing (acquiring processing & issuing processing), (3) credit (SCT) transfer, e-commerce payments and iDEAL processing, (4) the provision of POS terminals and related services, and (5) the market for the provision of software for German network service providers ("NSPs"), will be discussed below.

IV.2.1. Merchant acquiring

IV.2.1.1. Previous Commission decisions

(19) In previous decisions,[11] the Commission considered that the merchant acquiring market could be further subdivided along a number of axes: (a) types of payment card schemes (international/domestic), (b) payment card brands (e.g. Visa, MasterCard), (c) the type of payment card (debit/credit); and (d) depending on whether services are required for payments made through physical POS terminals or via web-enabled interfaces (eCommerce). In all previous cases, the Commission left the precise scope of the product market definition open

IV.2.1.2. Notifying Party's view

(20) The Notifying Party considers the most relevant market to be the overall merchant acquiring market notably because the main concern of the merchant is to be able to accept as many types of cards as possible irrespective of its type. However, the Notifying Party also submits that the segmentations previously considered by the Commission could be relevant due to certain differences among acquiring activities for certain types of cards.

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10 See for example M.7241 - Advent International/Bain Capital Investors/Nets Holding; M.7078 - Santander Consumer Finance/ El Corte Ingles/ Financiera El Corte Ingles, M.5241 - American Express/Fortis/Alpha Card.

11 See for example M.7241 - Advent International/Bain Capital Investors/Nets Holding, Case M.7711 - Advent International/Bain Capital/ICBPI, M.6956 - Telefonica/Caixabank/Banco Santander, M.5241 - American Express/Fortis/Alpha Card.

a) Regarding the potential segmentation of the relevant market by distinguishing between international and domestic schemes, the Notifying Party notes the following differences: clearing and settlement go through different channels, the card technology (may) differ, product and business rules are different (defined on supra-national basis for international schemes), and prices also vary. Finally, the Notifying Party also submits that domestic schemes have been phased out in a number of EU Member States (including the Netherlands and Luxembourg), but remain important in others (including notably Belgium and Germany).

b) As for a distinction by card brand, the Notifying Party argues that from the demand side, there is no need to divide the market for merchant acquiring in this manner, as merchants usually aim for business reasons at accepting all brands, or at least the well-established brands, of payment cards. From a supply side, it submits that most merchant acquirers are able to acquire different brands, and hence is not certain whether such segmentation is relevant.

c) Regarding the potential segmentation of the relevant market by distinguishing between acquiring of credit and debit card based transactions, the Notifying Party submits that differences in terms of price, interchange fees or commercial conditions may justify the definition of separate markets.

d) Regarding the potential segmentation of the relevant market by distinguishing between POS-based and web-enabled acquiring services, the Notifying Party notes that differences remain concerning technical infrastructure, commercial strategy, risk and fraud management requirements. It also points to the existence of players only active on the acquiring of web-enabled transactions. In addition, some customers have separate contracts for each type of services with different terms and conditions and even different services providers.

IV.2.1.3. Commission's assessment

(21) In the present case, the Parties' merchant acquiring activities overlap with regard to certain card brands, international schemes, debit and credit cards, as well as both POS terminals and web-enabled interfaces. The Commission's market investigation aimed at establishing whether the definition of separate markets for these previously contemplated segments would be appropriate.

(22) Generally speaking, the results of the market investigation clearly indicate that most merchant acquirers do not offer the acquiring of the same types of cards, even if most offer the most common brands such as Visa for example.[12] As the time and investment needed to add another type of card to an acquirer's portfolio is a relevant consideration for all contemplated market segmentations[13], the following considerations regarding supply-

12 See replies to Questions 23, 24 and 31 of Questionnaire Q4 to competitors.

13 If a company were only active in international schemes, it would have to add a domestic card scheme to its portfolio just as much as a credit card specialist would have to add a debit card to its portfolio to become active in this segment.

side substitutability[14] should be made upfront, as they apply to all plausible product markets assessed in this section..

(23) The results of the market investigation indicate that it would take a considerable amount of time and investment[15] for merchant acquirers to start offering acquiring of a new card (brand or type). One competitor describes the necessary steps as follows: "*In order to add a scheme [...] where X is not providing acquiring services yet, X has to: Acquire an acquiring license of this scheme, set-up the payment processing environment (acquiring processing host, connected to the scheme), pass through the certification process, and organize the operational flow: boarding, activation, billing, pay-out.*"[16] This would suggest that generally speaking, there is very limited supply-side substitutability across all plausible market segments.[17]

(24) As for demand-side substitutability[18] across acceptance of different cards by merchants, it should be borne in mind that for a merchant, the possibility to accept one type of card has little relevance if a customer wants to pay with a different type of card. Therefore, the Notifying Party's claim that most merchants are interested in having the possibility to accept a relatively wide range of payment cards is probably accurate. This indicates, at a general level, that the demand side substitutability between different types of cards and ultimately between merchant acquiring services for different types of cards (debit/credit, domestic card scheme/international card scheme, Visa/American express etc.) is rather limited.

(25) In addition, the market investigation revealed certain differences across cards that specifically support the market segmentations which the Commission considered in previous cases.

a) International vs domestic card schemes

(26) The results of the market investigation confirm the Notifying Party's submission that prices for acquiring services can vary significantly between domestic (in as far as they exist) and international schemes.[19] In addition, a number of customers point to other differences as regards for example the amount of time that it takes for a payment to arrive at the merchant's account.[20]

14 See Commission notice on the definition of relevant market for the purposes of Community competition law ("Commission Notice on market definition"), OJ C 372, 9.12.1997, p. 5–13, and in particular paragraphs 20 et seq.

15 Between several months and years and between EUR several hundred thousand and millions.

16 See replies to Question 11 of Questionnaire Q4 to competitors.

17 See replies to Question 11 of Questionnaire Q4 to competitors.

18 See Commission Notice on market definition and in particular paragraphs 15 et seq.

19 See replies to Question 6 of Questionnaire Q1 to customers, and Question 12 of Questionnaire Q4 to competitors.

20 See replies to Question 6 of Questionnaire Q1 to customers.

b) Debit vs. credit card

(27) The results of the market investigation indicate that there are significant differences in pricing across debit and credit schemes.[21] Customers also mentioned that other modalities such as charge back and pay out delays vary between debit and credit cards.[22]

c) Segmentation by card brand

(28) Similarly as for the above plausible market segmentations, respondents to the market investigations (both customers and competitors) confirm that each card scheme has its own and different pricing, and pay-out delay might also vary.[23]

d) POS vs web-enabled

(29) Finally, a clearly majority of customers and an overwhelming majority of competitors have identified various differences between acquiring services for POS terminals and web-enabled interfaces.[24]

Conclusion

(30) The above supports that the existence of separate markets for the segments considered in previous Commission decisions remains plausible. This means types that the segmentation of the market by the following axes – (a) payment card schemes (international/domestic), (b) payment card brands (e.g. Visa, MasterCard), (c) the type of payment card (debit/credit); and (d) depending on whether services are required for payments made through physical POS terminals or via web-enabled interfaces (eCommerce) – remains pertinent.

(31) The Commission also considers at this stage that national specificities, which will be discussed in greater detail below in the section the relevant geographic market (see section IV.3.1), might have a bearing on the precise product market definition. For instance, in Luxembourg and the Netherlands, there are no domestic schemes anymore, which make a distinction between those types of scheme futile. On the other hand, Belgium's domestic debit scheme, Bancontact Mr Cash ("BCMC"), remains important in this Member State. In view of the fact that all BCMC cards are co-branded with the Maestro international debit scheme, and that retailers can choose which brand they prefer that there is consequently certainly a relatively high degree of demand-side substitutability between the two, the distinction between international schemes and the domestic schemes appears to be of little or at least less relevance than in other EU Member States with strong domestic cards schemes. Finally, also in Germany the domestic debit scheme plays an important role – and a specific set-up (see below in

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21 See replies to Question 8 of Questionnaire Q1 to customers, Question 6.2 of Questionnaire Q2 to customers and Question 12.2 of Questionnaire Q4 to competitors.

22 See replies to Question 6.2 of Questionnaire Q1 to customers.

23 See replies to Question 6.3 of Questionnaire Q1 to customers, Question 6.3 of Questionnaire Q2 to customers and Question 12.3 of Questionnaire Q4 to competitors.

24 See replies to Question 6.3 of Questionnaire Q1 to customers, Question 6.3 of Questionnaire Q2 to customers and Question 12.3 of Questionnaire Q4 to competitors.

section IV.2.5), particularly the distinction domestic vs international schemes seems to be more pertinent there than in other Member States.

(32) In any event, the definition of the relevant product market can be left open for the purposes of the present decision as the Transaction, depending on the geographic markets, either raises or does not raise serious doubts under all plausible product market definition considered in this section.

IV.2.2. Card processing

IV.2.2.1. Previous Commission decisions

(33) The Commission has previously defined a distinct market for payment card processing, and within that market, has distinguished between acquiring processing and issuing processing, but ultimately left that segmentation open[25]. The Commission also inter alia considered that the market for acquiring processing services could be further segmented between acquiring processing for POS transactions and for web-enabled transactions.[26] Conversely, the Commission has never considered any possible further segmentation of the market for issuing processing.

IV.2.2.2. Notifying Party's view

The Notifying Party agrees with the Commission's previous decisions. The Notifying Party also submits that acquiring processing and issuing processing comprise actions which can be different and cannot be considered as substitutable for each other within the meaning of the EUMR.

(34) According to the Notifying Party, the market for issuing processing should not be further segmented. The Notifying Party submits that the technical requirements and complexity which may justify a segmentation of the market on the acquiring processing side, are less relevant on the issuing processing side. The Notifying Party submits that, as a general matter, on the acquiring processing side, it is necessary to be able to adapt to the variety of cards that the merchant can accept, and to the types of transactions (POS/web-enabled), whereas those factors are less prominent for the issuing processor. For example, for the issuing processor the processing will be the same regardless of where the transaction is originated (POS/Web-Enabled).

IV.2.2.3. Commission's assessment

(35) There is no information at the Commission's disposal, including from its market investigation which would suggest it were appropriate to deviate from its previous decisional practice according to which, in the card processing space, a general distinction should be drawn between acquiring processing and issuing processing services and, within acquiring processing services, a distinction between acquiring processing for POS transactions and for web-enabled transactions is likely to exist. Furthermore, the market

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25 See for example M.7241- Advent International/Bain Capital Investors/Nets Holding; M.7078 - Santander Consumer Finance/El Corte Ingles/Financiera El Corte Ingles; M.5241 - American Express/Fortis/Alpha Card.

26 M.7241- Advent International/Bain Capital Investors/Nets Holding.

investigation did not provide any evidence that any further segmentation of a possible market for issuing processing should be considered.[27]

(36) Under these plausible market definition, the Parties activities give rise to one potentially affected market in issuing processing, i.e. issuing processing in Germany, and possibly with respect to acquiring processing in the Netherlands, should the processing of iDEAL, as described below in section IV.2.3, fall in this product market.

(37) In any event, the product market definitions can be left open as under these plausible market definitions the Transaction does not give rise to serious doubts.

IV.2.3. Credit and iDEAL processing

IV.2.3.1. Introduction

(38) Potential overlaps between the Parties' activities also arise with respect to Worldline's supply of acquiring processing services for iDEAL transactions, and Equens' processing activities, including of credit transfers and (card based) electronic transactions.

(39) iDEAL is a payment method provided by online merchants to their customers that allows direct access to the customers' bank accounts for the payment of goods sold or services rendered by these merchants. iDEAL does not require the use of a credit- or debit card.

(40) From an end user perspective, the look and experience of iDEAL varies per bank and is identical to the online services delivered to clients of the respective bank. Therefore, iDEAL is perceived by consumers as part of their online bank environment.

(41) Ten banks active in the Netherlands (including the major ones) have connected their online banking environments to iDEAL. In the Netherlands, iDEAL is offered to online merchants by approximately fifty Payment Service Providers ("PSPs") as a part of the payment methods available on the Dutch e-commerce market, which also include credit transfers initiated by the consumer, SOFORT (a similar tool as iDEAL but offered by fewer Dutch banks), credit card transactions, PayPal and many others.

(42) The key service provided by the iDEAL processor to its customers, i.e. the banks that participate in iDEAL, is to provide the "switch", which establishes the connectivity and transactions routing/communication between the participating banks, and some reporting activities.

IV.2.3.2. Previous Commission decisions

(43) As described above in section IV.2.2, the Commission has previously considered that the market for acquiring processing services could be further segmented between acquiring processing for POS transactions and for web-enabled transactions.[28]

(44) The Commission has thus far never assessed whether iDEAL processing forms part of the same market as (card based) acquiring processing. It also has never considered other plausible market to which iDEAL could belong, i.e. markets for SEPA credit transfer processing, or e-commerce payments.

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27 See for example conference call with a customer, dated 17 February 2016.

28 M.7241- Advent International/Bain Capital Investors/Nets Holding.

IV.2.3.3. Notifying Party's view

(45) The Notifying Party firstly submits that iDEAL processing could form part of one of the following product markets: first, an overall market for processing of credit transfers; second, an overall market for the acquiring processing of all forms of e-commerce or, third, a market for the acquiring processing of all forms of card-less e-commerce.

(46) Regarding the first proposed market definition, the Notifying Party submits that since the introduction of the Single Euro Payments Area ("SEPA"), credit transfers in EUR across the Member States of the EU must be made using the SEPA Credit Transfer ("SCT") scheme. It explains that the regulation of SCT has brought about also a harmonisation of the technical processing requirements, and that SCT processing in the EU is done by a wide variety of processors that all support the same protocols. The Notifying Party submits that for both iDEAL and SCT processing, processors play the role of a hub redirecting the credit transfers to banks that further process them in their back offices.

(47) Secondly, the Notifying Party submits that iDEAL processing could potentially also form part of a market for acquiring processing of all forms of e-commerce payments. In its view, the particularities of e-commerce, such as the particularly high security requirements that protect against fraud, would speak in favour of such a market definition.

(48) Thirdly, the Notifying party submits that within a potential market for acquiring processing of e-commerce payments a distinction could be made between card-based and card-less e-commerce payments processing.

(49) The Notifying Party also submits that it would not be appropriate to consider iDEAL processing as belonging to the market for acquiring processing of card payments, given that iDEAL initiates a non-card payment.

(50) Finally, the Notifying Party submits that defining a separate market for processing of iDEAL payments would artificially distinguish iDEAL from substitutable competitive e-commerce payment products such as SOFORT.

IV.2.3.4. Commission's assessment

(51) At the outset, the Commission notes that any potential product market definition which would be broader than merely encompassing the processing of iDEAL transaction would be so for reasons of supply-side substitutability, as from a demand-side perspective, the customers (Dutch banks) could not replace the processing of their iDEAL transactions with that of other transactions.

(52) In terms of supply-side substitutability, the result of the market investigation were not conclusive on whether iDEAL acquiring processing should be considered as part of the same market as the acquiring processing of card transactions. Moreover, the market investigation indicated that, regardless what kind of processing a company not performing iDEAL processing does today, it would take approximately a year before it could process iDEAL transactions.[29]

(53) In addition, the results of market investigation indicate that it would most likely be incorrect to consider the processing of iDEAL transactions to form part of a market comprising (card based) acquiring processing. For example, customers have described it

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29 See Question 80.1 and 80. 2 of Questionnaire, Q4 to competitors.

as *"not card based, [...] contrary to (web-enabled) card scheme transactions. iDEAL is a web-based eCom[merce] product which relies on Bank log-in credentials, allowing a SCT debit and credit between the accounts of the issuer and the acquiring".*[30]

(54) In any event, the product market definition – i.e. whether iDEAL processing is a separate product market, or belongs to a broader market comprising either all SCT credit transactions, e-commerce transactions (or the card-less segment thereof), or even acquiring processing of card-based transactions (or the web-enabled segment thereof) – can be left open as under none of these plausible market definition the Transaction gives rise to serious doubts.

IV.2.4. Provision of POS terminals and related services

IV.2.4.1. Introduction

(55) By way of introduction, a point-of-sale ("POS") terminal is the electronic device used to process card payments at the merchant's location. It is thus a necessary element for physical card based transactions. POS terminals are either sold or rented to merchants jointly with the merchant acquiring services or separately on a standalone basis. The provision of terminals typically also includes services contracts for related services (maintenance and updates).

(56) POS terminals usually run on certain acceptance protocol specifications, which as of today, still vary from country to country. C-TAP (Common Terminal Acquirer Protocol) in the Benelux is an open protocol allowing all local and international acquiring processors active in the Benelux to process all transactions. Many other protocols, also made available by certification bodies, are established on a national basis.

(57) Worldline is an important POS terminals manufacturer and provider of terminal related services in Belgium (in 2015, it controlled [60-80]% of the terminals installed base in this country)[31] as well as in other EEA countries interested by the Transaction (in particular the Netherlands where Worldline is the second largest player after CCV).

(58) Equens, on the contrary, does not manufacture or sell POS terminals. It either partners with third Party terminal suppliers […] to have joint commercial offers or only offers acquiring services.

IV.2.4.2. Previous Commission decisions

(59) The Commission has not previously considered a distinct market for the provision of POS terminals (and related services).

IV.2.4.3. Notifying Party's view

(60) In the Notifying Party's view, it is not appropriate to consider the provision of POS terminals and related services as a separate product market.[32]

30 See replies of customers to questions of the Commission, received on 9 and 10 March.

31 Form CO, Figure 17.

32 Form CO, para. 193 and 309..

(61) In particular, the Notifying Party argues that POS terminals are a mere input to merchant acquiring services and that, as a consequence, this activity should be considered as ancillary to merchant acquiring, but not as part of a separate product market.

IV.2.4.4. Commission's assessment

(62) Contrary to the Notifying's Party's claims, the market investigation suggested that a separate market for the provision of POS terminals may exist.

(63) A large number of Belgian customers responded that they typically procure POS terminals (and related services) from a provider which is not their merchant acquirer.”[33]

(64) The responses of competitors in this regard were rather mixed.[34] Some competitors stated that, in Belgium, they usually provide (either sell their own or rent) the POS terminal together with the merchant acquiring services, while others responded that, when providing their acquiring services, they do not supply their own terminals.

(65) A large POS terminal provider in Belgium and the Netherlands, stated that “*merchants can either rent or buy the terminals, often together with an acquiring contract*.”[35] The same market participant however indicated that they are able to also provide acquiring on competitors' terminals “*provided that these work on the domestic CTAP protocol.”*[36]

(66) The market investigation additionally suggested that there may be a difference in the merchants' purchasing strategy, depending on their size.[37] While large retailers appear to be in a position to and often do buy the POS terminal separately from the merchant acquiring services, SMEs largely opt for packaged solutions, which include both the acquiring and the POS terminal.

(67) This was revealed, inter alia, by a competitor who, during the market investigation, stated that "*there is a difference between SMEs who typically like to have an all in one offering and larger merchants who are more willing to buy separately*."[38]

(68) In view of the above, notably the difference in the supplier base for POS terminals and merchant acquirers, and the presence of customers that buy terminals and merchant acquiring services separately, the Commission considers that a separate product market for POS terminals may exist.

(69) In any event, the definition of a potential separate market for POS terminals can be can be left open as the commitment removing the serious doubts regarding merchant acquiring in Belgium, as discussed below, also remove doubts that could arise regarding a potential market for POS terminals in Belgium. In other Member States serious doubts do not arise irrespective of whether a separate market is defined.

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33 See replies to Question 31 of Questionnaire Q1 to Belgian customers.

34 See replies to Question 6 of Questionnaire Q4 to competitors.

35 See minutes of conference call with a competitor, dated 22 February 2016.

36 See reply to Question 7 of Questionnaire Q 4 to competitors.

37 See replies to Question 46 of Questionnaire Q 4 to Competitors.

38 See minutes of conference call with a competitor, dated 22 February 2016.

IV.2.5. Provision of software for the activities of German NSPs

IV.2.5.1. Introduction

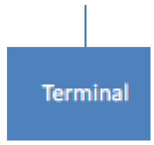
(70) As a result of the Transaction, a vertical link arises due to the fact that Paysquare is a customer of a software (WLP/Poseidon, hereinafter: "Poseidon") it buys from Worldline in order to carry out its activities as a Network Service Provider ("NSP") in Germany.

(71) By means of background, Germany's card payment systems are somewhat different to those described in the introduction above (as from recital (11)), in particular due to the specificities of the prevalent domestic Girocard scheme, through which a majority of card transaction are made.

(72) In the German card payment systems, there is an additional important actor in the value chain, namely the NSP (Network Service Provider). NSPs provide payment card acceptance to the merchant, including terminal distribution, terminal management, and routing of card transactions towards the issuer banks. There are currently 19 NSPs in Germany.

(73) The function of NSPs differs somewhat for the domestic German Girocard scheme and international schemes. As illustrated below, NSPs establish direct connectivity to the issuers for Girocard transactions, whereas for international schemes, i.e mostly credit cards, they establish connectivity with the acquirers, which can be the same companies as the NSPs (but there are also NSPs which do not acquire international cards, and "pure" acquirers which are not active as NSPs).

Figure 3: Role of NSPs (*Netzbetreiber*, in German) in card payment systems in Germany



Source: Notifying Party

(74) The above illustration also shows that in Germany, transactions made at a POS terminal have to pass through an NSP.

(75) In order for this communication to function, the terminal and the NSP's host computer have to use the same protocol. In Germany, the overwhelming majority of terminals (approx. [90-100] % according to the Notifying Party) run on the ZVT-protocol, which is owned by Worldline, and is either licensed to NSPs either jointly with the so called Poseidon software, or separately.

(76) Poseidon is an application software developed specifically for NSP activities. It comprises several modules and is described by the Notifying Party as a "toolbox" for several NSP functionalities including routing, clearing, authorization, communication protocol ZVT, routing of credit card transactions and some terminal management functions.

(77) Out of Germany's 19 NSPs, 18 work with the ZVT protocol, and [10-20] with Poseidon. [1-5] ZVT users have developed their own proprietary software. This is illustrated by the graph below.

Figure 4: Role of Poseidon and ZVT for German NSPs

[…]

Source: Notifying Party

IV.2.5.2. Previous Commission decisions

(78) In previous decisions, the Commission distinguished IT software from IT services.[39] The Commission also considered that software supply could be segmented on the basis of a number of criteria, such as functionality and end-use, further segmented in some case by application or level of sophistication, but always leaving the exact delineation of the market open.[40]

(79) The Commission has thus far never dealt with software for NSP activities in Germany, or Poseidon specifically, and has never analysed to which product market Poseidon could belong.

IV.2.5.3. Notifying Party's view

(80) The Notifying Party submits that Poseidon in Germany can be classified in the application software and office software category and belongs more specifically to the banking and financial business software sub-category.

(81) The Notifying Party argues that it would not be appropriate to define a product market only consisting of one Product – Poseidon, which is only licensed to [10-20] customers in one Member State.

(82) In support of its argument, the Notifying Party considers that there are a number of competitors that could supply equivalent software, and that the development therefore would be simple and not too costly for an undertaking specialised in developing software for the banking and financial industry. In its view, the fact that [1-5] NSPs have chosen to develop their own software solution in-house supports this argument, and militates in favour of a wider product market.

(83) The Notifying Party also submits that no competitor has yet developed software which is individualised to the NSPs in Germany. […].

IV.2.5.4. Commission's assessment

(84) The Commission notes at the outset that the market investigation supported to the relevant extent the description, in particular as to the usage, of Poseidon as submitted by the Notifying Party, and as summarised in the introductory part of this section IV.2.5.1.[41]

(85) The Commission also notes that the fact that either the number of relevant customers or the geographic area within which they are located are limited, is as such no obstacle to defining a relevant market for the purposes of merger control.

(86) According to the Commission Notice on market definition, specifically paragraphs 13 to 23, the relevant test is to determine alternative sources of supply based on demand-side and supply-side considerations.

(87) In the case at hand, the relevant group are NSPs, and particularly those [10-20] that have not developed an in-house solution and instead rely on Poseidon.

39 See for example M.7458 - IBM/INF Business of Deutsche Lufthansa; M.6166 - Deutsche Börse/NYSE Euronext.

40 See for example M.6166 - Deutsche Borse/NYSE Euronext.

41 See in particular replies to Questions 1-6 of Questionnaire Q6 to German Network Service Providers.

(88) In terms of demand-side substitution, the results of the market investigation indicate clearly that these customers have no possibility to switch to a different product. All those NSPs that have not developed their own solution would continue to licence Poseidon from Worldline if price were to increase by 5-10%.[42] Similarly, all respondents to the market investigation could only identify Poseidon or their respective in-house product as a means to perform their NSP activities. Those that rely on Poseidon today confirmed they could not use another product that a competitor has developed for its in-house needs, and explain that the only alternative to Poseidon would be to engage in the development of an in-house solution themselves.[43]

(89) Regarding supply-side substitutability, the results of the market investigation indicate that it would take a significant amount of time and resources for a NSP to develop its own solution, or for another software provider to develop an alternative. Accordingly, none of the respondents to the market investigation considers that another company would develop an alternative if prices rose by 5-10%.[44]

(90) In terms of cost for the development of an alternative, the estimations obtained are mostly qualitative – but imply a significant cost, and given the small amount of potential customers, almost certainly not commercially viable: One customer for example explains that "*There is a lot of legacy and functionalities built in over more than 20 years, so the investment would be huge. It is also a saturated market where we can expect consolidations of NSP's, so this NSP market is shrinking*." Another states that. *"The investment for a third party software provider would be huge and it would be open how many German Network Service Providers would migrate to a total new software platform."* A third customer explains that *"...due to the limited market capacity the development of a second solution will not be commercially justifiable."*[45]

(91) Finally, an overwhelming majority of respondents to the market investigations estimate that it would take 2 years or more (up to 5 years) to develop an alternative.[46]

(92) For the above reasons, the Commission considers it as appropriate to define a market solely comprising software for the activities of German NSPs, possibly only for those that rely on terminals using the ZVT protocol. The latter segmentation can be left open however, given that under both scenarios serious doubts arise as a result of the Transactions.

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42 See replies to Question 8 of Questionnaire Q6 to German Network Service Providers.

43 See replies to Question 7 (and to sub-questions) of Questionnaire Q6 to German Network Service Providers.

44 See replies to Question 9 of Questionnaire Q6 to German Network Service Providers.

45 See replies to Question 9.1 of Questionnaire Q6 to German Network Service Providers.

46 See replies to Question 10 of Questionnaire Q6 to German Network Service Providers.

IV.3. Geographic market

IV.3.1. Merchant acquiring

IV.3.1.1. Previous Commission decisions

(93) The Commission has previously considered the market for merchant acquiring as being likely national in scope or, at most EEA-wide, irrespective of the type of card, the card scheme and the card brand.[47]

(94) In a most recent decision[48], the Commission considered that the market for merchant acquiring services for all plausible market segmentations, except web-enabled transactions, is most likely national in scope, whereas the market for merchant acquiring services for payments made through web-enabled interfaces (eCommerce) would likely be EEA-wide.

IV.3.1.2. Notifying Party's view

(95) The Notifying Party submits in essence that the Commission's precedents remain relevant for now.

(96) As regards the market for merchant acquiring services for POS payments it considers it most likely national in scope, as it is important to have a local presence either through a legal entity or through a sales force. By means of example, it explains that it was not sufficient for Paysquare to have sales personnel speak the local languages in Belgium but it had to adapt to the Belgian culture and mentality to effectively enter the market. Moreover, the Notifying Party sees a local presence as a key factor to gain market share in the POS segment as it allows the acquirers to carry out doorstep selling i.e. sending sales force into the shops in order to convince merchants that the merchant acquiring service they offer is better/cheaper.

(97) On the other hand, the market for merchant acquiring services for payments through web-enabled interfaces is at least EEA-wide, in the Notifying Party's view, given that a local presence is not necessary.

(98) As for other plausible segmentations, the Notifying Party submits that markets for domestic schemes and brands are necessarily national in scope, whereas plausibly international schemes and brands could be wider.

IV.3.1.3. Commission's assessment

(99) As a preliminary remark, the Commission notes that there is indisputably a trend towards harmonisation across Member States in the payment systems space, and increasingly, the formerly often completely closed off national merchant acquiring markets are gradually opening up to competition.[49]

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47 M.4316 - Atos Origin/Banksys/BCC; /M.5241 - American Express/Fortis/Alpha Card; M.6956 - Telefonica/Caixabank/Banco Santander; M.7241 - Advent International/Bain Capital Investors/Nets Holding.

48 M.7711 - Advent International / Bain Capital /ICBPI.

49 See also the submissions of a competitor (Nets), of 10 and 25 March 2016, illustrating this development.

(100) Nonetheless, and contrary to credit and debit transfers, there are still numerous national specificities that appear to prevent the creation of a homogenous EEA wide merchant acquiring market, as illustrated for example by the following statement of Yves Mersch, Member of the Executive Board of the European Central Bank: "*Migration to the Single Euro Payments Area (SEPA) for credit transfers and direct debits was a major milestone in European retail payments integration. SEPA for cards is the next logical step in that process. To this day, consumers and merchants, but also banks and other payment service providers, still encounter obstacles or experience geographical differences when making and accepting card payments. We are not yet there with the SEPA for cards, i.e. a harmonised, competitive and innovative European card payments area*".[50]

(101) The results of the market investigation largely confirm the Notifying Party's submission that in order to compete successfully in POS-based merchant acquiring, a local presence is necessary. An overwhelming majority of competitors consider that this is the case,[51] due to Member State specific demand characteristics, such as customers' wish to have services provided in their local language, in order to communicate to merchants personally, and because the knowledge of the local market is key to compete successfully.

(102) Moreover, a majority of competitors also pointed to significant differences across EEA countries as regards the provision of merchant acquiring services. For example, they mentioned that prices can vary significantly, even within the same payment scheme, that the players and infrastructure in the payment systems industry can be different (for example the role of banks), and that the terminal standards or terminal protocol are different (for example, in the Benelux countries, the C-TAP protocol is used in most terminals, whereas most German terminals run on the ZVT protocol).[52]

(103) In addition, there are number of countries, including notably Germany and Belgium, in which domestic schemes (Girocard in Germany and BCMC in Belgium) still play a very important role. Access to a new payment scheme costs significant time and money, and therefore a domestic scheme can be a hurdle to cross-border competition, at least in this segment.

(104) None of the above is to suggest that no cross-border competition takes place. In fact, many respondents to the market investigations indicated that they would be ready to accept offers from outside their home country,[53] and a number of competitors also expressed the view that competition in merchant acquiring, or certain market segments thereof, takes place a wider than national level, either at the level of the a cluster of countries such as the Benelux or even at EEA-level.[54]

(105) The reasons for this may be that the profile of different merchants varies considerably. […].[55] […].

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50 Speech by Yves Mersch, Member of the Executive Board of the ECB, at the Banque de France Conference on card payments in Europe – latest trends and challenges, Paris, 18 January 2016

51 See replies to Question 19 of Questionnaire Q4 to competitors.

52 See replies to Question 20 of Questionnaire Q4 to competitors.

53 See replies to Questions 9 and 10 of Questionnaire Q1 to Belgian customers, and Questions 9 and 10 of Questionnaire Q2 to Dutch customers.

54 See replies to Question 21 of Questionnaire Q4 to competitors.

55 […].

(106) However, the huge discrepancies in market shares of the Parties and their competitors, to the extent that they are present, even across countries in a seemingly relatively homogenous region such as the Benelux, illustrate that currently the pattern of purchases of merchant acquiring services still follows national boundaries.

(107) In view of the above, the Commission considers that for the time being, in spite of the trend towards harmonisation across Member States in the payment systems space, the factors speaking in favour of a national market, for all POS-based merchant acquiring activities, still outweigh those that would support a wider geographic scope of the relevant market.

(108) On the basis of the above, the Commission considers merchant acquiring markets, probably with the exception of the web-enabled market segment, remain, for the time being, national, as least in those Member States at the heart of the present case, that is Belgium and Germany. For Luxembourg and the Netherlands, this can be left open as no serious doubts arise relating to the Parties' activities in merchant acquiring in those markets, or upstream, downstream or related markets thereto.

IV.3.2. Issuing processing

IV.3.2.1. Previous Commission decisions

(109) The Commission has previously considered that card processing markets including issuing processing, are probably national or potentially EEA wide in scope, but ultimately left the market definition open.[56]

IV.3.2.2. Notifying Party's view

(110) The Notifying Party considers that the markets for transaction processing remain national in scope, as most issuing processing and acquiring processing services for national customers are still provided by national or locally present suppliers.

(111) According to the Notifying Party, however, with the EU regulatory changes and SEPA initiatives, there is an increasing amount of cross-border processing of credit and debit cards and a consequent trend towards the “Europeanization” of these markets in the SEPA area.

IV.3.2.3. Commission's assessment

(112) There are no elements at the Commission's disposal, including from its market investigation, which would suggest that it would be appropriate to deviate from its previous decisional practice and to disagree with the Notifying Party's claims.

(113) The Commission shares the view of the Notifying Party that these markets are, at present, still characterised by strong national elements, although, as noted in recital (31) above, the Commission recognizes the existence of an undisputable trend towards harmonisation across Member States in the payment systems space.

(114) In any event, the precise geographic scope of the market can be left open as the Transaction does not give rise to serious doubts as its compatibility with the common market regardless of whether it is defined at national or EEA wide level.

56 M.5968 – Advent/Bain Capital/RBS Worldpay.

IV.3.3. Geographic scope of the potential markets to which iDEAL processing belongs

IV.3.3.1. Previous Commission decisions

(115) Regarding the plausible product markets contemplated above – i.e. a separate iDEAL processing market, or a broader market comprising either all SCT credit transactions, e-commerce transactions (or the card-less segment thereof), or even acquiring processing of card-based transactions – the Commission has so far only assessed the geographic dimension of acquiring processing.

(116) In previous decisions on this point, the Commission has left open whether these markets are national or EEA wide[57], though it recently contemplated an EEA-wide dimension of the web-enabled segment of acquiring processing.[58]

IV.3.3.2. Notifying Party's view

(117) The Notifying Party submits that acquiring processing markets are still national in scope, even if they are gradually opening up.

(118) According to the Notifying Party, a potential market for SCT processing would be EU (or EEA) wide in scope, given the harmonisation of the relevant standards and protocols, and the homogenous supplier base.

(119) Other plausible product market to which iDEAL processing belongs would, in the Notifying Party's view, be most likely national in scope.

IV.3.3.3. Commission's assessment

(120) The results of the market investigation strongly suggest that (potential) iDEAL processors do not necessary have to have a presence in the Netherlands to perform this activity[59]. This indicates that the geographic scope of plausible product markets to which iDEAL processing belongs could indeed be EEA-wide, given in particular also the fact that the investment necessary to become a supplier of such services does not seem to vary according to where a company is based or active.

(121) The market investigation also supported the Notifying Party's submission that formerly national processing markets are gradually opening up, notably also due to the creation of SEPA. For example, one iDEAL customer referred to the future possibility of turning to non-Netherlands based suppliers instead or in addition to Worldline.[60]

(122) On the other hand, iDEAL remains for now a payment system that is only accessible to customers of Dutch banks, and those banks are the only customers for (potential) iDEAL processors. Contrary to for example the processing of SCT transactions, there are evidently no EEA-wide standards with which all banks would have to comply.

(123) Were the Commission to define a product market comprising only the processing of iDEAL transactions, then it would appear to be more logical to limit this market to the

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57 M.5968 – Advent/Bain Capital/RBS Worldpay.

58 M.7241- Advent International/Bain Capital Investors/Nets Holding.

59 See Question 80.1 and 80.2 of Questionnaire Q4 to competitors.

60 See minutes of a call with a customer, 13 January 2016.

Netherlands, as this is where all the processing customers and the vast majority of end-users are located.

(124) In any event, the precise geographic scope of the various potential markets to which iDEAL processing belongs can be left open, as no serious doubts arise regardless of whether they are defined at national, Eurozone, EU or EEA wide level.

IV.3.4. Provision of POS terminals (and related services)

IV.3.4.1. Previous Commission decisions

(125) The Commission has so far never assessed whether a separate market for the provision of POS terminals should be considered, and hence has not assessed the geographic scope of such a market.

IV.3.4.2. Notifying Party's view

(126) As described above in recital (60), the Notifying Party does not consider it appropriate to define a separate market for the provision of POS terminals (and related services), but considers that POS terminals should be viewed as ancillary to merchant acquiring services and should, as a consequence, be considered as a part of the merchant acquiring market.

(127) The Notifying Party submits that, should a potential separate market for the provision of POS terminals be considered as relevant, such market would remain, at present, rather national in scope.[61]

IV.3.4.3. Commission's assessment

(128) Based on the market investigation, there are strong indications that the appropriate geographic scope of a possible separate market for the provision of POS terminals should be national, or at the very least comprised of cluster of countries.

(129) For example, the majority of competitors responding to the market investigation considered that competition between POS terminal suppliers occurs either at national or at "clusters of country" level[62] due to, inter alia, local languages (for setting up helpdesk, support activities), local terminal protocols (like C-TAP in Benelux), specific "*local cards like meal vouchers which need to be integrated into the terminal Software to be competitive*"[63]

(130) Also with reference to the provision of POS terminals, there seems to be therefore a need for a local sales and service presence.

(131) In addition and, even more importantly, there are country (or region specific) technical specifications, i.e. the terminal standards or terminal protocols (for example, in the Benelux countries, the C-TAP protocol is used in most terminals, whereas most German terminals run on the ZVT protocol) which would make the cross-border provision of POS terminals more challenging.

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61 Form CO, para. 360.

62 See replies to Question 21 of Questionnaire Q4 to Competitors.

63 See replies to Question 21.1 of Questionnaire Q4 to Competitors.

(132) During the market investigation, a competitor stated that *"POS terminals in Belgium and the Netherlands are using a payment application standard called C-TAP. This application can connect to the local processors who have adopted this standard. Generally cross border acquirers are using other local standards. This means that a merchant has to exchange his terminal in order to connect to a different acquirer."*[64]

(133) This was also revealed by a market participant, which explained that "[..] *currently, most European countries are using a country specific protocol for terminals. In Belgium, there is Acquiris C-TAP protocol which is largely used in Benelux"*[65]

(134) In any event, the precise geographic scope of a possible separate market for the provision of POS terminals and related services can be left open as the commitment removing the serious doubts regarding merchant acquiring in Belgium, as discussed below, also remove doubts that could arise regarding a potential market for POS terminals in Belgium.

IV.3.5. Provision of software for the activities of German network service providers

IV.3.5.1. Previous Commission decisions

(135) The Commission has so far never assessed whether there is a separate market for the provision of software for the activities of German network service providers, and hence has not assessed the geographic scope of such a market.

(136) In previous decisions, the Commission took the view that the relevant geographic markets for application software, including those use in the banking and financial sector, are generally at least EEA-wide or worldwide because the solutions were offered on an EEA, or even on a global basis. However, the exact geographic market definition was left open.[66]

IV.3.5.2. Notifying Party's view

(137) The Notifying Party submits that the market to which the Poseidon software belongs is at least EEA-wide.

IV.3.5.3. Commission's assessment

(138) In the case at hand, Poseidon is tailored to the German card payment systems, specifically for the needs of German NSPs. The results of the market investigation also indicate that the appropriate geographic dimension may in fact be national.

(139) About half of the respondents to the market investigation consider that a physical presence in Germany is necessary to provide software to NSPs. One respondent indicated that a "*physical presence is absolutely necessary. Most of the specifications are either written in German (coming from the German banking sector), or they need an in-depth know how of the German payment system to interpret the specifications. This makes it very unlikely for a foreign company to develop this*." Other market participants list the following factors pointing towards a national market: National regulation and access to local authorities; support for mission critical processing system, the need for a local

64 See minutes of a call with a competitor, dated 15 January 2016.

65 See minutes of conference call with a market participant, dated 8 February 2016.

66 See M.7458 - IBM/INF Business of Deutsche Lufthansa; M.6166 – Deutsche Börse/NYSE Euronext, para. 180.

marketing team, a good understanding of the German market needs and knowledge and experience of the Germany debit market.

(140) On the basis of the above, the Commission considers it likely that this market may indeed have a national, i.e. German dimension. In any event, in view of the fact that Worldline is the sole supplier of such software, and in all likelihood there is not even a potential other supplier, within or beyond Germany, the precise geographic scope of this market can be left open, as serious doubts arise under any plausible geographic market definition.

IV.4. Competitive assessment

(141) On the basis of the above market definitions, and the Parties' activities, the transaction results in the following (potentially) affected markets:

a) Merchant acquiring in Belgium, the Netherlands and Luxembourg;

b) issuing processing in Germany

c) a variety of plausible markets to which the processing of iDEAL transactions could belong (those are iDEAL processing as a separate product market, all SCT credit transactions, e-commerce transactions (or the card-less segment thereof), or acquiring processing of card-based transactions (or the web-enabled segment thereof);

d) provision of software for the activities of German NSPs

IV.4.1. Merchant acquiring – Belgium

IV.4.1.1. Notifying Party's view

(142) The Notifying Party submits that both Parties are active in merchant acquiring in Belgium, where Worldline holds a historically strong position which is challenged by the entry of new market players (such as Paysquare), innovation development, and EU regulation fostering liberalisation. The Notifying Party highlights that one of the key factors that enabled entry on this market is the implementation of a common and open standard protocol (for terminals) enabling dual sourcing and dual acquiring. In addition, the Notifying Party attributes the relatively recent entry of a number of competitors also to the dual branding of debit cards (in Belgium, practically all debit cards are co-branded BCMC and Maestro), allowing for market entrance via Maestro, and the alignment of interchange fee for debit cards.

(143) Furthermore, the Notifying Party submits that on the overall market for merchant acquiring, Worldline holds a market share of between [80-100] %, whereas Paysquare's market share is [0-5] %. Given this small increment, the Notifying Party argues that the Transaction cannot give rise to competition concerns.

(144) According to the Notifying Party, this conclusion also holds if the market for merchant acquiring were segmented in accordance with the Commission's previous decisions.

(145) In all potential markets in which overlaps occur (POS terminals, web-enabled, international card schemes, card schemes by brand, as well as the overall credit and debit segments), Worldline has a strong position, ranging from estimated market shares of [50-100] %, whereas Paysquare's market share is estimated to vary between [0-10] %, depending on the segment.

(146) The Notifying Party argues that in view of the limited increment, and the presence of competitors such as Elavon, Easycash (Ingenico), First Data (EMS), B+S and SIX, whose market shares the Notifying Party estimates to be [0-10]% in each segment, no competition concerns can arise under any plausible market definition.

(147) Lastly, regarding a potential impact of the Transaction on the provisions of terminals by Worldline's competitors in this space, the Notifying Party argues that […], and the Notifying Party would […].

IV.4.1.2. Commission's assessment

(148) The Commission will set out below its preliminary assessment regarding two related but distinct theories of harm resulting from the strengthening of the Parties' presence in merchant acquiring in Belgium: Horizontal non-coordinated effects in merchant acquiring (and numerous plausible subsegment thereof) and conglomerate (foreclosure) effects regarding related markets of merchant acquiring and the provision of POS terminals.

IV.4.1.2.a. Horizontal non-coordinated effects

Introduction

(149) Under Article 2(2) and (3) of the Merger Regulation, the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position.

(150) The Commission guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (the "Horizontal Merger Guidelines")[67] distinguish between two main ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, namely non-coordinated and coordinated effects. Non-coordinated effects may significantly impede effective competition by eliminating important competitive constraints on one or more firms, which consequently would have increased market power, without resorting to coordinated behaviour. In that regard, the Horizontal Merger Guidelines consider not only the direct loss of competition between the merging firms, but also the reduction in competitive pressure on non-merging firms in the same market that could be brought about by the merger.

(151) The Horizontal Merger Guidelines list a number of factors which may influence whether or not significant non-coordinated effects are likely to result from a merger, such as the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers, or the fact that the merger would eliminate an important competitive force. That list of factors applies equally if a merger would create or strengthen a dominant position, or would otherwise significantly impede effective competition due to non-coordinated effects. Furthermore, not all of these factors need to be present to make significant non-coordinated effects likely and it is not an exhaustive list.

(152) The Commission will below assess those factors that seem most relevant for the case at hand. In its assessment, the Commission will only highlight those instances in which the assessment differs from one potential product market (segment) to another – overall, as is set out below, serious doubts arise under any plausible product market definition.

<u>The Parties have a large combined market share</u>

(153) According to the Notifying Party, the combined market shares of the Parties in all potential product markets in which they overlap were as follows between 2012 and 2014:

67 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings OJC 31, 05.02.2004.

Figure 5: Estimated market shares of the Parties in merchant acquiring in Belgium

	2012		2013		2014	
	Number of transactions (millions)	**Market share (%)**	**Number of transactions (millions)**	**Market share (%)**	**Number of transactions (millions)**	**Market share (%)**
Overall market for merchant acquiring						
Worldline	[redacted]	[90-100]	[redacted]	[80-90]	[redacted]	[80-90]
PaySquare	[redacted]	[0-5]	[redacted]	[0-5]	[redacted]	[0-5]
Combined	[redacted]	[90-100]	[redacted]	[80-90]	[redacted]	**[80-90]**
POS segment						
Worldline	[redacted]	[90-100]	[redacted]	[80-90]	[redacted]	[80-90]
PaySquare	[redacted]	[0-5]	[redacted]	[0-5]	[redacted]	[0-5]
Combined	[redacted]	[90-100]	[redacted]	[90-100]	[redacted]	**[80-90]**
Credit segment						
Worldline	[redacted]	[50-60]	[redacted]	[40-50]	[redacted]	[60-70]
PaySquare	[redacted]	[0-5]	[redacted]	[0-5]	[redacted]	[0-5]
Combined	[redacted]	[50-60]	[redacted]	[40-50]	[redacted]	**[70-80]**
Debit segment						
Worldline	[redacted]	[90-100]	[redacted]	[90-100]	[redacted]	[80-90]
PaySquare	[redacted]	[0-5]	[redacted]	[0-5]	[redacted]	[0-5]
Combined	[redacted]	[90-100]	[redacted]	[90-100]	[redacted]	**[80-90]**
International schemes segment						
Worldline	[redacted]	[50-60]	[redacted]	[50-60]	[redacted]	[50-60]
PaySquare	[redacted]	[0-5]	[redacted]	[0-5]	[redacted]	[0-5]
Combined	[redacted]	[50-60]	[redacted]	[50-60]	[redacted]	**[50-60]**
Visa segment						
Worldline	[redacted]	[80-90]	[redacted]	[80-90]	[redacted]	[80-90]
PaySquare	[redacted]	[0-5]	[redacted]	[0-5]	[redacted]	[0-5]
Combined	[redacted]	[80-90]	[redacted]	[80-90]	[redacted]	**[80-90]**
Mastercard segment						
Worldline	[redacted]	[90-100]	[redacted]	[90-100]	[redacted]	[90-100]
PaySquare	[redacted]	[0-5]	[redacted]	[0-5]	[redacted]	[0-5]
Combined	[redacted]	[90-100]	[redacted]	[90-100]	[redacted]	**[90-100]**
Web-enabled segment						
Worldline	[redacted]	[30-40]	[redacted]	[40-50]	[redacted]	[40-50]
PaySquare	[redacted]	[0-5]	[redacted]	[0-5]	[redacted]	[0-5]
Combined	[redacted]	[30-40]	[redacted]	[40-50]	[redacted]	**[50-60]**

Source: Notifying Party, Form CO

(154) To the extent that the Form CO contains information on competitor's market shares, they are estimated for Elavon, Easycash, FirstData, B+S and SIX to amount to between 1 and 5%.

(155) The Commission attempted in the market investigation to reconstruct the market based on competitors' sales data.[68] While the information obtained indicates that the Form CO is mostly accurate in that these competitors are of a similar size as Paysquare in terms of market share, the Commission could not validate the sizes of the various potential markets as estimated in the Form CO. The data provided by competitors in the course of the investigation consistently suggests that the markets are most likely considerably smaller than what was submitted by the Notifying Party, with correspondingly larger market shares for all competitors, but most importantly with significantly higher market shares for Worldline.

(156) This finding is also in line with the internal documents of Worldline. For the debit card segment of the merchant acquiring market, for example, internal documents estimate its market share above [90-100]% both in 2014 and in 2015, as compared with approximately [80-90]% submitted in the Form CO. Similarly, for the credit card market, the same documents[69] estimates Worldline's market share to be close to [70-80]%, whereas the Form CO states that it is between [60-70]% and [70-80]%. The slide below illustrates this finding.

Figure 6: Worldline's estimation of its market share in Belgium

[...]

Source:[…]

(157) Paysquare's internal document on the other hand show market share figures in line with those contained in the Form CO, estimating its market share for 2014 to be approximately [0-5]% for debit transactions and [0-5]% for credit transaction.[70] However, the figures for 2014 do not reflect the fact that Paysquare has since then […]. This signing alone will have led to a considerable increase in Paysquare's market share[71].

(158) At this stage of the procedure, the Commission does not have complete information of all relevant data, and perhaps most importantly, lacks figures for 2015. Nonetheless, it can conclude from the data at its disposal that Worldline has very high market shares in all potential markets[72]. According to paragraph 17 of the Horizontal Mergers Guidelines, very large market shares of 50% and above may, in themselves, be evidence of the existence of a dominant market position. In the case at hand, the Transaction would reinforce it by between [0-10]%, depending on the potential market.

(159) Moreover, in addition to these quantitative indicators of market power, the results of the market investigation confirm that Worldline – and also Paysquare – are key players in merchant acquiring in Belgium. All respondents to the market investigation qualify Worldline as the strongest actor in this space, and a large number see Paysquare as the number two, whereas other merchant acquirers are mentioned only incidentally.[73]

68 See replies to Question 5 of Questionnaire Q4 to competitors

69 […].

70 […].

71 […].

72 Except for the web-enabled market, for which it also estimates its market share to be [50-60]%.

73 See replies to Question 22 of Questionnaire Q4 to competitors.

(160) In view of the above, the Commission considers for the purposes of the present decision that the Parties will have substantial market power to the degree of dominance on all relevant potential merchant acquiring markets in Belgium post-merger.

Closeness of competition between the Parties

(161) As indicated by the Notifying Party, in the Form CO, there are a number of competitors present in the Belgian market(s) for merchant acquiring. Those mentioned by the Notifying Party are Elavon, Easycash, FirstData, B+S and SIX. In addition, the market investigation revealed that Adyen, EMS, Nets, Concardis and Europabank are also present on this market.[74]

(162) The Commission attempted in its market investigation to establish how and for which customers these companies compete, and whether the Parties are close competitors.

(163) The results of the market investigation indicate that key parameters of competitiveness are the possibility to acquire for different card schemes and the price of the acquiring services.

(164) The former criterion however is of limited relevance in the case at hand, as most merchant acquirers active in Belgium acquire for most of the important card schemes, in particular BCMC, Maestro (Mastercard debit), Mastercard and Visa.

(165) There are number of companies such as for example Nets, Easycash (Ingenico) and Concardis that seem to only offer acquiring for credit cards. Perhaps most importantly, there only very few that offer BCMC acquiring, including Worldline, EMS, Adyen, and SIX but not Paysquare.

(166) However, as described above in recital (31), there are strong indications that in particular given the fact that virtually all Belgian debit cards are co-branded Maestro and BCMC, they are largely substitutable with each other. This is illustrated also by a statement from Worldline's internal documents […] [75]

(167) For these reasons, in terms of the criterion offering acquiring for various (and popular) card schemes, most merchant acquirers active in Belgium are largely comparable, with the exception of those that are only active in the credit card segment.

(168) As for the criterion of price, as set out in more detail below in recitals (188), Paysquare appears to have been offering particularly competitive prices for acquiring services, but the market investigation has not been conclusive on Worldline's behaviour as regards prices.[76]

74 See for example replies to Question 10 of Questionnaire Q4 to competitors.

75 […].

76 See replies to Questions 23, 24 and 31 of Questionnaire Q4 to competitors. See also replies to Questions 15-16, Questionnaire Q1 to Belgian customers.

(169) In addition, the results of the market investigation also indicate that the ability to combine merchant acquiring services with the provision and maintenance of POS terminals is important, notably for smaller retailers.[77]

(170) In Belgium, most acquirers, including the Parties are able to do so – either because they are able to provide terminals themselves, or because they cooperate with a terminal provider. However, some do not – such as Europabank, Concardis or Nets for example. [78]

(171) Furthermore, some respondents to the market investigation indicate as a weakness for SIX and B+S that they cannot acquire from terminals that run on the C-TAP protocol, the dominant POS terminal protocol in Belgium[79]. This means that those two players can offer the bundle – terminals and acquiring – but cannot offer acquiring from Worldline or CCV terminals, the vast majority of the installed terminal base.

(172) Finally, some of these competitors focus only on particular types of retailers, such as Adyen for example on large multinationals, or have only "followed" retailers from other Member States into Belgium, and are therefore, at least for most customers, not to be considered as close competitors to the Parties[80].

(173) In view of the above, the Commission cannot conclude that the Parties are particularly close competitors. In fact, given the significant scale of Worldline s on the market and its extended product and service offering, none of the companies currently active could be considered as a particularly close competitor. However, the market investigation indicated that Paysquare was one of the most credible and well equipped companies to competitively challenge Worldline established position, by aggressively competing against the incumbent see paragraphs (188) to (192) below.

Customers have limited possibilities of switching suppliers

(174) The results of the market investigation indicate that, while many customers have (considered) switching their merchant acquirer during the last three years[81], and there is an important hurdle to doing so, as it seems to entail either the switching of the POS terminal, or at least requires an intervention from the terminal provider.[82]

(175) The Notifying Party submits that Belgium is one of the few markets in the EU in which payment terminals are so-called multi-acquirers, which according to the Notifying Party means that merchants can accept multiple cards with different acquirers of their choice from the same payment terminal. As such, that should mean that terminals cannot be an obstacle for a merchant to switch merchant acquirer.

(176) However, the results of the market investigation and the Parties' internal documents cast doubts on this conclusion.

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77 See replies to Question 23 of Questionnaire Q4 to competitors. See also replies to Questions 32 and 38, Questionnaire Q1 to Belgian customers.

78 See replies to Question 39 of Questionnaire Q4 to competitors.

79 See replies to Question 24 of Questionnaire Q4 to competitors.

80 See replies to Question 24 of Questionnaire Q4 to competitors. See also email of a competitor received on 6 April 2016.

81 See replies to Question 13 of Questionnaire Q1 to Belgian customers.

82 See replies to Question 12 and 12.1 of Questionnaire Q1 to Belgian customers.

(177) While almost all competitors confirm that C-TAP terminals are able to multi-acquire[83], most of them indicate that Worldline has to "open" its terminals before other merchant acquirers can access them. "*It was not easy to convince Worldline to "open" the terminals in order to make this change possible, i.e have [Y] as acquirer for its Worldline terminals. In [X]'s view, for a retailer to be technically able to have another acquirer it would need access to the terminal's software (an OS ("operating system") owned in this case by Worldline) and the terminal's keys. Both of these components deal with fundamental elements such as the cash register and the contact with the acquirer. Sometimes some of the changes necessary to link a terminal to a different acquirer, as well as other terminal-related services, can be dealt with in a remote fashion, but whenever this is not possible, new terminals have to be ordered and delivered.* "[84] .

(178) This means that terminal suppliers, such as Worldline, are able to prevent or at least considerably slow down the switching from one merchant acquirer to another, as also illustrated by the following statement from a competitor of the Parties: "*[X] always need an intervention of the terminal supplier to add/change the identification data of Merchants in the TMS (Terminal Management System) of the terminal supplier. As Worldline is a terminal supplier and acquirer we need to inform our most important competitor with the information of all our (new) merchants using devices of Worldline. Sometimes it is difficult to get the merchant data of an [X] merchant changed in the TMS of Worldline, especially if the merchant is a former client (merchant) of Worldline. We always need to contact Worldline by Phone and inform their on our merchant base.*"[85]

(179) Customers also confirm that a terminal supplier can make switching to another merchant acquirer a difficult exercise, stating for example that *"the main obstacle [to switch] is the link between payment terminal type and possibility to change acquirer. Most of the time you need to change the terminal if you want to change acquirer, meaning extra investment on material which is still in your books"*, and *"we do own the terminals...even if you can't do anything with these if you change your acquirer"*.[86]

(180) The importance of terminals to prevent merchants from switching to alternative merchant acquirers is probably best illustrated by […].[87]

Figure 7: [….]

[…]

Source: […]

(181) Worldline's retention strategy seems to have be refined gradually, and, seemingly recognising the importance of terminal maintenance services for retention purposes, […][88].

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83 See replies to Question 45 of Questionnaire Q4 to competitors.

84 See non-confidential minutes of a call with a customer, 27 January 2016.

85 See replies to Question 7 of Questionnaire Q4 to competitors.

86 See replies to Question 30 of Questionnaire Q1 to Belgian customers.

87 […].

88 […].

(182) The success of this strategy was supported by the results of the market investigation. Of those customers who tried to switch the merchant acquirer while keeping the terminal provider, the majority indicates that this was not possible.[89]

(183) In view of the above, the description of the situation that one customer provided seems largely accurate. It explained that "*six years ago in Belgium it was "painful" to switch from Atos (the historical operator) to another acquirer. [X] explains that as long as a merchant has an Atos terminal, switching to another acquirer is very burdensome, and time/cost intensive. According to [X]'s knowledge, other retailers attempted to switch acquirer but failed because they retained Atos terminals. As a results, in essence, merchants have to change everything (the terminals in the first place) if they want to change acquirer*.

(184) The Commission therefore considers that terminal providers such as Worldline can considerably delay or even prevent their customers from switching merchant acquirers. Given that the Worldline controls at least [60-70]%, if not more, of the installed terminal base,[90] this constitutes an important means to hinder customers from changing merchant acquirers. Delaying or preventing the switching of customers is commercially rational – as one customer explained, "*Worldline would be reluctant to allow such a move [switching acquirers / "opening" terminals]more frequently because it cuts Worldline´s own business as an acquirer*".[91]

(185) For the above reasons, the Commission considers that merchant acquiring customers of the Parties, in particular if they are also terminal customers of Worldline, have only limited possibilities of switching their supplier of merchant acquiring service providers.

<u>Merged entity able to hinder expansion by competitors</u>

(186) The market investigation also attempted to establish whether the Parties could be in a position to hinder the expansion of competitors. Approximately half of the respondents consider that this is the case, quoting again in particular the possibility of Worldline to block or hinder competitors' access to Worldline terminals, as described in the previous section, as the key factor that enables the Parties to do so.[92]

(187) For this reason, the Commission considers that the Parties are, to some extent, capable of hindering the expansion of competitors.

<u>Merger eliminates an important competitive force</u>

(188) The results of the market investigation also suggest that the Transaction could result in the elimination of an important competitive force. Approximately half of the respondents to the market investigation, both customers and competitors, characterise PaySquare as competing particularly aggressively[93]. For example, one competitor explained that "*Paysquare is one of the few acquirers able to compete with Worldline in Tier 1 and 2*

89 See replies to Question 39 of Questionnaire Q1 to Belgian customers.

90 See replies to Question 43 and 44 of Questionnaire Q4 to competitors.

91 See minutes of a call with a customer, 27 January 2016.

92 See replies to Question 29 of Questionnaire Q4 to competitors.

93 See replies to Question 20 of Questionnaire Q1 to Belgian customers, and Question 29 of Questionnaire Q4 to competitors.

segments", while another stated that "*Paysquare offer particularly competitive pricing and have often provided a significantly lower bid for opportunities in Belgium.*"[94]

(189) Even those that do not perceive Paysquare as being particularly aggressive acknowledge that it exerts competitive pressure on Worldline. One customer which did not characterise Paysquare as aggressive explained that it *"broke up a monopolistic market dominated by Atos"*, while another stated that when it wanted to switch acquirer, *"Paysquare came with a strong proposal in all sense (payment scheme processes, online reporting, innovative solutions as well as pricing)."*[95]

(190) […].[96]

(191) […].[97]

(192) […].[98]

(193) In view of the above, the Commission considers that the Transaction would eliminate an importance competitive force.

<u>Conclusion</u>

(194) As set out above, a number of factors indicate that the Transaction will result in non-coordinated horizontal effects.

IV.4.1.2.b. Conglomerate effects

<u>Introduction</u>

(195) The Commission guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (the "Non-horizontal Merger Guidelines")[99] explain in paragraph 91 that conglomerate mergers are mergers between firms that are neither in a purely horizontal nor in a purely vertical relationship.

(196) In the case at hand, the Commission considers that the markets of merchant acquiring and the provision of POS terminals in Belgium are related markets in the sense of the non-horizontal Merger Guidelines, given that the customers are the same, and buy both merchant acquiring services and terminals for the same purpose, namely to be able accept card payment from consumers.

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94 See replies to Question 29 of Questionnaire Q4 to competitors.

95 See replies to Question 20 of Questionnaire Q1 to Belgian customers

96 […].

97 […].

98 […].

99 Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings OJC 265, 18.10.2008.

(197) The main concern in the context of a conglomerate merger 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, for example by means of bundling. In certain circumstance, such practices may reduce the competitive pressure on the merged entity allowing it to increase prices.

(198) In the present case, Worldline has very high market shares in two closely related markets, namely the provision of POS terminals (at least [60-70]%, probably higher), and merchant acquiring (approximately [90-100]%). The Transaction would further strengthen Worldline's position on the merchant acquiring market. The Commission therefore has to assess whether this would provide it with the (enhanced) ability and incentive to (partially) foreclose competitors from the terminal provision market in Belgium.

Ability to foreclose

(199) Firstly, the Commission notes that bundling of terminals and merchant acquiring services is a common practice in Belgium. The results of the market investigation indicate that most merchant acquirers, albeit not all, offer also terminals, either by themselves or in partnership with a terminal provider.[100]

(200) Customers responding to the market investigation confirm the answers received from competitors, and point to certain advantages of being offered a bundle, such as to have one central service desk. When problems occur, it is sometimes not easy to detect if it is caused by the terminal or the merchant acquirer / acquiring processor, and therefore it is beneficial to have one contact only.[101] On the other hand, customers have also identified certain benefits of buying these products and services separately, such as for example the possibility to negotiate overall better conditions and prices. Customers also indicate that switching acquirer is easier when it is not the same company as the terminal provider.[102]

(201) Consistent with this balance of advantages and disadvantages of buying separately or in a bundle, the results of the market investigation indicate that at least half of customers purchase the combinations, whereas the other half prefers to buy separately.[103] There are also indications that larger and more sophisticated retailers buy separately, whereas SMEs typically prefer to work with a one stop shop.[104]

(202) Secondly, the Commission recalls, as set out above in section IV.4.1, that Worldline is dominant in the merchant acquiring market, and the Transaction would further strengthen this dominance. With a [60-70]% or more market share in the terminals market, Worldline exerts significant market power in this market as well. According to paragraph 99 of the non-horizontal Merger Guidelines, a significant degree of market power is needed for a company to successfully foreclose a competitor from a related market. The

100 See replies to Questions 39, 46 and 47 of Questionnaire Q4 to competitors

101 See replies to Questions 32, 38 and 38.1 of Questionnaire Q1 to Belgian customers.

102 See replies to Question 32of Questionnaire Q1 to Belgian customers.

103 See replies to Question 31of Questionnaire Q1 to Belgian customers. Half of the customers responding to the market investigation buy separately. However, one competitor estimates that less than 10% of the market buys terminals separately from acquiring services (minutes of a call with a competitor, 22 February 2016).

104 See minutes of a call with a competitor, 22 February 2016.

market investigation indicated that Worldline is already leveraging its strong market position both in merchant acquiring and in terminals to propose bundles to its customers.

(203) Thirdly, as described above in section IV.2.4, the results of the market investigation indicate that there is a large common pool of customers, meaning customers that buy or would considering buying both terminals and merchant acquiring services out of one hand. This is another factor to be taken into account by the Commission for foreclosure effects in conglomerate mergers to be a concern.[105] While larger and more sophisticated customers reported that they can, with some difficulty and resistance from Worldline, and as set out above as of recital (174), unbundle the two offerings to obtain better prices or servicing conditions from different suppliers, for smaller customers having Worldline as merchant acquirer or terminal provider, the initial investment to look for cheaper alternatives to the bundle in terms of technical complexity and risk of unsuccessful integration is too high compared to the savings they could obtain going forward.

(204) In view of the above, it is likely that Worldline already has the ability to partially foreclose terminal competitors today. As the Transaction would strengthen Worldline dominance in merchant acquiring, it would also strengthen Worldline's ability to foreclose rivals on the terminal market in Belgium.

Incentive to foreclose

(205) According to paragraph 105 of the non-horizontal Merger Guidelines, the incentive to foreclose depends on the overall profitability of the strategy. In the case at hand, it means in particular that is necessary to determine whether it may be profitable for the Parties to sell either terminals or merchant acquiring services at lower cost than what they would charge separately, in order to increase or defend their market share, notably in the terminal market.

(206) […] this may already be profitable now, and […] the Transaction would further increase the incentive of the Parties to foreclose terminals competitors.

(207) […].[106]

(208) Conversely, as described as of recital (174), terminals can also function as retention tools for merchant acquiring customers. […].[107]

(209) In view of the above, it would seem that, depending on the customer and the current circumstances on the market, Worldline already has the incentive to leverage its position in merchant acquiring to sell more terminals, or sell more terminals at low cost to retain or increase its market share in merchant acquiring.

Likely impact on prices and choice

(210) At the outset, the Commission notes that Paysquare cooperates today with a terminal provider […] that is Worldline's largest competitor in the terminal market.

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105 See in particular paragraph 100 of the non-horizontal Merger Guidelines.

106 […].

107 […].

(211) As a result of the transaction, it is likely that Worldline could and would also make the former Paysquare customers a terminal offer "*a terminal offer they can't refuse* ".[108]

(212) Once equipped with Worldline terminals, these could in turn be used, to make the switching to a different merchant acquirer (or terminal provider), even more difficult.

(213) As a result, not only would Worldline's position be strengthened in both the merchant acquiring and the terminals market, but it is also likely that terminal competitors could exercise a less effective constraint, which could ultimately enable Worldline to increase prices, on both markets.

IV.4.1.2.c. Conclusion

(214) As set out above, the Transaction entails the presence of a number of factors that indicate that it would result in non-coordinated horizontal effects.

(215) Moreover, given the already very strong position of Worldline on both the merchant acquiring and the terminal provision market in Belgium, it cannot be excluded that the Transaction would strengthen its ability further to successfully and implement a foreclosure strategy on the market for the provision of terminals in Belgium.

(216) For the above reasons, the Commission considers that the Transaction raises serious doubts as to its compatibility with the internal market on the Belgian market for merchant acquiring.

IV.4.2. Merchant acquiring – Netherlands

IV.4.2.1. Notifying Party's view

(217) According to the Notifying Party, the transaction will only result in affected plausible markets in the credit segment of merchant acquiring in the Netherlands, where the combined market shares would be [20-30]% and [20%-40]% respectively.

(218) In the overall market for merchant acquiring in the Netherlands, it estimates the combined market share of the Parties to be below [0-5]%.

(219) According to the Notifying Party, the very small combined market share in the overall merchant acquiring market is explained by the dominance of the debit segment in the Netherlands, where the Parties are hardly present and where various Dutch banks account for most of the debit transactions. The Notifying Party estimates that [5-10]% of all card payments are made with a credit card in the Netherlands.

(220) In view of the insignificant size of the credit segment, the Notifying Party submits that the Transaction should not be assessed at this level.

(221) In any event, the Notifying Party submits that on this market segments it faces a large number of competitors, and that accordingly, the Transaction could not possibly give rise to competition concerns.

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108 […].

IV.4.2.2. Commission's assessment

No horizontal non-coordinated effects

(222) The Commission notes that the results of the market investigation broadly confirm the Notifying Party's estimates of the Parties' market shares: On the overall merchant acquiring markets, Dutch banks hold the lion's share, whereas for the credit cards segments, Paysquare, EMS, and Worldline are seen as the strongest/largest players by most respondents.[109]

(223) However, even on these market segments, there a sizable number of other suppliers are active, according to customers, including Elavon, SIX, CCV, EMS, Adyen, B+S, Concardis.[110]

(224) The market investigation was inconclusive as to the closeness of competition between the Parties: While some customers mentioned the respective other Party when asked about the best alternative, the majority indicated that other merchant acquirers such EMS, SIX, B+S and Concardis would be the preferred alternative option,[111] and hence arguably a closer competitor.

(225) Similarly, when asked which other merchant acquirers they refer to as potential alternatives in negotiations with current or potential suppliers, customers mentioned the Parties, but also EMS, Elavon, and SIX.[112]

(226) Overall, there seem to be a sizable number of merchant acquirers active in the Netherlands which offer comparable services. The market investigation indicated that none of the merchant acquirers, including the Parties, holds particular market power in the Netherlands in the credit segment, which is reflected in the relatively modest market shares in this segment. As indicated above, the credit segment is the only one where the Parties have a meaningful presence, and is overall only a small fraction of the overall merchant acquiring market.

(227) Against this background, it is not surprising that a clear majority of customers consider that sufficient alternative suppliers would remain after the Transaction.[113] In the same vein, only one competitor and one customer expect price to increase as a result of the transaction, whereas a significant number of customers even anticipates a decrease in prices.[114]

(228) Finally, hardly any customer or competitor that responded to the market investigation expects an impact on its company as a result of the Transaction.[115]

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109 See replies to question 58 of Questionnaire Q 4 to competitors.

110 See replies to question 8 of Questionnaire Q 2 to Dutch customers.

111 See replies to question 8 of Questionnaire Q 2 to Dutch customers.

112 See replies to question 19 of Questionnaire Q 2 to Dutch customers.

113 See replies to question 20 of Questionnaire Q 2 to Dutch customers.

114 See replies to question 23 of Questionnaire Q 2 to Dutch customers, and replies to question 65 of Questionnaire Q 4 to competitors.

115 See replies to question 22 of Questionnaire Q 2 to Dutch customers, and replies to question 77 of Questionnaire Q 4 to competitors.

(229) In view of the above, the Commission considers that no serious doubts as to the compatibility with the internal market arise as a result of the Transaction with respect to merchant acquiring (and the credit cards segments thereof) in the Netherlands.

No conglomerate (foreclosure) effects

(230) Conversely to the situation in Belgium as described above, in particular in section IV.4.1.2.b the Parties only hold an insignificant market share in the merchant acquiring market, which is dominated by Dutch banks.

(231) For this reason alone, it seems unlikely that the Parties could foreclose competitors from the market for the provision of POS terminals in the Netherlands.

(232) In view of the above, the Commission considers that no serious doubts as to the compatibility with the internal market arise as a result of the Transaction with respect to the market for the provision of POS terminals in the Netherlands.

IV.4.3. Merchant acquiring - Luxembourg

IV.4.3.1. Notifying Party's view

(233) The Notifying Party submits that the combined market shares of the Parties on the affected plausible markets of merchant acquiring in Luxembourg are modest, and the increment resulting from the transaction is always [0-5]%.

(234) More specifically, the Notifying Party submits that on the overall merchant acquiring market, the Parties hold a combined market share of less than [10-20]%. Affected markets arise in the plausible markets for POS acquiring (market share approximately [20-30]%, but with an increment of [0-5]%), as well as the Visa and Mastercard segments, with estimated market shares between [10-30]%, and an increment of [0-5]%.

(235) Furthermore, the Notifying Party submits that Paysquare is not really active in Luxembourg, […].

(236) The Notifying Party also points to the fact that Luxembourg does not have a domestic payment scheme any longer, and is as a result a particularly open market.

(237) Finally, it submits that the Parties face strong competitors, and notably SIX, with a market share of [70-90]% of the overall merchant acquiring, as well as other firms such as Elavon and Catella.

(238) In view of the above, the Notifying Party submits that no competition concerns can arise as a result of the Transaction.

IV.4.3.2. Commission's assessment

(239) According to paragraph 18 of the horizontal Merger Guidelines, concentrations leading to a combined market share of less than 25% are unlikely to impede effective competition.

(240) The Commission notes that the results of the market investigation broadly confirm the estimates of the market shares submitted by the Notifying Party, and considers that in no plausible merchant acquiring market would this amount to more than 25%.[116]

(241) In qualitative terms, the results of the market investigation indicate that Worldline and Paysquare are both minor challengers of SIX, among a number of others such as B+S, Catella, Concardis and Elavon.[117]

(242) In addition, not a single customer and only a sole competitor expect an adverse impact or an increase in price resulting from the Transaction.[118]

(243) In view of the above, the Commission considers that no serious doubts as to the compatibility with the internal market arise as a result of the Transaction, with respect to merchant acquiring (and the plausible Visa or Mastercard market segments thereof) in Luxembourg.

IV.4.4. Issuing processing – Germany

IV.4.4.1. Notifying Party's view

(244) The Notifying Party submits that, in Germany 80-85% of all card transactions are processed by banks internally, in particular as regards debit transactions under the domestic scheme. External service providers such as Worldline and Equens, only undertake and compete for the issuing processing of international card transactions.

(245) The Notifying Party submits that, if the overall market for issuing processing in Germany, including activities performed internally by banks, are considered, the level of combined market shares of the Parties is very low ([5-10]% with an increment of [0-5]%).

(246) If the transactions that are processed internally by banks directly or by bank owned entities are excluded (as the Parties and other external providers do not compete for the processing of these transactions), an affected market arises (the Parties' combined market share will be approximately [40-50]%). However, in the Notifying Party's view, Equens only brings a very small increment ([0-5] %), performing issuing processing for one customer ([…]) in Germany.

a) With respect to […] cards, the Notifying Party points out that these cards can be attributed either to the international scheme as they use the MasterCard brand or to the domestic debit scheme, as they are issued by […]. In addition, according to the Notifying Party, […] cards are technically neither debit nor credit cards, as they are prepaid.

(247) Finally, the Notifying Party reports the presence on this market of significant and sizeable competitors (namely First Data with a market share of [20-40]% and TSYS ([10-30]%) that compete with Worldline for the issuing of international card transactions, […].

(248) Based on the above, the Notifying Party submits that no competition concerns will arise as a result of the Transaction.

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116 See replies to Questionnaire Q 3 to customers in Luxembourg.

117 See replies to questions 91 and 93 of Questionnaire Q 4 to competitors.

118 See replies to questions 97 of Questionnaire Q 4 to competitors, and replies to questions 22 and 23 of Questionnaire Q 3 to customers in Luxembourg.

IV.4.4.2. Commission's assessment

(249) The results of the market investigation supported the Parties’ claim that no serious doubts arise as a result of the Transaction on the potential market for issuing processing in Germany.

(250) First, the results of the market investigation indicated that external service providers like the Parties, only compete for the issuing processing of credit card based transactions in Germany.

(251) In this respect, a market participant explained that German Banks outsource the issuing processing of credit cards transactions to external companies such as Worldline, but process debit card transactions in-house.[119]

(252) Second, the market investigation also revealed that Equens is at the most a very minor player: Among the various alternatives to Worldline when it comes to issuing processing of credit card transactions in Germany that were mentioned in the market investigation (First Data, TSYS, Bayern Card Services (BCS), Plus Card);[120] Equens did not feature.

(253) The reason for this may be that […] [an operator] explained that their cards are not fully comparable to credit cards ([…]) and that even so, “*they would be able to move away from the merged entity and switch to an alternative issuing processor, i.e., First Data, Ingenico or any other processor that would fit their needs*.”[121]

(254) In conclusion, as stated by a German bank during the market investigation, the Transaction will not change the situation in the issuing processing space in Germany, as “*Equens is not present in the market for issuing processing of credit card transactions*” and the credit card market is quite small and fragmented in Germany (compared to other European states), “*thus the impact of the transaction will be even less significant*."[122]

(255) In view of the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility to the internal market with respect to issuing processing in Germany.

IV.4.5. iDEAL processing – and plausible markets to which it could belong

IV.4.5.1. Notifying Party's view

(256) The Notifying Party submits that the Parties activities would lead to the following potentially affected markets:

(257) For SCT processing, if it were defined at Eurozone level, the combined market share would be approximately [20-30]%, with an increment of [0-5]%.[123]

(258) In other plausible markets, notably in (card-less) e-commerce transactions or web-enabled acquiring processing, the Parties' activities do not overlap, but the Notifying Party

119 See minutes of call with a customer, dated 17 February 2016.

120 See minutes of call with a customer, dated 17 February 2016.

121 See minutes of call with a customer, dated 17 February 2016.

122 See minutes of call with a customer, dated 17 February 2016.

123 No affected market would arise if the relevant market for SCT processing is defined at EEA or EU level.

submits that Equens terminated discussions with a Dutch bank about becoming its iDEAL processor in view of the Transaction.

(259) Only if national markets were defined for acquiring processing including both card-based and card-less payments, the combined market share in the Netherlands would be [80-100]%, with an increment of [0-10]%, […].

(260) The Notifying Party also submits that Worldline's current position regarding the processing of iDEAL payments, […], results from winning a public tender published Dutch banks […]. Recently however, another company, PPRO, was approved as iDEAL processor, and several other competitors have announced their intention to start offering iDEAL processing.

(261) In view of the limited market shares in the plausible markets in which the Parties' overlap, and the existence of alternative potential iDEAL processors, the Notifying Party submits that no serious doubts can arise as a result of the Transaction.

IV.4.5.2. Commission's assessment

(262) The responses to the market investigation indicate clearly that the Transaction cannot give rise to serious doubts, in particular as both customers and competitors do not expect the Transaction to have an adverse impact on customers.[124]

(263) Regarding a possible overall market for acquiring processing for card-based payments and the iDEAL processing of card-less payments in the Netherlands, the Parties would have a high market share of approximately [80-100]%, but be very distant competitors as in fact they offer completely different products – Equens acquiring processing of card-based transactions, and Worldline processing of iDEAL card-less transactions. Accordingly, they also have (to some extent) different customers – for Equens, it is merchants or merchant acquirers, whereas for Worldline it is Dutch banks participating in iDEAL. Most importantly, it seems extremely unlikely that the increment stemming exclusively from the addition of iDEAL processing customers would in any way strengthen Equens market power in this space.

(264) Were the relevant market defined as comprising the processing of SCT transactions in the Eurozone, the market shares would be very modest ([20-25]%), and there would be a number of sizable competitors such as STET, SIA, Iberpay, EBA or Vocalink. Moreover, the increment would be small ([0-5]%), […].

(265) Irrespective of the market definition, the results of the market investigation indicate that there has been at least one recent entrant – PPRO – which offers iDEAL processing.[125] Moreover, those companies that have participated in tenders in the past to become iDEAL processors (possibly including as many as MaxCode, Wordline, Payplaza, Ingenico, Adyen, Six and First Data)[126], could in all likelihood also start offering iDEAL processing, should a commercial opportunity arise.

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124 See replies to Question 82 of Questionnaire Q4 to competitors, and replies of customers to questions of the Commission, received on 9 and 10 March.

125 See replies to Question 79 of Questionnaire Q4 to competitors, and replies of customers to questions of the Commission, received on 9 and 10 March.

126 See replies of customers to questions of the Commission, received on 9 and 10 March

(266) The loss of potential competition resulting from the Transaction, either on the potentially affected markets, or on those that are not affected, is therefore in the Commission's view not significant, as many potential competitors remain, and the Transaction will only eliminate one of them.

(267) For the above reasons, the proposed transaction does not raise serious doubts as to its compatibility with the common market in the potential markets of processing iDEAL, card-based, SCT or e-commerce transactions.

IV.4.6. Provision of software for the activities of German NSPs

<u>Introduction</u>

(268) The Non-horizontal Merger Guidelines explain in paragraph 29 that a 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 the companies' ability and incentives to compete. Such foreclosure may discourage entry or expansion of rivals or encourage their exit. The foreclosure strategy can take the form of input foreclosure or customers' foreclosure. In the context of the proposed transaction, the Commission will focus solely on input foreclosure, as customer foreclosure is evidently not a concern in view of Equens lack of upstream presence.

(269) According to paragraph 31 of the Non-horizontal Merger Guidelines input foreclosure arises where post-merger, the new entity would be likely to restrict access to the products or services that it would have otherwise supplied absent the merger, thereby raising its downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger. This may lead the merged entity to profitably increase the price charged to consumers, resulting in a significant impediment to effective competition. The analysis of the input foreclosure requires an assessment of the ability and the incentives of the merged entity to refuse access to input.

(270) Worldline holds a nearly monopolistic position on the upstream market for software for the activities of German NSPs. Worldline is currently not active as NSP. PaySquare market share on the downstream market for NSP activities, for which merchant acquiring is a proxy, is approximately [5-10]%, and [5-10]% on the domestic card scheme segment (which accounts for the vast majority card transactions in Germany).

IV.4.6.1. Notifying Party's view

(271) In the Notifying Party's view there will be […]. Worldline's licensing activity of Poseidon generates revenue of around EUR […] per year among which those of PaySquare represent approximately […].

(272) According to the Notifying Party, Worldline continuously invests to upgrade its software solutions (new functionalities, innovations, etc.) and therefore has a strong incentive to release new software versions to all customers at the same time, and to as many as possible, so as to recoup its investments as quickly as possible.

IV.4.6.2. Commission's assessment

<u>Ability to foreclose access to inputs</u>

(273) In the market investigation, the Commission tested whether Worldline would be able post transaction to raise the licensing fees it charges to PaySquare's competitors or to make the conditions of access to Poseidon/WLP less favourable for competitors than for PaySquare in terms of technology updates or functionalities.

(274) The overwhelming majority of the customers indicated that Worldline could provide its NSP subsidiary PaySquare with a competitive advantage, for example by providing it with a better version, better service, earlier updates or a tailor made functionality of Poseidon/WLP; it could also discriminate in terms of price.[127]

(275) One respondent to the market investigation pointed out that *"o f course Worldline can bill lower charges to Paysquare and nobody will see that*",[128] whereas another explained that "*due to the [85-90]% market share of Poseidon there is a direct Impact on PaySquare's competitors caused by Poseidon, either economically (Price market vs. Price paysquare), service quality and/ or product development and availability (e.g. paysquare first), new functionalities and/ or IPRs*."[129]

(276) Similarly, another customer indicated that "*Worldline could provide new functionalities/ better service earlier to Paysquar*e"[130] and a fourth customer stated that "*Worldline could disadvantage other competitors of PaySquare by delaying the roll-out of products and functionalities since each customer maintains its own software application pack on the Software platform of Worldline.*"[131]

(277) As explained above in section IV.4.6, should such discrimination in terms of price or service occur, Worldline's customer would have very limited possibilities to react, in particular given that there are no alternatives on the market and that the development of an alternative to Poseidon would require significant time and investment.[132]. Customers will not have the possibility to develop an alternative solution since the software is *de facto* industry standard in Germany. Almost all terminals in Germany are connected via Worldline's ZVT protocol. The results of the market investigation indicated that without opening the protocol will be impossible to develop an alternative software solution with the full functionality of the Poseidon software.[133]

(278) In view of the above, the Commission considers that Wordline will have the ability to discriminate between NSPs and favour PaySquare's activities in terms of price and services regarding the provision of the Poseidon software and its modules.

<u>Incentives to foreclose access to inputs</u>

(279) In order to assess whether foreclosure could effectively take place, the Commission has to analyse if such strategy would be profitable. In the case at hand, the size of the downstream market for merchant acquiring of transactions under the domestic card scheme is EUR […] million in 2014, according to the Notifying Party. The market

127 See replies to Questions 12 and 13 of Questionnaire Q6 to NSPs.

128 See replies to Question 12.1 of Questionnaire Q6 to NSPs.

129 See replies to Question 12.1 of Questionnaire Q6 to NSPs.

130 See replies to Question 13.1 of Questionnaire Q6 to NSPs.

131 See replies to Question 13.1 of Questionnaire Q6 to NSPs.

132 See replies to Question 14 of Questionnaire Q6 to NSPs.

133 See replies to Question 7 of Questionnaire Q6 to NSPs.

investigation revealed that Poseidon is also largely used for the provision of merchant acquiring services for all major international card schemes at POS terminals. The size of the overall market for POS segment of merchant acquiring is estimated by the Notifying Party at EUR […] in 2014.

(280) As mentioned earlier, the revenue generated by the licensing fees of Poseidon/WLP on the upstream market is estimated at EUR […]. Given the rather limited revenue generated on the upstream market and the comparatively very large size of downstream market, it is very likely that Worldline will have the incentive to forgo part of the revenue it obtains in the upstream market in order to favour the activities of PaySquare on the downstream market with the aim to gain market share.

(281) On the basis of the above, the Commission considers that Wordline will also have the incentive to discriminate between NSPs and favour PaySquare's activities in terms of price and services regarding the provision of the Poseidon software and its modules.

Conclusion

(282) As presented above, there are several elements that indicate that the Transaction may lead to non-horizontal effects, namely input foreclosure regarding the market for software for the activities of German NSPs. The Commission considers therefore that the Transaction raises serious doubts as to its compatibility with the internal market.

V. PROPOSED REMEDIES

(283) In order to render the concentration compatible with the internal market, the undertakings concerned have modified the notified concentration by entering into the following commitments, which are annexed to this decision and form an integral part thereof.

V.1. Commitments submitted by the Notifying Party

(284) In order to render the concentration compatible with the internal market, the Notifying Party submitted a set of commitments under Article 6(2) of the Merger Regulation on 30 March 2016 ("Initial Commitments").

(285) The Commission market tested the Initial Commitments in order to assess whether they are sufficient and suitable to remedy the serious doubts identified in the market for merchant acquiring services in Belgium and on the market for the provision of software for the activities of NSPs in Germany.

(286) Following the market test, amended commitments were submitted on 19 April 2016 ("Final Commitments"). The Final Commitments are annexed to this decision and form an integral part thereof.

V.1.1. Initial Commitments

(287) The Initial Commitments consisted of two parts - one aimed at addressing the Commission's serious doubts in relation to the market for merchant acquiring in Belgium and the other relating to the market for the provision of software for the activities of NSPs in Germany.

Merchant acquiring market in Belgium

(288) The Initial Commitments consisted of the divestiture of the merchant acquiring business of Paysquare in Belgium. It included in particular the transfer of customers contracts

entered into by PaySquare, all the sales partnership agreements entered into by PaySquare on the market for merchant acquiring in Belgium and all corresponding merchant data and records, and the relevant personnel. At the option of the purchaser, the Notifying Party offered an Interim Service Arrangements for transaction processing, customer and acquirer servicing (such as call centre and fraud handling), continued technical product management, scheme licenses and payment institutions licenses.

(289) The Notifying Party also offered at the option of the purchaser to facilitate the transfer processing contracts with third party service providers. The Divestment Business did not include trademarks, service marks and brands, non-Belgian business, processing and product management as well as scheme and payment institution licenses.

Provision of software for the activities of NSPs in Germany

(290) The Initial Commitments also entailed the granting of a license for Poseidon and its modules to third-party NSPs under fair, reasonable and non-discriminatory ("FRAND") terms and particularly, on no less favourable terms than the ones granted to PaySquare during a period of 10 years as from the effective date and under the supervision of a licensing trustee. Furthermore, the Notifying Party committed to:

a. cap the software maintenance fee (for a period limited to the next 5 years);

b. provide maintenance services under FRAND terms and notably to serve third party NSPs in priority vis-à-vis PaySquare in case of shortage, with reinforced monitoring by an ad hoc user's group (to be created) and the licensing trustee;

c. grant access to the Poseidon source code for NSPs' internal business only in exchange for a payment of a one off fee (twice the amount of the annual maintenance fee);

d. externalise the governance of ZVT protocol to an independent not-for-profit industry organization, with a representation of all the market participants, with a right to sublicense the protocol to any and all interested parties, in exchange of a sublicense fee to be determined by the industry body;

e. create a fast track dispute resolution system leading ultimately to arbitration before the International Chamber of Commerce.

V.1.2. The results of the market test

Merchant acquiring market in Belgium

(291) On the basis of the results of the market test the Commission considered that the Initial Commitments were overall viable and effective, subject to some limited improvements. The overwhelming part of the respondents to the market test indicated that the Initial Commitments cover the necessary assets, in particular the entire Paysquare customers portfolio, in order to enable a competitor to effectively run the business in a viable and profitable manner.[134]

(292) Some competitors indicated that the interim measures should be offered for duration of 24 months instead of 18 months, as initially proposed by the Notifying Party, in order to

134 See replies to Questions 1 - 2 and 7 of Questionnaire R1 - Belgium.

enable even a company which is currently not active in the market for merchant acquiring services in Belgium to establish its presence following the acquisition of the Divestment Business.[135]

(293) The market participants also largely took the view that there is no need to enlarge the scope of the Initial Commitments and to include trademarks, service marks and brands, non-Belgian business, processing and product management as well as scheme and payment institution licenses.[136]

(294) Nevertheless, companies indicated that the duration of the non-compete obligation pursuant to which the Notifying Party is not allowed to target customers that form part of the divested portfolio should be longer than 3 years, in order to ensure the effectiveness of the Commitments.[137]

(295) As to the suitable purchasers for the acquisition of the Divestment Business, the market test revealed that the Divestment Business can be operated in an efficient manner even by a merchant acquirer with no current activity in Belgium.[138]

(296) Finally, respondents to the market test considered the Initial Commitments as sufficiently attractive and several companies expressed an interest in acquiring the Divested Business.[139]

Provision of software for the activities of NSPs in Germany

(297) The results of the market test revealed the need for some important improvements of the Initial Commitments.

(298) While the majority of the respondents considered that the FRAND terms for Poseidon licenses proposed in the Initial Commitments were conceptually sufficient to remove the competition concern, namely preventing the Notifying Party from treating some of Poseidon customers worse than Paysquare,[140] respondents to the market test identified several shortcomings, summarised below:[141]

a. the commitment from the Notifying Party should entail a duty to provide FRAND treatment also if the performance of the software was increased;

b. FRAND should apply to Poseidon updates and new modules which may be developed in the future;

c. existing contracts with NSPs should, if customers wish so, remain unchanged;

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135 See replies to Questions 3 – 4 of Questionnaire R1 - Belgium.

136 See replies to Question 6 of Questionnaire R1 – Belgium.

137 See replies to Questions 8 and 8.1 of Questionnaire R1 – Belgium.

138 See replies to Questions 9 – 10 of Questionnaire R1 – Belgium

139 See replies to Questions 11 - 14 of Questionnaire R1 – Belgium

140 See replies to Questions 1 and 13 of Questionnaire R2 – Germany

141 See replies to Question 1 of Questionnaire R2 – Germany

d. the monitoring mechanism for FRAND conditions should be clarified;[142]

e. the capping of the license fee should be offered for duration longer than 5 years;[143]

f. there should be an effective sanction in case of breach of the FRAND conditions by the Notifying Party. Access to the source code subject to royalty payment was not considered as a sufficiently effective deterrent.[144]

(299) Second, the market test revealed a need for substantial improvement of the Initial Commitments regarding the access to the source code and the possibility for NSPs to develop an alternative solution.

(300) The overwhelming majority of the respondents pointed out that access to the source code should not be limited to the development of in-house solution only, because the development cost is substantial and the process relatively complex.[145] In this respect a NSPs mentioned that: *"Just to develop the Poseidon authorisation software with all its functionalities for internal purposes is so much time consuming and expensive to use it than only internally."[146]* The same NSP also pointed out that: *"*The *development of an alternative solution to Poseidon Software should be allowed to several NSP customers that could develop the solution commonly and reduce costs of software development."[147]*

(301) According to the results of the market test, the development of an alternative solution will take longer than 2 years, even if access to the source code and the ZVT protocol is provided. The market participants emphasised the need to extend all provisions of the Initial Commitments for a duration of 10 years.[148]

(302) NSPs also stressed the need to have technical assistance, if necessary for working with the source code. The Notifying Party should also provide maintenance services during the development and testing phase of an alternative solution developed by NSPs based on the source code.[149]

(303) Third, respondents to the market test took the view that the divestment of the ZVT protocol and unrestricted access to it are crucial elements for the development of an alternative to Poseidon.[150] Nevertheless the development of competing software limited to in-house use would still not be commercially viable for NSPs. This was also stressed as the main implementation risk affecting the viability of the Commitments.[151]

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142 See replies to Question 11 of Questionnaire R2 – Germany

143 See replies to Question 2 of Questionnaire R2 – Germany

144 See replies to Question 3 of Questionnaire R2 – Germany

145 See replies to Questions 5 – 7 and 10 of Questionnaire R2 – Germany

146 See replies to Question 7.1 of Questionnaire R2 – Germany

147 See replies to Question 7.2 of Questionnaire R2 – Germany

148 See replies to Question 5 of Questionnaire R2 – Germany

149 See replies to Question 7.2 of Questionnaire R2 – Germany

150 See replies to Question 8 of Questionnaire R2 – Germany

151 See replies to Questions 9, 14, 14.1 and 15 of Questionnaire R2 – Germany

(304) Finally, the participants to the market investigation emphasised that the organisation managing the ZVT protocol should be independent from the Notifying Party.[152]

V.1.3. The Final Commitments

(305) On 19 April 2016, the Notifying Party submitted the Final Commitments, in order to address the concerns raised on the basis of the market test. The Final Commitments follow the structure of the Initial Commitments and contain several improvements compared to those.

Merchant acquiring market in Belgium

(306) The main improvements regarding the Divested Business in Belgium are: (i) the prolongation of the Interim Agreements for transaction processing, customer and acquirer servicing (such as call centre and fraud handling), continued technical product management, scheme licenses and payment institutions licenses from 18 to 24 months; and the extension of the duration of the non – compete obligation of the Notifying Party from 3 to 5 years.

Provision of software for the activities of NSPs in Germany

(307) The Final Commitments contain substantial improvements as compared to the Initial Commitments. The Notifying Party implemented the essential suggestions made by the market participants in the course of the market test and presented above in section V.1.2.

(308) In particular, the scope the Commitments was extended in order to cover all Poseidon modules used by NSPs and their updates, as well as those modules of potential future software which performs in essence the same functions as Poseidon today.

(309) The monitoring mechanism of the FRAND terms was improved. The Licensing Trustee will be granted access to all licensing agreements between Worldline and its customers,[153] including in particular PaySquare, in order to carry out an initial and then a yearly benchmarking. In addition, any NSP will be able to submit its own terms and conditions to the Licensing Trustee at any time so as to identify the status of its treatment compared to the terms and conditions granted to PaySquare and be able to opt for the FRAND terms at its sole option should it be more favourable.

(310) In case of a material breach of the FRAND terms the Notifying Party commits to give access to the source code free of charge.

(311) The procedural rules and rights of the ad hoc users group have been clarified. The Notifying Party commits to take the recommendations of the user group into account and make the necessary steps to implement these recommendations to the extent it is reasonable, possible and feasible.

(312) Any NSP who has paid for a license as well as for the access to the Poseidon source code will be able to mutualize costs and develop together with any other NSP placed in the same situation, an alternative solution based on Poseidon, either internally or with a third party supplier of their choice.

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152 See replies to Questions 14.1 of Questionnaire R2 – Germany

153 For customers other than Paysquare, this is subject to their agreement.

(313) If access to the Poseidon source code is requested, Worldline will continue to provide maintenance services to the NSP for the duration of the development phase of an alternative solution by the NSP.

(314) The governance of the ZVT protocol will be transferred to an independent not for profit organisation such as such as the German terminal manufacturer's organization named Verband der Terminalhersteller in Deutschland e.V.

VI. ASSESSMENT OF THE PROPOSED REMEDIES

Merchant acquiring market in Belgium

(315) As indicated above in section IV.4.1.2, the Transaction raises doubts as to its compatibility with the internal market due to non-coordinated horizontal effects on the market(s) for merchant acquiring in Belgium, and conglomerate foreclosure effects on the same market and the related market for the provision of POS terminals in Belgium.

(316) According to the Notifying Party, the commitment relating to Belgium removes the overlap on this market entirely, and as a result, the potential competition concerns arising as a result of the Transaction are eliminated.

(317) In light of the results of the market test, and the improvements of the Final Commitments as compared to the Initial Commitments, the Commission considers that the doubts as to the compatibility of the Transaction with the internal market are eliminated in relation to merchant acquiring in Belgium.

(318) First, practically all respondent to the market investigation took the view that the scope of the commitment encompasses all of Paysquare's merchant acquiring business in Belgium.[154] In that context, it is important to note that the Notifying Party confirmed that only one of Paysquare's contracts with merchants requires their consent to be transferred.

(319) Moreover, the extension of the non-compete clause for Paysquare's current customers, which will be transferred to the purchaser, enhances in the Commission's view the structural effect of the commitment.

(320) Second, in light of the result of the market test, the Commission considers that no additional assets or personnel are needed in order to make the divested business viable, so that it can be run by the purchaser in a profitable manner on a lasting basis.[155]

(321) Third, the main implementation risk revealed by the market test, consisting in the need for a smooth transition of the merchant acquiring contracts to the purchaser, was, in the Commission's view, considerable reduced through the prolongation of the Interim Service Arrangements to 24 month.

(322) Fourth, the Commission considers the fact that all but one respondent to the market test find the divested business attractive, and almost all that are active in merchant acquiring

154 See replies to Question 1 of Questionnaire R1 – Belgium

155 See replies to Questions 2, 6 and 7 of Questionnaire R1 – Belgium

would be interested in buying it, a strong indication for the viability of the of the Divestment Business.[156]

(323) In light of the above, the Commission concludes that the Final Commitments are sufficient to eliminate all serious doubts identified in the competition analysis as regards merchant acquiring (and the provision of POS terminals) in Belgium.

Provision of software for the activities of NSPs in Germany

(324) As indicated above in section IV.4.6, the Transaction raises doubts as to its compatibility with the internal market due to vertical foreclosure effects on the market for the provision of software for the activities of NSPs in Germany.

(325) According to the Notifying Party, the commitment relating to Germany eliminates the potential competition concerns arising as a result of the Transaction.

(326) In light of the results of the market test confirm, and the improvements of the Final Commitments as compared to the Initial Commitment, the Commission considers that this is the case.

(327) At the outset, the Commission notes that the commitments relating to Germany consist of two main elements: FRAND licences for the Poseidon software (and potential successors), and, as a safeguard, a number of provisions that are meant to facilitate the development of an alternative to Poseidon.

(328) As regards the commitment to grant licences at FRAND terms, the Commission considers that the results of the market test, and the improvements notably relating to the duration and the monitoring thereof, provide a sufficient level of certainty as to their effectiveness. A clear majority of respondents to the market test indicate that this part of the commitments will prevent any discrimination amongst Poseidon customers.[157]

(329) Furthermore, the implementation risk revealed by the market test, namely that even with access to source code and ZVT protocol, it would be too costly for a single NSP to develop an alternative to Poseidon for in-house use has been considerably reduced by the improvement of the Final Commitments as compared to the Initial Commitments in this regard. The fact that the commitments now enable NSPs to pool resources and jointly develop an alternative will in the Commission's view considerably increase cost-effectiveness and thereby the possibility of such a development occurring.

(330) In addition, this will enhance the deterrent effect of this aspect of the Final Commitments, in so far as discrimination of Poseidon customers might motivate them to the development of an alternative quickly, which as a result of the Final Commitments would now seem to be an affordable course of action.

(331) In combination with the other elements of the commitments relating to Germany, such as the free access to the Poseidon source in the event of a material breach of the commitments by Worldline, the Commission considers that the entire set of provisions

156 See replies to Questions 12, 13 and 14 of Questionnaire R1 – Belgium

157 See replies to Questions 1and 13 of Questionnaire R2– Germany

will remove both the ability and in particular the incentive for Worldline to (partially) foreclose NSP competitors.

(332) In light of the above, the Commission concludes that the Final Commitments are sufficient to eliminate all serious doubts identified in the competition analysis as regards the market for the provision of software for the activities of NSPs in Germany

Conclusion

(333) For the reasons outlined above and in view of the results of the market test and the ensuing improvements to the Initials Commitments, the Commission considers the Final Commitments to be sufficient in scope and suitable to eliminate the serious doubts as to the compatibility of the Transaction with the internal market in relation to provision of merchant acquiring services in Belgium and the provision of software for the activities of NSPs in Germany.

(334) The Final Commitments in sections I and II (including Schedules I and II, and Appendixes I and II thereto) of the Annex constitute conditions attached to this decision, as only through full compliance therewith can the structural changes in the relevant markets be achieved.

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

(336) The Decision in this case is conditioned on the full compliance with the requirements set out in sections I and II (including Schedules I and II, and Appendixes I and II thereto) of the Final Commitments (conditions), while all other Sections should be obligations within the meaning of Article 8(2) of the Merger Regulation. The full text of the Final Commitments is attached as an Annex to this Decision and forms an integral part thereof.

VII. CONCLUSION

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

For the Commission

(Signed)

Margrethe VESTAGER
Member of the Commission

CASE COMP M.7873- Worldline / Equens / PaySquare

COMMITMENTS OFFERED BY

WORLDLINE TO THE EUROPEAN

COMMISSION

18 APRIL 2016

EUROPEAN COMMISSION

Directorate General for Competition

Place Madou 1 / Madou Plein 1

1210 Saint-Josse-ten-Noode

Brussels

Case COMP M.7873- Worldline / Equens / PaySquare

Object: Commitment package offered by Worldline to the European Commission in relation to merchant acquiring market in Belgium and to the Poseidon software solution in Germany

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the **"Merger Regulation"),** Worldline (the **"Notifying Party")** hereby enters into the following Commitments (the **"Commitments")** vis-a-vis the European Commission (the **"Commission")** with a view to rendering the acquisition of sole control of the whole of Equens S.E. **("Equens"),** including its subsidiary PaySquare (the **"Concentration")** compatible with the internal market and the functioning of the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation (the **"Decision").**

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

This text shall be interpreted in light of the Decision, in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004.

Section A. Definitions

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

- **Affiliated Undertakings:** undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings.
- **Assets:** the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business as indicated and described more in detail in Schedule 1.
- **Closing:** the transfer of the legal title to the Divestment Business to the Purchaser.
- **Closing Date:** the closing of the proposed transaction filed under case M.7873.
- **Closing Period:** the period of […] from the approval of the Purchaser and the terms of sale by the Commission.
- **Confidential Information:** any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.
- **Conflict of Interest:** any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.
- **Divestment Business:** PaySquare's client portfolio, key assets and key personnel as defined and detailed in Schedule 1 which Worldline commits to divest.
- **Divestiture Trustee:** one or more natural or legal person(s) who is/are approved by the Commission and appointed by Worldline and who has/have received from Worldline the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price at the expiry of the first Divestiture Period
- **Effective Date:** the date of adoption of the Decision.
- **Equens:** a *Societas Europaea* incorporated under the laws of the Netherlands (Europese vennootschap), with its official seat in Utrecht, the Netherlands, and its registered office at Eendrachtlaan 315, (3526 LB) Utrecht, the Netherlands, registered with the Dutch Trade Register of the Chamber of Commerce under number 30220519.
- **First Divestiture Period:** a period of […] as from the Effective Date.
- **Hold Separate Manager:** the person appointed by Worldline for the

Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

- **Licensing Trustee:** one or more natural or legal person(s) who is/are approved by the Commission and appointed by Worldline, and who has/have the duty to monitor Worldline's compliance with its obligations under Section II.
- **Monitoring Trustee:** one or more natural or legal person(s) who is/are approved by the Commission and appointed by Worldline, and who has/have the duty to monitor Worldline's compliance with the conditions and obligations attached to the Decision.
- **Network Service Providers or NSPs:** the Network Service Providers *(Netzbetreiber)* active at the Effective Date, the list of which is published by *Die Deutsche Kreditwirtschafe*
- [1] *(DK).*
- **Parties:** Worldline and the target of the concentration.
- **PaySquare:** PaySquare, incorporated under the laws of the Netherlands, having its official seat in Utrecht, the Netherlands and its registered office at Eendrachtlaan 315, (3526 LB) Utrecht, the Netherlands and registered with the Dutch Trade Register of the Chamber of Commerce under number 30196418.
- **Personnel or Key Personnel**: active sales and account managers in charge of the Divestment Business namely 2 FTE key account managers and 1 FTE for Telesales are currently working on the Divestment Business and may be part of the Divestment Business at the option of the Purchaser.
- **Poseidon:** the application software developed and owned by Worldline which is licensed to most Network Service Providers allowing them to ensure several functionalities linked to the processing of card transaction (routing, clearing, authorization of credit-, fleet-and private label cards, support of the DK requirements like girocard and girogo, ZVT communication protocol, "on us" authorization for ELV and some terminal management functions).
- **Purchaser:** the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section I.C.
- **Purchaser Criteria:** the criteria laid down in paragraph 21of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

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1 See: http:/fwww.die-deutsche-kreditwirtschaft.de/dk/zahlungsverkehrfzulassungsverfahrenfelectronic-cash-system.html

- **Schedule:** the schedule to these Commitments describing more in detail the Divestment Business and the term sheet license agreement under FRAND terms proposed by Worldline.
- **Trustee(s):** the Monitoring Trustee and/or the Divestiture Trustee and/or the Licensing Trustee as the case may be.
- **Trustee Divestiture Period:** the period of […] from the end of the First Divestiture Period.
- **Poseidon ZVT Protocol or ZVT:** the protocol developed and owned by Worldline which is currently licensed to NSPs and terminal manufacturers. ZVT is the communication protocol used to enable communication between the payment terminals also using ZVT and Poseidon. ZVT is currently licensed to terminal manufacturers as well as NSPs using the Poseidon software application and NSPs who use their own proprietary solutions.

I. PAYSQUARE CLIENTS PORTFOLIO IN MERCHANT ACQUIRING IN BELGIUM

Section I.A. The commitment to divest and the Divestment Business

Commitment to divest

2. In order to maintain effective competition, Worldline commits to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in these Commitments. To carry out the divestiture, Worldline commits to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If Worldline has not entered into such an agreement at the end of the First Divestiture Period, Worldline shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraphs 35 and following.
3. Worldline shall be deemed to have complied with this commitment if:
   a) by the end of the Trustee Divestiture Period, Worldline or the Divestiture Trustee has entered into a final binding sale and purchase agreement and the Commission approves the proposed purchaser and the terms of sale as being consistent with the Commitments in accordance with the procedure described; and
   b) the Closing of the sale of the Divestment Business to the Purchaser takes place within the Closing Period.
4. In order to reinforce the structural effect of the Commitments, Worldline undertakes to terminate, in compliance with legal requirements and the contractual terms, the customer contracts remaining in the scope of the Divestment Business at the expiry of the Trustee Divestiture Period if any. Worldline undertakes to notify this termination in accordance with the contractual provisions and will invite the customers to find an alternative merchant acquirer.
5. With regards to customer contracts requiring the customer's consent to be transferred to a third party, Worldline will endeavour its best efforts to procure the customer's consent. Should this consent not be obtained within 2 months following the signing of the purchase agreement, Worldline undertakes to immediately notice the customer of the termination of the contract.
6. In order to maintain the structural effect of the Commitments, Worldline shall, for a

period of 5 years after Closing, neither directly approach nor directly contract with the customers of the Divestment Business, unless following the submission of a reasoned request from Worldline showing good cause and accompanied by a report from the Monitoring Trustee, the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the internal market.

7. In addition, Worldline commits to duly inform in writing its indirect sales channels partners in Belgium no later than Closing that it will not be able to contract with customers that are part of the Divestment Business for a period of 5 years as from the Closing.

Structure and definition of the Divestment Business

8. The Divestment Business consists of PaySquare's merchant acquiring business in Belgium, as detailed in Schedule 1. The legal and functional structure of the Divestment Business as operated to date is d escribed in Schedule 1. The Divestment Business as detailed in Schedule 1 includes all the commercial assets and related staff at the option of the purchaser that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business.

9. In addition, the Divestment Business includes the benefit, for a transitional period of up to24 months after Closing and on terms and conditions equivalent to those at present afforded to the Divestment Business, of all current license and processing arrangements under which PaySquare supply products or services to the Divestment Business, as detailed in Schedule 1, unless otherwise agreed with the Purchaser. Strict Chinese wall procedures will be adopted as required so as to ensure that a ny competitively sensitive information related to, or a rising from such supply arrangements (for example, product roadmaps) will not be shared with, or passed on to, anyone else.

Section I.B Related commitments

Preservation of viability. marketability and competitiveness

10. From the Effective Date until Closing, Worldline shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise

as far as possible any risk of loss of competitive potential of the Divestment Business.

11. In particular Worldline undertakes:

    a) not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;

    b) to make available, or procure to make available, sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans;

    c) to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business, and not to solicit or move any Personnel to Worldline's remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally l eave the Divestment Business, Worldline shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. Worldline must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

<u>Hold-separate obligations</u>

12. Worldline commits, from the Effective Date until Closing, to keep the Divestment Business separate from the business(es) it is retaining and to ensure that unless explicitly permitted under these Commitments: (i) current Worldline management and staff have no involvement in the Divestment business; (ii) the Key Personnel and Personnel of the Divestment Business have no involvement in any business retained by Worldline and do not report to any individual outside the Divestment Business.

13. Immediately after the adoption of the Decision, Worldline shall appoint a Hold Separate Manager. The Hold Separate Manager, who shall be part of the Key Personnel, shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by Worldline.

14. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold

Separate Manager shall be subject to the procedure laid down in paragraph 11(c) of these Commitments. The Commission may, after having heard Worldline, require Worldline to replace the Hold Separate Manager.

15. Until Closing, Worldline shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the business(es) which Worldline is retaining.

Ring-fencing

16. Worldline shall implement, or procure to implement, all necessary measures to ensure that it does not, after the Effective Date, obtain any Confidential Information relating to the Divestment Business and that any such Confidential Information obtained by Worldline before the Effective Date will be eliminated and not be used by Worldline. In particular, the participation of the Divestment Business in any central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. Worldline may obtain or keep information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or the disclosure of which to Worldline is required by law.

Non-solicitation clause

17. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of 2 years after Closing.

Due diligence

18. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, Worldline shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
    a) provide to potential purchasers sufficient information as regards the Divestment Business;
    b) provide to potential purchasers sufficient information relating to the Key Personnel and allow them reasonable access to the Key Personnel. Reporting

19. Worldline shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the

Commission's request). Worldline shall submit a list of all potential purchasers having expressed interest in acquiring the Divestment Business to the Commission at each and every stage of the divestiture process, as well as a copy of all the offers made by potential purchasers within five days of their receipt.

20. Worldline shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission if any and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section I.C. The Purchaser

21. In order to be approved by the Commission, the Purchaser must fulfil the following criteria:

a) The Purchaser shall be independent of and unconnected to Worldline and its Affiliated Undertakings (this being assessed having regard to the situation following the divestiture).

b) The Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;

c) The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to have or obtain all necessary licenses and approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

22. The final binding sale and purchase agreement (as well as ancillary agreements) relating to the divestment of the Divestment Business shall be conditional on the Commission's approval. When Worldline has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee. Worldline must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commission's Decision and the Commitments.

23. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

Section I.D. Trustee

I. Appointment procedure

24. Worldline shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. Worldline commits not to close the Concentration before the appointment of a Monitoring Trustee.
25. If Worldline has not entered into a binding sale and purchase agreement regarding the Divestment Business one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by Worldline at that time or thereafter, Worldline shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.
26. The Trustee shall:
    a) at the time of appointment, be independent of Worldline and its/their Affiliated Undertakings;
    b) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and
    c) neither have nor become exposed to a Conflict of Interest.
27. The Trustee shall be remunerated by Worldline in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

Proposal by Worldline

28. No later than 10 working days after the Effective Date, Worldline shall submit the

name or names of one or more natural or legal persons whom Worldline proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period or on request by the Commission, Worldline shall submit a list of one or more persons whom Worldline proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 26 and shall include:

a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;
c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

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

New proposal by the Worldline

30. If all the proposed Trustees are rejected, Worldline shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 24 to 29 of these Commitments.

Trustee nominated by the Commission

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

II. Functions of the Trustee

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

Duties and obligations of the Monitoring Trustee

33. The Monitoring Trustee shall:

i. propose in its first report to the Commission a detail ed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.

ii. oversee, in close co-operation with the Hold Separate Manager, the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by Worldline with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties, in accordance with paragraphs 10 and 12 of these Commitments;

b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 13 of these Commitments;

c) with respect to Confidential Information:

– determine all necessary measures to ensure that Worldline does not after the Effective Date obtain any Confidential Information relating to the Divestment Business,

– in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business,

– make sure that any Confidential Information relating to the Divestment Business obtained by Worldline before the Effective Date is eliminated and will not be used by Worldline and

– decide whether such information may be disclosed to or kept by Worldline as the disclosure is reasonably necessary to allow Worldline to carry out the divestiture or as the disclosure is required by law;

d) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and Worldline or Affiliated Undertakings;

iii. propose to Worldline such measures as the Monitoring Trustee considers necessary to ensure Worldline's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;

iv. review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:

a) potential purchasers receive sufficient and correct information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and

b) potential purchasers are granted reasonable access to the Personnel;

v. act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;

vi. provide to the Commission, sending Worldline a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the Divestment Business as well as the splitting of assets and the allocation of Personnel so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers;

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

viii. within one (1) week after receipt of the documented proposal referred to in paragraph 22 of these Commitments, submit to the Commission, sending Worldline a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the Sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser;

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

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

Duties and obligations of the Divestiture Trustee

35. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement (and ancillary agreements) as in line with the Commission's Decision and the Commitments. The Divestiture Trustee shall include in the sale and purchase agreement (as well as in any ancillary agreements) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of Worldline, subject to Worldline unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

36. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 working days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to Worldline.

III. Duties and obligations of the Parties

37. Worldline shall provide and shall cause its advisors to provide the Trustee with all

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

38. Worldline shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. Worldline shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. Worldline shall inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.

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

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

41. At the expense of Worldline, the Trustee may appoint advisors (in particular for

corporate finance or legal advice), subject to Worldline's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Worldline refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Worldline. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 40 of these Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Worldline during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

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

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

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

IV. <u>Replacement. discharge and reappointment of the Trustee</u>

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

a) the Commission may, after hearing the Trustee and Worldline, require Worldline to replace the Trustee; or

b) Worldline may, with the prior approval of the Commission, replace the Trustee.

46. If the Trustee is removed according to paragraph 45 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 24 to 31of these Commitments.

47. Unless removed according to paragraph 45 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section I.E. The review clause

48. The Commission may extend the time periods foreseen in the Commitments in response to a request from Worldline or, in appropriate cases, on its own initiative. Where Worldline requests an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to Worldline. Only in exceptional circumstances shall Worldline be entitled to request an extension within the last month of any period.

49. The Commission may further, in response to a reasoned request from the Notifying Parties showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to Worldline. The request shall not

have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

II. GERMANY

Section II.A. Purpose

50. Worldline understands that a number of German Network Service Providers ("NSPs") have apparently questioned Worldline's willingness, following the closing of the Concentration, to continue entering into Poseidon licensing agreements with NSPs under fair, reasonable and non-discriminatory terms.

51. Worldline started to develop software solutions for NSPs in 1989 in response to their needs. Since then, Worldline has developed and upgraded such software solutions which became Poseidon. ZVT is the communication protocol used to enable communication between the payment terminals also using ZVT and Poseidon. ZVT is today licensed to terminal manufacturers as well as NSPs using the Poseidon software application and NSPs who use their own proprietary solutions.

52. After the Concentration, the software development and licensing of Poseidon will be operated by the "EWC Equens Worldline Company" ("EWC"), a joint venture having its own P&L. The independence of EWC is supervised by the National Bank of the Netherlands (DNB) with the appointment of independent board members. For the avoidance of doubt, the commitments under section II shall also apply to EWC.

53. For the avoidance of doubt, the Poseidon commitments undertaken in section II.B *"Non- exclusive Poseidon Licensing Agreements and non-exclusive maintenance service agreements with third-party NSPs"* shall be construed:

   – <u>with regard to the FRAND terms,</u> as relating to Poseidon as defined in Section A "Definitions" of this Commitment Letter and to any updates, (new) additional modules and functionalities undertaken by Poseidon provided that such modules and functionalities are used for NSP business in Germany. Should the modules and functionalities of Poseidon used by PaySquare for its NSP business in Germany be undertaken by an alternative software provided by Worldline, such modules and functionalities, as far as they are practically comparable to the functionalities of Poseidon, will be included in the scope of the Commitments, to the exclusion of any other module(s) and/or functionality(ies) of such alternative software.

   – <u>with regard to the access to the source code described in paragraphs 72 to 75,</u>

as not going beyond the Poseidon source code and those elements of an alternative software provided by Worldline for modules and functionalities that are practically comparable to the functionalities of Poseidon. For the avoidance of doubt, the source code of module(s) and/or functionality(ies) undertaken by a wider alternative software solution such as Worldline Pay Front Office shall be excluded from the commitment to grant access to the source code.

54. Pursuant to the Commitments exposed in section II.B below, Worldline commits to grant access to the modules and functionalities used by PaySquare for the purpose of its NSP business in Germany and which are currently based on the use of Poseidon to third-party NSPs under fair, reasonable and non-discriminatory terms and particularly, on no less favourable terms than the ones granted to PaySquare as regards Germany in all respects, including without limitation price conditions, quality of service, maintenance, new modules and upgrades. It is specified that Worldline will propose such licensing agreements under FRAND terms to the NSPs which will remain free to opt for these terms to the extent they would be more favourable to them but shall not in any case whatsoever be obliged to do so.

55. Worldline also intends to maintain and update Poseidon in a way that will continuously preserve performance of Poseidon and thereby proposes to enter into a maintenance services agreement under FRAND terms.

56. As further detailed in paragraphs 65 to 70 of the present Commitment Letter, in order to secure the customers as to the monitoring of the following Commitments, and in addition to the appointment of a Licensing Trustee which will be provided with contracts, documentation, pricing and invoicing conditions on a quarterly basis and more regularly upon request in order to enable the Licensing Trustee to check that the conditions applied to other NSPs are FRAND i.e. on no less favourable terms than the ones granted to PaySquare, Worldline also intends to set up a structured user's group including all NSP customers to verify on a regular basis the compliance with its obligation in terms of quality of service.

57. As described in Section II.B, Worldline also intends to undertake granting access to the source code of Poseidon to NSPs to run their NSP business so as to enable continuity of maintenance services with a third party operator of their choice in exchange of payment of a one off fee. Any NSP who requests access to its Poseidon source code will thereby be able to mutualize costs and develop together with any other NSP placed in the same situation, an alternative solution based on Poseidon, either internally or with a third party supplier of their choice.

58. Worldline also intends to commit externalizing the management of Poseidon ZVT protocol to an independent and not-for-profit industry organization in exchange of a license back to be able to continue using the ZVT protocol. The independent industry organization will be able to sublicense the use of ZVT and will be in charge of managing the ZVT protocol notably in order to adapt it directly or indirectly as per regulatory requirements. Such commitment will extend third party's ability to provide a software solution within a reasonable time frame to the NSPs and thereby increase their alternative sources of supply on the long term under the conditions described in Section II.C.

59. Lastly, Worldline will enable all NSPs to benefit from a discretionary option that will allow them to solve any potential dispute through a fast track dispute resolution system.

60. Worldline therefore makes the following Commitments to address the NSPs' concerns. These Commitments shall remain applicable for 10 years as from the Effective Date except as otherwise provided in paragraph 71 of the Commitment Letter.

Section II.B. Non-exclusive Poseidon Licensing Agreements and non-exclusive maintenance service agreements with third-party NSPs

61. Worldline undertakes to enter into non-exclusive, non-transferable, non-assignable Poseidon licensing agreements and non-exclusive maintenance service agreements with third-party NSPs, without right to sub-license, upon request, under fair, reasonable and non-discriminatory terms and on no worse terms than the ones granted to PaySquare.

62. The pricing of the actual Poseidon licensing agreements is structured around three main aspects namely:

- licensing fees set by reference to the number of modules used by the NSP customer which at their option may change over the time. The pricing of each module is made by reference to the number of transactions or number of transactions per month. Usually, a price list is provided to the NSP customer and serves as a basis for bilateral negotiations. Additional modules are subject to additional fees which follow the same bilateral negotiation process.
- software maintenance fees are set by reference to a percentage of the license fee paid by the NSP customer which is adjusted on an annual basis.
- *Ad hoc* support services fees are set by reference to a hourly rate which is adjusted on annual basis.

63. In the framework of the Poseidon licensing agreements including upgrades and new modules under FRAND terms notably in terms of pricing that will be proposed to NSP customers and entered into at their sole option, Worldline commits to the following:

- licensing fees:
  - existing Poseidon modules used by actual NSP customers: to the extent existing NSP customers already paid the licensing fees for the existing modules which they opted for, Worldline commits not to request any additional fees should the NSP customers wish to opt for the licensing agreements under FRAND terms for the same scope of modules. NSPs having less favourable conditions than PaySquare for the same existing modules may therefore opt for the licensing agreement proposed under FRAND terms to benefit from more favourable terms and conditions.
  - additional modules fees for existing NSP customers will be based on a public price list and the fees agreed with NSP customers willing to add new modules shall in any case not be less favourable than those paid by PaySquare.
  - new NSP customers will pay a one off fixed fee for the installation of the Poseidon software by reference to the number of modules used, which pricing is set by reference to the number of transactions.
- software maintenance fees: on top of the FRAND terms described above regarding the licensing fees, Worldline undertakes to freeze the maintenance fee to the actual percentage at the Effective date for the next 10 years, subject to adjustment in consideration of the inflation rate.
- *ad hoc* support services fees: on top of the FRAND terms described above regarding the licensing fees, Worldline undertakes to cap the annual increase of the ad hoc support services fee to a maximum of 3% per year for the next 10 years as from the Effective Date, subject to material adverse change.

64. It is specified that there will be no impact on existing licensing agreement with NSPs, apart from adding FRAND provisions compared to PaySquare to their benefit and additional guarantees in terms of software maintenance fee and ad hoc support services fees. In particular, Worldline will remain free to grant better price conditions to third-party NSPs in consideration of specific requests, and in any case, will not grant them less favourable price conditions than those granted to PaySquare.

65. The monitoring of Worldline's compliance with its FRAND pricing obligations will

be handled by the Licensing Trustee so as to enable an objective, appropriate and independent management of such confidential information. The Licensing Trustee will to that end be granted access to all the necessary information to ensure compliance with this commitment, including, but not limited to the contracts, pricing and invoicing conditions entered into between Worldline and PaySquare on a quarterly basis and more regularly upon request. Moreover, and subject to the consent of Worldline's other NSP customers, the Licensing Trustee shall be granted access to these other NSP contracts on a yearly basis, as well as within 2 month as of the Effective Date and on its own initiative. So as to be able to proceed in practice and at any time to a comparison of the terms and conditions that Worldline grants to any of its other NSP customer to ensure compliance with its pricing undertaking, the Licensing Trustee shall carry out a benchmarking of the Poseidon licences within 3 months of the Effective Date, and on a yearly basis. It shall inform Worldline, the other NSP customers and the Commission of its results without delay. Finally, any NSP customer will be able to submit its own terms and conditions to the Licensing Trustee at any time so as to identify the status of its treatment compared to the terms and conditions granted to PaySquare. Any NSP customers shall be able to opt for the FRAND terms at its sole option should it be more favourable. In such *case,* Worldline commits to apply the FRAND terms and conditions to the NSP so as to ensure that the latter has no less favourable terms than PaySquare, under the supervision of the Licensing Trustee.

66. As to the quality of maintenance services, Worldline undertakes to continuously maintain and update Poseidon in order to preserve performance of third party NSPs.

67. In addition, Worldline undertakes in its role as supplier of the Poseidon software and provider of related services, not to take any measure giving a competitive advantage to PaySquare. For example, Worldline commits to offer and/or provide Poseidon updates and functionalities to third party NSPs on no less favourable terms than those granted to PaySquare notably with regards to availability and timing. As to the provision of maintenance services in case of shortage of Poseidon software application, Worldline commits to provide support services to third party NSPs in priority vis-a-vis PaySquare as for example in terms of allocation of resources.

68. For the purpose of ensuring customer's satisfaction in terms of quality of services, Worldline undertakes to create an ad hoc user's group of Poseidon including all users of Poseidon application (NSPs). The user group will meet twice a year on the basis of an agenda that Worldline commits to send to all the members of the user's group at least 1 month in advance of the meeting based on the quality matters that all members

of the user group will have indicated in writing and in advance to Worldline so as to prepare the agenda. The user group may organize extraordinary meeting sessions upon written request of one NSP. Should such request be made by an NSP, Worldline commits to inform all the members of the user group and organize the meeting within a short time following the request.

69. The purpose of that user's group will be to complement the Licensing Trustee's mandate from a quality perspective. Members of the users' group will be enabled to monitor on a regular basis the implementation of the maintenance services and updates to the application.

70. The members of the users' group will also be able to discuss the development, maintenance, technical issues encountered by customers as per the use of Poseidon, subject to internal regulations, precise agenda and recording of the meetings, the presence of an antitrust counsel and the Licensing trustee. The user's group will have a consultancy role to guide Worldline in a transparent manner in order to improve the quality of services. Worldline commits to take the recommendations of the user group into account and make the necessary steps to implement these recommendations to the extent it is reasonable, possible and feasible.

71. In case of Poseidon phase out, Worldline undertakes to keep the maintenance of Poseidon should the NSPs wish to continue using this software solution under FRAND terms notably in terms of pricing as described in paragraph 63 of the present Commitment letter, for a duration of 5 years as from the date of the announcement of the phase out as communicated to customers.

72. In addition and in order to enable NSP customers to develop either internally, or in cooperation with another NSP customer, or with a third party supplier an alternative solution to Poseidon software only for its own internal NSP activity within 10 years as from the Effective Date, Worldline also undertakes to grant a direct access to each NSP customer upon written request, to the Poseidon source code it uses at the time of its request, together with the adaptive and curative rights subject the NSP represents and warrants that it will not use the Poseidon source code to develop any software based on or derived from the software and/or for commercial purposes, but only for its own internal business use. The execution of such access to Poseidon source code's right will be subject to the payment of a fee set at twice the amount of the annual maintenance fee paid by the NSP customer at the date at which it notifies the execution of this right. Any NSP who has paid for a license as well as for the access to the Poseidon source code will thereby be able to mutualize costs and develop together with any other NSP placed in the same situation, an alternative solution based on Poseidon, either internally or with a third party supplier of their choice, subject to

compliance with national and EU competition rules.

73. In such case, Worldline will give a personalized CD-copy of the Poseidon source code which is relevant for a single NSP to this NSP and the technical assistance if requested by the NSP based on time and material which is to be paid by the NSP.

74. The NSP shall not transfer the Poseidon source code to any third party. By way of exception, the NSP may provide access to the Poseidon source code to a third party in charge of performing development, adaptive maintenance, curative maintenance for the NSP, provided that such third party shall commit not to use the Poseidon source code for any other purposes and that the NSP requests such maintenance for its own internal business use.

75. Should the NSP make such formal request to access its Poseidon source code, it will be able to work with a third party service provider for the development of an alternative to Poseidon and the provision of maintenance services. If access to the Poseidon source code is requested, Worldline will continue to provide maintenance services to the NSP for the duration of the development phase of an alternative solution by the NSP. Should and once the NSP carries out any maintenance himself or requests the provision of maintenance services to a third party, Worldline's obligations as to the provision of maintenance services shall immediately cease towards the said customer for evident reasons of liability. The obligation for the NSP to pay the maintenance fee would therefore no longer be valid.

76. Should Worldline wish to stop maintaining Poseidon or in case of cessation of Worldline's operation without successor or decision taken by a judicial authority to submit Worldline to winding-up proceedings or in case of material breach of the Commitments by Worldline notably in terms of maintenance services resulting from necessary regulatory requirements, sub ject such material breach is acknowledged by the Licensing Trustee after a contradictory debate, Worldline undertakes to grant access to the source code of Poseidon to the NSPs upon request under the same conditions as described in paragraph 72 to 75 of the present Commitment letter, except that in case of material breach, Worldline undertakes to grant access to the source code of Poseidon for free.

Section II.C. Externalization of the governance of the ZVT protocol to an independent not-for-profit organization

77. Worldline commits to assign responsibility for managing and updating ZVT Protocol, to an Independent Industry Body as soon as reasonably possible, but in any case within 6 months following the Effective Date.

78. The Independent Industry Body may be either a pre-existing independent organization aiming at technical and software standardization such as the German terminal manufacturer's organization named *Verband der Terminalhersteller in Deutschland e.V*[159] should it accept to manage the governance of the ZVT protocol or a not-for-profit consortium created by Worldline, which would not be controlled (solely or jointly) by Worldline within the meaning of Article 3 of the Merger Regulation.

79. In any case, Membership of the Independent Industry Body shall be open to any and all interested parties, including NSPs, terminal manufacturers, government agencies and non-profit corporations. Members shall have equal voting rights and no obligation to have a share capital, but only to pay reasonable membership fees. Decisions regarding the finalization of revision to ZVT protocol would result on transparent decision making procedures and be based on large consensus views of members, as is typical in the internal procedures of standard development organizations, but with no veto right for any Member. The President will be appointed amongst the representative members excluding Worldline. Presidency of the Independent Industry Body will rotate every 6 months so as to enable a proper representation of all members and ensure the independence of such organization.

80. Worldline undertakes to grant this Independent Industry Body with an exclusive, non-transferable, non-assignable license on the ZVT protocol with right to sublicense and be remunerated by sublicensees, it being specified that the Independent Industry Body will be a not-for-profit organization. Should the Independent Industry Body require Worldline to incur costs in relation notably but not limited to updates or maintenance of ZVT protocol, these will be remunerated at cost by reference to hourly rates based on an annual bill addressed by Worldline to the Independent Industry Body for a ten year period as from the Effective Date.

81. The Independent Industry Body will be enabled to grant sublicenses for the use of the ZVT protocol to any third party, under terms and conditions defined by the Independent Industry Body in an open, transparent and non-discriminatory manner on the basis of a fixed and upfront fee.

82. In order for Worldline to continue using the ZVT protocol, the Independent Industry Body will also grant a free license back to Worldline under the same terms and conditions as those granted to third parties.

83. The Independent Industry Body will make publicly available information on its decision making procedures and publish its decisions.

84. Worldline will assume all reasonable costs related to the creation of such an

[159] http: //www.terminalhersteller.deI

Independent Industry Body.

85. During the interim period and until the acceptance of the management mandate by the German industry organization or the creation of the Independent Industry Body by Worldline, Worldline undertakes to grant a non-exclusive, non-transferable, non-assignable license for the use of the ZVT protocol - without the right to sublicense, to NSPs and terminal manufacturers under fair, reasonable and non-discriminatory terms, upon request.

Section II.D. Licensing Trustee

86. Worldline shall appoint a Licensing Trustee to ensure its compliance with its obligations in Sections II.B and II.C here above. The provisions of paragraphs 24 to 47 of the Divestment Commitments shall apply mutatis mutandis to the appointment of the Licensing Trustee, provided that the Licensing Trustee's Mandate shall reflect the nature of the Licensing Trustee's duties and obligations.

87. The provisions of paragraphs 45 to 47 of the Divestment Commitments shall apply mutatis mutandis to the replacement, discharge and reappointment of the Licensing Trustee. Worldline's duties and obligations pursuant to paragraphs 37 to 44 of the Divestment Commitments (provision of cooperation, assistance and information) shall also apply mutatis mutandis the Licensing Trustee.

88. The Licensing Trustee shall monitor Worldline's compliance with its obligations in paragraphs 50 to 85 of these Commitments, including negotiations with third parties. It shall arbitrate disputes arising from the application of paragraphs 90 to 12 2 after a contradictory debate under the supervision of the Commission. The Licensing Trustee shall report every 2 months to the Commission in the first two years following the Effective Date, then every 6 months in respect of its obligations under this paragraph, or at more frequent intervals if requested by the Commission to do so.

Section II.E. Reporting Obligations

89. Worldline will report to the Licensing Trustee without delay, and every 2 months to the Commission, on any requests received by it from third parties to enter into Poseidon Licensing Agreements, the progress of negotiations with them, the grant of any Licenses of Poseidon and any arbitration proceedings commenced and their outcome. It shall also provide without delay to the Licensing Trustee and the Commission copies of any Poseidon Licensing Agreements that it enters into and copies of any arbitration awards made in compliance with the Commitments, and copies of the most current agreements with PaySquare in order to carry out the

benchmarking.

Section II.F. Fast track dispute resolution system

90. In order to ensure the effective implementation and to facilitate the monitoring of the Commitments, Worldline commits to implement a fast track dispute resolution system.
91. Such fast track dispute resolution system will be an additional option to the benefit of NSPs and not an obligation for them. Indeed, Worldline commits that for any dispute in relation to the compliance with the access to Poseidon solution and maintenance service, the NSP will have a discretionary right, but no obligation to solve it through this fast track dispute resolution system.
92. Thus, any dispute arising in relation to the compliance with the access to Poseidon solution and maintenance services may, if the NSP wishes *so*, be finally and exclusively resolved by the fast track dispute resolution procedure as described herein, in order to ensure the effective implementation and to facilitate the monitoring of the Commitments
93. The fast track dispute resolution procedure aims at allowing the NSP themselves to effectively enforce the Commitments in a timely manner, without requiring a permanent monitoring of the Commitments by the Commission.
94. Any Network Service Provider who wishes to avail itself of the fast track dispute resolution procedure (a "Requesting Party") shall send a written request (the "Request") to Worldline (with a copy to the Monitoring Trustee). The Request shall set out in detail the reasons leading the Requesting Party to believe that Worldline is failing to comply with the requirements of the Commitments.
95. The Requesting Party and Worldline will use their best efforts to resolve all differences of opinion and to settle all disputes that may arise through cooperation and consultation within a reasonable period of time not exceeding 15 Working Days after receipt of the Request.
96. The Monitoring Trustee shall present its own proposal (the "Trustee Proposal") for resolving the dispute within 8 Working Days, specifying in writing the action, if any, to be taken by Worldline in order to ensure compliance with the Commitments vis-a-vis the Requesting Party, and be prepared, if requested, to facilitate the settlement of the dispute. Worldline puts its best efforts to accomplish these actions.
97. Should the Requesting Party and Worldline (together the "Parties to the Arbitration") fail to resolve their differences of opinion in the above-described consultation phase, the Requesting Party may serve a notice (the "Notice"), in the sense of a request for arbitration, to the International Chamber of Commerce (hereinafter the "Arbitral Institution"), with a copy of such Notice to Worldline and to the Monitoring Trustee.

98. The Notice shall set out in detail the dispute, difference or claim (the "Dispute") and shall contain, inter alia, all issues of both fact and law, including any suggestions as to the procedure, and all documents relied upon shall be attached, e.g. documents, agreements, expert reports, and witness statements.
99. The Notice shall also contain a detailed description of the action to be undertaken by Notifying Party (including, if appropriate, a draft contract comprising all relevant terms and conditions) and the Trustee Proposal, including a comment as to its appropriateness.
100. Worldline shall, within 10 Working Days from receipt of the Notice, submit its answer (the "Answer"), which shall provide detailed reasons for its conduct and set *out*, inter alia, all issues of both fact and law, including any suggestions as to the procedure, and all documents relied upon, e.g. documents, agreements, expert reports, and witness statements.
101. The Answer shall, if appropriate, contain a detailed description of the action, which Worldline proposes to undertake vis-a-vis the Requesting Party (including, if appropriate, a draft contract comprising all relevant terms and conditions) and the Trustee Proposal (if not already submitted), including a comment as to its appropriateness.

Appointment of the Arbitrators

102. The Arbitral Tribunal shall consist of three persons having experience in intellectual property matters.
103. The Requesting Party shall nominate its arbitrator in the Notice; Worldline shall nominate its arbitrator in the Answer.
104. The arbitrators nominated by the Requesting Party and by Worldline shall, within 5 Working Days of the nomination of the latter, nominate the chairman, making such nomination known to the Parties to the Arbitration and to the Arbitral Institution, which shall forthwith confirm the appointment of all three arbitrators.
105. Should Worldline fail to nominate an arbitrator, or if the two arbitrators fail to agree on the chairman, the default appointment(s) shall be made by the Arbitral Institution.
106. The three-person arbitral tribunal is herein referred to as the "Arbitral Tribunal".

Arbitration Procedure

107. The Dispute shall be finally resolved by arbitration under the rules of the Arbitral Institution with such modifications or adaptations as foreseen herein or necessary under the circumstances (the "Rules"). The arbitration shall be conducted in Paris, France in the English language.

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

109. The Arbitral Tribunal shall, as soon as practical after its confirmation, hold an organizational conference to discuss any procedural issues with the Parties to the Arbitration.

110. Terms of Reference shall be drawn up and signed by the Parties to the Arbitration and the Arbitral Tribunal at the organizational meeting or immediately thereafter and a procedural time-table shall be established by the Arbitral Tribunal. An oral hearing shall, as a rule, be established within 3 weeks of the confirmation of the Arbitral Tribunal.

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

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

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

Involvement of the Commission

114. The Commission shall have a discretionary right to be allowed and enabled to participate in all stages of the procedure by:

- receiving all written submissions (including documents and reports, etc.) mad e by the Parties to the Arbitration;
- receiving all orders, interim and final awards and other documents exchanged by the Arbitral Tribunal with the Parties to the Arbitration (including Terms of Reference and procedural time-table);
- giving the Commission the opportunity to file amicus curiae briefs; and

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

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

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

Decisions of the Arbitral Tribunal

117. The Arbitral Tribunal shall decide the dispute on the basis of the Commitment and the Decision. Issues not covered by the Commitment and the Decision shall be decided (in the order as stated) by reference to the Merger Regulation, EU law and laws of the Federal Republic of Germany without reference to its rules of conflicts of law.

118. Each Party to the Arbitration shall submit to the Arbitral Tribunal a single proposal for the terms of the license. The Arbitral Tribunal shall take all decisions by majority vote. This Arbitral Tribunal can select one of the two submitted proposals in its entirety; provided, however, that the Arbitral Tribunal may, if it determines that the proposal to be selected contains one or more unreasonable clauses, impose alternatives to such clauses. With respect to the royalties to be paid, the royalties can be the one proposed by either party or any royalty in between. It being specified that there will be no additional cost, royalty fee or other fee charged to the NSP than the ones described above in the paragraphs relating to the license. This selection must be made by majority decision or, if there is no majority, by the chairman alone.

119. The Arbitral Tribunal shall in the award specify the action, if any, to be taken by Worldline in order to comply with the Commitments vis-a-vis the Requesting Party. The award shall be final and binding on the Parties to the Arbitration and shall resolve the Dispute and determine any and all claims, motions or requests submitted to the Arbitral Tribunal. The costs associated with any arbitration (including arbitration fees and the fees and expenses of counsel to the successful party) will be borne by the losing party, as determined by majority decision or, if there is no majority, by the chairman alone.

120. The award shall, as a rule, be rendered within 1 month after the adoption of the Terms of Reference; provided, however that if both Parties to the Arbitration agree, the award may be rendered not more than three months thereafter. The time-frame shall, in any case, be extended by the time required for the Commission to submit an interpretation of the Commitment if so requested by the Arbitral Tribunal.

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

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

III. <u>Entry into force</u>

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

SCHEDULE 1

1. The Divestment Business as operated to date has the following legal and functional structure:

   The Divestment Business is operated directly by PaySquare from the Netherlands and consists in all commercial assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, in particular:

   - all customer contracts entered into between PaySquare and merchants having their registered office in Belgium and operating a business (sales of goods and /or services) in Belgium (the **"PaySquare Clients Portfolio")** and the corresponding customer data and records;
   - the sales partnership agreements entered into by PaySquare on the market of merchant acquiring in Belgium;
   - the relevant sales, account and commercial product managers associated to the Divestment Business.

2. In accordance with paragraph 8 of these Commitments, the Divestment Business includes, but is not limited to:

   a) the following main contracts, agreements, commitments and understanding:
      - the customer contracts of the PaySquare Clients Portfolio;
      - the sales partnership agreements entered into by PaySquare on the market of merchant acquiring in Belgium.

   b) the following customer, credit and other records:
      - to the best knowledge of Worldline, the PaySquare clients portfolio is currently estimated at approx. [6000-7000] client accounts corresponding to approx. [8000-9000] shop locations. The exact portfolio will be confirmed at the Effective Date and regularly updated towards the monitoring trustee.
      - all corresponding merchant data and record.

   c) the following Personnel: the s le, account and commercial product managers associated to the Divestment Business at the option of the purchaser;

   d) the Interim Service arrangements for the supply with the following products or services by Equens Worldline Company or Affiliated Undertakings for a transitional period of up to 24 months after Closing at the option of the purchaser:
      - operations and product management, namely:
        i. transaction processing i.e. technical processing of transaction, namely authorisation, clearing, and settlement. EWC will pursue the existing contractual relationship with *CCV* and OmniPay on terms and conditions equivalent to those at present afforded by *CCV* and OmniPay to Equens;
        ii. customer and acquirer servicing (such as the call center or fraud handling): EWC will pursue the existing contractual intercompany

relationship with Equens on terms and conditions equivalent to those at present afforded by Equens to PaySquare;

iii. continued technical product management i.e. evolution of the technical processing and servicing platform functionalities for market demands and readiness for regulatory and scheme compliance.

- scheme licenses and payment institution licenses: PaySquare has generic licenses for 5 payment schemes namely Visa, MasterCard, JCB, Diners, UnionPay and 1 generic payment institution license from the Dutch National Bank, which are not specific to the Divestment Business in Belgium. The Purchaser is reasonably expected to have such licenses or to obtain/extend them for operating in Belgium. Operations under the Interim Service Agreement will be conducted under Worldline's licenses while the business benefits and financial risks will be transferred to the Purchaser.
- other functions as might be reasonably necessary to facilitate the transition, such as an interim license to use the trademark at the option of the purchaser.

3. The Divestment Business shall not include:
   - business relating to non-Belgium activities to the extent that these assets are not necessary for the viability and the competitiveness of the Divestment Business;
   - trademarks, service marks or brands or any licenses thereto as there is no specific trademark for the business undertaken by PaySquare in Belgium, only one generic trademark for the whole PaySquare's business which is not transferable but will be licensed under the Interim Service Agreement at the option of the purchaser;
   - operations (processing, servicing) and technical product management to the extent they are not transferable and will be provided under the Interim Service Agreement at the option of the purchaser;
   - scheme licenses and payment institution licenses, and other regulatory authorizations to the extent they are not transferable and will be provided under the Interim Service Agreement at the option of the purchaser.
4. If there is any asset or personnel or additional interim services which is not be covered by paragraph 2 of this Schedule but which is both used (exclusively or not) in the Divestment Business and necessary for the continued viability and competitiveness of the Divestment Business, that asset or adequate substitute will be offered to potential purchasers.
5. In addition to the Interim Service Agreement covering at the option of the purchaser the provision of transaction processing services for example *via* a back-to-back agreement, Worldline commits to do its best efforts to facilitate the transfer of First Data Omnipay and CCV contracts to the purchaser if the purchaser wishes so.

SCHEDULE 2

Term sheet of Poseidon licence agreement and its appendices

COMP M.7873- Worldline / Equens / PaySquare

Schedule 2 of Commitment Letter

TERMSHEET - Poseidon software license and maintenance services agreement

Any license and maintenance services agreement entered into by Worldline GmbH ("Worldline") with a network service provider established in Germany (the "NSP") for the use of Poseidon shall include the following terms and conditions.

Definitions

- **Agreement** means the software license and maintenance services agreement entered into by Worldline and the NSP.
- **Ad hoc Support** means the following support services which may be provided by Worldline to the NSP: assistance in a problem situation which can be of any kind (e.g. identification of hardware problems, system tuning, human errors, etc.)
- **Adaptive Maintenance** means services provided by Worldline to the NSP to provide general implementation of Anomalies' corrections on a regular basis and to adapt the Software to new regulatory requirements.
- **Anomaly** means a reproducible failure, bug or error preventing the use of the Software's functionalities in compliance with the Specifications.
- **Authorized Level** means for each module of the Software ordered by the NSP, the right of use granted to the NSP based on the metric applicable to such module of the Software (e.g., number of transactions and/or number of terminals connected). The metric applicable to each ordered module of the Software is further defined in Annex 2 to the Agreement, together with the Authorized Level.
- **Curative Maintenance** means provisions by Worldline to the NSP of solution, work around or action plan in case of Anomaly identified by Worldline or reported to Worldline by the NSP within the framework of a procedure to be detailed in the Agreement.
- **License** means the limited rights to use the Software granted by Worldline to the NSP pursuant to the article "License" of the Agreement.

- **Maintenance Services** means Curative Maintenance and Adaptive Maintenance services provided by Worldline to the NSP.
- **Patch** means an unitary software element delivered by Worldline to the NSP to correct an Anomaly as part of the Curative Maintenance.
- **Software or Poseidon** means the software named "Poseidon" published by Worldline under the trademark n° 000367912 attached in Annex 1, on the basis of technological developments performed to date on this software and the functionalities and technical features that are described in the Specifications. The list of the Software's modules and functionalities of Poseidon ordered by the NSP is specified in Annex 2. The Software includes any Update and Patch made available to the NSP as part of the Maintenance Services and of the Ad hoc Support.
- **Specifications** means the description of the Software's technical and functional specifications included in Annex 2.
- **Update** means any modification to the Software made available to the NSP as part of the Adaptive Maintenance. Updates will apply only to unmodified Software.

License

Worldline grants to the NSP a non-exclusive, non-transferrable, non-assignable right to:

– install and use the Software for its internal business purposes only and within the limit of the authorized license volume level;

– move the Software in the licensed product configuration to a replacement computer, which has to be supported by Worldline and therefore has to be agreed upon with World line beforehand;

– make a copy of the Software (which does not include the source code) for archival and backup purposes only and a copy of the Specifications.

Such License is granted worldwide.

Restrictions on use

The NSP is only granted the rights to use the Software expressly provided for in this Agreement. Any other use of the Software by or resulting from the NSP shall be considered as an unauthorized use of the Software and shall be deemed to be a material breach of the Agreement.

Maintenance Services

Worldline shall provide Adaptive Maintenance and Curative Maintenance to the NSP during the term of this Agreement. Worldline commits to make available to the NSP all Updates and Patches promptly upon their commercial release.

Maintenance Services provided by Worldline shall be strictly limited to services described in the Agreement. The Agreement shall not be construed as an obligation for Worldline or any of its affiliates to provide any other maintenance services to the NSP.

Ad hoc Support

Ad hoc Support may be requested from time to time by the NSP. Upon written request by the NSP to Worldline describing in detail required Ad hoc Support, Worldline will provide to the NSP a fee quote for the performance of such Ad hoc Support. Worldline shall start to perform Ad hoc Support upon written acceptance by the NSP of Worldline's fee quote.

Price

Prices paid by the NSP to Worldline under the Agreement shall be as follows:

- licensing fees:
  - existing Poseidon modules used by actual NSP customers: no additional fees for NSP customers who wish to opt for the licensing agreements under FRAND terms for the same scope of modules.
  - additional modules fees for existing NSP customers will be based on a public price list.
  - new NSP customers will pay a one off fixed fee for the installation of the Poseidon software by reference to the number of modules used, based on the price list.
- software maintenance fees: freeze the maintenance fee to the actual percentage for the next 10 years as from the date of the clearance decision of the European Commission in case COMP/M.7873, subject to adjustment in consideration of the inflation rate.
- *ad hoc* support services fees: cap the annual increase of the *ad hoc* support services fee to a maximum of 3% per year for the next 10 years as from the date of the

clearance decision of the European Commission in case COMP/M.7873, subject to material adverse change.

For the purpose of this clause, material adverse change shall mean any event, circumstance, condition, fact, effect or other matter has or is likely to have a material adverse effect, whether immediately or in the future, on the business, assets, sales revenues, condition (financial or otherwise), prospects, results of operations or liabilities (contingent or otherwise) of Worldline.

Intellectual property

Worldline and its third party contributors respectively retain ownership of all rights, title and interest in and to all intellectual property rights associated with the Software and Specifications.

Access to Source Code

The provisions in the "Access to Source Code" article of the Agreement shall only be applicable for a period of 10 years as from the date of the clearance decision of the European Commission in Case COMP/M.7873.

As stated in paragraph 53 of the Commitment Letter attached to the clearance decision of the European Commission in Case COMP/M.7873, it will be specified that the provisions in the "Access to Source Code" article of the Agreement shall be construed as not going beyond the Poseidon source code and those elements of an alternative software provided by Worldline for modules and functionalities that are practically comparable to the functionalities of Poseidon. For the avoidance of doubt, the "Access to the Source Code" article of the Agreement will also specify that the source code of module(s) and/or functionality(ies) undertaken by a wider alternative software solution such as Worldline Pay Front Office shall be excluded from the commitment to grant access to the source code.

Upon written request of the NSP, Worldline shall provide the NSP with the source code corresponding to the Software for which rights have been granted to the NSP under the Agreement ("Source Code"). The NSP may request access to the Source Code in the following circumstances:

- NSP's decision to develop either internally or with a third party supplier an alternative solution to the Software;
- material breach of Worldline's Maintenance Services obligations under the Agreement, provided that such material breach is acknowledged by the licensing trustee appointed by Worldline to ensure Worldline's commitments pursuant to EC Decision COMP. M.7873;
- cessation of Worldline' operation without successor; or
- decision taken by a judicial authority to submit Worldline to winding-up proceedings.

The Source Code shall be delivered by Worldline to the NSP in a CO-copy of the Poseidon source code which is relevant for a single NSP to this NSP, subject to the payment by the NSP of a fee amounting to two (2) times the annual maintenance fee paid by the NSP, except that in case of material breach, Worldline undertakes to grant access to the source code of Poseidon for free. The technical assistance if requested by the NSP will be based on time and material which is to be paid by the NSP.

In case of access to the Source Code, Worldline grants to the NSP a personal, non-exclusive, non-transferable, non-assignable right to:

- use the Software for its internal business purposes only and within the limit of the Authorized Level set forth in Annex 2 to the Agreement;
- move the Software in the licensed product configuration to a replacement computer;
- perform Adaptive Maintenance and Curative Maintenance.

Such license shall be granted worldwide and expire on the date upon which the NSP stops using the Software.

The NSP represents and warrants that it will not use the Source Code to develop either internally and/or with a third party supplier any software based on or derived from the Software for commercial purposes. The NSP shall not transfer the Source Code to any third party. By way of exception, the NSP may provide access to the Source Code to a third party supplier in charge of performing Adaptive Maintenance and /or Curative Maintenance for the NSP, provided that such third party shall commit not to use the Source Code for any other purposes.

Additionally, if access to the Poseidon source code is requested, Worldline will continue to provide maintenance services to the NSP for the duration of the development phase of an alternative solution by the NSP. However, should and once the NSP carries out any maintenance himself or requests the provision of maintenance services to a third party, Worldline's obligations as to the provision of maintenance services shall immediately cease towards the said customer for evident reasons of liability. The obligation for the NSP to pay the maintenance fee would therefore no longer be valid.

Liability

In no event shall Worldline be liable to the NSP for any indirect damages, including any lost profits, lost savings, Joss of use, lost data, failure of security mechanisms, interruption of business as far as permitted by law.

Notwithstanding any other provision of the Agreement, Worldline's total aggregate liability under the Agreement in case of gross negligence shall be limited to proven direct damages caused by Worldline in an amount not to exceed the fees actually paid by the NSP to Worldline under the Agreement during the twelve (12) month period immediately preceding the date of the claim. Worldline's total aggregate liability under the Agreement in case of simple negligence shall be limited to proven direct damages caused by Worldline in an amount not to exceed seventy-five per cent (75%) of the fees actually paid by the NSP to Worldline under the Agreement during the twelve (12) month period immediately preceding the date of the claim.

Warranty

The Software shall comply with the Specifications.

Except as expressly provided in the Agreement, Worldline does not make any kind of representation or warranty. The Software is provided "AS-IS" and Worldline does not warrant that the functions contained in the Software will be uninterrupted or error-free.

Duration

This Agreement is entered into for an indefinite duration and may be terminated by any of the parties upon a written notice of termination at least six (6) months provided however that Worldline shall not be entitled to give such written notice of termination to the NSP before 10 years as from the date of the clearance decision of the European Commission in Case COMP/M. 7873 except in case of Poseidon phase out or Access to the Source Code.

In case of Poseidon phase out, Worldline undertakes to keep the maintenance of Poseidon should the NSPs wish to continue using this software solution for duration of 5 years as from the date of the announcement of the phase out as communicated to customers.

Termination

Either party may terminate the Agreement if the other party: (a) fa ils to cure any material breach of the Agreement within thirty (30) days after written notice of such breach; (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, insolvency, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against such party. Furthermore, Worldline may terminate the Agreement if the NSP is in default with two (2) monthly instalments, unless the NSP has disputed those instalments in writing with good cause.

Upon expiration or termination of the Agreement for any reason: (a) unless the NSP accesses to the Source Code within the conditions set forth in the Article "Access to Source Code" of the Agreement, the NSP shall cease any a nd all use of the Software, and destroy all copies of the latter and of the documentation and so certify to Worldline in writing; (b) each party will return to the other party the confidential information of the other party that it obtained during the course of the Agreement; and (c) any amounts owed to Worldline under the Agreement before termination will be immediately due and payable.

Governing Law

The Agreement shall be governed by German law.

Jurisdiction

Unless the NSP opts for the application of the fast track dispute resolution procedure provided for in EC Decision COMP.M.7873, the courts of Frankfurt am Main in Germany shall have exclusive jurisdiction over any disputes relating to the Agreement.

Conflicting Terms

In case of conflict or contradictions between negotiated provisions and mandatory terms and conditions applicable to the Agreement, such mandatory terms and conditions shall prevail.

ANNEX 1

Software trademark registration

ANNEX2

Software modules, metrics and Authorized Level