EUROPEAN COMMISSION
DG Competition

Case M.9776 - WORLDLINE / INGENICO

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: 30/09/2020

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EUROPEAN COMMISSION

Brussels, 30.9.2020
C(2020) 6828 final

PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Worldline S.A.
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Bezons 95871
France

Subject: Case M.9776 – Worldline/Ingenico
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]

Dear Sir or Madam,

(1) On **12 August 2020,** the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Worldline S.A. ("**Worldline**", France) intends to acquire within the meaning of Article 3(1)(b) of the Merger Regulation control of Ingenico Group S.A. ("**Ingenico**", France) (the "**Transaction**")[3]. Worldline is referred to as the "**Notifying Party**" and, together with Ingenico, will be referred to as the "**Parties**".

1 Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), 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 (the '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 273, 18.8.2020, p. 7.

1. THE PARTIES

(2) Worldline is a company listed on Euronext Paris and active in the payment and transactional services industry. Worldline's offerings include pan-European and domestic merchant acquiring for physical (in-store) or online (e-commerce) businesses, payment processing activities (acquiring and issuing), e-commerce acceptance solutions, and business solutions services to financial institutions, merchants, corporations and government agencies. Worldline also supplies point-of-sale ("**POS**") terminals. Present in 32 countries, throughout Europe and in several emerging markets in Latin America and Asia, Worldline employs approximately 12 000 people worldwide.

(3) Ingenico is a company listed on Euronext Paris active in the payment services industry. It is primarily engaged in the design, development and supply of POS terminals (hardware and related software). Ingenico, however, also provides POS terminals along with merchant acquiring services and is also active in payment related services worldwide such as merchant acquiring services and e-commerce acceptance services. Ingenico employs around 8 000 people in 170 countries.

2. THE OPERATION

(4) The proposed concentration will be executed through a tender offer for Ingenico shares, which was filed with the French *Autorité des marchés financiers* on 8 July 2020. The closing of the tender offer will be subject to the condition that Worldline acquires a number of Ingenico shares representing at least 60% of Ingenico's share capital, on a fully diluted basis.[4] Following completion of the Transaction, Worldline will thus acquire sole control of Ingenico. The Transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the EU Merger Regulation.

3. UNION DIMENSION

(5) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (Worldline: EUR 2 382 million; Ingenico: EUR 3 370 million)[5]. Each of them has a Union-wide turnover in excess of EUR 250 million (Worldline: EUR ***[...]***; Ingenico: EUR ***[...]***). In addition, they do not achieve more than two-thirds of their respective aggregate Union-wide turnover within one and the same Member State. The proposed concentration therefore has Union dimension.

4 See Section 2.3 of the Business Combination Agreement ("BCA").

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

4. COMPETITIVE ASSESSMENT

4.1. Introduction and the Parties' activities

(6) The Transaction combines Ingenico with Worldline, both payment service providers active across the European Economic Area (the 'EEA'[6]) and worldwide. The Transaction follows multiple previous acquisitions by Worldline, including, amongst others, the acquisition of SIX Payment Services in 2018 and the acquisition of Equens S.E., including its subsidiary PaySquare SE in 2016.[7]

(7) Card payment systems available to the public allow a cardholder to use a payment card, such as a debit or a credit card, to pay for products and services purchased at stores (physical or online) without using cash. Through these systems, the merchants are connected with financial institutions, namely the bank issuing the card (issuer bank) and the bank endorsing the cashless payment to the benefit of the merchant (acquirer bank), to execute the entire transaction from the moment of payment at the point of sale ("**POS**") until the merchant's account is credited.

4.1.1. Physical (POS) payment transactions

(8) This Section will describe the actors and main steps in a physical card payment transaction. A physical card payment transaction begins when the cardholder uses a payment card to pay for the purchase of goods or services from a merchant. The merchant will seek authorisation for the transaction from its merchant acquirer. The authorisation request is transmitted from the merchant's POS terminal (card reader) in which the customer entered his/her card. Subsequently, the authorisation request is sent to the acquirer processor, which will identify the scheme network to which the payment card belongs and transmits the request to the issuer processor. The issuer processor will perform checks, such as whether the card is valid and whether the cardholder's account contains sufficient funds. The result of the authorisation request is sent back to the POS terminal; if the transaction is authorised, the merchant can be sure of payment.

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6 The EEA covers the 27 Member States of the European Union (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Spain Slovakia and Sweden), as well as Iceland, Liechtenstein and Norway. The United Kingdom withdrew from the European Union as of 1 February 2020. During the transition period until the end of 2020, Union law will in principle continue to apply also to and in the United Kingdom and any reference to Member States in Union law shall be understood as including the United Kingdom. Therefore, any reference in this decision to EEA countries or the EEA territory shall be understood as also pertaining to the United Kingdom.

7 See case COMP/M.7873 - *Worldline/Equens/PaySquare*, decision of 20.4.2016.

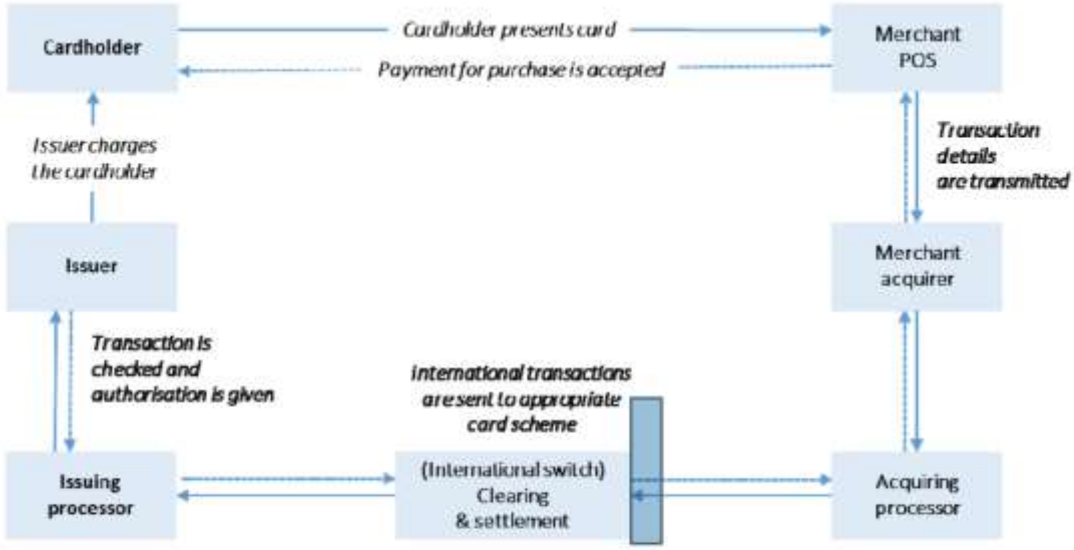

Figure 1: Overview of an in-store card based payment transaction
Source: Notifying Party

(9) The setup described above can be subject to some variations between countries. A variety of players are active in the card payment process, such as banks, payment service providers ("PSPs"), and scheme networks. Typically, an actor is involved in multiple stages of the process.

(10) The Parties are both active in the following activities relating to in-store card based payment transactions:

(a) **POS merchant acquiring:** a set of services that enable merchants to accept payment cards at POS terminals. Merchant acquirers sign contracts with merchants (who are thus the customers of merchant acquirers), maintain the merchant-customer relationship and ensure that merchants receive the funds following the card payment transactions. Both Parties are active in POS merchant acquiring.

(b) **Acquiring processing services:** the merchant-oriented side of technically processing a transaction. This includes the network routing of payments towards the issuer processor and POS authorisation. Merchant acquirers can either provide acquiring processing in-house, or outsource it to third party processors. Ingenico only provides acquiring processing services internally, and does not offer them to external parties. Worldline provides acquiring process both to meet its internal needs, as well as to external parties.

(c) **POS terminals:** POS terminals are the card readers to which the payment card is introduced, and in some cases the PIN is entered, when making a payment transaction. The Parties are both active in (i) the manufacturing and supply of POS terminals, as well as (ii) the provision of POS terminals (card readers) to merchants, either on a rental or purchase basis, as well as related services such as maintenance. Various types of POS terminals are available, such as countertops, wireless portable terminals, unattended terminals, mobile POS terminals ("**mPOS**") which rely on a device such as a mobile phone for network connection.

(11) In addition, the Parties perform the following activities relating to in-store card-based payment transactions that are specific to certain types of merchants or certain countries:

(a) **In-store acceptance:** a technical service that allows merchant to optimise the connection to multiple acquirers. In-store acceptance services act as a central platform that connects the merchant's entire installed base of POS terminals to merchant acquirers. This service is only provided to large merchants with a significant amount of terminals and transaction volume. Within the EEA, Worldline and Ingenico both offer this service only in France.

(b) **Network service provider ("NSP") services:** NSPs are part of the prevalent domestic Girocard scheme in Germany, through which a majority of card payment transactions in Germany are made. This country-specific four-party scheme involves a merchant, a cardholder, an NSP and a bank. NSPs provide payment card acceptance to a merchant, including terminal distribution, terminal management, and routing of card transactions towards the issuer banks.

4.1.2. E-commerce payment transactions

(12) This Section will describe the actors and main steps in e-commerce payment transactions. Essentially, as set out in Figure 2, e-commerce payment transactions involve similar actors as physical payment transaction. As for physical payments, the Parties are active in merchant acquiring for e-commerce transactions, as well as acquiring processing services. E-commerce transactions do not involve POS terminals. Instead, when making a payment the customer will see a landing page or gateway, which then routs the customer to the appropriate interface for the selected payment method.

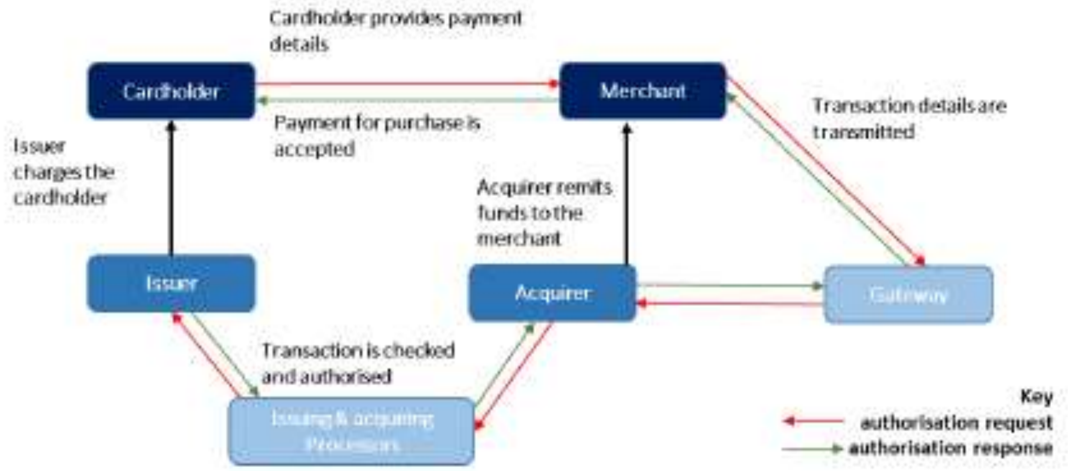

Figure 2: Overview of an online (e-commerce) card-based payment transaction
Source: Notifying Party

(13) The Parties perform the following activities specific to e-commerce card payment transactions:

(a) **E-commerce merchant acquiring:** Similar to POS merchant acquiring, e-commerce merchant acquiring comprises a set of services that allow merchants to accept cards;

(b) **E-commerce acceptance:** The provision of this gateway service is called e-commerce acceptance. E-commerce acceptance solutions can give the option to select multiple types of cards (e.g. credit or debit card, various scheme networks such as Mastercard and Visa) and can also rout payments with alternative payment methods ("**APMs**"), such as digital wallets. E-commerce acceptance can be offered to merchants on a stand-alone basis, or in a solution together with e-commerce merchant acquiring. E-commerce acceptance can also be offered to other merchant acquirers on a white label basis who then sell it to merchants together with their e-commerce merchant acquiring services. Both Parties are active in e-commerce acceptance services.

(14) Finally, Worldline is also active in other services related to payment card systems, such as IT services, the provision of application software for the banking and financial sector and the provision of Single Euro Payments Area ("**SEPA**") direct debit clearing services. Ingenico also has a number of ancillary activities in the EEA, such as management of loyalty programs, provision of prepaid cards (e.g. for mobile phones and online purchases) and provision of healthcare terminals in Germany. None of these activities are affected by the Transaction.

4.2. Market definitions

4.2.1. Merchant acquiring

4.2.1.1. Product market definition

The Commission's precedents

(15) The Commission has previously defined a separate product market for merchant acquiring services.[8] In recent cases,[9] the Commission has considered separate product markets for the provision of merchant acquiring services and the provision of POS terminals and related services.[10]

(16) In previous decisions,[11] the Commission considered that the merchant acquiring market could be further subdivided on the basis of the following criteria: (i) types of

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8 See for example Cases COMP/M.7873 - *Worldline/Equens/PaySquare*, decision of 20.04.2016, paragraph 17 et seq; COMP/M.7241 - *Advent International/Bain Capital Investors/Nets Holding*, decision of 08.07.2014, paragraph 12 et seq; COMP/M.7711 - *Advent International/Bain Capital/ICBPI*, decision of 17.09.2015, paragraph 14 et seq; COMP/M.6956 - *Telefonica/Caixabank/Banco Santander*, decision of 14.08.2013, paragraph 44 et seq; and COMP/M.5241 - *American Express/Fortis/Alpha Card*, decision of 3.10.2008. paragraph 23 et seq.

9 See Cases COMP/M.9357 - *FIS/WorldPay*, decision of 5.7.2019, paragraphs 36-38; and COMP/M.9387 - *Allied Irish Banks/First Data Corporation/Semeral*, decision of 23.10.2019, paragraphs 11-15.

10 This distinction will be discussed in more detail in the section for POS terminals (Section 4.2.2)

11 See, for example, Cases COMP/M.9759 - *Nexi/Intesa Sanpaolo (Merchant Acquiring Business)*, decision of 26.6.2020, paragraph 35 et seq; COMP/M.7873 - *Worldline/Equens/Paysquare*, decision of 20.4.2016, paragraph 19 et seq; COMP/M.7241 - *Advent International/Bain Capital Investors/Nets Holding*, decision of 8.7.2014, paragraph 12 et seq; COMP/M.7711 - *Advent International/Bain Capital/ICBPI*, decision of 17.9.2015, paragraph 23 et seq; COMP/M.6956 - *Telefonica/Caixabank/Banco Santander*, 14.8.2013,

payment card schemes (international/domestic), (ii) payment card brands (e.g. Visa, Mastercard), (iii) type of payment card (debit/credit), (iv) based on whether the service relates to a physical payment via a POS terminal ("POS merchant acquiring") or a web-based payment ("e-commerce merchant acquiring") and (v) wholesale merchant acquiring (to banks) and retail merchant acquiring (to merchants). The Commission found that separate product markets for wholesale and retail merchant acquiring are appropriate for Italy.[12] For all other countries and potential subdivisions, the Commission left the precise scope of the product market definition open.

The Notifying Party's view

(17) The Notifying Party submits that there is a market for merchant acquiring that encompasses all subdivisions,[13] except for e-commerce merchant acquiring services, which should be assessed separately from POS merchant acquiring.[14] The Notifying Party further submits that merchant acquiring services are differentiated between international and domestic schemes, in countries that have a domestic scheme.[15]

(18) With respect to a subdivision by **international (such as Visa and Mastercard) versus domestic cards (national schemes, such as Belgian Bancontact, German Girocard and French Carte Bancaire)** the Notifying Party submits that while several arguments may support this historical segmentation, it is becoming less relevant in the context of the SEPA. To illustrate this, the Notifying Party submits that:

(a) *First*, since the introduction of the revised Directive (EU) 2015/2366 of 25 November 2015 on payment services in the internal market[16], non-domestic merchant acquirers can now acquire domestic scheme transactions. To illustrate this, it mentions examples such as the entry of EVO Payments (USA) and Worldline itself (via the acquisition of PaySquare) into Germany and the increase in Belgian domestic scheme licences from 6 in 2015 to 17 in 2018.[17]

(b) *Second*, differences in card technology mentioned in previous cases[18] are now no longer relevant, as all schemes have since moved to adopting the Europay Mastercard Visa ("**EMV**") standard.[19]

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paragraph 46; and COMP/M.5241 - *American Express/Fortis/Alpha Card*, decision of 3.10.2008, paragraph 28 et seq.

12 See Case COMP/M.9759 - *Nexi/Intesa Sanpaolo (Merchant Acquiring Business)*, decision of 26.6.2020, paragraph 27.

13 Form CO, paragraph 143.

14 Form CO, paragraph 172.

15 Form CO, summary box on page 67.

16 Directive 2015/2366/EU of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, OJ L 337, 23.12.2015, p. 35–127.

17 Form CO, paragraphs 146-147.

18 Case COMP/M.7873 - *Worldline/Equens/PaySquare*, decision of 20.4.2016.

19 Form CO, paragraph 148 and 149.

(c) *Third*, price differences in merchant acquiring for international and domestic cards have decreased as a result of Regulation (EU) 2015/751 of 29 April 2015 on interchange fees for card-based payment transactions[20], which limits interchange fees, which in turn represent a significant part of the total fees.[21]

(d) *Fourth*, the product features of merchant acquiring services are the same for both domestic and international schemes.[22]

(e) *Fifth*, domestic schemes have been phased out in a number of EEA countries, including Luxembourg, Ireland, the Netherlands and Finland, as well as in the United Kingdom. Even in countries where a domestic scheme is available, banks may choose to issue cards with only an international card scheme with the aim of achieving cross-border acceptance.[23]

(19) The Notifying Party finally submits that the segmentation between international and domestic schemes is only relevant in EEA countries that have a domestic scheme network, *i.e.* Belgium, Bulgaria, Denmark, France, Germany, Italy, Malta, Portugal, Slovenia and Spain.[24]

(20) With regard to the segmentation between ***POS and e-commerce merchant acquiring services***, the Notifying Party submits that these should be assessed as two separate product markets.[25] The Notifying Party further submits that the product market for e-commerce merchant acquiring encompasses both card-based payment transactions, and APMs, such as bank transfers and e-wallets, as they closely compete with card payments.[26]

(21) The Notifying Party indicates that there are differences in technical infrastructure, commercial strategy (e-commerce being more cross-border) and risk and fraud management. The Notifying Party also submits that e-commerce merchant acquiring requires different related services, such as facilitation of reimbursement in case of returns, management of automated subscriptions and uncoupling of authorisation and transaction.[27] Finally, the Notifying Party submits that the segmentation between POS and e-commerce merchant acquiring is losing its relevance, as merchants increasingly require both services, and merchant acquirers that were initially only active in the e-commerce market have entered the POS space (e.g. Adyen and Wirecard).[28]

(22) For a subdivision based on ***card brands (e.g. Mastercard, Visa)***, the Notifying Party submits that this is not relevant from both a supply and demand side perspective. As regards the *supply side*, it submits that most merchant acquirers are able to acquire several types of cards, and at least the most common brands, to be able to meet

[20] Regulation (EU) 2015/751 of 29 April 2015 on interchange fees for card-based payment transactions. OJ L 123, 19.5.2015, p1.
[21] Form CO, paragraph 150.
[22] Form CO, paragraph 151.
[23] Form CO, paragraphs 152-154.
[24] Form CO, paragraph 153.
[25] Form CO, paragraph 172.
[26] Form CO, paragraph 171.
[27] Form CO, paragraph 170.
[28] Form CO, paragraph 168.

customer demands. Concerning the *demand side*, the Notifying Party indicates that merchants aim to accept all brands, or at least all well established brands. The Notifying Party further submits that any relevant difference between card brands would already be captured by other segmentations, such as international versus national cards and debit versus credit cards.[29]

(23) Regarding a subdivision between ***credit cards and debit cards,*** the Notifying Party considers that this is not relevant for the following reasons:

(a) *First*, while services may be different to some extent (e.g. charge back for credit cards), all merchant acquirer offer merchant acquiring services for both debit and credit cards.[30]

(b) *Second*, due to the introduction of Regulation 2015/751, the price gap between merchant acquiring services for debit and credit cards has significantly reduced. As a result, credit cards have become more interesting even for smaller, local merchants.[31]

(c) *Third*, in the vast majority of cases, merchant require merchant acquiring services for both debit and credit cards. The Notifying Party illustrates this by submitting that [The vast majority]% of Ingenico's customers rely on both debit and credit card merchant acquiring, and for Worldline debit-only points of sale represent only [<10%], [<10%] and [<10%] in Austria, Germany and Luxembourg respectively.[32]

(d) *Fourth*, as the travel and tourism industries have been growing rapidly during the last decades, merchants are increasingly interested in being able to serve tourists, which often use credit cards of, for example, Visa and Mastercard.[33]

(e) *Fifth*, any difference that may exist between debit and credit cards would already be covered by the segmentation between international and domestic schemes (discussed above), as domestic schemes are only debit based.[34]

(24) The Notifying Party contests the relevance of a segmentation between a ***wholesale (from PSPs to banks) and retail market (to merchants) for merchant acquiring***. The Notifying Party indicates that while it – as some other PSPs – is involved in alliances with banks, these partnerships should not be viewed as a wholesale/retail relationship.[35] Instead, banks should merely be seen as distributors of merchant acquiring services, as:

(a) Merchant acquirers (PSPs) enter into contracts directly with merchants (although three-party contracts between the merchant, merchant acquirer and bank may exist) and merchant acquirers hold the acquiring license and remain liable to the scheme network;

[29] Form CO, paragraphs 155-157.
[30] Form CO, paragraph 159.
[31] Form CO, paragraphs 160 and 161.
[32] Form CO, paragraphs 163 and 164.
[33] Form CO, paragraph 165.
[34] Form CO, paragraph 166.
[35] Form CO, paragraphs 174-176.

(b) Banks act mostly as a distribution channel for merchant acquirers, and are not the exclusive mode of distribution as merchant acquirers have own sales forces and other sales partners as well;

(c) While merchant acquiring services offered in partnerships with banks may be branded with the bank name, this should just be seen as branding, and not as a white label service provided to the bank.[36]

(25) Notwithstanding the Notifying Party's view that wholesale merchant acquiring and retail merchant acquiring are not separate product markets, it indicated that the relationships between merchant acquirers and partner banks can have the following characteristics:

(a) Banks have direct sales contact with the merchants and particularly for larger accounts, the key account manager is typically employed by the bank;

(b) Banks may have a degree of pricing freedom (with a floor agreed with the merchant acquirer);

(c) Banks may bundle merchant acquiring services with other financial services in their portfolio.[37]

(26) Finally, and for the sake of completeness, the Notifying Party discusses a possible subdivision between ***large merchants and smaller merchants ("SMEs")***. The Notifying Party submits that such a segmentation is not relevant, as merchant acquirers in practice serve all types of customers and the size of clients for a given merchant acquirer is a result of historical entry, commercial strategy and distribution channels. The Notifying Party further indicates that there is no market sizing available by customer size, there is no harmonised definition of each customer segment, and all merchant acquirers are able to serve all types of customers.[38]

The Commission's assessment

(27) In line with Commission precedent, the Commission considers that merchant acquiring constitutes a separate product market.

(28) The Commission's market investigation was inconclusive as to whether the sub-segmentations considered in previous Commission decisions, namely (i) types of payment card schemes (international/domestic), (ii) payment card brands (e.g. Visa, Mastercard), and (iii) type of payment card (debit/credit) are appropriate. Regarding the segmentation between POS merchant acquiring and e-commerce merchant acquiring, the market investigation provided sufficient evidence to conclude that these constitute separate product markets. By contrast, the Commission considers that the market investigation did not provide sufficient evidence to distinguish between (i) SMEs and large merchants and (ii) wholesale merchant acquiring and retail merchant acquiring.

36 Form CO, paragraph 177.
37 Form CO, paragraph 178.
38 Form CO, paragraph 185.

(29) Concerning the segmentation between **domestic and international cards schemes,** around half the merchants responding the market investigation considered that terms and conditions differ. Those that took the view that terms and conditions differ, most often mention that fees are different.[39] Similarly, around half the PSPs that responded to the market investigation consider that terms and conditions differ. PSPs also mention pricing as the main difference most often, however, some PSPs indicated that terms and conditions are broadly the same.[40]

(30) On the segmentation between **different card brands**, a slight majority of merchant considered that terms and conditions are different. However, these differences may largely be explained by whether the card brand is part of a domestic or international card scheme: when asked whether they thought that terms and conditions differ for different brands *within* domestic or international schemes, only a minority of merchants indicated that they thought this to be the case.[41] The majority of PSPs considered terms for different card brands to be broadly the same.[42]

(31) About the segmentation between **credit and debit cards,** a slight majority of merchants considered terms and conditions to be different. Most indicate that credit card fees are typically higher than debit card fees.[43] For PSPs, a slight minority considered terms and conditions to be different.[44] Those that consider terms are different, mention differences in pricing, as well as potential risk (which is higher for credit cards) and additional services offered for credit cards (e.g. chargeback handling).

(32) Concerning a distinction by **SMEs and large merchants**, the Commission recently took the view that such a segmentation is not appropriate,[45] in line with the Notifying Party's submissions. The market investigation in the present case gave no reason to depart from this view. Therefore, the Commission considers that large merchants and SMEs do not constitute separate product markets, but may constitute different segments in a heterogenic market.

(33) Regarding the distinction between **wholesale merchant acquiring** (provided by PSPs to banks) and **retail merchant acquiring** (provided to merchants), PSPs responding to the market investigation provided mixed feedback. While the majority of PSPs agreed that wholesale and retail models exist in the EEA, feedback was more mixed when asked whether separate wholesale markets exist in the specific national markets affected by the Transaction (i.e. Austria, Belgium, Germany, and Luxembourg).

(34) For the purposes of this Transaction, given the Member States in which the Transaction gives rise to affected geographic markets, the Commission concludes that a distinction between wholesale and retail merchant acquiring is not appropriate. Both Parties only have very limited activities that could be considered as wholesale

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39 Responses to question 9 of Questionnaire Q1 to Merchants.
40 Responses to question 10 of Questionnaire Q2 to PSPs.
41 Responses to question 9 of Questionnaire Q1 to Merchants.
42 Responses to question 10 of Questionnaire Q2 to PSPs.
43 Responses to question 9 of Questionnaire Q1 to Merchants.
44 Responses to question 10 of Questionnaire Q2 to PSPs.
45 See Case COMP/M.9759 - *Nexi/Intesa Sanpaolo (Merchant Acquiring Business)*, decision of 26.6.2020, paragraph 44.

merchant acquiring activities. In the national merchant acquiring markets affected by the Transaction (i.e. Austria, Belgium, Germany and Luxembourg), Worldline has partnerships with a very limited number of banks in Belgium (representing ***[...]*** of Worldline's market share in Belgium) and with only ***[...]*** in Germany (representing ***[...]*** of Worldline's market share in Germany).[46] Ingenico is not involved in typical wholesale / retail relationships. Only Ingenico's subsidiary Payone, a joint venture with Deutscher Sparkassenverlag ("DSV") sells merchant acquiring services under the DSV brand in Germany (representing ***[...]*** of Ingenico's market share in Germany). However, as DSV is a parent of Payone, this does not resemble a typical wholesale / retail relationship but rather an intra-group relation, so no overlap on a potential wholesale market exists.[47] Additionally, wholesale / retail relationships between PSPs and banks appear to be of limited importance in the national merchant acquiring markets affected by the Transaction. In Belgium, Worldline is the only Party to engage in these, and in Germany there are few merchant acquirers that have a relationship with only one bank each as well.[48] These relationships never comprise more than 10% of the total market. For the purposes of the Transaction, market shares for merchant acquirers will include the volumes that are distributed via banks, so that their full market presence is considered.

(35) Finally, concerning the distinction between POS merchant acquiring and e-commerce merchant acquiring, a majority of both merchants and PSPs that responded to the market investigation considered that POS merchant acquiring is materially different from e-commerce merchant acquiring.[49] Many mentioned that the providers for e-commerce merchant acquiring are different and that a broader set of suppliers is available for e-commerce only set-ups. Additional fees and security requirements related to e-commerce transactions were also mentioned by many respondents. One PSP explains that "e-*commerce often shows higher fraud risks. - Products or services are often delivered multiple days after the payment. This opens up a chargeback risk for the acquirer in case of bankruptcy for the merchant. Therefore, pricings are clearly different, the KYC-process is stricter and some additional conditions apply, allowing the acquirer to cover for chargeback risk for example."* A significant proportion of merchants indicate that they source e-commerce merchant acquiring services separately from POS merchant acquiring services.[50]

(36) In conclusion, the Commission considers that, based on the feedback from the market investigation, POS merchant acquiring and e-commerce merchant acquiring constitute separate product markets. Whether separate product markets exist for the segmentations between (i) credit and debit cards, (ii) card brands, and (iii) domestic and international payment card schemes, as well as whether e-commerce merchant

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46 This excludes lead agreements, where banks are remunerated once for referral to the merchant acquirer, which is not considered a wholesale / retail setup.

47 Form CO, paragraph 175 and Annex U to the Form CO, paragraphs 303-304.

48 For comparison, in some national markets that are not affected by the Transaction, such as Italy, PSPs may have commercial relationships with tens of banks.

49 Responses to question 10 of Questionnaire Q1 to Merchants; responses to question 11 of Questionnaire Q2 to PSPs.

50 Responses to question 11 of Questionnaire Q1 to Merchants.

acquiring can be further sub-divided between APMs and card-based payments, can be left open, as it does not materially affect the Commission's assessment.[51]

4.2.1.2. Geographical market definition

The Commission's precedents

(37) In past decisions, the Commission has considered the market for merchant acquiring to be likely national in scope, except for e-commerce merchant acquiring services, which it considered to be at least EEA-wide.[52] The precise scope of the geographic market definition was ultimately left open, except for Belgium and Germany, for which the geographic market definition of merchant acquiring was defined as national.[53]

The Notifying Party's view

(38) The Notifying Party submits that the relevant geographic scope for the market for POS merchant acquiring is national,[54] as a local presence (*e.g.* a sales force) is still important. However, the Notifying Party does indicate that the development of omni-channel solutions (combining POS and e-commerce merchant acquiring) means that the POS merchant acquiring market is increasingly becoming EEA-wide. The Notifying Party proposes the following definitions for each of the sub-segments of the POS merchant acquiring market (which in the Notifying Party's view all belong to the overall market for POS merchant acquiring):[55]

(a) **Domestic scheme:** National in scope because of country-based specificities;

(b) **International scheme:** An EEA-wide market may be relevant as the schemes have been developed through rules and service designed to enable cross-border operation. This is further supported by SEPA, which has further harmonised the European card payments area;

(c) **Debit cards:** Larger than national in scope; the relevant geographical scope could be EEA-wide, except for the fact that cards issued under domestic scheme networks are always debit cards;

(d) **Credit cards:** National in scope, if not EEA-wide, as credit cards are issued under international scheme networks;

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51 E-commerce merchant acquiring is not affected on EEA-wide level regardless of whether APMs are included in the product market, and will therefore not be covered further in this decision.

52 See Cases COMP/M.9387 - *Allied Irish Banks/First Data Corporation/Semeral*, decision of 23.10.2019, paragraph 16 et seq; COMP/M.9357 - *FIS/WorldPay*, decision of 5.07.2019, paragraph 23 et seq; and COMP/M.7873 - *Worldline/Equens/Paysquare*, decision of 20.04.2016, paragraph 108. This follows from the Commission's previous decisions in e.g., COMP/M.6956 - *Telefonica/Caixabank/Banco Santander*, decision of 14.08.2013, paragraph 50; and COMP/M.5241 - *American Express/Fortis/Alpha Card*, decision of 3.10.2008, paragraph 30. See also COMP/M.7241 - *Advent International/Bain Capital Investors/Nets Holding*, decision of 8.07.2014, paragraph 30.

53 See Case COMP/M.7873 - *Worldline/Equens/PaySquare*, decision of 20.04.2016, paragraph 108.

54 Form CO, summary box on page 67.

55 Form CO, paragraph 194.

(39) The Notifying Party submits that the market for e-commerce merchant acquiring services is EEA-wide in scope, as no local presence is required and suppliers provide services across all EEA Contracting Parties.[56]

The Commission's assessment

(40) The Commission has observed a trend towards an EEA-wide market for merchant acquiring in past decisions, but considered that the structure of the market still pointed towards national merchant acquiring markets.[57]

(41) In this case, the market investigation gave indications that support this trend towards an EEA-wide market. A significant number of merchants would consider sourcing from an international merchant acquirer, particularly in case of a small but significant and non-transitory increase in price ("SSNIP").[58] Especially merchants with activities in multiple countries indicate that they aim at having a single merchant acquirer that can support them in multiple countries, with one stating: "*it is interesting from volume perspective to have an acquirer present in different European countries for our business*".

(42) However, when asked specifically about POS merchant acquiring services, a majority of merchants indicate that they only consider local merchant acquirers as suitable suppliers. Respondents indicate that it is important to have a merchant acquirer with local presence, to provide support in the local language and to provide on-site technical support. Domestic card schemes are also mentioned as a barrier, as international acquirers typically are not able to handle payments via local payment card schemes.[59]

(43) PSPs gave mixed feedback on whether local presence is required to offer POS merchant acquiring services. However, replies to the market investigation strongly indicate that local presence is required to (i) provide on-site technical support, (ii) meet Know Your Customer ("KYC") requirements, (iii) adapt to local regulations, technical rules and customs, and (iv) provide support in the local language. In countries with a domestic payment card scheme, local presence is considered particularly important, with one PSP indicating that "*…it is highly recommended, even essential, to have [local] activities/physical presence. This enables a better control and knowledge of the local protocols and infrastructures used for acquisition of payments, and simplifies processes (for instance in case of interbank incidents or disputes)"*.[60]

(44) The market structure supports national markets for POS merchant acquiring services. While some players, including the Parties, are active in several EEA Contracting Parties, no player is truly active on an EEA-wide level. Additionally, the set of competitors found in each country is different. In some countries, such as France,

56 Form CO, paragraph 194.

57 See, for example, Case COMP/M.7873 - *Worldline/Equens/PaySquare*, decision of 20.04.2016, paragraph 99; and COMP/M.9759 - *Nexi/Intesa Sanpaolo (Merchant Acquiring Business)*, decision of 26.06.2020, paragraphs 49-50.

58 Responses to questions 13 and 18 of Questionnaire Q1 to Merchants.

59 Responses to questions 14 and 17 of Questionnaire Q1 to Merchants.

60 Responses to question 15 of Questionnaire Q2 to PSPs.

merchant acquiring services are primarily provided by banks, while in other countries, such as Belgium, PSPs are more prevalent.

(45) The market structure and market investigation do not give any indication that a national market definition would not be equally relevant for the possible segmentations of POS merchant acquiring, namely according to credit/debit cards, card brand and by international / domestic card network schemes.

(46) Regarding e-commerce merchant acquiring, the majority of both merchants and PSPs gave indications that the market is at least EEA-wide. The majority of merchants that expressed a view indicated that they would consider international merchant acquirers for e-commerce.[61] Similarly, the large majority of PSPs indicated that they consider competition to take place on EEA or global level.[62]

(47) The market structure for e-commerce merchant acquiring supports an EEA-wide or global market, as several competitors, such as Adyen and WorldPay, compete across the EEA as well as outside the EEA.

(48) In light of the above, the Commission considers that (i) the market for the provision of POS merchant acquiring services (and its possible segmentations according to credit/debit cards, card brand and international/domestic card network schemes) is national in scope and (ii) the market for the provision of e-commerce merchant acquiring services (and its possible segmentation according to APMs and card-based payment methods) is at least EEA-wide in scope.[63]

4.2.2. POS terminals

4.2.2.1. Product market definition

The Commission's precedents

(49) In its most recent decisions, the Commission defined a market for the provision of POS terminals and related services separate from the market for merchant acquiring services.[64]

(50) The Commission further considered whether the market for the provision of POS terminals should be further subdivided by type of POS terminal (traditional POS terminals versus mPOS and smartPOS terminals) or based on customer size (small versus medium-sized versus large customers). Ultimately, the Commission left both questions open.[65]

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61 Responses to question 15 of Questionnaire Q1 to Merchants.

62 Responses to question 18 of Questionnaire Q2 to PSPs.

63 E-commerce merchant acquiring is not affected on EEA-wide level regardless of whether APMs are included in the product market, and will therefore not be covered further in this decision.

64 See Cases COMP/M.9357 - *FIS/WorldPay*, decision of 5.7.2019, paragraphs 36-38; and COMP/M.9387 – *Allied Irish Banks/First Data Corporation/Semeral*, decision of 23.10.2019, paragraphs 11-15.

65 See Cases COMP/M.9759 – *Nexi/Intesa Sanpaolo (Merchant Acquiring Business)*, decision of 26.6.2020, paragraphs 65-67; COMP/M.9357 - *FIS/WorldPay*, decision of 5.07.2019, paragraphs 29-38; and COMP/M.9387 – *Allied Irish Banks/First Data Corporation/Semeral,* decision of 23.10.2019, paragraphs 11-15.

(51) The Commission has not yet considered a market for the manufacturing and supply of POS terminals separate from the provision and management of POS terminals in its past decisional practice.

The Notifying Party's view

(52) The Notifying Party submits that there are separate markets for (i) the manufacturing and supply of POS terminals, and (ii) the provision and management of POS terminals to merchants.[66]

(53) As regards the **manufacture and supply of POS terminals**, the Notifying Party explains that, while the Commission has not previously assessed the market for manufacturing and supply of POS terminals, it has on some occasions indirectly noted the relevance of separating this activity from the provision and management of POS terminals. For example, in one case the Commission assessed POS terminals in the UK both in terms of new shipments and existing terminals (installed base), which more or less mirrors the proposed separate product markets.[67] In another case, the Commission considered that the parties to the transaction were not close competitors, as one procured POS terminals externally and the other produced them in-house.[68]

(54) Concerning the manufacturing and supply of POS terminals, the Notifying Party furthermore indicates that there are three types of customers for this activity: (i) merchant acquirers that do not manufacture POS terminals in-house; (ii) large merchants, which often procure POS terminals directly from the manufacturer instead of via the merchant acquirer; and (iii) distributors which resell the POS terminals and potentially develop software for their customers.[69]

(55) As regards the **provision and management of POS terminals**, the Notifying Party submits that this activity is typically performed by merchant acquirers and consists of the selling or renting of terminals to merchants. It also includes services such the maintenance and repair of the terminals. The Notifying Party indicates that while the provision and management of POS terminals on the one hand is closely related to merchant acquiring on the other, they constitute a separate product markets. In support of this, the Notifying Party indicates that merchants can either purchase or rent their POS terminals from merchant acquirers, buy them from manufacturers directly, or buy them from distributors.[70]

(56) The Notifying Party submits that a further sub-segmentation of the market for the manufacturing and supply of POS terminals and the market for provision and management of POS terminals is not appropriate.[71]

(57) Concerning a subdivision between **mPOS, smartPOS and traditional POS terminals** for the manufacture and supply of POS terminals, the Notifying Party submits that:

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66 Form CO, paragraph 252.

67 Form CO, paragraph 246. See also COMP/M.9357 - *FIS/WorldPay*, decision of 5.7.2019, Table 1.

68 Form CO, paragraph 249. See also Case COMP/M.9387 - *Allied Irish Banks/First Data Corporation/ Semeral*, decision of 23.10.2019, paragraph 57.

69 Form CO, paragraph 228.

70 Form CO, paragraphs 243.

71 Form CO, paragraphs 253.

(a) ***First,*** on the demand side, both devices serve the same purpose, *i.e.* allowing in-store payments and traditional POS terminals are a credible alternative for most if not all merchants that would consider mPOS terminals. Conversely, some retailers may prefer the more solid materials of a traditional POS, but ultimately mPOS would be a substitute.[72] The Notifying Party does indicate that mPOS terminals are typically less expensive than traditional POS terminals.[73]

(b) ***Second,*** on the supply side, traditional POS manufacturers can easily supply mPOS devices, as they are made in the same manufacturing plants and there are no significant barriers to switching production between the two.[74]

(58) Regarding a subdivision **by POS terminal customer size**, the Notifying Party submits that this segmentation is not relevant as any given player would be able to serve customers of all sizes. Any stronger positions with smaller or larger merchants in a given country is a result of historical market entry, commercial strategy and distribution channels. In any event, the Notifying Party indicates that it would not be able to assess a market segmented by customer size, as there is not market sizing available for each category of customer and there is no harmonised definition for the customer categories.[75]

The Commission's assessment

(59) The market investigation largely confirmed the Notifying Party's arguments that there are two distinct markets for POS terminals, namely for (i) the manufacture and supply of POS terminals (mainly to distributors, merchant acquirers, and large merchants) and (ii) the provision and management of POS terminals to merchants.[76] A large majority of merchants indicated they would not increase their purchase of managed POS terminals if the price of POS terminal hardware shipped would increase, and conversely would not increase their purchase of "naked" POS terminals if the price of managed POS terminals would increase.[77]

(60) The market investigation largely confirmed that the provision (and management) of POS terminals should be viewed as distinct from the provision of merchant acquiring services, as the two are not necessarily purchased together. However, in some countries these markets are closely related such as in Austria. Indeed, some respondents confirmed the Parties' claim that it may depend on the country concerned, with Austria in particular being a country where the POS terminal is supplied alongside merchant acquiring services, suggesting these services are complementary, rather than being substitutes.[78]

(61) The market investigation was not conclusive as to whether the market for the manufacture and supply of POS terminals should be further segmented between the different categories of POS (including traditional POS, mPOS, or SmartPOS).

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72 Form CO, paragraphs 254 and 256.
73 Form CO, paragraph 257.
74 Form CO, paragraph 255.
75 Form CO, paragraphs 272-274.
76 See responses to question 42 of Questionnaire Q2 to PSPs.
77 See responses to questions 45.1 and 45.2 of Questionnaire Q1 to Merchants.
78 See responses to question 43.1 of Questionnaire Q1 to Merchants.

(a) As regards the demand side, a large majority of merchants indicated they would not increase their purchase of another type of POS terminals if the price of a specific category would increase, including in particular merchants in industries such as transport or catering which may require the use of mPOS.[79]

(b) Regarding the supply side, a large majority of respondents, including both merchants and PSP consider that POS terminals are commoditised products and that most manufacturers are able to offer a similar product range.[80] In addition, most suppliers offer all categories of POS terminals. This is particularly the case of the main POS terminal manufacturers globally, including the Parties, as well as PAX, VeriFone, Datecs, First Data, Spire and Castles.[81] However, only a minority of POS terminal manufacturers indicated that they could switch production between the different categories of POS terminals at short notice and for limited investments.[82]

(62) In line with the Notifying Party's views, the market investigation did not provide any element that would suggest that a segmentation by category of POS terminals would be appropriate with regard to the provision and management of POS terminals.

(63) With regard to a segmentation based on customer size (e.g. SMEs and large customers), the market investigation indicates that such a segmentation is not appropriate. While the market investigation indicates that supply conditions may differ between large and small customers, this is largely linked to scale effects, rather than reflecting differing competitive dynamics.[83] As large customers purchase more POS terminals, they benefit from better supply conditions including lower prices, while different customer categories do not constitute fully distinct market segments. A majority of merchants (including large retailers) indicated that their needs are fairly commoditised in the sense that they do not require specific products or services that only a number of POS terminal providers can offer.[84]

(64) It follows from the above that for the purposes of this decision, it is necessary to distinguish product markets for (i) the manufacture and supply of POS terminals and (ii) the provision and management of POS terminals. In addition, for the purposes of this decision, a segmentation depending on customer size is not needed, and the question as to whether a segmentation depending on the type of POS supplied for the manufacture and supply of POS terminals, can be left open, as the competitive assessment would not change With regards to the provision and management of POS terminals, no further sub-segmentation is needed.

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79 Responses to question 47 of Questionnaire Q1 to Merchants.

80 Responses to question 52 of Questionnaire Q1 to Merchants; responses to question 51 of Questionnaire Q2 to PSPs.

81 Responses to question 50 of Questionnaire Q2 to PSPs.

82 Responses to question 50.3 of Questionnaire Q2 to PSPs.

83 Responses to questions 51 and 51.1 of Questionnaire Q1 to Merchants; Responses to questions 53 and 53.1 of Questionnaire Q2 to PSPs.

84 Responses to question 66 of Questionnaire Q1 to Merchants.

4.2.2.2. Geographical market definition

The Commission's precedents

(65) In its previous decisions, the Commission considered that the geographic market definition for the provision and management of POS terminals is likely national, or at least regional (e.g. Benelux, Nordics) in scope. In particular, the Commission noted that technical specifications such as standards and protocols may differ between countries. Furthermore, the Commission considered that the provision and management of POS terminals requires presence of local service teams. Ultimately, the Commission left the geographical market definition open.[85]

(66) The Commission has not considered a market for the manufacturing and supply of POS terminals separate from the provision and management of POS terminals in its past decisional practice.

The Notifying Party's view

(67) The Notifying Party submits that the market for the manufacturing and supply of POS terminals is worldwide, and at the very least EEA wide, in scope.

(68) On the supply side, the Notifying Party indicates that terminals are sold as hardware, which is not country-specific, and that international players can sell their terminals across countries. To support this, they indicate that Asian players such as PAX and Newland have been able to gain market share in the EEA rapidly.[86] The Notifying Party further submits that whilst sometimes country-specific applications need to be developed, this is usually done once a client has been secured, and only requires that a supplier has the ability to develop such application, which all do.

(69) On the demand side, the Notifying Party submits that the customers for the manufacturing and supply of POS terminals are large retailers, banks and merchant acquirers, which are all sophisticated buyers and often have demand across multiple countries. According to the Notifying Party, the rapid rise of Asian manufacturers in the EEA shows that customers have no preference for manufacturers from the EEA.[87]

(70) The Notifying Party further supports its view that the market for manufacturing and supply of POS terminals is worldwide by presenting the global sales volumes of the Parties, which show that particularly Ingenico is active globally: sales outside of Europe make up ***[...]%*** of Ingenico's and [<20]% of Worldline's POS terminal sales.[88]

(71) On the other hand, in line with its view on the market for POS merchant acquiring, the Notifying Party considers that the market for the provision and management of

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85 See Cases COMP/M.9387 – *Allied Irish Banks/First Data Corporation/Semeral*, decision of 23.10.2019, paragraphs 16-18; COMP/M.9357 - *FIS/WorldPay*, decision of 5.07.2019, paragraphs 39-41; and COMP/M.7873 - *Worldline/Equens/PaySquare*, decision of 20.04.2016, paragraphs 128-134.

86 Form CO, paragraph 285.

87 Form CO, paragraph 286.

88 Form CO, paragraphs 287-290.

POS terminals is national in scope, or in some cases comprises clusters of countries (*e.g.* the Nordics, consisting of Denmark, Finland, Norway and Sweden).[89]

The Commission's assessment

(72) The market investigation largely confirmed the Parties' submissions according to which the geographic scope for the markets are: (i) at least EEA-wide for the manufacturing and supply of POS terminals, and (ii) national for the provision and management of POS terminals.

(73) The large majority of respondents confirmed that it is not necessary for a POS terminal manufacturer to have a physical presence in a country to ship POS terminals.[90] In fact, the large majority of POS terminal manufacturers responding to the investigation who do not offer management services in some countries still ship POS terminals to these countries.[91]

(74) Regarding the shipment of POS terminals hardware, the large majority of responding merchants who expressed a view consider that there are no barriers to procuring POS terminals across countries. Similarly, a majority of PSPs consider that there are no obstacles to shipping or purchasing POS terminals across the world and that there are no barriers for them to procure POS terminals across countries.[92] The share of transport costs in the final prices of POS terminals is typically below 5%.[93] Moreover, even if POS terminals may need certain protocols specific to some countries, the Parties confirmed that neither Worldline nor Ingenico own proprietary protocols ensuring the connection/interoperability between POS terminals and merchant acquirers in the EEA, or any intellectual property rights over these protocol (including for instance the C-TAP, ZVT, EP2, CB2 and CB2A protocols) and that suppliers are able to include the required protocols.[94] In this vein, a significant competitor explains that "*with respect to the software integrated in the POS terminals, [the competitor] considers that there can be minor regional differences and software can sometimes be specific to one country. Differences include, for example, integrating with local scheme networks and language. However, the software can easily be adapted to the relevant country in question and local scheme networks and language can easily be integrated in the software. [The competitor] indicates that software can be provided by the POS manufacturer, by payment service providers (PSPs), independent software vendors (ISVs), acquiring processors or in some cases merchants".*[95]

(75) On the other hand, a majority of merchants indicated that it is necessary for a POS terminal supplier to have a physical presence in a country to manage POS terminals, including to ensure swifter maintenance and support.[96] In this vein, one manufacturer

[89] Form CO, paragraph 291.

[90] Responses to question 48 of Questionnaire Q1 to Merchants; responses to question 46 of Questionnaire Q2 to PSPs.

[91] Responses to question 52 of Questionnaire Q2 to PSPs.

[92] Responses to question 51 of Questionnaire Q1 to Merchants; responses to questions 45 and 47 of Questionnaire Q2 to PSPs.

[93] Responses to question 44 of Questionnaire Q2 to PSPs.

[94] For more details, see Section 4.6.1.

[95] Non-confidential minutes of a call with a competitor on 12 June 2020.

[96] Responses to questions 49 and 49.1 of Questionnaire Q1 to Merchants.

of POS terminals confirmed for instance that it "*offers [management] services only in case it has the required operations in the countr*y".[97] Finally, the responses of PSPs are mixed on the issue.[98]

(76) Considering that the market investigation has not yielded any clear indications that would militate in favour of deviating from the Commission´s previous decisional practice and the Notifying Party's views, the Commission considers that for the purposes of this decision, the market for the provision and management of POS terminals should be considered as national in scope.

(77) In line with the Notifying Party's views and considering the results of the market investigation, the Commission considers that for the purposes of this decision (i) the market for the manufacture and supply of POS terminals and any plausible sub-segmentation according to type of terminal should be considered as at least EEA-wide in scope, and that (ii) the market for the provision and management of POS terminals should be considered as national in scope.

4.2.3. Acquiring processing

4.2.3.1. Product market definition

The Commission's precedents

(78) The Commission previously considered a distinct market for card processing and within that market, it has discussed the existence of separate relevant markets for acquiring processing services and issuing processing services. The exact market definition was, however, ultimately left open.[99]

(79) Within acquiring processing, the Commission has identified a possible further sub-segmentation based on (i) the payment card scheme (domestic/international) and (ii) the platform, distinguishing between physical POS terminals and through web-enabled interfaces (e-commerce). The exact market definition was ultimately left open.[100]

The Notifying Party's view

(80) The Notifying Party submits that acquiring processing constitutes a separate product market, and that further subdivisions are not appropriate.[101]

(81) Regarding a segmentation between domestic and international card scheme networks, the Notifying Party indicates that there is full supply side and demand side substitutability between acquiring processing services for these segments, as all

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97 Non-confidential Minutes of a call with a competitor held on 17 June 2020, paragraph 15.

98 Responses to question 47 of Questionnaire Q2 to PSPs.

99 See Cases COMP/M.9452 - *Global Payments/TSYS*, decision of 16.9.2019, paragraphs 17-25; COMP/M.7873 - *Worldline/Equens/PaySquare*, decision of 20.4.2016, paragraphs 33-37; and M.7241 - *Advent International/Bain Capital Investors/Nets Holding*, decision of 8.7.2014, paragraph 31-36.

100 See Cases COMP/M.8073 - *Advent International/Bain Capital/Setefi Services/Intesa Sanpaolo Card*, decision of 10.8.2016, paragraphs 22-27; and COMP/M.7241 - *Advent International/Bain Capital Investors/Nets Holding*, decision of 8.7.2014, paragraph 36.

101 Form CO, paragraph 313.

acquirer processors can process both and customers generally choose one processor for both types of schemes.[102]

(82) Similarly, concerning a segmentation between POS and web-enabled (e-commerce) acquiring processing, the Notifying Party indicates that acquiring processing for both types of transactions are fully substitutable as well. The Notifying Party indicates that web-enabled transactions are characterised by a higher level of security due to the higher risk of fraud, but that regardless, acquiring processors handle both transaction types indifferently. Additionally, customers generally only choose one processor for both types of transactions.[103]

The Commission's assessment

(83) Card processing includes all gateways concerning payment card transactions. Card processing services include acquiring processing services and issuing processing services. Acquiring processing services are required for merchant acquirers whereas issuing processing services are necessary for issuing banks. The activities of the Parties do not overlap in issuing processing.

(84) Acquiring processing relates to the merchant-oriented side of technically processing a card payment transaction. It includes the network routing of payments towards the corresponding issuer and the POS authorisation.

(85) The market investigation confirmed the argument of the Parties that the majority of customers source acquiring processing services for POS transactions and for web-enabled (e-commerce) transactions from the same supplier.[104] In the same vein, the majority of customers considered that there are not significant differences between acquiring processing services for POS transactions and those for web-enabled transaction.[105] Similarly, the large majority of suppliers indicated that they provide acquiring processing services for POS transactions and for web-enabled transactions and confirmed that, while there are some technical differences or differences concerning security requirements between both, they are not significant.[106]

(86) The large majority of customers also indicated that their acquiring processing provider enables payments with all types of cards, including international and national card schemes, debit and credit cards and different card schemes such as Visa or Mastercard and that there are not significant differences between acquiring processing services for different types of cards.[107] The large majority of suppliers also indicated that their acquiring processing services enable payments with all types of cards.[108]

(87) Considering the results of the market investigation and in line with the Notifying Party's views, the Commission considers that, for the purposes of this decision,

[102] Form CO, paragraph 314.
[103] Form CO, paragraph 315.
[104] Responses to question 96 of Questionnaire Q2 to PSPs.
[105] Responses to question 97 of Questionnaire Q2 to PSPs.
[106] Responses to questions 111 and 112 of Questionnaire Q2 to PSPs.
[107] Responses to question 98 and 99 of Questionnaire Q2 to PSPs.
[108] Responses to question 113 of Questionnaire Q2 to PSPs.

acquiring processing is a separate product market and that no further segmentation is appropriate.

4.2.3.2. Geographical market definition

The Commission's precedents

(88) In its decisional practice, the Commission has previously left open whether the provision of payment card processing services, in general, and of acquiring processing services, in particular, is national or EEA-wide in scope.[109]

The Notifying Party's view

(89) The Notifying Party considers that the geographic scope for acquiring processing services is at least EEA-wide in scope, but considers that the market definition can be left open as it does not believe the Transaction raises concern for acquiring processing services under any geographic market definition.[110]

(90) The Notifying Party indicates that acquiring processing is primarily an IT service that can be delivered from anywhere, and can be provided from data centres located in a different country than the customer. Additionally, it indicated that acquiring processing requirements are commoditised, and requirements are the same across EEA Contracting Parties. Finally, the Notifying Party indicates that major processors all operate across multiple EEA Contracting Parties, and that Directive 2015/2366 contains "passporting" provisions that enable processors to provide services across the Union, further facilitating cross-border provision of acquiring processing services.[111]

The Commission's assessment

(91) The results of the market investigation support an EEA-wide market definition as regards acquiring processing services. The large majority of customers indicated that they procure acquiring processing services from acquiring processing providers established anywhere in the EEA.[112] In this vein, the large majority of customers indicated that international acquiring processing providers can credibly supply all types of acquiring processing services to businesses in the territory of every EEA Contracting Party in which they are active.[113] The majority of customers are also of the view that there are no significant barriers to procuring acquiring processing services at EEA level.[114] The market investigation also revealed that the majority of providers offer acquiring processing in the territory of all EEA Contracting Parties or in a significant number thereof.[115]

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109 See COMP/M.9452 - *Global Payments/TSYS*, decision of 16.09.2019, paragraphs 28-29; COMP/M.7873 - *Worldline/Equens/PaySquare*, decision of 20.04.2016, paragraphs 112-114; and M.7241 - *Advent International/Bain Capital Investors/Nets Holding*, decision of 8.07.2014, paragraphs 37-41.

110 Form CO, paragraphs 323 and 325.

111 Form CO, paragraph 325.

112 Responses to question 103 of Questionnaire Q2 to PSPs.

113 Responses to question 104 of Questionnaire Q2 to PSPs.

114 Responses to question 105 of Questionnaire Q2 to PSPs.

115 Responses to question 115 of Questionnaire Q2 to PSPs.

(92) It results from the above that for the purposes of this decision the market for acquiring processing services should be considered as EEA-wide in scope.

(93) The Transaction does not give rise to a horizontally affected market for acquiring processing services at EEA level. Therefore, these services will not be considered further in the competitive assessment of horizontal overlaps in this decision.

4.2.4. E-commerce acceptance services

4.2.4.1. Product market definition

The Commission's precedents

(94) The Commission has not yet considered the activity of e-commerce acceptance in its previous decisions.

The Notifying Party's view

(95) The Notifying Party submits that e-commerce acceptance services constitute a separate product market. As e-commerce payment transaction do not involve a physical POS terminal, customers need to select the payment method and enter their payment authentication details via a web page, *i.e.* an e-commerce acceptance solution.[116]

(96) The Notifying Party considers that the market for e-commerce acceptance solutions is not part of the market for e-commerce merchant acquiring, as the service is different, e-commerce acceptance being a technical service and merchant acquiring a financial service. The Notifying Party submits that further subdivision of the e-commerce market is not appropriate.[117]

The Commission's assessment

(97) The market investigation supports the Notifying Parties views. In particular, a significant proportion of customers procure e-commerce merchant acquiring services separately from e-commerce acceptance services.[118] The market investigation also suggests that no further segmentation is appropriate. The large majority of both customers and competitors indicated that e-commerce acceptance providers enable payments with all cards and that there are no significant differences between e-commerce acceptance services for different card types.[119]

(98) It results from the above that, in line with the Notifying Party's views, for the purposes of this decision, e-commerce acceptance is a separate product market and that no further segmentation is appropriate.

[116] Form CO, paragraphs 197-198.
[117] Form CO, paragraph 204.
[118] Responses to question 79 of Questionnaire Q1 to Merchants.
[119] Responses to questions 77 and 78 of Questionnaire Q1 to Merchants; responses to question 68, 69, 79 and 80 of Questionnaire Q2 to PSPs.

4.2.4.2. Geographical market definition

Commission's precedents

(99) The Commission has not yet considered the activity of e-commerce acceptance in its previous decisions.

The Notifying Party's view

(100) The Notifying Party submits that, in line with the geographical market definition for e-commerce merchant acquiring and acquiring processing, e-commerce acceptance is an EEA-wide market as it is part of the same value chain.[120]

(101) The Notifying Party indicates that, *on the supply side*, e-commerce acceptance providers operate throughout the EEA and offer a single solution across countries. *On the demand-side*, merchants that are active across the EEA will typically search for a single provider of e-commerce acceptance services; locally active merchants have the possibility to choose a local provider or providers with presence across countries.[121] The Notifying Party further submits that the proportion of e-commerce merchants involved in cross-border activities is significant, such that cross-border sales represent 20% of e-commerce sales,[122] ***[...]***.[123]

The Commission's assessment

(102) The market investigation supports the views of the Notifying Party as regards the EEA-wide scope of the market for e-commerce acceptance. The large majority of customers use EEA-wide procurement strategies or confirm that they could procure from players established anywhere in the EEA.[124] Customers also confirm that international players can supply throughout the EEA and consider that there are no factors preventing them from procuring competitively across the EEA.[125] Moreover, the majority of customers would switch to a player based elsewhere in the EEA if the price offered by a local (national) supplier were to increase by 5 to 10%.[126] In addition, the majority of competitors indicated that they offer e-commerce acceptance services in all EEA countries. The majority of competitors consider that there are no significant barriers to offering e-commerce acceptance services in all the EEA.[127] Indeed, competitors that are only active locally or in a few countries explain

[120] Form CO, paragraph 208

[121] Form CO, paragraphs 209-211.

[122] Form CO, paragraph 213, referring to a report by Cross Border Commerce Europe, entitled "23% of ecommerce in Europe is cross-border" of 14.3.2019. This report covers 16 European countries: Austria, Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the UK.

[123] Form CO, paragraph 218.

[124] Responses to question 80 of Questionnaire Q1 to Merchants; responses to question 71 of Questionnaire Q2 to PSPs.

[125] Responses to question 81 and 82 of Questionnaire Q1 to Merchants; Responses to question 72 and 73 of Questionnaire Q2 to PSPs.

[126] Responses to question 83 of Questionnaire Q1 to Merchants.

[127] Responses to question 82 of Questionnaire Q2 to PSPs.

that not expanding their activities across the EEA is a strategic/commercial choice, rather than the result of any particular barriers.[128]

(103) It results from the above that for the purposes of this decision the market for e-commerce acceptance services should be considered as EEA-wide in scope.

(104) While both Parties offer these services, the Transaction does not give rise to a horizontally or vertically affected market of e-commerce acceptance services at EEA level. Such services will therefore not be further discussed in this decision.

4.2.5. In-store acceptance services

4.2.5.1. Product market definition

The Commission's precedents

(105) The Commission has not yet considered the activity of in-store acceptance in its previous decisions.

The Notifying Party's view

(106) The Notifying Party explains that in-store acceptance comprises the following set of services:[129]

(a) *Concentration of transaction flows* – providing a single remittance of transactions across various shops to the merchant acquirer once per day (instead of several transfers per day), to reduce costs for the merchant and simplify reporting;

(b) *Multiple-acquirer switching* – directing payment transactions to a specific merchant acquirer based on, *e.g.* the currency (currency-based switching) or based on the type of card (card-based switching). The latter is particularly relevant in France, Spain and in the United Kingdom, where card issuers also act as merchant acquirers, and transactions can be routed to the issuer that issued the card to reduce costs for the merchant;

(c) *Reporting services* – providing of reports such as, for example, revenues per day, per shop or per merchant acquirer.

(107) The Notifying Party considers that in-store acceptance services are only relevant to large retailers that rely on multiple merchant acquirers, and that the set of services, described above, are always provided by a single provider.

(108) The Notifying Party submits that in-store acceptance services constitute a separate product market distinct from merchant acquiring and acquiring processing and that no consider any further segmentation is appropriate.

[128] Responses to question 81 of Questionnaire Q2 to PSPs.
[129] Form CO, paragraph 294.

The Commission's assessment

(109) In-store acceptance is a technical service that allows a merchant to optimise connection to multiple acquirers: it is a centralised platform that connects all POS terminals to all its merchant acquirers and allows concentration of transaction flows, multiple-acquirer switching or reporting services. In-store acceptance is not a mandatory technical service and is only provided to large retailers which have a significant volume of terminals and transactions for which optimisation of payment flows is necessary. The market investigation confirmed that a significant proportion of customers do not require in-store acceptance services at all and that those that do require in-store acceptance services procure them separately from other services such as merchant acquiring.[130] Therefore, the Commission considers that in-store acceptance services constitute a market that is distinct from merchant acquiring and acquiring processing, the latter two being mandatory services, required by all types of customers.

(110) The market investigation did not provide any indication that any further subdivisions would be appropriate.

(111) It results from the above that, in line with the Notifying Party's views, for the purposes of this decision, in-store acceptance services constitute a separate product market and that no further subdivision is appropriate.

4.2.5.2. Geographical market definition

The Commission's precedents

(112) The Commission has not yet considered the activity of in-store acceptance in its previous decisions.

The Notifying Party's view

(113) The Notifying Party considers that, on the supply side, in-store acceptance service providers are typically larger players with the required technical platforms and typically offer their services in multiple countries. On the demand side, the customers in the market only consists of large retailers, which typically have cross-border activity and source their in-store acceptance services for multiple countries from a single supplier.[131]

(114) The Notifying Party submits that the market is EEA-wide but that ultimately, the geographic market definition can be left open, as the Transaction does not raise competition concerns regardless of the geographic market scope, as the activities of the Parties only overlap in France.[132]

The Commission's assessment

(115) The market investigation results support the finding that the market for in-store acceptance is EEA-wide in scope. The large majority of customers indicated that they

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130 Responses to question 90 of Questionnaire Q1 to Merchants.
131 Form CO, paragraph 302-304.
132 Form CO, paragraph 305.

source in-store acceptance services from providers established anywhere in the EEA or that they could easily procure these services from in-store acceptance service providers anywhere in the EEA[133]. In this vein, the majority of customers indicated that international in-store acceptance service providers can credibly supply all types of in-store acceptance services to businesses in the territory of every EEA Contracting Party in which they are active. While local support is needed, many customers indicate that international players have the capabilities to offer such support.[134] Moreover, while competitors identified some barriers to offering in-store acceptance services everywhere in the EEA such as local schemes, language barriers or consumer preferences, a large number of competitors indicated that they are able to provide in-store acceptance services at EEA level or at least in several countries in the EEA.[135]

(116) It results from the above that for the purposes of this decision the market for in-store acceptance services should be considered as EEA-wide in scope.

4.2.6. NSP services in Germany

(117) NSP services are a service that is specific to the German card payment system, and relates to the unique set-up of the German domestic Girocard scheme, which represents the majority of payment transactions in Germany.

(118) Girocard is a so-called "four-party scheme", which involves the merchant, the card holder, a bank and an NSP (*Netzbetreiber*). The NSP provides services to the merchant including card acceptance, POS terminal provision and management, and routing of Girocard transactions to issuer banks. For international card schemes, the NSP routes the transaction to merchant acquirers, which can either be in-house or an external party. Figure 3 presents the set-up of the German Girocard scheme.

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133 Responses to question 91 of Questionnaire Q1 to Merchants.

134 Responses to question 92 and 93 of Questionnaire Q1 to Merchants.

135 Responses to question 88 and 89 of Questionnaire Q2 to PSPs.

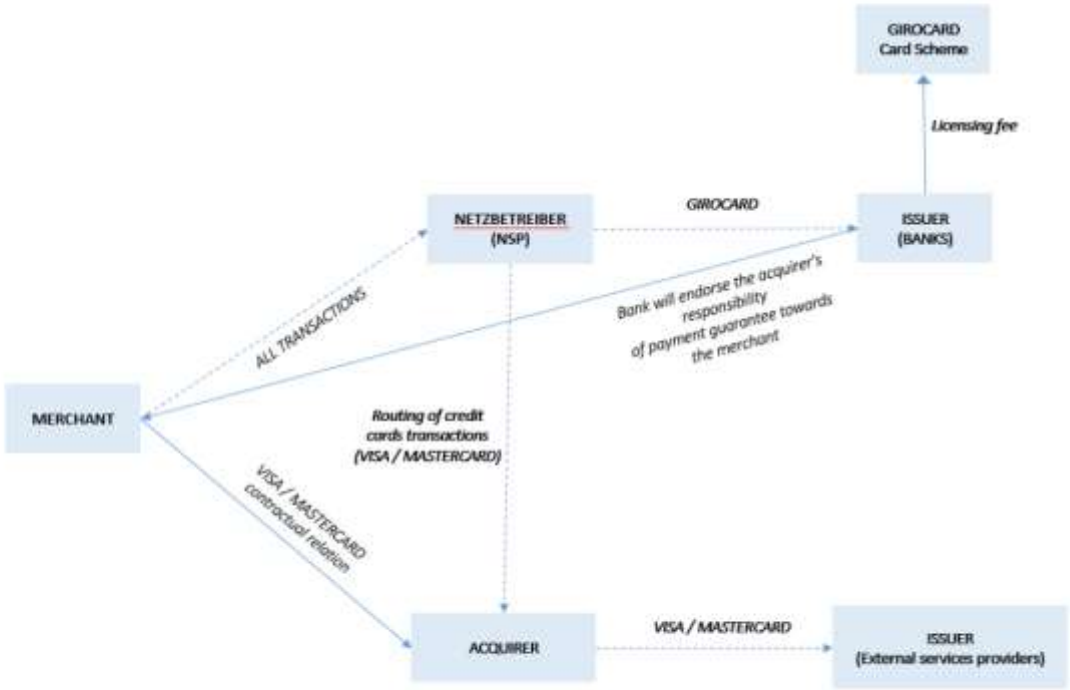

Figure 3: Set-up of the German Girocard scheme
Source: Notifying Party

(119) There are 20 technical NSPs with NSP licenses in Germany. Most major technical NSPs also offer merchant acquiring services for international debit and credit cards (*e.g.* the Parties, Concardis, Evalon and CardProcess). The majority of customers single-source NSP services, although there are some customers that multi-source from different providers. In addition to Girocard transactions, technical NSPs also offer acceptance of payment by Elektronisches Lastschriftverfahren ("**ELV**") / Online Lastschriftverfahren ("**OLV**"), types of account-to-account payments.

(120) Additionally, there are 80-120 commercial NSPs active in Germany, which account for 20-25% of all POS payments.[136] Commercial NSPs are distinct from the technical NSPs mentioned above. Only the latter are certified NSPs and only they can provide technical Girocard acceptance. Without this certification any undertaking can act as a so-called "Girocard merchant concentrator" or "commercial NSP", but needs to cooperate with a certified technical NSP to be active on the market.[137] Certification is obtained from Deutsche Kreditwirtschaft, which is the association of leading German banking-sector associations and the supervisory board of the German Banking Industry and which regulates Girocard.[138] Commercial NSPs purchase network operating services from technical NSPs like Worldline and sell them to merchants in their own name and on their own account whereas their contracts with merchants relate to the POS rental part of the service only. Merchants also need to contract with the certified NSP player, given that payment transactions are handled by it (i.e. for the acceptance of transactions).[139] Therefore, commercial NSPs could be regarded as

136 Form CO, paragraph 996.
137 Form CO, paragraph 1000.
138 Form CO, footnote 331.
139 Form CO, paragraph 1000.

retailers of NSP services, which they procure from wholesale suppliers such as Worldline.

4.2.6.1. Product market definition

The Commission's precedents

(121) The Commission has not previously considered the market for the provision of NSP services. The Commission has considered the related market for the provision of software for NSPs, which it found to be a separate product market. The Commission further considered a market for the provision of software for NSPs that rely on terminals using the ZVT-protocol, but left this question open.[140]

The Notifying Party's view

(122) The Notifying Party considers that the market for NSP services in Germany is part of the larger market for merchant acquiring services in Germany.[141]

(123) The Notifying Party submits that non-cash payment methods, such as international cards, Girocard and ELV, are full substitutes of each other and NSP services and merchant acquiring services essentially offer the same core service, *i.e.* the ability to accept electronic payments. The Notifying Party further indicates that national schemes such as Girocard are under increasing competitive pressure and that international payment companies have entered the German market without offering support for the domestic payment methods.[142]

(124) Finally, the Notifying Party submits that if NSP services were to be considered a relevant product market, which it does not think is appropriate, it should encompass all market players (both "pure" NSPs and players offering NSP and merchant acquiring services) and both the Girocard and ELV payment methods, as it considers these fully substitutable.[143]

(125) Concerning a potential segmentation of NSP services into retail NSP and wholesale NSP services the Notifying Party is of the opinion that such segmentation would not be appropriate. In that regard the Notifying Party declares that although commercial NSPs purchase network operating services from technical NSPs like Worldline and sell them to merchants in their own name and on their own account, they can rather be considered as non-exclusive resellers or distributors of certified NSP services i.e. they distribute services from several certified NSP.[144] Moreover, as far as pricing is concerned, certified NSPs such as Worldline or Ingenico provide a buy rate to the commercial NSPs for their transaction services they sell to merchants. POS terminals are purchased by the commercial NSPs and then rented to merchants. Commercial NSPs have the freedom of the sale price (sell rate) for transactions services and freedom of POS rental rate to merchants.[145]

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140 See Case COMP/M.7873 - *Worldline/Equens/PaySquare*, decision of 20.4.2016, paragraphs 84-92.
141 Form CO, paragraph 339.
142 Form CO, paragraph 340-342.
143 Form CO, paragraph 343.
144 Form CO, paragraph 1000.
145 Form CO, paragraph 1002.

The Commission's assessment

(126) The market investigation was not conclusive as to whether a separate market for NSP services should be distinguished from a market for merchant acquiring in Germany.

(127) On the demand side, the results of the market investigation were mixed. A majority of merchants indicated that merchant acquirers and NSPs meet the same needs, but a still significant number considered that they do not.[146] A majority of merchants procures NSP and merchant acquiring services together, but a still significant number procures them separately. Pricing and more flexibility were listed as reasons for procuring NSP and merchant acquiring services separately.[147] The majority of merchants who procure both services together explained that they primarily choose the merchant acquirer and then request additional NSP services.[148]

(128) On the supply side, the overwhelming majority of respondents stated that they provide both NSP and merchant acquiring services.[149] Moreover, suppliers indicated that NSP and merchant acquiring services meet the same customer needs and that there are similarities in the functions and processing steps of these services.[150] Therefore, they require the same resources from the service provider. But respondents also indicated that the licences and certifications required may be different. In this respect, it was noted that NSP services for Girocard require a network agreement with Deutsche Kreditwirtschaft, whereas merchant acquiring services require a regulatory licence from the German financial regulator BaFin.[151] Regarding security requirements, it was also mentioned that there is no difference between these services.[152]

(129) Furthermore, the market investigation did not reveal any indication that a sub-segmentation of NSP services would appropriately reflect market conditions. The majority of responding merchants do not generally request services separately for Girocard, ELV or international credit cards.[153] The majority of merchants is also of the opinion that the different payment methods (Girocard, ELV/OLV and international credit cards) are regarded as substitutes by consumers for the majority of domestic consumer payments.[154] This is supported by PSPs, the majority of whom stated that customers do not request services for payment acceptance selectively for only some of these three payment methods.[155] Moreover, the majority of PSPs stated that they provide payment acceptance for Girocard, ELV/OLV and international credit card transactions alike as part of their NSP services.[156]

(130) The replies of PSPs are split over the question as to whether these three different payment methods serve different consumer needs. In that regard, it has been pointed

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146 Responses to question 99 of Questionnaire Q1 to Merchants.
147 Responses to questions 100 and 100.1 of Questionnaire Q1 to Merchants.
148 Responses to question 100.2 of Questionnaire Q1 to Merchants.
149 Responses to question 121 of Questionnaire Q2 to PSPs.
150 Responses to question 122 of Questionnaire Q2 to PSPs.
151 Responses to question 122.1 of Questionnaire Q2 to PSPs.
152 Responses to question 122.1 of Questionnaire Q2 to PSPs.
153 Responses to question 101 of Questionnaire Q1 to Merchants.
154 Responses to question 102 of Questionnaire Q1 to Merchants.
155 Responses to question 124 of Questionnaire Q2 to PSPs.
156 Responses to question 123 of Questionnaire Q2 to PSPs.

out that Girocard and ELV/OLV transactions are cheaper for consumers. However, a majority is of the opinion that these payment methods can be substituted in a cost-effective and practicable manner for the majority of domestic consumer payments.[157]

(131) The market investigation among PSPs also revealed that it is appropriate to distinguish between the provision of NSP services at wholesale level, mainly to banks or commercial NSPs, and at retail level, with the majority of PSPs supporting such a distinction.[158] One respondent noted that in this regard NSP services have different processes and different customer service requirements.[159] However, the market investigation among PSPs also revealed that the provision of NSP services at wholesale level to banks and commercial NSPs is not considered as a separate market that is upstream of NSP services provided by banks or commercial NSPs. Banks and commercial NSPs are rather seen as a mere distribution channels by the majority of PSPs, albeit PSPs differed in their assessment of price setting freedom for the retailer.[160] A minority was of the opinion that NSP services provided at wholesale level to banks and commercial NSPs are an alternative channel of distribution, and the customer, (distributing) bank or commercial NSP, does not play an important role. A minority was also of the opinion that NSP services at wholesale level to banks and commercial NSPs can be considered as an alternative channel of distribution, with some degree of freedom, in terms of retail pricing power in particular. An equal number was also of the opinion that NSP services at wholesale level to banks and commercial NSPs constitute a separate upstream market, where wholesalers would actively compete for customer banks or commercial NSPs, which subsequently enjoy a great degree of freedom to sell NSP services to their merchant customers. However, PSPs also stated in their majority that at retail level pricing policy can be set freely.[161]

(132) It results from the above, that for the purposes of this decision, NSP services may constitute a separate product market. Such a market would be comparable to the domestic POS merchant acquiring services in other countries, as mentioned in this decision, but also includes additional functions, specific to the German market. Therefore, for the purposes of this decision the plausible markets for POS merchant acquiring for international card transactions and one for NSP services with its specific functions for domestic card transactions in Germany are assessed separately, followed by a conclusion for the overall market for POS merchant acquiring in Germany. However, for the purposes of this decision, it can ultimately be left open whether NSP services and POS merchant acquiring in Germany constitute separate markets or whether they form an overall market including both types of services. This is because the competitive assessment did not reveal competition concerns for any respective market definition.

157 Responses to question 125 and 125.1 of Questionnaire Q2 to PSPs.
158 Responses to question 126 of Questionnaire Q2 to PSPs.
159 Responses to question 126.1 of Questionnaire Q2 to PSPs.
160 Responses to question 127 of Questionnaire Q2 to PSPs.
161 Responses to question 128.4 of Questionnaire Q1 to Merchants.

4.2.6.2. Geographical market definition

The Commission's precedents

(133) The Commission has not previously considered the market for the provision of NSP services. In its assessment of the related market of the provision of software for NSPs, the Commission found that the market is likely national in scope, but ultimately left the question open.[162]

The Notifying Party's view

(134) The Notifying Party considers that the geographic dimension of the market for NSP services is national, it being a specificity of the German market.[163]

Commission's assessment

(135) Since NSP services, and in particular the certification requirement with the Deutsche Kreditwirtschaft, are specific to the German market and since the provision of software for NSPs has been found likely to be national in scope in past decisional practice the German market for NSP services can be regarded as having a national dimension.

4.3. Legal Framework

(136) Under Articles 2(2) and 2(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.

4.3.1. Horizontal mergers

(137) A merger can entail horizontal effects. In this respect, the Commission Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("the Horizontal Merger Guidelines")[164] distinguish between two main ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, namely (a) by eliminating important competitive constraints on one or more firms, which consequently would have increased market power, without resorting to coordinated behaviour (non-coordinated effects); and (b) by changing the nature of competition in such a way that firms that previously were not coordinating their behaviour are now significantly more likely to coordinate and raise prices or otherwise harm effective competition. A merger may also make coordination easier, more stable or more effective for firms that were coordinating prior to the merger (coordinated effects).[165]

[162] See Case COMP/M.7873 - *Worldline/Equens/PaySquare*, decision of 20.04.2016, paragraphs 138-140.
[163] Form CO, paragraph 347.
[164] OJ C 31, 5.2.2004, p. 5.
[165] Horizontal Merger Guidelines, paragraph 22.

4.3.2. Non-horizontal mergers

(138) In addition, a merger can also entail non-horizontal effects when it involves companies operating at different levels of the same supply chain or in closely related markets. Pursuant to 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")[166], non-horizontal mergers do not entail the loss of direct competition between merging firms in the same relevant market and provide scope for efficiencies. However, there are circumstances in which non-horizontal mergers may significantly impede effective competition. This is in particular the case if they give rise to foreclosure.[167] In the assessment of non-horizontal mergers, the Commission distinguishes between two broad types of such mergers: vertical mergers and conglomerate mergers.

(139) Vertical mergers involve companies operating at different levels of the supply chain. For example, when a manufacturer of a certain product (the 'upstream firm') merges with one of its distributors (the 'downstream firm'), this is called a vertical merger.

(140) Conglomerate mergers are mergers between firms that are in a relationship that is neither horizontal (as competitors in the same relevant market) nor vertical (as suppliers or customers). In practice, the Commission focusses on mergers between companies that are active in closely related markets (e.g. mergers involving suppliers of complementary products or products that belong to the same product range).

(141) In assessing potential <u>vertical effects</u> of a merger, the Commission analyses whether a merger results in foreclosure so that actual or potential rivals' access to supplies or markets is hampered or eliminated as a result of the merger, thereby reducing these companies' ability and/or incentive to compete. Such foreclosure may discourage entry or expansion of rivals or encourage their exit. Foreclosure thus can be found even if the foreclosed rivals are not forced to exit the market: It is sufficient that the rivals are disadvantaged and consequently led to compete less effectively. Such foreclosure is regarded as anti-competitive where the merging companies — and, possibly, some of its competitors as well — are as a result able to profitably increase the price charged to consumers.

(142) The Non-Horizontal Merger Guidelines distinguish between two forms of foreclosure.[168] The first is where the merger is likely to raise the costs of downstream rivals by restricting their access to an important input (input foreclosure). The second is where the merger is likely to foreclose upstream rivals by restricting their access to a sufficient customer base (customer foreclosure

(143) In assessing both types of foreclosure, the Commission applies the ability, incentive, effects framework. This implies the assessment of whether (1) the merged entity would have the ability to engage in foreclosure, (2) it would have the incentive to do so, and (3) what would be the overall impact on effective competition in the affected markets.

166 OJ C 265, 18.10.2008, p. 6.
167 Non-Horizontal Merger Guidelines, paragraph 18.
168 Non-Horizontal Merger Guidelines, paragraph 30.

(144) The main concern in the context of conglomerate mergers is also that of foreclosure. The combination of products in related markets may confer on the merged entity the ability and incentive to leverage a strong market position from one market to another by means of tying or bundling or other exclusionary practices. Tying and bundling as such are common practices that often have no anticompetitive consequences. Companies engage in tying and bundling in order to provide their customers with better products or offerings in cost-effective ways. Nevertheless, in certain circumstances, these practices may lead to a reduction in actual or potential rivals' ability or incentive to compete. This may reduce the competitive pressure on the merged entity allowing it to increase prices.

(145) In assessing the likelihood of such a scenario, the Commission examines, first, whether the merged firm would have the ability to foreclose its rivals, second, whether it would have the economic incentive to do so and, third, whether a foreclosure strategy would have a significant detrimental effect on competition, thus causing harm to consumers. In practice, these factors are often examined together as they are closely intertwined.

4.4. Overview of affected markets

(146) Worldline and Ingenico are both active in the provision of POS and e-commerce merchant acquiring services, manufacturing and supply of POS terminals, provision and management of POS terminals and related services, acquiring processing services, e-commerce acceptance services, in-store acceptance services and NSP services in Germany. As such, the Transaction gives rise to various affected markets.[169]

(147) The Transaction gives rise to the following horizontally affected markets:

(a) POS merchant acquiring services and possible segmentations in Austria, Belgium, Germany and Luxembourg (Section 4.5.1 to 4.5.4);

(b) NSP services in Germany (Section 4.5.3.2);

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169 An affected market consist of all relevant product and geographic markets, as well as plausible alternative relevant product and geographic markets, if in the EEA territory (a) two or more of the parties to the concentration are engaged in business activities in the same relevant market ("horizontal relationships") and where the concentration will lead to a combined market share of 20% or more; or (b) one or more of the parties to the concentration are engaged in business activities in a relevant market, which is upstream or downstream of a relevant market in which any other party to the concentration is engaged (vertical relationships), and any of their individual or combined market shares at either level is 30% or more, regardless of whether there is or is not any existing supplier/customer relationship between the parties to the concentration. (See Annex 1, Section 6.3, Regulation (EC) No 802/2004 of 21 April 2004 implementing the Merger Regulation OJ L 133, 30.4.2004, p. 1).
The Commission may presume that concentrations where the market share of the undertakings concerned does not exceed 25% either in the common market or in a substantial part of it are not liable to impede effective competition and are compatible with the common market. (See paragraph 32 of the Merger Regulation and paragraph 18 of the Horizontal Merger Guidelines).
The Commission is unlikely to find concerns in non-horizontal mergers, be it of a coordinated or of a non-coordinated nature, where the market share post-merger of the new entity in each of the markets concerned is below 30% and the post-merger HHI is below 2 000. Where a merged entity would have a market share just above the 30% threshold on one market but substantially below on other, related, markets competition concerns will be less likely. (See paragraph 25 of the Non-Horizontal Merger Guidelines.

(c) Manufacturing and supply of POS terminals and possible segmentations in the EEA (Section 4.5.5);

(d) Provision and management of POS terminals in Austria, Belgium, Germany and the Netherlands (Section 4.5.6 to 4.5.9); and

(e) In-store acceptance services in the EEA (Section 4.5.10).

(148) Additionally, the Transaction also gives rise to the following non-horizontal relationships, which result in affected markets:

(a) **Vertical effects – input foreclosure:** Production and supply of POS terminals and possible segmentation (upstream) – Provision and management of POS terminals and possible segmentations / POS merchant acquiring services / NSP services (downstream) (Section 4.6.1.1);

(b) **Vertical effects – customer foreclosure:** Production and supply of POS terminals and possible segmentations (upstream) – Provision and management of POS terminals (downstream) (Section 4.6.1.2);

(c) **Vertical effects – input foreclosure:** Acquiring processing (upstream) – POS merchant acquiring and possible segmentations (downstream) (Section 4.6.1.3);

(d) **Conglomerate effects:** Production and supply of POS terminals and possible segmentations – POS merchant acquiring services and possible segmentations (Section 4.6.2.1); and

(e) **Conglomerate effects:** Production and supply of POS terminals and possible segmentations – Acquiring processing services (Section 4.6.2.2).

4.5. Competitive assessment of the horizontally affected markets

4.5.1. POS merchant acquiring in Austria

(149) The Parties' and their main competitors' market shares for POS merchant acquiring in Austria are provided below.

Table 1: Notifying Party's estimate of Austria market shares for POS merchant acquiring for international cards (by merchant sales value, 2017-2019)

	2017		2018		2019	
	MERCHANT SALES VALUE (€ billion)	MARKET SHARE (%)	MERCHANT SALES VALUE (€ billion)	MARKET SHARE (%)	MERCHANT SALES VALUE (€ billion)	MARKET SHARE (%)
WORLDLINE	[redacted]	[40-50]%	[redacted]	[40-50]%	[redacted]	[40-50]%
INGENICO	[redacted]	[10-20]%	[redacted]	[10-20]%	[redacted]	[5-10]%
COMBINED	[redacted]	[50-60]%	[redacted]	[50-60]%	[redacted]	[50-60]%
Card Complete	-	[20-30]%	-	[20-30]%	-	[20-30]%
Concardis / Nets	-	5-10%	-	5-10%	-	5-10%
Hobex	-	5-10%	-	5-10%	-	5-10%
Others	-	0-5%	-	0-5%	-	0-5%
TOTAL	[redacted]	100%	[redacted]	100%	[redacted]	100%

(150) The Parties have a combined market share of [50-60]% in the Austrian market for POS merchant acquiring with an increment of [5-10]%. Austria does not have a domestic payment card scheme, so a potential subdivision between international and domestic card schemes is not applicable to Austria. Table 1 therefore reflects the structure of the overall POS merchant acquiring market in Austria. The Parties' market shares for plausible subdivisions of the market for POS merchant acquiring in Austria are provided below.

Table 2: Notifying Party's estimate of Austria market shares for POS merchant acquiring segmented by credit / debit cards (by merchant sales value, 2019)

	2019			
	Worldline (%)	Ingenico (%)	Combined (%)	Market size (€ billion MSV)
CREDIT	[20-30]%	[5-10]%	[30-40]%	[redacted]
DEBIT	[50-60]%	[10-20]%	[60-70]%	[redacted]

(151) The combined market share is higher for the debit segment than for the overall market for POS merchant acquiring in Austria. This is caused primarily by Worldline's large retailer customers (e.g. grocery stores), where consumers primarily pay by debit card.

(152) The Parties submit that they are not able to provide market shares segmented by card brand for any of the national POS merchant acquiring markets, as no market sizing is available for each of the card brands. However, the Notifying Party submits that all merchants tend to accept all major card brands and all merchant acquirers are able to handle transactions for all major card brands.[170] The market investigation confirmed this.[171] Additionally, the Notifying Party submits that any differences that may exist

[170] Annex U to the Form CO, paragraph 243.

[171] Responses to question 8 of Questionnaire Q1 to Merchants; responses to question 9 of Questionnaire Q2 to PSPs.

between card brands are largely covered by the segmentations between (i) credit and debit cards and (ii) domestic and international card schemes.[172] The market investigation gave no indication that the Parties' position varies significantly for any particular card brand or that the Transaction gives rise to competitive concerns specific to a single card brand. The Commission therefore considers that its assessment can be based on the overall market shares without there being a need to establish market shares by card brand segment.

The Notifying Party's view

(153) The Notifying Party considers that the Transaction will not result in a significant impediment to effective competition on the POS merchant acquiring market in Austria for the reasons set out below.

(154) **First,** the Notifying Party considers that several credible local and international competitors are active on the Austrian market, including Card Complete, Concardis/Nets and Hobex. The Notifying Party emphasises that significant competitive pressure is exerted by German merchant acquirers on the Austrian market. As examples, it names Wirecard, Concardis/Nets in a partnership with Austrian telecom company A1, and Intercard. The Notifying Party submits that some merchants, particularly those active in tourism, prefer German merchant acquirers as those can offer acquiring for Girocard, the German domestic card scheme.[173]

(155) **Second,** the Notifying Party argues that the Parties' market shares in the Austrian market are not static, but subject to significant client gains and losses, which illustrate the competitiveness of Austria's market.[174] The Notifying Party further indicates that they have had to lower prices in recent years as a consequence of this competition.[175]

(156) **Third,** the Notifying Party submits that customers contract merchant acquirers via multi-lateral commercial processes, including but not limited to tenders. The Notifying Party further submits that the Parties only meet on few occasions in these multi-lateral processes.[176]

(157) The Parties submit that the fact that they only meet on few occasions is evidence that they are not close competitors. According to the Parties, ***[...]***.[177]

(158) **Fourth,** the Notifying Party indicates that the Austrian market is characterised by strong merchants, ***[...]***, which exert significant countervailing buyer power.[178]

[172] Annex U to the Form CO, paragraph 244.

[173] Form CO, paragraphs 719-722 and Concept paper on Austria submitted by the Notifying Party on 5 September 2020.

[174] Form CO, paragraphs 724-725.

[175] Concept paper on Austria submitted by the Notifying Party on 5 September 2020.

[176] Form CO, paragraphs 730-732 and Concept paper on Austria submitted by the Notifying Party on 5 September 2020.

[177] Concept paper on Austria submitted by the Notifying Party on 5 September 2020.

[178] Form CO, paragraph 733.

(159) **Fifth,** the Notifying Party submits that there are no significant obstacles to switching merchant acquirers in the Austrian market. In support of this, it presents its customer churn rates.[179]

(160) **Sixth,** the Notifying Party considers that the Austrian market has low barriers to entry, particularly as there is no domestic card network scheme, and because of harmonising regulation at EU level. This allows in particular German merchant acquirers to compete on the Austrian market. The Notifying Party explains that the Austrian market is attractive to foreign acquirers as it is fast-growing.[180]

The Commission's assessment

(161) Worldline has had a strong market position in Austria pre-Transaction, with a market share of [40-50]% on the overall market for POS merchant acquiring (Austria does not have a domestic card network schemes, and therefore only the segment of international cards is relevant for the Commission's assessment). The combination with Ingenico further strengthens this position to [50-60]% of the market; a significant increment of around [5-10]%. The combined market share level, being above 50%, is indicative of a dominant position of the merged entity.[181] The market is concentrated, with an HHI pre-Transaction exceeding 2 500. The Transaction increases this concentration and involves a significant HHI delta exceeding 900.

(162) The merged entity would have considerably more market power than its largest competitor, Card Complete, which has a market share of around 20%. The market investigation confirmed Worldline's competitive strength, as both merchants and PSPs rated Worldline as the strongest merchant acquirer in Austria. Ingenico was also identified as a strong competitor, behind Worldline and Card Complete. Merchants additionally identified Adyen as a similarly strong competitor to Card Complete, even though it does not have a notable market share according to the data provided by the Notifying Party (Table 1). Therefore, the actual market power of Adyen for POS merchant acquiring in Austria may be lower than estimated by merchants.[182]

(163) Furthermore and contrary to what the Notifying Party submits, the market investigation indicated that the Parties are particularly close competitors in Austria. PSPs considered Ingenico the single closest competitor to Worldline and merchants considered Ingenico the closest competitor to Worldline together with Adyen. Card Complete, the largest player in Austria after Worldline, was named less often than Ingenico.[183] The Notifying Party's argument that ***[...]*** – is contradicted by the tender data provided by the Parties, which shows ***[...]***.[184] The tender data additionally shows that the Parties met several times in tenders over the past years.

179 Form CO, paragraphs 734-737.

180 Form CO, paragraphs 740-741 and Concept paper on Austria submitted by the Notifying Party on 5 September 2020.

181 Horizontal Merger Guidelines, paragraph 17.

182 Responses to question 30 of Questionnaire Q1 to Merchants; responses to question 26 of Questionnaire Q2 to PSPs.

183 Responses to question 34 of Questionnaire Q1 to Merchants; responses to question 31 of Questionnaire Q2 to PSPs.

184 Annex O to the Notifying Party's reply to RFI 9 bis, dated 9 September 2020.

(164) While the market investigation confirmed that the majority of merchants see German merchant acquirers as a credible option in Austria, only Concardis/Nets was considered a relatively strong player, albeit weaker than the Parties. Other German merchant acquirers were not considered particularly strong competitors in Austria.[185] Moreover, the market shares provided by the Notifying Parties do not indicate a significant presence of any other German merchant acquirers on the Austrian market. The characterisation by the Notifying Parties that Concardis/Nets competes particularly aggressively in the Austrian market is not clearly supported by the tender data and market shares provided by the Notifying Party either. The tender data only show few wins by Concardis/Nets, and Concardis/Nets' market shares in Austria appear to have remained more or less stable over the past three years. The Commission therefore considers that the market investigation could not confirm that the asserted "aggressive competition" and the collaboration with Austrian telecom provider A1, entered into in January 2019, translate in such an increased competitive pressure on the Parties in practice that it would replace the competitive pressure lost from the combination of Worldline with Ingenico.

(165) The market investigation gave mixed results on whether merchants consider that there are significant obstacles to switching to other providers of POS merchant acquiring services. Almost half the respondents indicated that they would not be able to change merchant acquirers in case of a SSNIP. Some merchants indicated that they would not be able to switch, as no other acquirer could meet their needs in Austria.[186] The Commission considers that this feedback, together with the switching rates reported by the Parties which are slightly lower than those in Germany, do not provide sufficient confirmation of the Notifying Party's argument that there are no obstacles to switching in Austria.

Table 3: POS merchant acquiring customers won and lost by Worldline in Austria between 2017 and 2019 (Source: the Parties)

"[...]"

(166) The large majority of PSPs that responded to the market investigation considered that insufficient choice of merchant acquirers would remain on the Austrian market post-Transaction. PSPs furthermore anticipated price increases, and a significant number indicated that they expect a negative impact of the Transaction on the quality of POS merchant acquiring services. One PSP indicated that they expect the Transaction to result in "*reduced competition due to dominant size [of the merged entity] combined with declining service quality*."

(167) Merchants on the other hand were less concerned about choice, but gave mixed feedback on whether the Transaction's impact on prices would be neutral or negative. In this context, one merchant noted that "*i[f] no new [merchant acquirers] come[s] to Austria there are not many options.*" [187]

(168) The market investigation was not able to confirm that the barriers to entry for the Austrian market are low, as the Notifying Party argues. While many competing

185 Responses to question 30 of Questionnaire Q1 to Merchants.

186 Responses to question 25 of Questionnaire Q1 to Merchants.

187 Responses to questions 39 and 40 of Questionnaire Q1 to Merchants; responses to questions 37 and 38 of Questionnaire Q2 to PSPs.

merchant acquirers did not provide any substantive views on this issue, merchants most commonly characterised entry as *fairly difficult*, and a significant number considered it *very difficult*.[188]

(169) In summary, the Transaction further strengthens the position of Worldline in the Austrian POS merchant acquiring market, creating a player with a market share clearly indicative of dominance. The market investigation did not support the Parties' arguments as regards them not being close competitors, ease of switching and barriers to entry, and a significant number of respondents, particularly PSPs, voiced concerns about the Transaction. As a result, the Commission considers that the Transaction raises serious doubts as to its compatibility with the internal market in relation to the market for POS merchant acquiring in Austria as a result of the strengthening of Wordline's dominant position, as well as for its potential segmentations by card brand (see paragraph 152), and for the sub-segment of debit cards (where the Parties have a higher combined market share than in the overall POS merchant acquiring market in Austria), due to horizontal non-coordinated effects. Whether the Transaction raises competitive concerns on the sub-segment for credit cards can be left open, as any such competitive concerns would ultimately be remedied (see Section 5).

4.5.2. POS merchant acquiring in Belgium

(170) The Parties' and their main competitors' market shares for POS merchant acquiring in Belgium are provided below.

Table 4: Notifying Party's estimate of Belgium market shares for POS merchant acquiring for international and domestic cards (by merchant sales value, 2017-2019)

	2017		2018		2019	
	MERCHANT SALES VALUE (€ billion)	MARKET SHARE (%)	MERCHANT SALES VALUE (€ billion)	MARKET SHARE (%)	MERCHANT SALES VALUE (€ billion)	MARKET SHARE (%)
WORLDLINE	[redacted]	[80-90]%	[redacted]	[70-80]%	[redacted]	[70-80]%
INGENICO	[redacted]	[0-5]%	[redacted]	[0-5]%	[redacted]	[0-5]%
COMBINED	[redacted]	[80-90]%	[redacted]	[70-80]%	[redacted]	[70-80]%
Elavon	-	[10-20]%	-	[10-20]%	-	[10-20]%
EMS (First Data)	-	5-10%	-	5-10%	-	5-10%
Europa Bank	-	0-5%	-	0-5%	-	0-5%
Others (CCV, BNPPF, Carrefour Bank, etc.)	-	[10-20]%	-	[10-20]%	-	[10-20]%
TOTAL	[redacted]	100%	[redacted]	100%	[redacted]	100%

(171) The Parties have a combined market share on the Belgian market for POS merchant acquiring of [70-80]%, with an increment of [0-5]%. The Parties' market shares for plausible subdivisions of the market for POS merchant acquiring in Belgium are provided below.

188 Responses to question 37 of Questionnaire Q1 to Merchants.

Table 5: Notifying Party's estimate of Belgium market shares for POS merchant acquiring segmented by credit / debit cards and by domestic / international card schemes (by merchant sales value, 2019)

	2019			
	Worldline (%)	Ingenico (%)	Combined (%)	Market size (€ billion MSV)
CREDIT	[40-50]%	[0-5]%	[40-50]%	[redacted]
DEBIT	[70-80]%	[0-5]%	[80-90]%	[redacted]
INTERNATIONAL	[30-40]%	[5-10]%	[40-50]%	[redacted]
DOMESTIC	[90-100]%	[0-5]%	[90-100]%	[redacted]

(172) Worldline's share is particularly high for the domestic card scheme network, as historically, Worldline has been the sole acquirer for Bancontact, the domestic network scheme. Ingenico does not acquire payments via the domestic network scheme, so there is no overlap on the segment for domestic card scheme networks. As Bancontact is a debit card brand, the strong position of Worldline in the debit cards segment is a direct result of this as well.

(173) As explained in paragraph 152 of this decision, the Parties submit that they are not able to provide market shares by card brand.

The Notifying Party's view

(174) The Notifying Party considers that the Transaction will not result in a significant impediment to effective competition on the POS merchant acquiring market in Belgium for the reasons set out below.

(175) **First**, the Notifying Party submits that the increment brought by Ingenico is limited ([0-5]%). It further indicates that the high combined market shares only result from Worldline's historical position in Belgium (until 2013, Worldline was the only player to perform merchant acquiring for Bancontact, the Belgian domestic scheme).[189]

(176) **Second**, the Notifying Party indicates that the Parties are not close competitors ***[…]***.[190]

(177) **Third**, the Notifying Party submits that the competitive landscape has significantly changed since 2015 and that market dynamics mitigate the merged entity's position. In support of this, the Notifying Party shows that Worldline's market share has decreased from [80-90]% in 2015 to [70-80]% in 2019.[191]

(178) **Fourth**, the Notifying Party considers that over the last years there has been an increasing number of new entrants, including foreign acquirers. By way of example, it names Elavon, EMS (First Data), Concardis/Nets and e-commerce players which

[189] Form CO, paragraphs 784-785.
[190] Form CO, paragraphs 787-788.
[191] Form CO, paragraphs 789-791.

have recently developed offers on the POS merchant acquiring market, such as Adyen and Mollie. [192]

(179) **Fifth**, the Notifying Party submits that as a result of Regulation 2015/751,[193] interchange fees for different card payment schemes have largely been aligned. According to the Notifying Party, Maestro has since grown in the Belgian market and now effectively competes with Bancontact, the domestic scheme.[194]

(180) **Sixth**, the Notifying Party submits that strong competition in the Belgian market is evidenced by the decrease in prices over the last years. According to the Notifying Party, prices for SMEs have dropped between 1.8% and 26% from 2015 to 2019.[195]

(181) **Seventh**, the Notifying Party indicates that the Belgian market is characterised by strong countervailing buyer power of merchants.[196]

The Commission's assessment

(182) The Belgian overall market for POS merchant acquiring pre-Transaction is already concentrated and characterised by a strong position of Worldline, with [70-80]% market share in 2019, which is indicative of dominance. The addition of Ingenico's market share, albeit modest ([0-5]%), would further strengthen this already dominant position. The market is very concentrated, with an HHI pre-Transaction exceeding 5 000. The Transaction increases this concentration and involves an HHI delta exceeding 350.

(183) While competition has increased somewhat since the opening of the Bancontact scheme to other acquirers than Worldline, respondents to the market investigation still considered Worldline by far the strongest merchant acquirer in Belgium. Ingenico was rated among the top three. One respondent indicates that the Belgian market is characterised by "*extreme dominance of Worldline due to the historic market share.*"[197] Worldline's dominance in the Belgian market is further illustrated by tender data provided by the Notifying Party. ***[...]***.[198]

(184) Furthermore, contrary to Worldline's submission, Ingenico was mentioned most often as the closest competitor to Worldline by merchants responding to the market investigation.[199] While, as the Parties put forward, Ingenico's participation in tenders specific to Belgium is limited ***[...]***, Ingenico took part in several tenders that included Belgium in their scope. ***[...]***.

(185) The majority of merchants responding to the market investigation indicated they would switch in case of a price increase. However, many pointed out that this would

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192 Form CO, paragraphs 805-806.

193 Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions.

194 Form CO, paragraph 807-808.

195 Form CO, paragraph 809.

196 Form CO, paragraph 810.

197 Responses to question 31 of Questionnaire Q1 to Merchants; responses to question 27 of Questionnaire Q2 to PSPs.

198 Annex P to the Form CO.

199 Responses to question 34 of Questionnaire Q1 to Merchants.

entail significant cost and takes time, *e.g.* as it is necessary to exchange POS terminals. Exchange POS terminals can be a significant cost and effort for retailers with a large installed base, such as grocery stores, as the terminals need to be interfaced with equipment such as the cashpoint and personnel need to be trained.[200] Additionally, the Commission notes that switching rates in Belgium provided by the Notifying Party are significantly lower in other national markets, such as Austria and Germany.

Table 6: POS merchant acquiring customers won and lost by Worldline in Belgium between 2017 and 2019 (Source: the Parties)

[...]

(186) Respondents to the market investigation were able to mention several examples of recent entries into the Belgian POS merchant acquiring market. However, a significant amount of respondents characterised entry into the Belgian market as difficult or fairly difficult. One competitor pointed out that *"The dominance of Worldline in the market makes entrance in the Belgian market a significant challenge.*"[201]

(187) In terms of impact of the Transaction, a significant number of merchants and a large majority of PSPs that responded to the market investigation expected a negative impact on price. One merchant explained that "*[i]f there is no increase on the short term, on the long term it will have a possible negative impact. [L]ess competition is normally the evolution to higher prices and less service*". Additionally, a vast majority of PSPs expected that choice would suffer.[202] One PSP explains that *"…the local Belgian POS Acquiring market will be even more dominated by one player in case no remediation actions are taken.*"

(188) Several PSPs indicate that the Transaction would have a negative impact on their business in Belgium. One indicates that it expects the Transaction to stifle its growth: "*We expect business growth to be slowed down due to the Transaction, as the dominant positioning of Worldline will be enhanced.*" Another PSP indicated that the Transaction would reinstate Worldline's dominant position on the Belgian market, and may result in the company not making its growth target and even be forced to exit the POS merchant acquiring market in Belgium.[203] Some merchants were also concerned, with one indicating that "*the Transaction may impact its negotiating power and therefore prices in the next tender procedure*".[204]

(189) In summary, the Transaction further strengthens the position of Worldline in the Belgian overall POS merchant acquiring market, in which it has already been dominant pre-Transaction. In addition, several market participants have indicated their concern with the effects of the Transaction with the competitive landscape in Belgium. As a result, the Commission considers that the Transaction raises serious doubts as to its compatibility with the internal market in relation to the market for

200 Responses to question 25 of Questionnaire Q1 to Merchants.

201 Responses to questions 35 and 37 of Questionnaire Q1 to Merchants; responses to question 33 of Questionnaire Q2 to PSPs.

202 Responses to question 40 of Questionnaire Q1 to Merchants; responses to question 38 of Questionnaire Q2 to PSPs.

203 Non-confidential minutes of call with a PSP held on 20 March 2020.

204 Responses to question 39 of Questionnaire Q1 to Merchants.

overall POS merchant acquiring in Belgium due to horizontal non-coordinated effects. The competitive concerns apply to the market segmented by credit cards (for which the Parties' combined market shares are higher than for the overall market of POS merchant acquiring in Belgium) and debit cards (where the combined market share is [40-50]% with an increment of almost [0-5]%) as well. Whether competitive concerns arise for the segmentation of international card schemes can be left open, as any such concerns would ultimately be remedied (see Section 5).

4.5.3. POS merchant acquiring in Germany

(190) As discussed in Section 4.2.6, the POS merchant acquiring of Girocard, the domestic network scheme in Germany, follows a different process than in other countries. The most notable specificity is that the POS merchant acquiring of the domestic network scheme in Germany involves a fourth party, the NSP.

(191) Due to this specific nature of POS merchant acquiring for domestic cards in Germany, the segments for (i) POS merchant acquiring for international cards and (ii) POS merchant acquiring for domestic cards (i.e. NSP services) will be discussed separately in this Section. This will be followed by a conclusion for the overall market for POS merchant acquiring in Germany.

4.5.3.1. POS merchant acquiring in Germany for international cards

(192) The Parties' and their main competitors' market shares for the plausible market for POS merchant acquiring for international cards in Germany are provided below.

Table 7: Notifying Party's estimate of Germany market shares for POS merchant acquiring for international cards only (by merchant sales value, 2017-2019)

	2017		2018		2019	
	MERCHANT SALES VALUE (€ billion)	MARKET SHARE (%)	MERCHANT SALES VALUE (€ billion)	MARKET SHARE (%)	MERCHANT SALES VALUE (€ billion)	MARKET SHARE (%)
WORLDLINE	[redacted]	[5-10]%	[redacted]	[5-10]%	[redacted]	[5-10]%
INGENICO	[redacted]	[20-30]%	[redacted]	[30-40]%	[redacted]	[30-40]%
COMBINED	[redacted]	[30-40]%	[redacted]	[30-40]%	[redacted]	[40-50]%
Concardis / Nets	-	30-40%	-	30-40%	-	30-40%
VR Payments (CardProcess)	-	[5-10]%	-	[5-10]%	-	[5-10]%
InterCard (VeriFone)	-	0-5%	-	0-5%	-	0-5%
Others (EVO, WireCard, etc.)	-	15-25%	-	15-25%	-	15-25%
TOTAL	[redacted]	100%	[redacted]	100%	[redacted]	100%

(193) The Parties' combined market share on the plausible market for POS merchant acquiring for international cards in Germany is [40-50]%, with an increment of [5-10]%. The Parties' market shares for subdivisions of the plausible market for international POS merchant acquiring in Germany are provided below.

Table 8: Notifying Party's estimate of German market shares for international card scheme POS merchant acquiring segmented by credit / debit cards (by merchant sales value, 2019)

	2019			
	Worldline (%)	Ingenico (%)	Combined (%)	Market size (€ billion MSV)
CREDIT	[5-10]%	[30-40]%	[40-50]%	[redacted]
DEBIT	[10-20]%	[30-40]%	[40-50]%	[redacted]

(194) The Parties' market shares segmented by credit and debit cards do not differ materially from market shares for the plausible market for Germany international card scheme POS merchant acquiring overall. As explained in paragraph 152 of this decision, the Parties submit that they are not able to provide market shares by card brand.

The Notifying Party's view

(195) The Notifying Party considers that the Transaction will not result in a significant impediment to effective competition on the POS merchant acquiring market in Germany for the reasons set out below.

(196) **First,** the Notifying Party submits that the Parties' combined market share will remain below the level where the Commission traditionally finds a presumption of the creation of a dominant entity.

(197) **Second**, the Notifying Party indicates that the Parties will face strong competition from Concardis/Nets, which has a market share of 30 to 40% and is the historical market leader.

(198) **Third,** the Notifying Party argues that besides Concardis/Nets, the German market knows many other credible international and national competitors, including VR Payment (CardProcess), Intercard (VeriFone), EVO Payments and Elavon.

(199) **Fourth,** the Notifying Party considers that Concardis/Nets is Ingenico's closest competitor in the German market, rather than Worldline. ***[…]***.

(200) **Fifth,** the Notifying Party submits that in addition to traditional competitors, APMs are a growing source of competition in the German market, naming examples such as Vodafone Wallet and Deutsche Bank Mobile.

(201) **Sixth,** the Notifying Party indicates that large merchant enjoy strong countervailing buying power in the German market.

(202) **Seventh**, the Notifying Party considers that barriers to entry in the German market are low, and that there are no significant obstacles to switching merchant acquirers. According to the Notifying Party, switching merchant acquirers is easier in the German market than in other markets, as merchant acquirers are connected to the NSP and not directly to POS terminals, meaning that it is sufficient for the NSP to re-route transactions to the new merchant acquirer.

The Commission's assessment

(203) The Transaction gives rise to a new leading player on the plausible POS merchant acquiring market for international cards (as well as its potential segmentations by card brand and by credit / debit cards) by combining the second and third largest market players in Germany. On the POS merchant acquiring market for international cards, the Parties' combined market share is around [40-50]% with an increment brought about by Worldline of just under 10%. The merged entity will be of similar size to the current market leader, Concardis/Nets, which has a market share of 30-40%. The market is moderately concentrated, with an HHI pre-Transaction exceeding 2 000. The Transaction increases this concentration and involves an HHI delta of 625.

(204) One the one hand, for Germany, the market investigation largely confirms the arguments put forward by the Parties.

(205) **First,** in line with what the Notifying Party submits, the market investigation confirmed that Concardis/Nets is a strong player in Germany, with respondents indicating that its competitive strength is similar to that of Ingenico (pre-Transaction). The market investigation further confirmed that Concardis/Nets is Ingenico's closest competitor. Other competitors, such as Elavon and Adyen, were rated moderately strong as well, and were frequently included among the closest competitors for both Worldline and Ingenico.[205]

(206) **Second,** the market investigation partly supported the Notifying Party's argument that APMs form a source of competition for merchant acquirers. While the market investigation confirmed that APMs are increasingly adopted by consumers, comments suggested that this is particularly the case for e-commerce transactions, and less so for POS merchant acquiring, which is assessed here.[206]

(207) **Third,** a vast majority of respondents indicate that they would switch merchant acquirer in case of a SSNIP.[207] The switching data submitted by Ingenico, presented in the Table below, shows switching rates that are significantly higher than in Belgium and slightly higher than in Austria. This, in conjunction with the positive market investigation feedback on whether switching is possible, confirming the Parties arguments as regards switching.

Table 9: POS merchant acquiring customers won and lost by Ingenico between 2017 and 2019 (Source: the Parties)

[...]

(208) The tender data provided by the Parties show that tenders are particularly common in Germany. Ingenico participated in over **[...]** tenders over 2018 and 2019 for POS merchant acquiring for international cards. This further supports the Parties' arguments that merchants enjoy buyer power and that switching is possible.

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[205] Responses to questions 32 and 34 of Questionnaire Q1 to Merchants; responses to questions 27 and 31 of Questionnaire Q2 to PSPs.

[206] Responses to question 38 of Questionnaire Q1 to Merchants.

[207] Responses to question 25 of Questionnaire Q1 to Merchants.

(209) **Finally,** the large majority of both merchants and PSPs responding to the market investigation considered that sufficient choice of merchant acquirers would remain in the German market post-Transaction.[208] Furthermore, the majority of respondents did not anticipate a negative impact on price, quality, choice or innovation.[209]

(210) On the other hand, a few respondents to the market investigation did expect a negative impact on their business as a result of the Transaction. However, these represented a small minority of respondents. Notably, one PSP that approached the Commission voiced the concern that the Transaction would enable the merged entity to commit an "*efficiency offence*": due to the combined transaction volumes, the merged entity would be in the position to negotiate lower interchange fees with the issuing bank concentrators and therefore to offer significantly lower prices than competitors. The company in question is concerned that the cost efficiency of the merged entity will allow it to first undercut prices, drive competition out of the market and then recoup profits at a later stage.[210] The PSP indicates that this concern especially pertains to interchange fees relating to NSP services, and will therefore be discussed in Section 4.5.3.2 of this decision.

(211) Based on the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the plausible market for POS merchant acquiring for international cards in Germany as a result of horizontal non-coordinated effects. The Transaction does not raise serious doubts for the potential segmentations by card brand (see paragraph 152), or by credit/debit cards either, as the market positions of the Parties for these segments are similar as for the overall plausible market for POS merchant acquiring for international cards in Germany.

4.5.3.2. NSP services in Germany

(212) The Parties' and their main competitors' market shares for NSP services in Germany are provided below.

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208 Responses to question 39 of Questionnaire Q1 to Merchants; responses to question 37 of Questionnaire Q2 to PSPs.

209 Responses to question 40 of Questionnaire Q1 to Merchants; responses to question 38 of Questionnaire Q2 to PSPs.

210 Non-confidential minutes of call with a PSP held on 8 April 2020.

Table 10: Notifying Party's estimate of German market shares for NSP services (by number of transactions, 2017-2019) Source: the Parties

	2017		2018		2019	
	NO. OF TRANSAC-TIONS (millions)	MARKET SHARE (%)	NO. OF TRANSAC-TIONS (millions)	MARKET SHARE (%)	NO. OF TRANSAC-TIONS (millions)	MARKET SHARE (%)
WORLDLINE	[redacted]	[5-10]%	[redacted]	[5-10]%	[redacted]	[0-5]%
INGENICO	[redacted]	[30-40]%	[redacted]	[30-40]%	[redacted]	[30-40]%
COMBINED	[redacted]	[40-50]%	[redacted]	[40-50]%	[redacted]	[40-50]%
First Data / Telecash	-	[20-30]%	-	[20-30]%	-	[20-30]%
VeriFone (InterCard)	-	[10-20]%	-	[10-20]%	-	[10-20]%
VR Payment	-	5-10%	-	5-10%	-	5-10%
Others	-	[10-20]%	-	[10-20]%	-	[10-20]%
TOTAL	[redacted]	100%	[redacted]	100%	[redacted]	100%

(213) The combined market shares of the Parties are [40-50]% with a limited increment of [0-5]% on a market for NSP services in Germany, encompassing Girocard, ELV/OLV, international scheme transactions routed to merchant acquirers and some other card transactions[211] as presented in Table 10. The next competitor is First Data/Telecash with a market share of approximately [20-30]%.

(214) The Parties and their main competitors' market shares for NSP services do not change significantly when looking only at domestic card transactions, encompassing Girocard and ELV/OLV transactions only (and excluding the routing of international card transactions), as presented in the following Table 11.

Table 11: Notifying Party's estimate of German market shares for NSP services (Girocard and ELV/OLV only) Source: the Parties[212]

	2017		2018		2019	
	NO. OF TRANSAC-TIONS (millions)	MARKET SHARE (%)	NO. OF TRANSAC-TIONS (millions)	MARKET SHARE (%)	NO. OF TRANSAC-TIONS (millions)	MARKET SHARE (%)
WORLDLINE	[redacted]	[5-10]%	[redacted]	[5-10]%	[redacted]	[0-5]%
INGENICO	[redacted]	[30-40]%	[redacted]	[30-40]%	[redacted]	[30-40]%
COMBINED	[redacted]	[30-40]%	[redacted]	[30-40]%	[redacted]	[30-40]%
First Data / Telecash	-	[20-30]%	-	[20-30]%	-	[20-30]%
Verifone (InterCard)	-	[10-20]%	-	[10-20]%	-	[10-20]%
VR Payment	-	5-10%	-	5-10%	-	5-10%
Others	-	[10-20]%	-	[10-20]%	-	[10-20]%
TOTAL	[redacted]	100%	[redacted]	100%	[redacted]	100%

211 Mainly transactions with retailers' fidelity cards and petrol cards.

212 See Short Form CO, Annex U, Table 97.

The Notifying Party's view

(215) The Notifying Party is of the opinion that the Transaction will not impede competition on the market for NSP services mainly for the reasons set out below.[213]

(216) ***First***, the Notifying Party submits that the increment brought by Worldline to the combined entity is limited (i.e. approximately [0-5]%) and materially less than the market share of other players such as First Data/Telecash, VeriFone via InterCard and VR Payment. The combined entity will also continue to face competition from their sizeable competitor First Data which has a market share of approximately [20-30]%.[214]

(217) ***Second***, the Notifying Party considers that Worldline and Ingenico are not close competitors on the market for NSP services in Germany, with both Parties having widely differing market shares and targeting different clients; ***[...]***.[215] Moreover, customer switching points to other competitors as being closer to Worldline.[216]

(218) ***Third***, the Notifying Party is of the opinion that the market for NSP services is highly competitive with recent market entries and multiple competitors, like First Data/Telecash, VeriFone/InterCard, Concardis/Nets, VR Payment (CardProcess) and Elavon.[217] According to the Notifying Party, this is also evidenced by the fluctuation of customers and in particular key accounts,[218] which is further supported by short term contracts between acquirers/NSPs and merchants. To Ingenico's knowledge, the duration of contracts is approximately ***[...]***.[219] This intense and fierce competition is evidenced by strong price decreases in recent years ***[...]***.[220]

(219) ***Fourth***, the Notifying Party submits that electronic payment methods in Germany are becoming increasingly interchangeable, with merchants in Germany being able to freely choose between ELV, Girocard and all other international schemes including Maestro as alternatives to Girocard. Thereby, the need for a licensed NSP provider becomes less important. According to the Notifying Party, from a merchant's point of viewss, all payment methods compete against each other. If one payment method were to become significantly more expensive than the others, the merchant could substitute such payment method with an alternative.[221]

(220) ***Fifth***, the Notifying Party submits that NSP services are characterised by low barriers to entry, in particular with respect to obtaining relevant certification for providing such services.[222] According to the Notifying Party, the process to obtain a certification from the Deutsche Kreditwirtschaft to provide NSP services is straightforward and takes six to twelve months for an experienced payment provider,

213 Form CO, paragraph 969 et seq.
214 Form CO, paragraph 970.
215 Form CO, paragraph 972.
216 Form CO, paragraph 103 et seq.
217 Form CO, paragraph 982.
218 Form CO, paragraph 1020.
219 Form CO, paragraph 1009.
220 Form CO, paragraph 984.
221 Form CO, paragraph 985 et seq.
222 Form CO, paragraph 990.

with no upfront payment needed.[223] Cost and duration of the certification procedure do not constitute a barrier to entry. Moreover, without this certification any undertaking can act as a so-called “Girocard merchant concentrator” or “commercial NSPs” when it cooperates with a certified (technical) NSP to be active on the market.[224]

(221) ***Finally***, the Notifying Party explains that the Transaction will not change the merged entity’s ability to negotiate interchange fees with the issuing bank concentrators and to benefit from a larger scale.[225] In this respect, the Notifying Party puts forward the following arguments.

(222) In the first place, the Notifying Party explains that the ability to negotiate the interchange fee will not increase with the Transaction as each Party has already negotiated a rate. Issuing banks wish to grant such rebate to all NSP players to achieve their objective of promoting Girocard over other payment schemes. According to the Notifying Party, the combined entity will not be in a better position to negotiate lower authorization (interchange) fees with the issuing side (banks or bank concentrators) than prior to the Transaction.[226]

(223) In the second place, the Notifying Party is of the opinion that there are limited incentives for issuers to give a higher rebate to the Parties since the only real objective of these negotiations is to promote Girocard towards Maestro/Vpay without impacting their own revenue. Such an objective requires collaboration of as many NSP providers as possible and hence should lead to similar rebates granted to the various NSP providers.[227]

(224) In the third place, the Notifying Party explains that, in any event, the interchange fee is only one of the components of a pricing offer, which itself is only one component of a NSP’s service offer to merchants. Therefore, competitors who may have negotiated a different interchange fee could remain as competitive as they are today by using other parameters of competition.[228]

(225) In the fourth place, the Notifying Party states that ***[...]***.[229]

(226) The Notifying Party further submits that it does not consider commercial NSPs to be wholesale customers for NSP services.[230] Although commercial NSPs purchase network operating services from technical NSPs (e.g. Worldline) and sell them to merchants in their own name and on their own account, the Notifying Party is of the opinion that they can rather be considered as non-exclusive resellers or distributors of certified NSP services i.e. they distribute services from several certified NSP.[231] The Notifying Party further explains that merchants are contracting directly with commercial NSPs, but that such contracts relate to the POS rental part of the service

[223] Form CO, paragraph 990.
[224] Form CO, paragraph 995.
[225] Form CO, paragraph 1021 et seq.
[226] Form CO, paragraph 1027.
[227] Form CO, paragraph 1029.
[228] Form CO, paragraph 1031.
[229] Form CO, paragraph 1034.
[230] Form CO, paragraph 999.
[231] Form CO, paragraph 1000.

only. Merchants also need to contract with certified NSP players, given that payment transactions are handled by it (i.e. for the acceptance of transactions) and commercial NSPs have to take this into account in their own contracts.[232] Therefore, commercial NSPs are only indirect channels for certified NSPs to sell their services to merchants,[233] and NSP services provided to merchants directly by certified NSPs and via commercial NSPs are exactly the same.[234]

The Commission's assessment

(227) The Transaction has a limited structural impact on the plausible market for NSP services. Ingenico has a sizeable market share of [30-40]% or [30-40]% when only domestic card transactions are considered (and the routing of international cards is excluded), but the increment provided by Worldline is only [0-5]%, or [0-5]% respectively. Moreover, competitors remain available with individual market shares up to [20-30]%, which have remained relatively stable over time, as displayed in Table 10.

(228) In particular, the market shares in Table 10 show that Ingenico is the strongest market participant with a market share of [30-40]%, followed by First Data/Telecash with a market share of [20-30]%, Verifone (Intercard) with a market share of [10-20]%, VR Payment with a market share of 5 – 10% and Worldline with a market share of [0-5]% and a combined market share of [10-20]% for other market participants.

(229) PSPs also consider that the strongest players are (1) Ingenico and (2) First Data, but regard Concardis/Nets and Worldline as number 3 in the market and as equally strong.[235] According to merchants Ingenico is the strongest service provider, followed by First Data and Worldline as number 3 and followed very closely by Verifone (Intercard).[236] This outcome of the market investigation therefore confirms that First Data is a strong alternative supplier that is regarded as number 2 in the market. Regarding Worldline's market position the outcome is not exactly in line with the market shares as provided in Table 10. However, regarding its market shares, Worldline would be number 4 or 5 in the market and therefore would still be close to the market position as perceived by merchants and PSPs. Furthermore, Worldline's market share in the market of POS merchant acquiring is almost twice as high as in the market for NSP services, probably leading to a stronger perception and a possible overrating of Worldline's market position in the NSP market.

(230) But even with this discrepancy with respect to Worldline's perceived market position, the market investigation confirmed that there will remain sufficient credible competitors post-Transaction, according to the majority of merchants,[237] a view also shared by the majority of PSPs.[238] Moreover, it has been confirmed that there have been new entrants in the market in the last five years,[239] and new entrants are

[232] Form CO, paragraph 1000.
[233] Form CO, paragraph 1001.
[234] Form CO, paragraph 1004.
[235] Responses to question 130 of Questionnaire Q2 to PSPs.
[236] Responses to question 105 of Questionnaire Q1 to Merchants.
[237] Responses to question 111 of Questionnaire Q1 to Merchants.
[238] Responses to question 134 of Questionnaire Q2 to PSPs.
[239] Responses to question 103 of Questionnaire Q1 to Merchants.

considered as credible suppliers by the majority of merchants,[240] even despite the acknowledged obstacles for entering the market due to the certification process for technical NSPs.[241] Concerning closeness of competition, merchants considered Worldline's closest competitor to be Ingenico, which could be explained by Ingenico's strong market position, whereas Ingenico's closest competitors are Adyen and Concardis.[242] This view is not supported by PSPs, who are of the opinion that for both Parties First Data is the closest competitor,[243] which especially for Ingenico is in line with First Data's market position as reflected in market shares and as perceived by merchants and PSPs, again stressing the importance of First Data in the market and as alternative provider of NSP services.

(231) Additionally, the market investigation confirmed the Notifying Party's view that prices have decreased in the past years. Although a slight majority of merchants were of the opinion that prices remained constant over the past 5 years, almost an equal number replied that prices were decreasing,[244] and were supported in this view by the majority of PSPs that also stated that prices decreased in the same time.[245]

(232) One competitor expressed its concerns that the merged entity may be in a position post-Transaction to negotiate better Girocard interchange fees.[246] As a result, this competitor feared that these better conditions might be passed on to customers, which might enable the merged entity to drive out competitors with lower price offerings and subsequently raise prices. However, the Commission is of the opinion that the Notifying Party addressed this concern by the arguments laid out above.[247] First, the small increment the Transaction will bring about will not impact the merger entity's ability to negotiate better terms. Second, issuers of Girocard are incentivised to promote Girocard towards Maestro/Vpay without impacting their own revenue. Such an objective requires collaboration of as many NSP providers as possible and hence should lead to similar rebates granted to the various NSP providers. In this respect, the Notifying Party explains that currently Ingenico and Worldline ***[...]***. Third, this fee is just one component of a NSP's pricing offer. The Parties explain that the stream of revenues generated by interchange fees makes up approximately ***[...]*** of their revenues generated by their NSP services for 2019.[248] Fourth, the Parties have ***[...]***. The Commission is of the opinion that the arguments are convincing that the merged entity will not profit from the alleged behaviour, as put forward by the complainant. ***[...]*** it seems possible, that also smaller market participants can be competitive vis-à-vis stronger players. This holds all the more true since the interchange fee only makes up a small share of the Parties' revenues and thus it can be assumed that there will be room to compete for other market participants. Furthermore, the market investigation revealed that there will be sufficient credible competitors post-Transaction and that market entry is possible. Therefore, if the

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240 Responses to question 104 of Questionnaire Q1 to Merchants.
241 Responses to question 133.1 of Questionnaire Q2 to PSPs.
242 Responses to questions 106.1 and 106.2 of Questionnaire Q1 to Merchants.
243 Responses to question 131 of Questionnaire Q2 to PSPs.
244 Responses to question 108 of Questionnaire Q1 to Merchants.
245 Responses to question 132 of Questionnaire Q2 to PSPs.
246 Non-confidential Minutes of call with competitor on 8 April 2020.
247 Also Form CO, paragraph 1021.
248 Form CO, paragraph 1032.

merged entity would raise prices as part of the alleged strategy, competitors could be attracted and drive down prices.

(233) Concerning the Transaction's impact on different parameters of competition, the majority of responding merchants are of the opinion that it will have no impact on price or quality of service. Concerning choice of service, the majority of respondents expects a neutral or positive impact. With respect to innovation, the majority also expects a neutral or positive impact.[249] Accordingly, merchants also expressed neutral or positive views when asked about the expected impact on their business.[250] These views are mirrored in the replies of PSPs. The majority of PSPs expect a positive or neutral impact on price, quality of service, choice and innovation.[251] When asked about the impact of the Transaction on their own business, respondents were split equally between those that expect increased competition and those that expect reduced competition.[252] However, the majority of PSPs or merchants responding did not expect any decrease in competition with respect to price, quality, choice or innovation. One PSP responded that as a result of the Transaction a significant number of its merchants' terminals will be provided by a competitor which could potentially result in a commercial and technical disadvantage for this PSP.[253] However, as explained in Sections 4.6.1.1 and 4.6.1.2 of this decision, there are no competition concerns in relation to vertical effects in this regard. Moreover, as both Parties to the Transaction are already competitors to other PSPs and this responding PSP, this potential disadvantage is only to a limited extent merger-specific. Furthermore, the Commission's assessment under Section 4.5.3.1 showed that numerous credible competitors will remain in the market for the provision and management of POS terminals post-Transaction and additional entry and/or expansion by competitors is also expected.

(234) Based on the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the plausible market for NSP services in Germany due to horizontal non-coordinated effects.

4.5.3.3. Conclusion for the overall market for POS merchant acquiring in Germany

(235) The market shares for the overall market for POS merchant acquiring in Germany are presented below. The market shares for the overall market do not differ materially from the shares in each of the segments.

[249] Response question 112 of Questionnaire Q1 to Merchants.
[250] Responses to question 113 of Questionnaire Q1 to Merchants.
[251] Responses to question 135 of Questionnaire Q2 to PSPs.
[252] Responses to question 136 of Questionnaire Q2 to PSPs.
[253] Responses to question 136 of Questionnaire Q2 to PSPs.

Table 12: Notifying Party's estimate of Germany market shares for POS merchant acquiring overall, and for the segments for international cards and NSP services (domestic cards) (by merchant sales value, 2019)

	2019			
	Worldline (%)	Ingenico (%)	Combined (%)	Market size (€ billion MSV)
INTERNATIONAL	[5-10]%	[30-40]%	[40-50]%	[redacted]
NSP (DOMESTIC)	[5-10]%	[30-40]%	[40-50]%	[redacted]
OVERALL POS MERCHANT ACQUIRING	[5-10]%	[30-40]%	[40-50]%	[redacted]

(236) As is explained in Sections 4.5.3.1 and 4.5.3.2, the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the segment for POS merchant acquiring for international cards in Germany and the segment for NSP services in Germany (which is equivalent to POS merchant acquiring for domestic cards in Germany).

(237) The market investigation did not yield any indications of competitive concerns that would pertain specifically to an overall market for POS merchant acquiring in Germany. In addition, there are no indications that the factors that have already been discussed in the competitive assessment for the individual segments above would lead to any different assessment, individually or cumulatively, in relation to an overall market for POS merchant acquiring in Germany.

(238) As a result, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the overall market for POS merchant acquiring in Germany due to horizontal non-coordinated effects.

4.5.4. POS merchant acquiring in Luxembourg

(239) The Parties' and their main competitors' market shares for POS merchant acquiring in Luxembourg are provided below.

Table 13: Notifying Party's estimate of Luxembourg market shares for POS merchant acquiring for international cards (by merchant sales value, 2017-2019)

	2017		2018		2019	
	MERCHANT SALES VALUE (€ billion)	MARKET SHARE (%)	MERCHANT SALES VALUE (€ billion)	MARKET SHARE (%)	MERCHANT SALES VALUE (€ billion)	MARKET SHARE (%)
WORLDLINE	[redacted]	[80-90]%	[redacted]	[70-80]%	[redacted]	[70-80]%
INGENICO	[redacted]	[5-10]%	[redacted]	[5-10]%	[redacted]	[5-10]%
COMBINED	[redacted]	[90-100]%	[redacted]	[80-90]%	[redacted]	[80-90]%
Elavon	-	5-10%	-	5-10%	-	5-10%
Concardis / Nets	-	0-5%	-	0-5%	-	0-5%
Others (EVO, EMS, French banks, etc.)	-	0-5%	-	0-5%	-	0-5%
TOTAL	[redacted]	100%	[redacted]	100%	[redacted]	100%

(240) The Parties' combined market share on the Luxembourgish market for POS merchant acquiring is [80-90]% with an increment of [5-10]%. The Parties' market shares for plausible subdivisions of the market for POS merchant acquiring in Luxembourg are provided below. Luxembourg does not have a domestic payment card scheme, so a potential subdivision between international and domestic card schemes is not relevant for Luxembourg.

Table 14: Notifying Party's estimate of Luxembourg market shares for POS merchant acquiring segmented by credit / debit cards (by merchant sales value, 2019)

	2019			
	Worldline (%)	Ingenico (%)	Combined (%)	Market size (€ billion MSV)
CREDIT	[70-80]%	[10-20]%	[80-90]%	[redacted]
DEBIT	[70-80]%	[5-10]%	[80-90]%	[redacted]

(241) The Parties' market shares segmented by credit and debit cards do not differ materially from market shares for the Luxembourg POS merchant acquiring market overall. As explained in paragraph 152 of this decision, the Parties claim that they are not able to provide market shares by card brand.

The Notifying Party's view

(242) The Notifying Party considers that the Transaction will not result in a significant impediment to effective competition on the POS merchant acquiring market in Luxembourg for the reasons set out below.

(243) **First,** the Notifying Party submits that it has lost market share over the past years. It further submits that this loss of market share has not benefitted Ingenico, as Ingenico's market share has remained stable, indicating that the Parties are not close competitors. In fact, according the Parties, *[...]*. The Parties therefore conclude that Ingenico and Worldline are not close competitors.[254]

(244) **Second,** the Notifying Party submits that the Luxembourgish market has several credible competitors, such as Elavon, Concardis, EMS, EVO Payments and Eurokartensystem. The Notifying Party additionally indicates that some of these competitors, notably Elavon, do target local merchants and are not present in Luxembourg only because of a *follow your customer* strategy, *[...]*.[255]

(245) **Third,** the Notifying Party submits that the combined entity will face competition from innovative solutions such as electronic money or payment institutions.[256]

(246) **Finally,** the Notifying Party submits that the market size in Luxembourg may be underestimated due to the significant cross-border activity of merchant acquirers

[254] Form CO, paragraphs 1073-1076 and Concept paper on Luxembourg submitted by the Notifying Party on 5 September 2020.

[255] Form CO, paragraphs 1081-1082.

[256] Form CO, paragraphs 1086-1087.

from neighbouring countries, enabled by the lack of a domestic card network scheme in Luxembourg.[257]

The Commission's assessment

(247) The Luxembourgish market for POS merchant acquiring (which is identical to the POS merchant acquiring market for international cards only, as Luxembourg does not have a domestic card scheme network) is extremely concentrated pre-Transaction, with the Notifying Party controlling [70-80]% of the market. The acquisition of Ingenico, among the largest competitors in terms of market share, result in a significant increment ([5-10]%) and a combined market share of [80-90]%. This combined market share is far above the threshold (50%) which is indicative of a dominant position of the merged entity.[258] The market is very concentrated, with an HHI pre-Transaction exceeding 5 500. The Transaction increases this concentration and involves a very significant HHI delta exceeding 1 400.

(248) While the Parties submit that ***[...]***, this is not relevant (especially as a significant amount of merchants contracts POS merchant acquiring services for Luxembourg together with another country[259]) and the fact remains that Ingenico is amongst the largest competitors – and is potentially the single largest competitor – to Worldline. The only other competitor that comes close is Elavon, for which the Notifying Party estimates a market share between 5 and 10%. The Transaction would therefore only leave Elavon as a competitor with a market share above 5%.

(249) The market investigation confirmed the dominance of Worldline. Both merchants and PSPs indicated that Worldline is by far the strongest player in Luxembourg. One PSP mentioned that *"[the] [m]arket [is] fully dominated by Worldline after take-over of SIX. Other players only have [a] marginal share.*"[260] Limited input was given in the market investigation on merchants' ability to switch and the Parties' switching rates were not provided for Luxembourg.

(250) Feedback of the market investigation on the closeness of competition between Worldline and Ingenico in Luxembourg was mixed. In addition to Ingenico, respondents named Adyen, CCV and BNP Paribas as close competitors to Worldline. However, Adyen, CCV and BNP Paribas do not have a notable market share according to the overview provided by the Parties (Table 13). Elavon, which has similar market share to the Parties, only received very limited mention. The Parties provided data for the largest 10 tenders in Luxembourg for 2018 and 2019, which show that ***[...]***. The tender data provided represent approximately [a small proportion]% of Luxembourgish MSV in 2018 and [a small proportion]% in 2019. Data for international tenders show that ***[...]***. The Commission considers that these results should be interpreted with the market structure in mind, as in the Luxembourgish POS merchant acquiring market it would be difficult for any player to be particularly close to a competitor as strong as Worldline.

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[257] Form CO, paragraph 1088.

[258] See paragraph 17 of the Horizontal Merger Guidelines.

[259] Responses to question 33.2 of Questionnaire Q1 to Merchants.

[260] Responses to question 33 of Questionnaire Q1 to Merchants; responses to question 27 of Questionnaire Q2 to PSPs.

(251) With regard to alternative payment methods, such as digital wallets and account-to-account payments, a majority of merchants responding to the market investigation indicate that these form an alternative to card payments. However, several respondents explain that this is particularly the case for e-commerce payments, and less so for in-store payments.[261]

(252) While the market investigation confirmed that many customers acquire their POS merchant acquiring services for Luxembourg in combination with POS merchant acquiring services for neighbouring countries,[262] the market investigation also confirmed that there are few alternatives for Luxembourgish customers. Furthermore, the market investigation did not provide any indication that Worldline has less market power than suggested by its market shares.

(253) Market investigation feedback on the impact of the Transaction in Luxembourg was mixed. While a slight majority of merchants and PSPs expected a neutral impact on price and choice, a significant amount of respondents indicated that they anticipate a negative impact as well. One PSP explains that "*[i]n Luxembourg Worldline is already so dominant that the transaction will have limited impact to an already highly non-competitive market.*"[263]

(254) In light of the market structure in Luxembourg, which is characterised by strong dominance of Worldline and where Ingenico is one of two competitors with a market share above 5%, the Transaction *prima facie* is likely to give rise to competitive concerns as a result of the strengthening of Worldline's dominant position. The market investigation was not able to allay these competition concerns, with a significant proportion of respondents anticipating negative impacts on choice and price. Furthermore, it cannot be excluded that those that expect a neutral impact do so because the market is "*already highly non-competitive*" today. As a result, the Commission considers that the Transaction raises serious doubts as to its compatibility with the internal market in relation to the market for POS merchant acquiring and relevant segmentations, namely by credit/debit cards (where the Parties' positions are similar as for POS merchant acquiring in Luxembourg overall) or by card brand (see paragraph 152), in Luxembourg due to horizontal non-coordinated effects.

4.5.5. Manufacturing and supply of POS terminals in the EEA

Market structure

(255) The Parties and their main competitors' market shares are provided in the Table below.

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[261] Responses to question 38 of Questionnaire Q1 to Merchants.

[262] Responses to question 33 of Questionnaire Q1 to Merchants.

[263] Responses to question 40 of Questionnaire Q1 to Merchants; responses to question 38 of Questionnaire Q2 to PSPs.

Table 15: Notifying Party's estimate of EEA market shares for POS terminal manufacturing and supply (by thousands of POS terminals shipped, 2017-2019)

	2017		2018		2019	
	NO. OF POS TERMINALS SHIPPED (000s)	MARKET SHARE (%)	NO. OF POS TERMINALS SHIPPED (000s)	MARKET SHARE (%)	NO. OF POS TERMINALS SHIPPED (000s)	MARKET SHARE (%)
WORLDLINE	[redacted]	[0-5]%	[redacted]	[0-5]%	[redacted]	[0-5]%
INGENICO	[redacted]	[50-60]%	[redacted]	[40-50]%	[redacted]	[40-50]%
COMBINED	[redacted]	[50-60]%	[redacted]	[40-50]%	[redacted]	[40-50]%
VeriFone	-	[20-30]%		[20-30]%		[20-30]%
PAX	-	0-5%		5-10%		[10-20]%
Spire	-	0-5%		0-5%		0-5%
SumUp	-	0%		0%		0-5%
Poynt	-	0%		0-5%		0-5%
Others (Sunmi, etc.)	-	5-10%		5-10%		5-10%
TOTAL	[redacted]	100%	[redacted]	100%	[redacted]	100%

(256) Regarding market share estimates at EEA and global level and according to the type of terminal as per Section 4.2.2 above:

(a) At **global** level, the Parties' combined market share for the overall manufacturing and supply of POS terminals would be around [10-20]%, and no affected market would arise under any plausible market segmentation according to different type of terminals.

(b) At EEA level, the Parties' combined market share on an overall market for the manufacture and supply of POS terminals amounted to [40-50]% in 2019 with an increment by Ingenico of [0-5]%.

(c) As regards the manufacturing and supply of SmartPOS terminals, the Parties' combined share would be below 5% at EEA level, and no affected market would arise.

(d) As regards the segmentation between **mPOS and traditional POS terminals**, in the EEA, Worldline only ships **mPOS** terminals in Belgium and to a very limited extent in the Netherlands. Considering the market is EEA-wide, the increment would be insignificant and a plausible market for the shipments of mPOS at EEA level is not affected either. The Parties' market shares on the **traditional POS terminal** segment are not materially different to those for all POS terminals, as most POS terminals shipped are traditional POS terminals.

(e) Traditional POS terminals represent approximately 90% of all POS terminals at EEA level. Considering that the market structure and the combined market shares of the Parties would not change significantly in the EEA between

Traditional POS and all POS Terminals, the competitive assessment would not change.[264]

(257) For the reason laid out above, the Commission's assessment in this decision will focus on the overall EEA market for the manufacture and supply of all POS terminals.

The Notifying Party's view

(258) The Notifying Party argues that the Transaction will not result in any significant impediment to effective competition in particular due to the fact that: (i) the increment brought about by Worldline is low (less than 5%) and [a significant proportion] of Worldline sales are internal (i.e. relate to shipments to Worldline group entities); (ii) ***[...]***; (iii) the Parties are not close competitors, in particular due to the fact that Ingenico competes more closely with global POS terminal manufacturers including VeriFone and PAX, as evidenced by tender data ***[...]***; (iv) the market for the manufacturing and supply of POS terminals are tender-driven and customers multi-source POS terminals; (v) there is dynamic competition and entry, in particular from PAX and other Asian suppliers whose market share grew significantly in Europe; (vi) switching costs are low; and (vii) the market is evolving towards more commoditized products, in particular Android-based POS terminals.

The Commission's assessment

(259) The Transaction has a limited structural impact on a market that has been historically relatively concentrated. The Parties' combined market share exceeds 40% with an increment brought about by Worldline [0-5]%. The market is still relatively concentrated, with an HHI pre-Transaction exceeding 2 000. The Transaction increases this concentration and involves an HHI delta exceeding 300.

(260) However, considering only sales to third parties, which are more representative of competitive dynamics on the POS terminal manufacturing and supply as they may better show the preferences of customers as opposed to internal sales of vertically integrated players, Worldline's market share would be halved, to around [0-5]% and the Parties' market share would drop just below 40%. This in turn implies that the HHI delta of the Transaction would drop to approximately 150 (at 155.4), the threshold at which the Commission is unlikely to indicate horizontal competition concerns except under special circumstances.[265]

(261) The Parties and their main competitors' shares on a market for POS manufacturing and supply limited to third parties are provided in the Table below.

[264] Annex U to the Form CO, Section 1.

[265] Paragraph 20 of the Horizontal Merger Guidelines. None of the special circumstances identified in this paragraph are met in relation to this market, as further detailed in this section.

Table 16: Notifying Party's estimate of EEA market shares for POS terminal manufacturing and supply to third parties (by thousands of POS terminals shipped, 2019)

	2019	
	NO. OF POS TERMINALS SHIPPED (000s)	MARKET SHARE (%)
WORLDLINE	[redacted]	[0-5]%
INGENICO	[redacted]	[30-40]%
COMBINED	[redacted]	[30-40]%
VeriFone	-	[20-30]%
PAX	-	[10-20]%
Spire	-	0-5%
SumUp	-	0-5%
Poynt	-	0-5%
Others	-	0-5%
TOTAL	[redacted]	100%

(262) In addition, the market investigation and the Parties' internal documents largely confirm the Notifying Party's arguments in relation to the manufacturing and supply of POS terminals.

(263) **First**, Ingenico's position as a market leader has been steadily eroding over time. The company's market share in the EEA steadily decreased from around [50-60]% in 2015 to [40-50]% in 2019. Such a drop in market share, which is confirmed by third party market reports,[266] evidences to some degree a lack of, or at least a material decrease, in market power.

(264) The market share of Ingenico is expected to further decrease in the future. In fact, Ingenico has been increasingly focussing its activity on the merchant acquiring and processing markets, where it competes with its traditional customers of POS terminals, which are mostly PSPs and have become reluctant to procure their POS from a vertically integrated player competing with them on the downstream merchant acquiring and processing markets. One POS terminal manufacturer notes for instance that "*banks are now uncomfortable with having Ingenico as both a traditional terminal supplier, but now also a new competitor in the acquiring / transaction processing space*".[267]

(265) The Transaction may lead to a similar reaction of Wordline's customers, as PSP customers will see the merged entity as a stronger competitor downstream so that the merged entity will likely end up with a market presence that is more limited than the combination of Worldline and Ingenico, and will foster entry and expansion by alternative POS terminal manufacturers. One competitor notes for instance that "*[a]s far as payment terminal hardware ("POS HW") is concerned [...]*

[266] Annexes K.1 to the Form CO.

[267] Non-confidential version of an email from a competitor dated 16 June 2020.

Ingenico are already losing a lot of legacy customers to whom they sold POS HW (because they seem them as competing in the acquiring space) and [the Transaction] will open up the space for more competition amongst market newcomers (combined with the collapse of Verifone, their traditional POS HW competitor). Relatively new market newcomers such as PAX will certainly benefit in terms of more POS HW sales, and other new market newcomers (such as Sunmi or NexGo) will try and enter the POS HW market. This ultimately benefits the acquirers and PSPs who buy terminals and deploy them to merchants", and another one similarly states that "*a merger will never be 1+1=2 but in this case it need to be considered that it will be 1+1=1,5 which means that room is created for new competitors to deliver better and accurate services*".[268]

(266) In addition, Ingenico is not perceived by market players as being as innovative as PAX and some other Asian POS terminal manufacturers.[269]

(267) **Second**, in line with the market share estimates provided by the Parties, Worldline is not among the top players in the manufacturing and supply of POS terminals in the EEA. Market analyst Nilson ranks Worldline as the ninth largest supplier of POS terminals in Europe, after Ingenico, VeriFone, Datecs, Spire, PAX, Newland, Castles and Yarus.[270] Respondents to the market investigation typically consider in particular Ingenico, VeriFone and PAX as strongest suppliers, followed by other suppliers including Castles, CCV, Datecs, Poynt, Spire or Worldline.[271]

(268) Some market participants consider Worldline as one of the top three players on the market alongside Ingenico and VeriFone. However, they are a minority and are typically customers or competitors of the Parties in the Belgian or Benelux markets, where Worldline's market position is much stronger than Ingenico's market position.[272] The local profile of Worldline in terms of POS terminal manufacturing is confirmed by a competitor which states that: "*Worldline also manufactures devices, but is not a global player, focused mainly just on Benelux region in terms of hardware deployment [...] they are certainly never considered a payment terminal hardware supplier by acquirers and payment service providers in other regions*".[273] However, for the reasons laid out in Section 4.2.2.1 above, for the purposes of this decision, the market for the manufacturing and supply of POS terminals is considered to be at least EEA-wide in scope and Worldline is not considered a strong supplier at EEA level.

(269) In addition, Worldline is not a new entrant nor has it been a particularly disruptive competitive force or maverick. Its market share has remained overall stable between [0-5]% and [0-5]% each year since 2015. This is unlikely to change in the foreseeable future, in particular due to the fact that the company is not perceived by market players as particularly innovative and therefore it is unlikely that its sales will

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268 Responses to questions 61.1 and 62.1 of Questionnaire Q2 to PSPs.

269 Responses to question 64 of Questionnaire Q1 to Merchants; responses to question 57 of Questionnaire Q2 to PSPs.

270 Annex K.1 to the Form CO, page 11. Note that the geographic scope does not strictly match the EEA territory.

271 Responses to questions 55.3 and 56.1 of Questionnaire Q2 to PSPs.

272 Responses to questions 59.1 of Questionnaire Q1 to Merchants.

273 Non-confidential version of an email from a competitor dated 16 June 2020.

increase significantly.[274] This is also reflected in the Parties' own internal documents. ***[...]***".[275]

(270) Furthermore, most of Worldline POS terminal shipments are shipped within the company and are thus of limited relevance for the purposes of the competitive assessment of the market for the shipment of POS terminals. As mentioned in paragraph 260 above, considering only sales to third parties, Worldline's market share would be halved, to around [0-5]%.

(271) **Third**, there are no indications that the Parties would be particularly close competitors for the manufacturing and supply of POS terminals.

(272) The market investigation confirms the Notifying Party's arguments that VeriFone is viewed as the closest competitor to Ingenico. In particular, market respondents indicate that Ingenico and VeriFone compete closely in particular in terms of their POS terminal product portfolio, prices, and geographic presence. However, contrary to the Parties' claims, other "pure" POS terminal manufacturers, including PAX, are considered as equally close to Ingenico as this is the case for Worldline.[276]

(273) The fact that Worldline and Ingenico are not close competitors is also confirmed by tender data submitted by the Parties. This data indicates that ***[...]***.[277] In fact, ***[...].***[278]

(274) **Fourth**, there seems to be some degree of countervailing buyer power, in particular from large retailers, as well as PSPs (including banks) acting as distributors or merchant acquirers for the reasons set out below.

(275) Most customers (including both merchants and PSPs) engage in some form of competitive sourcing, either through tender processes or through bilateral negotiations with multiple POS terminal manufacturers, or purchase POS terminals via distributors who do.[279]

(276) In addition, customers who organise competitive tenders are typically the largest customers of POS terminals. ***[...]***.[280]

(277) The market investigation also indicated that important customers, and in particular large retailers, may also be able to extract better supply conditions from POS terminal manufacturers, further indicating the existence of some bargaining power.[281]

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274 Responses to question 64 of Questionnaire Q1 to Merchants; responses to question 57 of Questionnaire Q2 to PSPs.

275 Worldline document provided as Annex 22 of section 5(4) of the Form CO, slide 25.

276 Responses to question 61 of Questionnaire Q1 to Merchants; response to question 55.5 of Questionnaire Q2 to PSPs.

277 Annex L to the Form CO.

278 Responses to questions 51 and 51.1 of Questionnaire Q1 to Merchants; Responses to questions 53 and 53.1 of Questionnaire Q2 to PSPs.

279 Responses to question 54 of Questionnaire Q1 to Merchants; responses to question 54 of Questionnaire Q2 to PSPs.

280 ***[...]***.

281 Responses to questions 51 and 51.1 of Questionnaire Q1 to Merchants; Responses to questions 53 and 53.1 of Questionnaire Q2 to PSPs.

(278) By contrast, the market investigation did not confirm the Notifying Party's arguments that most customers multi-source POS terminals. In fact, a large majority of merchants responding to the investigation single-source for reasons including economies of scale or smoother integration with the merchant's existing infrastructure (including electronic cash registers in particular).[282] On the other hand, PSPs managing a POS terminal installed base typically multi-source, in particular to increase their bargaining power vis-à-vis POS terminal manufacturers, as well as for better stock management.[283] This is particularly relevant since a large share of merchants, including large retailers, purchase POS terminals via distributors or merchant acquirers.[284]

(279) **Fifth**, there will remain enough credible manufacturers of POS terminals active on the market post-Transaction.

(280) Besides the Parties, there will remain at least a dozen other suppliers of POS terminals. Alternative suppliers to the Parties' cited by respondents to the market investigation include VeriFone, PAX, Castles, CCV, Clover, Datecs, Poynt, Spire, First Data, Newland, NewPOS, Paytec, and XAC.[285] A number of these players, and particularly PAX, are relatively recent entrants in the EEA market. PAX has achieved a market share of approximately [10-20]% and therefore is considerably bigger than Worldline despite being a recent entrant.

(281) In addition, some of these suppliers are perceived as more innovative than the Parties. Compared to other players, the Parties, and in particular Worldline, are not perceived as particularly strong innovators on the markets for POS terminals, in particular due to a weak Android terminal offering. Companies cited as innovative include primarily PAX, as well as, to some lesser extent VeriFone, Clover, Ingenico, iZettle, Castles and Adyen, but not particularly Worldline.[286] Therefore, the Parties do not seem to have a more innovative offer that could help to increase their market shares. Rather, other competitors seem to have a more innovative offer that could help them to erode market shares from the Parties.

(282) The fact that there are credible competitors in the market and that there is active competition between them is further evidenced by lower POS terminal prices over the last years. Increased price competition and lower prices are also mentioned in the Parties' internal documents. ***[...]***.[287] ***[...].***[288]

(283) **Sixth**, the market investigation confirms the Parties' arguments on the global trend towards commoditisation of POS terminals, in particular due to the trend of Android-based POS terminals.

(284) A large majority of respondents, including both merchants and PSPs, consider that POS terminals are commoditised products and that most manufacturers are able to

282 Responses to questions 57 and 57.1 of Questionnaire Q1 to Merchants.
283 Responses to question 55.2of Questionnaire Q2 to PSPs.
284 Responses to question 54 of Questionnaire Q1 to Merchants.
285 Responses to question 55.3 of Questionnaire Q2 to PSPs.
286 Responses to question 64 of Questionnaire Q1 to Merchants; responses to question 57 of Questionnaire Q2 to PSPs.
287 Worldline document provided as Annex 16 of section 5(4) of the Form CO, slide 36.
288 Ingenico document provided as Annex 16 of section 5(4) of the Form CO, slide 10.

offer a similar product range.[289] Regarding Android POS terminals specifically, respondents to the market investigation generally consider that offering Android-based terminals is important.[290] In that respect, merchants consider PAX as the primary supplier of Android-based POS terminals, even if Ingenico and VeriFone are also mentioned by a (lower) number of respondents, and Worldline even less so.[291] PAX is also considered as the primary supplier of Android-based terminals by PSPs, alongside other Asian suppliers including Castles, Clover, and Poynt. Only one PSP mentions Worldline as a top provider and none mention Ingenico.[292]

(285) The trend towards commoditisation of POS terminals is also reflected in the Parties' internal documents. ***[...]***.[293]

(286) **Lastly**, the overwhelming majority of merchants, as well as the majority of PSPs, indicate that the Transaction will have a neutral or positive impact in the market for the manufacturing and supply of POS terminals.[294]

(287) Based on the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the market for the manufacturing and supply of POS terminals in the EEA, including its potential segmentation by type of POS terminal, due to horizontal non-coordinated effects.

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289 Responses to question 52 of Questionnaire Q1 to Merchants; responses to question 51 of Questionnaire Q2 to PSPs.

290 Responses to question 65 of Questionnaire Q1 to Merchants; responses to question 58 of Questionnaire Q2 to PSPs.

291 Responses to question 65.1 of Questionnaire Q1 to Merchants.

292 Responses to question 58.1 of Questionnaire Q2 to PSPs.

293 Ingenico document provided as Annex 14 of Section 5(4) of the Form CO, slide 1.

294 Responses to question 69 of Questionnaire Q1 to Merchants; responses to question 62 of Questionnaire Q2 to PSPs. Among those who expect a negative impact of the Transaction of a horizontal nature, most concerns expressed relate to either: (i) the combination of the two largest suppliers to the Belgian market as a result of the Transaction, which as explained is of limited relevance considering the scope of the relevant market is at least EEA wide; (ii) a rationalization of the product lines, which is not necessarily anticompetitive in itself; and/or (iii) general statements according to which a concentration results in a decrease in competition, which are not further substantiated. Non-horizontal concerns expressed are further discussed in Section 4.6 below.

4.5.6. Provision and management of POS terminals in Austria

(288) The Parties' and their main competitors' market shares are provided in the Table below.

Table 17: Notifying Party's estimate of Austria market shares for POS terminal provision and management (by thousands of POS terminals installed base, 2017-2019)

	2017		2018		2019	
	NO. OF POS TERMINALS INSTALLED BASE (000s)	MARKET SHARE (%)	NO. OF POS TERMINALS INSTALLED BASE (000s)	MARKET SHARE (%)	NO. OF POS TERMINALS INSTALLED BASE (000s)	MARKET SHARE (%)
WORLDLINE	[redacted]	[50-60]%	[redacted]	[40-50]%	[redacted]	[40-50]%
INGENICO	[redacted]	[5-10]%	[redacted]	[10-20]%	[redacted]	[5-10]%
COMBINED	[redacted]	[60-70]%	[redacted]	[50-60]%	[redacted]	[50-60]%
Card Complete	-	[20-30]%	-	[20-30]%	-	[20-30]%
Concardis / Nets	-	5-10%	-	5-10%	-	5-10%
Hobex	-	5-10%	-	5-10%	-	5-10%
Others	-	[5-10]%	-	[5-10]%	-	[5-10]%
TOTAL	[redacted]	100%	[redacted]	100%	[redacted]	100%

The Notifying Party's view

(289) The Notifying Party argues that the Transaction will not result in any significant impediment to effective competition in particular due to the fact that: (i) there are several strong competitors remaining on the market post Transaction including new entrants; (ii) customers can switch supplier easily; (iii) the POS management market is closely linked to the POS merchant acquiring market (which together may even form part of a single product market); and (iv) competition is evidence by high customer churn rates.

The Commission's assessment

(290) Most of the arguments raised by the Notifying Party relate to competitive dynamics applicable to the POS merchant acquiring market in Austria. In fact, the Parties even consider that there is a single market encompassing both POS merchant acquiring services and POS terminal provision and management.[295] The market investigation provided indications that point in the same direction. All but one responding Austrian customer indicated procuring POS terminals and related services from their merchant acquirer.[296] However, for the reasons laid out in see Section 4.5.1 above, the Transaction raises serious doubts as to its compatibility with the internal market in relation to the market for POS merchant acquiring. A competitive assessment is provided below for a plausible market for the Provision and Management of POS terminals in Austria.

295 Form CO, paragraphs 754-758 and Annex T paragraphs 28-31.

296 Responses to question 43 of Questionnaire Q1 to Merchants.

(291) The Transaction has a significant impact on a market that is relatively concentrated pre-Transaction. The Parties' combined market share exceeds [50-60]%, which is in itself indicative of a likely dominant position,[297] with an increment brought about by Ingenico close to [5-10]%. The market is relatively concentrated, with an HHI pre-Transaction exceeding 2800. The Transaction strongly increases this concentration and involves an HHI delta exceeding 900. The market shares of the Parties are relatively stable over the last three years and there are only three additional sizeable competitors active in the market.

(292) With regard to the provision and management of POS specifically, the feedback provided is also overall in line with that provided for POS merchant acquiring services.

(293) While merchants responding to the market investigation generally indicate that sufficient alternative players will remain active on the provision and management of POS terminal services in Austria, when asked to provide comments about Austria specifically, the only merchant who expressed a view indicated that they will need to look for alternatives if the two largest suppliers in Austria (i.e. the Parties) merge.[298] In addition, half of the responding merchants and a majority of responding PSPs expect a negative impact of the Transaction, in particular on prices.[299]

(294) Based on the above, the Commission considers that the Transaction raises serious doubts as to its compatibility with the internal market in relation to the market for the provision and management of POS terminals in Austria due to creation of a dominant position.

[297] Paragraph 17 of the Horizontal Merger Guidelines.
[298] Responses to question 71.1 of Questionnaire Q1 to Merchants.
[299] Responses to question 72 of Questionnaire Q1 to Merchants; Responses to question 66 of Questionnaire Q2 to PSPs.

4.5.7. *Provision and management of POS terminals in Belgium*

(295) The Parties' and their main competitors' market shares are provided in the Table below.

Table 18: Notifying Party's estimate of Belgium market shares for POS terminal provision and management (by thousands of POS terminals installed base, 2017-2019)

	2017		2018		2019	
	NO. OF POS TERMINALS INSTALLED BASE (000s)	MARKET SHARE (%)	NO. OF POS TERMINALS INSTALLED BASE (000s)	MARKET SHARE (%)	NO. OF POS TERMINALS INSTALLED BASE (000s)	MARKET SHARE (%)
WORLDLINE	[redacted]	[60-70]%	[redacted]	[60-70]%	[redacted]	[60-70]%
INGENICO	[redacted]	[5-10]%	[redacted]	[5-10]%	[redacted]	[5-10]%
COMBINED	[redacted]	[70-80]%	[redacted]	[70-80]%	[redacted]	[70-80]%
CCV	-	[10-20]%	-	[10-20]%	-	[10-20]%
Keyware	-	5-10%	-	5-10%	-	5-10%
Others	-	0-5%	-	0-5%	-	0-5%
TOTAL	[redacted]	100%	[redacted]	100%	[redacted]	100%

The Notifying Party's view

(296) The Notifying Party argues that the Transaction will not result in any significant impediment to effective competition in particular due to the fact that: (i) the same arguments as those raised for POS merchant acquiring (see Section 4.5.2 above) hold true for the provision and management of POS terminals; (ii) Worldline's market share has been decreasing over the years; (iii) competition for SMEs, ***[…]***, is particularly fierce; and (iv) competition is particularly dynamic, including entry from new players over the last years.

The Commission's assessment

(297) The Transaction has a significant structural impact on a market that is strongly concentrated pre-Transaction. The Parties' combined market share exceeds 70%, which is in itself indicative of a likely dominant position,[300] with an increment brought about by Ingenico of close to [5-10]%. The market is heavily concentrated, with an HHI pre-Transaction exceeding 4 400. The Transaction strongly increases this concentration and involves an HHI delta nearing 1 200. Moreover, only two sizeable competitors will remain in the market with market shares of [10-20]% and 5-10% approximately and thus, being very far in terms of market shares from the merged entity. Therefore, they will likely not be able to exert a sufficient constraint in the merged entity.

(298) Most of the arguments raised by the Parties regarding the provision and management of POS terminals in fact relate to competitive dynamics applicable to the POS merchant acquiring market in Belgium. However, these arguments do not indicate the absence of concerns for the provision and management of POS terminals given that,

[300] Paragraph 17 of the Horizontal Merger Guidelines.

for the reasons laid out in Section 4.5.2 above, the Transaction raises serious doubt as to its compatibility with the internal market in relation to the market for POS merchant acquiring.

(299) In addition, while Worldline's market share has indeed decreased over the last years, ***[...]***, and the company's share remains in excess of 60%, which according to settled case law is indicative of a dominant position on the market.

(300) Moreover, the market investigation consistently identified Worldline and Ingenico as the top two players in the provision and management of POS terminals in Belgium, far ahead of other players such as CCV and Loyaltek.[301]

(301) Lastly, while respondents to the market investigation indicate that a sufficient number of alternative players will remain active on the market in Belgium,[302] a material share of the responding merchants and virtually all responding PSPs expect a negative impact of the Transaction in Belgium, in particular on prices.[303] Some indicate that the merged entity may even be able to unilaterally define / degrade the level of service offered to merchants, stating that "*[i]t is to be expected that WL & Ingenico will dominate the Belgian market even more than before. Therefore they can set the boundaries of what is the minimum or maximum base of delivered service to the merchant*". [304]

(302) Based on the above, the Commission considers that the Transaction raises serious doubts as to its compatibility with the internal market in relation to the market for the provision and management of POS terminals in Belgium due to the strengthening of a dominant position as a result of horizontal non-coordinated effects.

301 Responses to question 72 of Questionnaire Q1 to Merchants; responses to question 66 of Questionnaire Q2 to PSPs.

302 Responses to question 70 of Questionnaire Q1 to Merchants; responses to question 63 of Questionnaire Q2 to PSPs.

303 Responses to question 70 of Questionnaire Q1 to Merchants; responses to question 63 of Questionnaire Q2 to PSPs.

304 Response to question 62.1 of Questionnaire Q2 to PSPs.

4.5.8. Provision and management of POS terminals in Germany

(303) The Parties and their main competitors' market shares are provided in the Table below.

Table 19: Notifying Party's estimate of Germany market shares for POS terminal provision and management (by thousands of POS terminals installed base, 2017-2019)

	2017		2018		2019	
	NO. OF POS TERMINALS INSTALLED BASE (000s)	MARKET SHARE (%)	NO. OF POS TERMINALS INSTALLED BASE (000s)	MARKET SHARE (%)	NO. OF POS TERMINALS INSTALLED BASE (000s)	MARKET SHARE (%)
WORLDLINE	[redacted]	[10-20]%	[redacted]	[10-20]%	[redacted]	[10-20]%
INGENICO	[redacted]	[20-30]%	[redacted]	[20-30]%	[redacted]	[20-30]%
COMBINED	[redacted]	[30-40]%	[redacted]	[30-40]%	[redacted]	[30-40]%
First Data / Telecash	-	[20-30]%	-	[20-30]%	-	[20-30]%
VeriFone (InterCard)	-	[10-20]%	-	[10-20]%	-	[10-20]%
Concardis / Nets	-	[10-20]%	-	[10-20]%	-	[10-20]%
Others	-	[10-20]%	-	[10-20]%	-	[10-20]%
TOTAL	[redacted]	100%	[redacted]	100%	[redacted]	100%

The Notifying Party's view

(304) The Notifying Party argues that the Transaction will not result in any significant impediment to effective competition in particular due to the fact that: (i) the Parties' combined market share remains moderate (below 40%) post Transaction; (ii) there are several strong competitors active on the market; (iii) POS terminals are not necessarily sold directly to merchants; and (iv) customers have multi-sourcing strategies.

The Commission's assessment

(305) The Transaction gives rise to a new leading player by combining the second and third market players in Germany. The Parties' combined market share is around [30-40]% with an increment brought about by Worldline exceeding [10-20]%. The market is moderately concentrated, with an HHI pre-Transaction not exceeding 1 700. The Transaction involves an HHI delta exceeding 600. Moreover, the merged entity will be constrained by several credible competitors and in particular by First Data, former market leader, and with a market shares estimated of [20-30]%.

(306) The market investigation confirms that numerous credible competitors will remain on the market post-Transaction, including those mentioned by the Parties (see Table 19 above). The respondents also identified CCV as a credible supplier. Moreover, despite having achieved a market share of [10-20]% in 2019, Worldline is cited by

only few respondents as a top player in the management and supply of POS terminals in Germany.[305]

(307) In addition, competing POS management providers such as CCV or First Data are in particular considered as providing better quality support/services than the Parties.[306]

(308) Additional entry and/or expansion by competitors are also expected in Germany for the provision and management of POS terminals. Indeed, some respondents to the market investigation indicated having such plans for the future.[307]

(309) Based on the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the market for the provision and management of POS terminals in Germany, due to horizontal non-coordinated effects.

4.5.9. Provision and management of POS terminals in the Netherlands

(310) The Parties' and their main competitors' market shares are provided in the Table below.

Table 20: Notifying Party's estimate of the Netherlands market shares for POS terminal provision and management (by thousands of POS terminals installed base, 2017-2019)

	2017		2018		2019	
	NO. OF POS TERMINALS INSTALLED BASE (000s)	MARKET SHARE (%)	NO. OF POS TERMINALS INSTALLED BASE (000s)	MARKET SHARE (%)	NO. OF POS TERMINALS INSTALLED BASE (000s)	MARKET SHARE (%)
WORLDLINE	[redacted]	[20-30]%	[redacted]	[20-30]%	[redacted]	[20-30]%
INGENICO	[redacted]	[0-5]%	[redacted]	[0-5]%	[redacted]	[0-5]%
COMBINED	[redacted]	[20-30]%	[redacted]	[20-30]%	[redacted]	[20-30]%
CCV	-	[20-30]%	-	[20-30]%	-	[20-30]%
ING / Payvision	-	[10-20]%	-	[10-20]%	-	[10-20]%
ABN AMRO / EMS	-	[10-20]%	-	[10-20]%	-	[10-20]%
Rabobank	-	[10-20]%	-	[10-20]%	-	[10-20]%
TOTAL	[redacted]	100%	[redacted]	100%	[redacted]	100%

The Notifying Party's view

(311) The Notifying Party argues that the Transaction will not result in any significant impediment to effective competition in particular due to the fact that: (i) Worldline has a low market share in POS merchant acquiring services in the Netherlands; and (ii) Ingenico only brings about an immaterial increment.

305 Responses to question 55.4 of Questionnaire Q2 to PSPs.

306 Responses to question 62 of Questionnaire Q1 to Merchants; responses to question 55.6 of Questionnaire Q2 to PSPs.

307 Responses to question 55.8 of Questionnaire Q2 to PSPs.

The Commission's assessment

(312) The Transaction only has a limited structural impact on a market that is not particularly concentrated pre-Transaction. The Parties' combined market share reach around [20-30]% with a limited increment brought about by Ingenico (below [0-5]%). The market is not particularly concentrated, with an HHI pre-Transaction below 1 600. The Transaction has a limited impact on market concentration with HHI delta below 25.

(313) The Parties' combined market shares is lower than 25%, the level under which concentrations are presumed to not impede effective competition.[308]

(314) The market investigation did not provide elements that would be of the nature to rebut this presumption. In particular, the market share estimates provided by the Parties have not been challenged, and the strong market presence of CCV in the Netherlands has been confirmed by the market investigation.[309]

(315) Based on the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the market for the provision and management of POS terminals in the Netherlands, due to horizontal non-coordinated effects.

4.5.10. In-store acceptance services in the EEA

(316) The Parties' and their main competitors' market shares for in-store acceptance in the EEA are provided below.

Table 21: Notifying Party's estimate of EEA market shares for in-store acceptance services (by number of transactions, 2017-2019)

	2017		2018		2019	
	NO. OF TRANSAC-TIONS (millions)	MARKET SHARE (%)	NO. OF TRANSAC-TIONS (millions)	MARKET SHARE (%)	NO. OF TRANSAC-TIONS (millions)	MARKET SHARE (%)
WORLDLINE	[redacted]	[0-5]%	[redacted]	[0-5]%	[redacted]	[0-5]%
INGENICO	[redacted]	[20-30]%	[redacted]	[30-40]%	[redacted]	[30-40]%
COMBINED	[redacted]	[20-30]%	[redacted]	[30-40]%	[redacted]	[30-40]%
Wynid (VeriFone)	-	[10-20]%	-	[10-20]%	-	[10-20]%
ACI	-	[10-20]%	-	[10-20]%	-	[5-10]%
Toshiba	-	[5-10]%	-	[5-10]%	-	[0-5]%
FIS	-	[0-5]%	-	[0-5]%	-	[0-5]%
Others	-	[40-50]%	-	[30-40]%	-	[30-40]%
TOTAL	[redacted]	100%	[redacted]	100%	[redacted]	100%

(317) The combined market shares of the Parties are [30-40]% with a limited increment of [0-5]%. For completeness, although the market is EEA wide, the combined market

308 Paragraph 18 of the Horizontal Merger Guidelines.

309 Responses to question 59.1 of Questionnaire Q1 to Merchants.

shares of the Parties in France, the only country in which their activities overlap, are [40-50]% with an increment of [0-5]%.

The Notifying Party's view

(318) The Notifying Party argues that the Transaction will not result in any significant impediment to effective competition in particular due to the fact that: (i) Worldline only brings about an immaterial increment; and (ii) Worldline only offering this service in France and to a handful of customers.

The Commission's assessment

(319) The combined market shares of the Parties in the EEA remain below 40% with a limited increment brought by Worldline of [0-5]%. In addition, there remain three competitors with market shares significantly above the increment - VeriFone, Toshiba and ACI are all more than two times the size of Worldline. Moreover, although the market is EEA-wide in scope, Worldline is only active in France with a moderate share of supply in France ([0-5]%), where five competitors have a share of supply higher or similar to Worldline (VeriFone, Monext, Nepting, ACI and Adyen) and therefore will constrain the merged entity post-Transaction.

(320) The market investigation confirmed that the overwhelming majority of customers consider that post-Transaction, there will remain sufficient choice of credible suppliers providing in-store acceptance services.[310] In the same vein, the large majority of customers are of the view that the Transaction will have a positive or neutral impact on the EEA market for in-store acceptance in terms of price or quality of the services. The large majority consider that the impact on innovation will be positive. For completeness, customers also consider that the impact of the Transaction will be positive or neutral in France with regard to price or quality and positive with regards to innovation.[311] Similarly, the overwhelming majority of suppliers, consider that post-Transaction, there will remain sufficient choice of credible suppliers providing in-store acceptance service in the EEA and in France.[312] Competitors also consider that the impact of the Transaction in terms of prices, quality of the services and innovation will be neutral or positive in the EEA and in France.[313]

(321) Based on the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the market for the provision of in-store acceptance services in the EEA due to horizontal non-coordinated effects.

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310 Responses to question 95 of questionnaire Q1 to Merchants, question 95.

311 Responses to question 96 of questionnaire Q1 to Merchants, question 96.

312 Responses to question 91 of questionnaire Q2 to PSPs, question 91.

313 Responses to question 92 of questionnaire Q2 to PSPs, question 92.

4.6. Competitive assessment of the non-horizontally affected markets

4.6.1. Vertical effects

4.6.1.1. Manufacturing and supply of POS Terminals (upstream) – Provision and management of POS terminals/POS merchant acquiring services/NSP services (downstream) **- Input foreclosure**

(322) The Parties manufacture and supply POS terminals to competing PSPs active on the provision and management of POS terminals and/or POS merchant acquiring markets throughout the EEA (as well as to NSPs in Germany specifically). The markets for the provision and management of POS terminals[314] and POS merchant acquiring services are strongly interrelated. In fact, as mentioned in Section 4.2.2, in some countries (i.e. in Austria) the market for the provision and management of POS terminals to merchants may form part of a single market including POS merchant acquiring services. Moreover, the management of POS terminals is often complemented by POS merchant acquiring services. While in some countries both services can be procured separately, in others (e.g. Austria), POS terminals are typically supplied alongside POS merchant acquiring services. PSPs offering POS management and/or POS merchant acquiring services need to have access to POS terminals (upstream market). Regarding NSP services, it should be taken into account that "pure" NSPs have been on the decline in Germany and today virtually every NSP also offers POS merchant acquiring services in Germany. Accordingly, given that the base of customers for POS terminals is virtually the same across merchant acquiring and NSP services in Germany, as are the Parties' market shares in these two markets, the assessment is similar. In any event, this Section includes an assessment of input foreclosure of POS terminals (upstream) to suppliers of POS management and/or POS merchant acquiring services and/or NSP services.

(323) In fact, the market investigation indicates that many merchants acquire POS terminals from their merchant acquirer. Therefore, merchant acquirers are one of the main sources of POS terminals for merchants.[315] One POS terminal manufacture notes for instance that "*merchant acquirers provide the main channel for distribution of POS terminals to large retailers and SMEs*".[316] In fact, a substantial number of responding PSPs raised concerns in relation to the merged entity engaging in an input foreclosure strategy for POS terminals.

(324) As a result, the risks that the Transaction would give rise to potential vertical effects and in particular, would give the Parties the ability and incentives to engage in a successful input foreclosure strategy will be addressed in this Section.

The Notifying Party's view

(325) The Notifying Party argues that the Transaction will not result in any significant impediment to effective competition in particular due to the fact that: (i) the Parties will not have the ability to affect the competitiveness of rival merchant acquirers by

[314] As explained in Section 4.5.6, the market structure and the combined market shares of the Parties would not change significantly in the EEA between Traditional POS and all POS Terminals. Therefore for this section, only a market comprising all POS terminals will be considered.

[315] Responses to question 54 of Questionnaire Q1 to Merchants.

[316] Non-confidential Minutes of a call with a competitor held on 17 June 2020, paragraph 28.

increasing the prices of POS terminals, in particular due to the presence of multiple competing POS terminal manufacturers, that would be able to serve additional demand quickly, the fact that POS terminals are commoditized products and the Parties' POS terminals are not "must-have" products; (ii) the Parties will also not have the ability to decrease quality, in particular by degrading the interoperability of their POS terminals and the services of rival merchant acquirers; and (iii) the merged entity would not have the incentive to foreclose access to its terminals, as demonstrated by an economic analysis conducted by the Parties for the relevant markets.

The Commission's assessment

(326) For input foreclosure to be a concern, the vertically integrated firm resulting from the merger must have a significant degree of market power in the upstream market.[317] The Commission firstly recalls that the combined share of the Parties in the manufacture and provision of POS has decreased consistently over recent years and amounted to [40-50]% in 2019. For the reasons set out in Section 4.5.5 above, it is unlikely that the merged entity will benefit from a significant degree of market power in relation to the manufacturing and supply of POS terminals in the EEA, in particular due to the presence of many competitors on the market, including recent entrants such as PAX, which are perceived as more innovative than the Parties, and with a strong offering of Android-based POS terminals.

(327) In addition, the market investigation indicates that it is unlikely that the merged entity would have the ability to foreclose rivals, be it by completely stopping supply of POS terminals to rival POS merchant acquirers or NSPs, by increasing prices or by degrading interoperability of POS terminals with competitors' services.

(328) **First**, in relation to a full input foreclosure by ceasing to supply POS terminals to competing rivals, the Commission notes that the Parties' competitors already supply around [60-70]% of POS terminals at EEA level. There are no indications that any of those competitors would face capacity constraints and would not be in a position to increase supply should the merged entity reduce its supply of POS terminals at EEA level. Indeed, the large majority of respondents to the market investigation indicated that post-Transaction there will remain a sufficient number of credible suppliers of POS terminals and a significant number of suppliers indicated that they have plans to expand their sales of POS terminals.[318]

(329) **Second**, in relation to potential price increases to raise rivals' costs, it is important to note that Ingenico's top customers for POS terminals are large payment service providers ***[...]***. Moreover, the sales price of Ingenico's POS terminals has steadily been decreasing in recent years as a result of pressure from rivals and the fact that its customers have a degree of countervailing buyer power (as explained in Section 4.5.5). This is confirmed by the Parties' internal documents, ***[...]***:[319]

[...]

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317 Paragraph 35 of Non-Horizontal Merger Guidelines.

318 Responses to questions 56 and 60 of Questionnaire Q1 to Merchants.

319 Ingenico document provided as Annex 11 to Section 5(4) of the Form CO, slide 6.

(330) The addition of Worldline, which only sells limited volume of POS terminals to competing POS merchant acquirers (***[...]***% of the company's total sales of POS terminals in the EEA) and has a low ***[...]*** market share in the manufacture and supply of POS terminals (less than [0-5]%) is unlikely to increase the pricing power of the merged entity materially vis-à-vis POS merchant acquirers or NSPs.

(331) **Third**, in relation to interoperability specifically, the Parties confirmed that neither Worldline nor Ingenico own proprietary protocols ensuring the connection/interoperability between POS terminals and POS merchant acquirers in the EEA, or any intellectual property rights over these protocol (including for instance the C-TAP, ZVT, EP2, CB2 and CB2A protocols).[320]

(332) None of the proprietary protocols owned by the Parties is relevant to ensure interoperability of the POS terminals and POS merchant acquiring services. The only protocol owned by Worldline in relation to POS terminals is the VIC Protocol, which is only deployed in Belgium and ensures communication between the POS terminal and the customer's ECR system. One respondent nonetheless indicates that "*for the Belgian market till integration is a huge driver of interoperability. The dominance of the Worldline-owned VIC protocol is a significant barrier*".[321] However, the VIC protocol is not licensed out to any merchant acquirer (or to any competing POS terminal manufacturer). Ingenico also owns proprietary ECR protocols but these are deployed in Germany and not relevant in the Benelux region. As a result, the Transaction would in any event have no impact on competitors, who already have no access to the VIC protocol pre-Transaction. In addition, other competing POS terminal manufacturers also own other relevant protocols.[322] Likewise, the Commission's investigation has not identified any proprietary protocols owned by the Parties that would give rise to concerns in relation to the interoperability of POS terminals with NSP services.

(333) Furthermore, in countries where the Parties have a strong market presence downstream, and in particular the Benelux countries and Germany, there are open protocols that ensure the interoperability of POS terminals and acquiring services. These include the C-TAP protocol in the Benelux countries, and the ZVT protocol in Germany. These are particularly widespread; for instance, the C-TAP protocol is estimated to cover 90% of the POS installed base in Belgium and the Netherlands, and 100% of POS terminals shipped by Ingenico's in Belgium use this protocol, whereas all transactions processed by Worldline in the Netherlands use this protocol.[323] The same respondent who raises concerns in relation to Worldline's VIC protocol also acknowledged that "*C-TAP protocol is a multi-acquirer protocol dominating the Belgian market. Any terminal provider willing to be active in the Belgian market should be able to implement this protocol. However this protocol is governed by a separate instance – Acquiris - and therefore should not be considered a major issue*". Another respondent confirms that while "*[t]erminal protocols are rarely interoperable - i.e. merchants can not freely switch to other suppliers of merchant acquiring services / these suppliers can not independently access the*

320 Response to RFI 9, question 1.

321 Responses to question 59.1 of Questionnaire Q2 to PSPs.

322 Response to RFI 12, question 4.

323 Response to RFI 9bis to the Parties

terminals. […] The dominant protocol in Benelux (the CTAP protocol) then is interoprable (sic) - i.e. any CTAP acquirer has access to any CTAP terminal”.[324]

(334) The Parties have no controlling influence over the standard setting bodies for the C-TAP and ZVT protocols, which are managed by industry associations, including many members besides the Parties.[325]

(335) As a result, it is unlikely that the merged entity would have the ability to engage in an input foreclosure strategy post-Transaction, either by ceasing to supply POS terminals to competing POS merchant acquirers or NSP service providers, increasing prices or by degrading interoperability.

(336) Furthermore, even if the merged entity had the ability to engage in a foreclosure strategy, it would be unlikely that it would have the incentives to do so. In order for the merged entity to have the incentives to engage in a foreclosure strategy, it would be necessary that the upstream profit loss from customers switching to competing POS providers were sufficiently small compared with the profit gain from customers switching to the Parties’ provision and management of POS terminals or POS merchant acquiring services (or NSP services) downstream.

(337) The economic paper submitted by the Parties[326] argues that the merged entity will not have the incentives to foreclose access to its POS terminals as this strategy would generate large losses due to massive foregone sales. It further argues that the new entity would need to increase its fees on the downstream market for POS merchant acquiring by an unrealistic amount in order to recoup these losses (and this analysis also includes the provision and management of POS terminals and NSP services). Having reviewed the submission, the Commission considers that it shows that, in the event of vertical foreclosure, the intensity of competition in the POS terminals market is such that the profit loss in the upstream market could not realistically be compensated by an increase in merchant services charges downstream.[327] Therefore, it is unlikely that the merged entity would have the incentives to engage in a foreclosure strategy in these market.

(338) The Commission, having reviewed the arguments put forward by the Parties, considers that the economic paper follows a sound methodology and is in line with the principles of the Non-Horizontal Merger Guidelines in the way it compares the upstream profit loss with downstream profit gain (in light of diversion of customers) from a vertical foreclosure strategy.[328]

(339) In addition, the fact that the merged entity would retain some incentive to ship POS terminals to competing merchant acquirers is further evidenced by the fact that pre-Transaction Ingenico already ships terminals to merchant acquirers in countries where they are also active in POS merchant acquiring. This is in particular the case in Germany, where Ingenico is the leading player downstream, as well as in Austria and Belgium, where it has a material market presence in POS merchant acquiring.

[324] Responses to question 59.1 of Questionnaire Q2 to PSPs.
[325] Response to RFI 9bis to the Parties.
[326] Annex T to the Form CO.
[327] Response to RFI 15.
[328] Paragraphs 40-46 of the Non-Horizontal Merger Guidelines.

(340) Further, as regards NSP services, as outlined in Section 4.5.3.2 above, the increment resulting from the Transaction is small (less than 5%), so the Transaction is unlikely to materially increase the incentive of the merged entity to engage in input foreclosure.

(341) As a result, it is unlikely that the merged entity would have the incentives to engage in an input foreclosure strategy post-Transaction.

(342) Based on the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to potential vertical effects in relation to the markets for the manufacturing and supply of POS terminals (upstream) and provision and management of POS terminals (downstream) or POS merchant acquiring services (downstream) or NSP services (downstream) in the EEA.

4.6.1.2. Manufacturing and supply of POS terminals (upstream) – POS merchant acquiring / NSP services / Provision and management of POS terminals (downstream) – **Customer foreclosure**

(343) The Parties procure POS terminals from competing POS terminal manufacturers and offer them to clients as part of their POS management and merchant acquiring services throughout the EEA.

(344) In particular, the Parties purchase POS terminals from competing manufacturers for their activity in the provision and management of POS terminals in: Austria, Germany and Poland for Worldline (from manufacturers including ***[...]***), as well as in Austria, Belgium, Germany and the Netherlands for Ingenico (from manufacturers including ***[...]***). In addition, ***[...]***.

(345) Some market respondents raised concerns relating to the fact that such purchases would stop post-Transaction. One competitor notes for instance that in terms of POS terminals shipments "*[the Company] is concerned that Ingenico being the largest POS terminal hardware provider, the Transaction would prevent [the Company] from selling POS terminals to the combined entity and their merchant base*".[329]

(346) As a result, the risk that the Transaction would give rise to potential vertical effects and, in particular, would give the Parties the ability and incentives to engage in a successful customer foreclosure strategy, will be addressed in this Section. For the reasons laid out in Section 4.2.2, the market for the manufacturing and supply of POS terminals is at least EEA-wide and the assessment of customer foreclosure should be carried out at that level rather than at a narrower (e.g. national) level.

The Notifying Party's view

(347) The Notifying Party argues that the Transaction will not result in any significant impediment to effective competition in particular due to the fact that (i) the merged entity purchases only very limited quantities of POS terminals from third party suppliers in the EEA, and (ii) POS terminal manufacturers are global firms with significant sales worldwide.

329 Non-confidential Minutes of a call with a competitor held on 17 June 2020, paragaph 26.

The Commission's assessment

(348) A vertical merger may affect upstream competitors by increasing their cost to access downstream customers or by restricting access to a significant customer base.[330]

(349) In the present case, the merged entity cannot be considered to represent a significant customer base for competing manufacturers and suppliers of POS terminals at the upstream level. The Parties' purchases only represent a marginal share of POS terminals shipped in the EEA:

(a) In 2019, Worldline procured ***[...]***.

(b) Similarly, in 2019 Ingenico procured ***[...]***.

(350) Post-Transaction, the merged entity would thus procure around [a small proportion]% of POS terminals shipped by third party POS manufacturers in the EEA, representing less than [a small proportion]% of total shipments in the region.

(351) As a result, it is unlikely that the merged entity would have the ability to engage in a customer foreclosure strategy post-Transaction.

(352) In addition, the fact that the merged entity would retain some incentive to procure POS terminals from competing manufactures is evidenced by the fact that pre-Transaction both Worldline and Ingenico already procure terminals for their installed base in countries where they are strong players in POS merchant acquiring, NSP services or POS provision and management including Austria, Belgium and Germany. In fact, strong customer preferences drive the incentives to procure POS terminals from competing manufacturers. In this regard, the Parties explained that ***[...]***. Indeed, Austria is historically a Member State where VeriFone, formerly Hypercom, is the market leader, and is rewarded by strong consumer preference.[331]

(353) As a result, it is unlikely that the merged entity would have the incentives to engage in a customer foreclosure strategy post-Transaction.

(354) Finally, any customer foreclosure strategy would only have a limited impact (if any) on the relevant markets. The market investigation revealed indeed that only a minority of POS terminal manufacturers consider that there will not remain a sufficient pool of customers post-Transaction. The few who indicated that there might not remain a sufficient pool of customers have only had limited sales to the Parties pre-Transaction and would thus likely not be heavily impacted by any customer foreclosure strategy.[332]

(355) Based on the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to potential vertical effects in relation to the markets for the manufacturing and supply of POS terminals (upstream) and merchant acquiring / NSP services / the provision and management of POS terminals (downstream) in the EEA.

330 Paragraph 60 of the Non-Horizontal Merger Guidelines.

331 Form CO, paragraph 743.

332 Response to question 61.2 of Questionnaire Q2 to PSPs.

4.6.1.3. Acquiring processing (upstream) – POS merchant acquiring / e-commerce merchant acquiring (downstream) – **Input foreclosure**

(356) Certain merchant acquirers do not handle the acquiring processing, the technical handling and routing of a payment transaction, in-house. When merchant acquirers procure their acquiring processing from a third party, a vertical relationship may exist. Worldline and Ingenico both perform acquiring processing in-house to meet their entire internal needs and do not source acquiring processing from the market. Therefore, customer foreclosure will not be assessed in this decision. However, Worldline provides acquiring processing services for third parties. An input foreclosure assessment is therefore presented below. Both Parties are active in the downstream markets for POS merchant acquiring and e-commerce merchant acquiring.

The Notifying Party's view

(357) The Notifying Party argues that the Transaction will not result in any significant impediment to effective competition in particular due to the fact that (i) the merged entity lacks power in the upstream market, (ii) the presence of alternative significant suppliers and (iii) the lack of incentive to foreclose.

The Commission's assessment

(358) For input foreclosure to be a concern, the vertically integrated firm resulting from the merger must have a significant degree of market power in the upstream market.[333] For the reasons laid out below, it is unlikely that the merged entity will benefit from a significant degree of market power in relation to acquiring processing. Moreover, the merged entity would lack incentives to pursue a foreclosure strategy.

(359) First, the merged entity will not have the ability to foreclose customers of acquiring processing services. Ingenico does not provide acquiring processing services to third parties. Therefore, the Transaction does not increase the ability of the merged entity to foreclose customers. Moreover, at EEA level, in a market comprising both transactions processed internally and to third parties, the Parties' combined market share was [10-20]% in 2019 in terms of number of transactions with a very limited increment from Ingenico ([0-5]%). On a market consisting of only transactions processed by third parties, the merged entity holds an EEA-wide market share of [30-40]% in terms of number of transactions, without any increment, as Ingenico only performs acquiring processing for own transactions. Customers and competitors responding to the market investigation confirmed that the merged entity will continue to be constrained by a large number of major, credible providers in the EEA, such as First Data, FIS, Adyen, Elavon, Evo, Wordpay, Barclays, SIA, Nets or Wirecard. In fact, only two customers identified Worldline among the top three suppliers of acquiring processing services in the EEA; indeed, customers mentioned First Data more often than Worldline as one of the three largest suppliers and competitors mentioned WorldPay more often.[334] In this vein, the large majority of customers consider that post-Transaction, there will remain sufficient choice of credible suppliers providing acquiring processing services in the EEA.[335] Finally, the large

333 Paragraph 35 of the Non-Horizontal Merger Guidelines.

334 Responses to questions 106 and 117 of Questionnaire Q2 to PSPs.

335 Responses to question 107 of Questionnaire Q2 to PSPs.

majority of customers and competitors are of the view that the Transaction will have a neutral or positive impact in terms of price, choice, quality and innovation in the market for acquiring processing and consider that the Transaction will not have any impact on their own businesses.[336] Therefore, at EEA level, the merged entity would not have the ability to foreclose access to acquiring processing services.

(360) Second, the Transaction does not materially change the incentives to pursue a foreclose strategy. ***[...]*** of the transactions processed by Worldline for third parties originate from France, the Netherlands, and Italy, where merchant acquirers are, exclusively or mostly, banks. Because of this, the merged entity has very low market shares on the downstream national POS merchant acquiring markets in these countries. More specifically, the combined market shares in the downstream market (value) are [0-5]% in the Netherlands, [0-5]% in France and [0-5]% in Italy, with a very limited increment, always below [0-5]%. In these countries, a foreclosure strategy would be unprofitable. Refusing to provide processing services to merchant acquirers would result in losses that cannot be recouped through a realistic margin increase on the national POS merchant acquiring market or through a realistic increase of market shares downstream. Therefore, the Transaction does not materially change the incentives of the merged entity to foreclose customers, as the merged entity achieves [the large majority]% of its third party acquiring processing transactions in countries in which in the downstream market the increment is always below [0-5]% and the combined market shares are limited. With regard to e-commerce merchant acquiring, the merged entity would also lack the incentives to foreclose, considering its limited market share in the EEA ([0-5]%).

(361) Based on the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to potential vertical effects in relation to the markets for acquiring processing services (upstream) and merchant acquiring for POS terminals or e-commerce merchant acquiring (downstream) in the EEA.

4.6.2. Conglomerate effects

(362) The Transaction gives rise to conglomerate relationships between the Parties' activities.

4.6.2.1. Production and supply of POS Terminals – POS merchant acquiring services / NSP services

(363) In the event that merchants procure POS terminals directly from the manufacturer and additionally buy POS merchant acquiring services (or NSP services), conglomerate effects between the two are conceivable. In the event that the merchant would procure (or rent) its POS terminals *via* a merchant acquirer, the relationship would instead be of a vertical nature (see Section 4.6.1.1)

The Notifying Party's view

(364) The Notifying Party submits that a conglomerate link between production and supply of POS terminals and POS merchant acquiring services (or NSP services) only exists

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[336] Responses to questions 108, 109, 118 and 119 of Questionnaire Q2 to PSPs.

for merchants who buy their POS terminals from the manufacturers, *i.e.* typically large merchants. SMEs typically buy or rent their POS terminals from their merchant acquirer/NSP, together with POS merchant acquiring services (or NSP services), in which case the linkage is of a vertical nature (this vertical linkage is discussed in Section 4.6.1.1 of this decision).[337]

(365) The Notifying Party argues that conglomerate effects are therefore only relevant for those (large) merchants that procure POS terminals and POS merchant acquiring/NSP services from the same company (that is both a POS terminal manufacturer and a merchant acquirer/NSP). The Notifying Party argues that no significant group of large merchants that meets this characterisation exists, as large merchant organise separate tenders for these two products and are not willing to single-source.[338]

(366) In support of this argument, the Parties provide several examples for Belgium, Germany and Luxembourg, where significant proportions of large merchants source POS terminals and POS merchant acquiring in separate tenders, and in some cases choose to procure them from different suppliers. [339]

(367) The Notifying Party further submits that non-proprietary protocols exist in Belgium (CTAP protocol) and Germany (ZVT protocol) which further facilitate switching of POS terminal providers and merchant acquirers. For Luxembourg, the Notifying Party submits that Worldline's POS merchant acquiring and POS terminals are already *de facto* technically tied, due to the use of the EP2 protocol, which is not compatible with competing merchant acquirers in Luxembourg.[340] Therefore, no merger-specific conglomerate effects can take place.[341]

The Commission's assessment

(368) The merged entity will offer POS terminals and merchant acquiring services for POS terminals, as well as NSP services in Germany. Considering that some customers purchaser both products, the Transaction gives raises to a conglomerate relationship. The merged entity could conceivably leverage its position on POS merchant acquiring (and/or NSP services in Germany) into the POS terminals market or vice versa. The Commission notes that both Worldline and Ingenico already offered both products pre-Transaction. Conglomerate effects may result in foreclosure when the merged entity has the ability and incentive to leverage a strong market position from one market to another. For instance, the merged entity may expand its position on the POS merchant acquiring/NSP market by using its advantage on the POS terminals market. Conversely, it may strengthen its strong position on the POS terminals market by bundling it with acquiring/NSP services.

(369) With regard to the possibility of leveraging its position in the POS merchant acquiring market, the Commission notes that during the market investigation, few PSPs voiced the concern that post-Transaction the merged entity could leverage its

337 Annex T to the Form CO, paragraph 92.
338 Annex T to the Form CO, paragraph 96.
339 Annex T to the Form CO, paragraphs 100-101 and 104-106.
340 Competing merchant acquirers in Luxembourg are primarily German acquirers and likely use the ZVT protocol.
341 Annex T to the Form CO, paragraphs 103, 107 and 111.

strong position in merchant acquiring to strengthen its position in the supply of POS terminals by forcing merchants to use POS terminals produced by the merged entity. According to one of the PSPs, the merged entity will hold a very strong position in the POS merchant acquiring market in the EEA, in excess of 50%, and if the merged entity would not allow merchants to use hardware from competing POS terminal manufacturers, a large proportion of the European market will not be accessible to the latter, increasing the merged entity's market power.[342]

(370) As regards a foreclosure strategy, whereby the merged entity would leverage any market power from its position in merchant acquiring, the Commission firstly notes that the merged entity will control significantly less of the POS merchant acquiring space than estimated in the complaint: the Notifying Party estimates that the Parties' combined share in overall POS merchant acquiring at EEA level represents [0-5]% and the results of the market investigation did not provide any reason to doubt the reliability of these estimates. Thus the merged entity would clearly lack the ability to engage in conglomerate foreclosure strategies relying on its market position in overall POS merchant acquiring at EEA level (and, in any event, the POS merchant acquiring market is national, as outlined in Section 4.2.1 above).

(371) Looking at national level, the merged entity would have market shares above 50% in Austria, Belgium and Luxembourg for POS merchant acquiring. In Germany the Transaction also gives rise to an affected market in merchant acquiring, however as discussed in Section 4.5.3, the merged entity will not have a significant degree of market power in this market. The same holds true for the market of NSP services in Germany.

(372) For Austria, Belgium and Luxembourg, despite the high market shares in POS merchant acquiring, the market investigation did not provide any indication that the merged entity could successfully implement a strategy that would significantly increase the risk of anti-competitive tying and bundling. The majority of respondents to the market investigation confirmed that they use competitive procurement processes such as bilateral negotiation with multiple suppliers or tender process and that those customers that purchase POS terminals directly from the manufacturer typically procure merchant acquiring services and POS terminals in separate processes.[343] Any tying strategy is therefore unlikely to succeed.

(373) This lack of ability and/or incentives to bundle the products is further evidenced by the fact, as described in Section 4.6.1.2, that pre-Transaction both Worldline and Ingenico already procure terminals from rival third party POS terminal suppliers for their installed base in countries where the Parties are strong players in POS merchant acquiring or NSP services, including Austria, Belgium and Germany. It follows that even in countries where the Parties are strong in POS merchant acquiring/NSP services, they have been unable and/or lacked the incentive to bundle POS merchant acquiring services and POS terminals and even for customers purchasing both products, the Parties had to offer POS terminals from competing suppliers to merchants due to strong customer preferences. Therefore, the Commission considers that it is unlikely that the merged entity would have the ability or incentive to

342 Responses to question 40 of Questionnaire Q2 to PSPs.

343 Responses to question 55 of Questionnaire Q2 to PSPs and Responses to questions 43 and 54 of questionnaire Q1 to Merchants.

leverage its market position on the merchant acquiring/NSP services markets to bundle the provision of this service with the supply of POS terminals.

(374) Moreover, even if the merged entity were to implement a bundling or tying strategy in Austria, Belgium and/or Luxembourg, which is unlikely for the reasons set out above, the effects on the EEA market for the supply of POS terminals would be very limited. Indeed, the market for the supply of POS terminals is EEA wide in scope, and Austria, Belgium and Luxembourg account for only a fraction of the total EEA market size for the supply of POS terminals. It follows that competitors would not lose a significant share of their sales of POS terminals in the EEA.

(375) Additionally, as explained in Section 4.6.1, the merged entity will not have the ability to degrade interoperability, as it does not control proprietary protocols to do so. Therefore, it is unlikely that the merged entity could engage in a technical tying strategy or that any such attempted strategy would be successful.

(376) Moreover, the merged entity would have a limited ability to engage in a foreclosure strategy relying on its market position in the manufacture and supply of POS terminals. The merged entity would have a market share of [40-50]% on the EEA-wide market for manufacturing and supply of POS terminals and as discussed in Section 4.5.5 the merged entity will not have a significant degree of market power in this market. In fact, the large majority of respondents to the market investigation indicated that post-Transaction there will remain a sufficient number of credible suppliers of POS terminals and a significant number of suppliers indicated that they have plans to expand their sales of POS terminals.[344]

(377) As mentioned above, the market investigation also confirmed the Parties' argument that customers tend to use competitive procurement processes and that those customers that purchase POS terminals directly from the manufacturer typically procure merchant acquiring services and POS terminals in separate processes.[345] Any tying strategy is therefore unlikely to succeed.

(378) Therefore, considering that (i) the merged entity will lack market power in the EEA-wide market for manufacturing and supply of POS terminals and in the space of POS merchant acquiring/NSP services in the EEA, including at national level, (ii) there are a number of alternative credible suppliers for POS terminals in the EEA and (iii) customers use competitive process to procure POS terminals and procure separately from merchant acquiring/NSP services, the merged entity will not be able to leverage its position in the POS terminal market to bundle POS terminals with POS merchant acquiring/NSP services.

(379) Based on the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to potential conglomerate effects in relation to the markets for the manufacturing and supply of POS terminals and its potential segmentations and POS merchant acquiring and its potential segmentations as well as NSP services in Germany.

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344 See section 4.6.1.1.

345 Responses to question 55 of Questionnaire Q2 to PSPs and Responses to questions 43 and 54 of questionnaire Q1 to Merchants.

4.6.2.2. Production and supply of POS terminals – Acquiring processing services

(380) Banks that provide merchant acquiring services at retail level may be customers for POS terminals and acquiring processing services, meaning that conglomerate effects are generally conceivable for the two markets.

The Notifying Party's view

(381) The Notifying Party argues that the Transaction will not result in any significant impediment to effective competition in particular due to (i) the fact that the merged entity lacks power in the production and supply of POS terminals and in the provision of acquiring processing services; (ii) the presence of alternative significant suppliers in both markets; and (iii) the fact that both markets are weakly related given that banks usually source both products from different suppliers or through different tenders processes and that the demand for these products originates from different entities within banks.

The Commission's assessment

(382) The ability to foreclose relies on the merged entity having a significant degree of market power in one of the markets concerned and on one of the products being viewed as particularly important, for instance because of a lack of alternatives or in the presence of capacity constraints. For the reasons laid out below it is unlikely that conglomerate effects arise in relation to the markets for production and supply of POS terminals and acquiring processing services.

(383) First, on the market for production and supply of POS terminals, the Parties have a combined market share of [40-50]% in the EEA but, for the reasons explained above in Section 4.6.1.1, the merged entity likely does not have a significant degree of market power in the market for the manufacture and supply of POS terminals. For acquiring processing, the Parties only have a modest combined market share of [10-20]% in the EEA and, for the reasons set out in Section 4.6.1.3, the merged entity does not have a significant degree of market power in the market for acquiring processing.

(384) Second, the market investigation confirmed the argument of the Parties that the large majority of customers procure POS terminals and acquiring processing services separately, using different tenders or different contracts.[346] Moreover, a significant number of customers procure acquiring processing services for POS transactions and POS terminals from different suppliers.[347]

(385) Therefore, considering that customers can and actually do procure POS terminals and acquiring processing services separately, the presence of alternative credible suppliers and the lack of a significant degree of market power in both markets for the reasons explained in Sections 4.6.1.1 and 4.6.1.3, conglomerate effects are unlikely.

(386) Based on the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to potential

[346] Responses to question 102 of Questionnaire Q2 to PSPs.
[347] Responses to question 101 of Questionnaire Q2 to PSPs.

conglomerate effects in relation to the markets for acquiring processing services and the supply of POS terminals in the EEA.

4.7. Summary of competitive concerns caused by the Transaction

(387) As described in the previous Sections, the Commission raises serious doubts for the following markets, in each case due to the horizontal non-coordinated effects of the Transaction:

(a) the market for **POS merchant acquiring in Austria**, including its potential segmentations by card brand and the segment for debit cards;[348]

(b) the market for **POS merchant acquiring in Belgium**, including its potential segmentations by card brand and credit/debit card;[349]

(c) the market for **POS merchant acquiring in Luxembourg**, including its potential segmentations by card brand and by debit/credit cards;

(d) the market for **the provision and management of POS terminals in Austria**; and

(e) the market for **the provision and management of POS terminals in Belgium**.

5. PROPOSED REMEDIES

5.1. Framework for the assessment of the commitments

(388) Where a concentration raises serious doubts as regards its compatibility with the internal market, the merging parties may undertake to modify the concentration to remove the grounds for the serious doubts identified by the Commission. Pursuant to Article 6(2) of the Merger Regulation, where the Commission finds that, following modification by the undertakings concerned, a notified concentration no longer raises serious doubts, it shall declare the concentration compatible with the internal market pursuant to Article 6(1)(b) of the Merger Regulation.

(389) As set out in the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the "Remedies Notice")[350], the commitments have to eliminate the competition concerns entirely, and have to be comprehensive and effective from all points of view.[351]

(390) In assessing whether commitments will maintain effective competition, the Commission considers all relevant factors, including the type, scale and scope of the

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[348] Whether competitive concerns arise for the credit card segment of the Austrian POS merchant acquiring market can be left open as such concerns are ultimately remedied (See Section 5).

[349] Whether competitive concerns arise for the international and domestic card network scheme segments of the Belgian POS merchant acquiring market can be left open as such concerns are ultimately remedied (See Section 5).

[350] OJ C 267, 22.10.2008, p. 1.

[351] Paragraph 9 of the Remedies Notice.

proposed commitments, with reference to the structure and particular characteristics of the market in which the transaction is likely to significantly impede effective competition, including the position of the parties and other participants on the market.[352]

(391) In order for the commitments to comply with those principles, they must be capable of being implemented effectively within a short period of time. Concerning the form of acceptable commitments, the Merger Regulation gives discretion to the Commission as long as the commitments meet the requisite standard. Structural commitments will meet the conditions set out above only in so far as the Commission is able to conclude with the requisite degree of certainty, at the time of its decision, that it will be possible to implement them, and that it will be likely that the new commercial structures resulting from them will be sufficiently workable and lasting to ensure that serious doubts are removed.[353] Divestiture commitments are normally the best way to eliminate competition concerns resulting from horizontal overlaps.

5.2. Proposed commitments

(392) On 9 September 2020, the Notifying Party submitted a set of commitments under Article 6(2) of the Merger Regulation (the "**First Commitments**"), in order to render the concentration compatible with the internal market.

(393) The Commission market tested the First Commitments to assess whether they are sufficient and suitable to remove the serious doubts identified in Section 4 of this decision. The feedback received from merchants and PSPs during the market test confirmed that the First Commitments could in principle remedy the serious doubts identified by the Commission, but subject to modifications to address a number of specific issues described below in Section 5.2.2 of this decision. On 24 September 2020, the Parties submitted revised Commitments under Article 6(2) of the Merger Regulation (the "**Final Commitments**") that aim to address the issues identified by the Commission.

5.2.1. Description of the First Commitments

(394) In order to render the Transaction compatible with the internal market, the Notifying Party submitted commitments consisting of the divestiture to a suitable purchaser (the "**Purchaser**") of: (i) Ingenico's POS merchant acquiring and POS provision and management business in Austria (the "**Austria Divestment Business**"), (ii) Ingenico's POS merchant acquiring and POS provision and management business in Belgium (the "**Belgium Divestment Business**"), and (iii) Worldline's merchant acquiring business in Luxembourg (the "**Luxembourg Divestment Business**"). Together, they are referred to as the "**Divestment Businesses**".

352 Paragraph 12 of the Remedies Notice.
353 Paragraph 10 of the Remedies Notice.

5.2.1.1. Scope of the Divestment Businesses

(395) The Divestment Businesses will contain the following assets:

(a) Austria Divestment Business: all commercial assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Austria Divestment Business:

– all customer contracts, relating to the markets for POS merchant acquiring services and POS installed base, entered into between Ingenico and merchants having their registered office in Austria and operating a business (sales of goods and/or services) in Austria[354] and the corresponding customer data and records. In total, approximately [10 000-11 000] clients are included;

– the relevant management, sales and customer support team associated to the Austria Divestment Business, i.e. ***[...]*** employees;

(b) Belgium Divestment Business: all commercial assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Belgium Divestment Business:

– all customer contracts, relating to the markets for POS merchant acquiring services and POS installed base, entered into between Ingenico and merchants having their registered office in Belgium and operating a business (sales of goods and/or services) in Belgium[355] and the corresponding customer data and records. In total, approximately [15 000-20 000] clients are included;

– the relevant management, sales and customer support team associated to the Belgium Divestment Business, i.e. ***[...]*** employees; and

(c) Luxembourg Divestment Business: all commercial assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Luxembourg Divestment Business, which relates to (i) all customer contracts with local merchants (SMBs) relating to the market for POS merchant acquiring services, entered into between these merchants having their registered office in Luxembourg and operating a business (sales of goods and/or services) in Luxembourg and Worldline, before the acquisition of Six Payment Services which was closed in November 2018 and that are using the C-TAP protocol as a technical solution;[356] and (ii) [0-10] Worldline local key account merchants, and the corresponding customer data and records. In total, approximately [1 000-2 000] clients are included.

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354 Except cross-border merchants which have achieved in 2019 a Merchant Sales Value below 50% in Austria, and a few public entities.

355 Except cross-border clients which have achieved in 2019 a Merchant Sales Value below 50% in Belgium and a few public entities.

356 Except a few public entities.

5.2.1.2. Purchaser requirements of the First Commitments

(396) Under the First Commitments, each of the Divestment Businesses may be sold separately to different Purchasers or to one and the same Purchaser. The choice of Purchaser(s) is subject to an approval by the Commission. In particular, the Purchaser(s) must fulfil the following criteria (together, the "**Purchaser Requirements**"):

(a) The Purchaser(s) shall be independent of and unconnected to the Notifying Party[357] and its Affiliated Undertakings (this being assessed having regard to the situation following the divestiture);

(b) The Purchaser(s) shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business(es) as a viable and active competitive force in competition with the Parties and other competitors; in particular, the Purchaser(s) should have the necessary back-office resources for all Divestment Businesses and the POS management expertise for the Divestment Businesses in Austria and in Belgium;

(c) The acquisition of the Divestment Business(es) by the Purchaser(s) 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(s) must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business(es); and

(d) Specifically for the Luxembourg Divestment Business, the Purchaser(s) should have the required personnel to operate it.

5.2.1.3. Other elements of the First Commitments

(397) To reinforce the structural effect of the First Commitments, the Parties commit that if less than ***[...]*** of the Divestment Businesses would be transferred to the relevant Purchaser(s) due to the refusal by certain merchants to agree to the transfer, the Parties shall substitute the non-transferred merchants with alternative, comparable (by merchant sales value) merchants. Where more than ***[...]*** of the Divestment Businesses would be transferred, the Parties commit to terminate, in compliance with legal requirements and the contractual terms, Ingenico's (in Belgium and Austria) and Worldline's (in Luxembourg) current merchant acquiring contracts for those customers who are in scope of the Divestment Business but would not transfer. The Parties shall also not reacquire influence over the Divestment Businesses or contract in Austria, Belgium or Luxembourg for merchant acquiring or POS provision and management services with customers that are part of the Divestment Businesses for a period of 5 years as from Closing.

(398) Furthermore, with the aim of ensuring a smooth transfer of the Divestment Businesses, the Notifying Party committed to provide an interim support arrangement to the Purchaser during the integration process (the "**Interim Support**

[357] For the avoidance of doubt, this requirement was updated to refer to the "Parties" in the Final Commitments.

Arrangement”). The Interim Support Arrangement consists of the supply, at cost and at the Purchaser’s option, for a period of up to 24 months of:

(a) Operations and product management, namely transaction processing, customer and acquirer servicing, and technical product management;

(b) The benefit of Ingenico’s (in Belgium and Austria) and Worldline’s (in Luxembourg) scheme licenses and payment institution licenses for the operation of the Divestment Businesses; and

(c) Other functions that might be reasonably necessary to facilitate the transition, such as an interim licence to use relevant trademarks.

(399) The First Commitments also provide that the Notifying Party should enter into related commitments, *inter alia* regarding the separation of the Divestment Businesses from its retained businesses, the preservation of the viability, marketability and competitiveness of the Divestment Businesses, including the appointment of a monitoring trustee and, if necessary, a divestiture trustee.

5.2.1.4. Notifying Party’s views

(400) The Notifying Party argues that the First Commitments would eliminate the Commission’s serious doubts in relation to the Transaction. In particular, the Notifying Party is of the view that:

(a) The First Commitments would address the Commission’s concerns as they: (i) remove the large majority of the overlap between the Parties for POS merchant acquiring and POS provision and management in Austria, (ii) remove the large majority of the overlap between the Parties for POS merchant acquiring and POS provision and management in Belgium, and (iii) remove more than the overlap between the Parties for POS merchant acquiring in Luxembourg;

(b) The Divestment Businesses are comprehensive and effective, allowing the Purchaser(s) to compete effectively in the relevant markets on a lasting basis; and

(c) The other elements of the First Commitments ensure that the Commitments are capable of being implemented effectively within a short period of time.

5.2.2. Assessment of the First Commitments

(401) The Commission conducted a market test of the Initial Commitments to investigate the scope and effectiveness of the Commitments, the viability and competitiveness of the Divestment Businesses, and the appropriateness of the Purchaser Requirements. The Commission’s assessment of each of these elements in light of the results of the market test is as follows.

5.2.2.1. Sufficiency to address concerns and scope

(402) As explained in Section 4 above, the Commission finds that the Transaction gives rise to serious doubts as to the compatibility of the concentration with the internal market in respect of each of: (i) POS merchant acquiring and POS provision and

management in Austria; (ii) POS merchant acquiring and POS provision and management in Belgium; and (iii) POS merchant acquiring in Luxembourg.

(403) In each of Austria, Belgium and Luxembourg, the First Commitments entail the divestment of (at least) the large majority of the overlap in the markets in which serious doubts result from the Transaction. The First Commitments would therefore ensure that in each of these markets the Transaction maintains effective competition at the level in effect pre-Transaction. More specifically:

(a) The Austria Divestment Business includes a client base of approximately [10 000-11 000] merchant acquiring customers, generating a merchant sales value of approximately EUR ***[...]*** in 2019. This represents a market share of approximately [5-10]%, meaning that the First Commitments would remove the large majority of the overlap between the Parties ([5-10]%)[358] in the POS merchant acquiring market in Austria. Likewise, virtually the whole of the overlap in Austria is divested in the POS provision and management market, as the Austria Divestment Business includes a POS installed base of approximately [10 000-15 000] POS terminals, representing a market share of [5-10]% (compared with an overlap of [5-10]%).[359]

(b) The Belgium Divestment Business includes a client base of approximately [15 000-20 000] merchant acquiring clients, generating a merchant sales value of approximately EUR ***[...]*** in 2019. This represents a market share of approximately [0-5]%, meaning that the First Commitments would remove virtually the whole of the overlap between the Parties ([0-5]%) in the POS merchant acquiring market in Belgium. Similarly, virtually the whole of overlap in Belgium is divested in the POS provision and management market, as the Belgium Divestment Business includes a POS installed base of approximately [20 000-25 000] POS terminals, representing a market share of [5-10]% (compared with an overlap of [5-10]%).[360]

(c) The Luxembourg Divestment Business includes a client base of approximately [1 000-2 000] merchant acquiring clients, generating a merchant sales value of approximately EUR ***[...]*** in 2019. This represents a market share of approximately [5-10]%, meaning that the First Commitments would divest more than the overlap between the Parties ([5-10]%) in the POS merchant acquiring market in Luxembourg.[361]

(404) The market test confirmed the suitability of the First Commitments to address the Commission's serious doubts. The vast majority of customers and competitors that expressed a view considered that the First Commitments are suitable to effectively remove the competitive concerns relating to the markets for POS merchant acquiring

[358] The Divestment Business is slightly smaller than the total size of the increment as the merged entity will retain those merchants generating more than 50% of their merchant sales value outside of Austria and a few public entities.

[359] Form RM, paragraphs 21-29.

[360] Form RM, paragraphs 5-12.

[361] Form RM, paragraphs 13-20.

in Austria, Belgium and Luxembourg and POS provision and management services in Austria and Belgium.[362]

(405) The market test also confirmed that the Austria Divestment Business and Belgium Divestment Business contain sufficient customers, personnel and support services to ensure that it will be an effective competitor in the hands of a suitable Purchaser.[363] One respondent in each of Austria and Belgium noted that the Austria Divestment Business and Belgium Divestment Business, respectively, exclude those merchant acquiring clients that generate the majority of merchant sales value outside of those countries, and explained that this could risk excluding key accounts and so may reduce the competitiveness of the Divestment Businesses.[364] However, the overwhelming majority of respondents did not have such concerns and considered the scope of the Divestment Businesses to be sufficient. In each case, the divestment accounts for the large majority of the overlap and includes customers whose commercial focus is on Austria or Belgium respectively (in the sense that more than 50% of their merchant sales value is generated in the country), including key accounts. Therefore, the Commission considers this concern does not call into question the competitiveness or scope of the Divestment Business or the efficacy of the First Commitments in resolving the concerns.

(406) In relation to Luxembourg, respondents to the market test considered that sufficient customers and support services are included. Respondents noted that the transfer of personnel would not be strictly necessary to allow a suitable purchaser to compete effectively on the relevant Luxembourgish markets.[365] However, this point should be viewed in the context of the market test results relating to viability, as described below.

(407) The results of market test did not identify any other material assets that would be necessary for the effectiveness of the divestment but that have not been included in the First Commitments.

(408) In light of the above, the Commission considers that the First Commitments are adequate in scope and suitable to address the serious doubts the Transaction would otherwise give rise to, as the Divestment Businesses will each be an effective competitor in the hands of a suitable Purchaser.

5.2.2.2. Viability and competitiveness of the Divestment Businesses

(409) The Austria Divestment Business and Belgium Divestment Business each represent (at least) the large majority of Ingenico's current activities in Belgium regarding POS merchant acquiring and POS provision and management. Likewise, the Luxembourg Divestment Business is larger than the increment and reflects the size of Worldline's

362 Responses to questions 3, 5 and 7 of Questionnaire R1 to Merchants and PSPs.

363 Responses to questions 4 and 6 of Questionnaire R1 to Merchants and PSPs. For completeness, some respondents considered that the Belgium Divestment Business may be over-staffed and so the Purchaser should have the option of whether these personnel should transfer as part of the Belgium Divestment Business. The Commission understands that it was the Notifying Party's intention in the First Commitments that personnel should be at the Purchaser(s)' option for the Belgium Divestment Business and Luxembourg Divestment Business; this has been clarified in the Final Commitments.

364 Responses to questions 3 and 6 of Questionnaire R1 to Merchants and PSPs.

365 Responses to question 8 of Questionnaire R1 to Merchants and PSPs.

POS merchant acquiring business in Luxembourg prior to its acquisition of Six Payment Services. In 2019, the Divestment Businesses generated net revenues of EUR ***[...]*** million in Austria, EUR ***[...]*** million in Belgium and EUR ***[...]*** million in Luxembourg, with a strong level of profitability (gross margins of EUR ***[...]*** million, EUR ***[...]*** million, and EUR ***[...]*** million, respectively).

(410) The market test clearly confirmed that the Austria Divestment Business and Belgium Divestment Business are viable as individual businesses.[366] However, in relation to all three Divestment Businesses, a number of customers and competitors pointed to the growing importance of a supplier's ability to provide omnichannel merchant acquiring solutions (including both POS merchant acquiring and e-commerce merchant acquiring solutions), which was also reflected in the market investigation.[367] Accordingly, it was suggested that to ensure the competitiveness of the Divestment Businesses, they should be capable of offering e-commerce merchant acquiring solutions as well as POS merchant acquiring solutions. This would be the case if the Purchaser(s) were capable of offering e-commerce merchant acquiring solutions in the relevant Member State(s).

(411) However, the market test indicated concerns regarding the viability of the Luxembourg Divestment Business, in particular due to the small size of the Luxembourg Divestment Business and the relevant markets in Luxembourg.[368] The Commission considers in light of the feedback of the market test that the Luxembourg Divestment would, nevertheless, be viable and competitive if sold in a context where it can benefit from the Purchaser's scale in an adjacent country. This could be the case if it were sold together with the Belgium Divestment Business or if the Purchaser has a significant presence in an adjacent Member State.

(412) Most respondents confirmed that the Interim Support Arrangements proposed under the First Commitments are adequate in scope and duration to enable the Purchaser(s) to start operating the Divestment Business successfully.[369] The vast majority of respondents did not identify any additional support services that are necessary to include within the Interim Support Arrangements to ensure a smooth transfer of the Divestment Businesses to the Purchaser(s).[370]

(413) In light of the above, the Commission considers that the First Commitments are adequate to ensure the viability of both the Austria Divestment Business and the Belgium Divestment Business if they are acquired by suitable Purchaser(s). All three Divestment Businesses are competitive, provided that the Purchaser(s) are able to provide e-commerce merchant acquiring solutions post-divestment. However, in light of the feedback of the market test, the Luxembourg Divestment Business is not viable and competitive on a standalone basis.

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366 Responses to questions 10.1-10.2 of Questionnaire R1 to Merchants and PSPs.

367 Responses to questions 5.1, 6.1, 14.1, 15.3.1, 19.1, 20 of Questionnaire R1 to Merchants and PSPs; responses to question 11 of Questionnaire Q1 to Merchants; responses to questions 11.1, 35 and 38 of Questionnaire Q2 to PSPs.

368 Responses to questions 10.3, 10.3.1 and 9 of Questionnaire R1 to Merchants and PSPs.

369 Responses to question 11 of Questionnaire R1 to Merchants and PSPs.

370 Responses to question 11.1 of Questionnaire R1 to Merchants and PSPs.

5.2.2.3. Purchaser Requirements, marketability and potential purchasers

(414) The majority of respondents to the market test confirmed that the Purchaser Requirements in the First Commitments are appropriate to identify a suitable Purchaser.[371]

(415) As regards the need for further Purchaser Requirements, respondents generally did not consider it necessary for a suitable Purchaser to already be active in the Member State of the Divestment Business. Rather, respondents generally considered that it was sufficient for a Purchaser to be active as a merchant acquirer in the EEA, pointing to the fact that the necessary licences to operate are valid in all Member States as result of the EEA-wide "passporting" regime.[372]

(416) Otherwise, the overall results of the market test did not indicate that any additional Purchaser Requirements would be appropriate. While it was considered advantageous for a Purchaser to already hold relevant scheme licences (e.g. Visa, Mastercard, local schemes such as Bancontact), the market test confirmed that a Purchaser is reasonably expected to be able to procure any necessary scheme licences within the duration of the Interim Support Agreement.[373]

(417) The vast majority of respondents indicated that they consider the Divestment Businesses to be attractive to a Purchaser(s).[374] Indeed, several respondents expressed preliminary interest in acquiring each of the Divestment Businesses, with some Purchasers interested in acquiring more than one of them.[375]

(418) In light of the above, the Commission considers that the Divestment Businesses are perceived as marketable and attractive businesses. However, to ensure the suitability of the Purchaser(s), the Purchaser Requirements should be amended to require that the Purchaser(s) have the necessary licences to operate as a merchant acquirer in the relevant Member States, or have these licences within the EEA and be able to benefit from the "passporting" regime.

5.2.3. Description of the Final Commitments

(419) In response to the Commission's feedback regarding the outcome of the market test and its preliminary assessment, the Parties submitted the Final Commitments on 24 September 2020. The Final Commitments represent an amended version of the First Commitments, with the following changes.[376]

(420) First, three additional Purchaser Requirements have been introduced, namely that:

(a) the Purchaser(s) must "*have the required licences or shall extend an existing EU licence for operating in Belgium and/or Austria and/or Luxembourg*";

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371 Responses to question 14 of Questionnaire R1 to Merchants and PSPs.

372 Responses to question 15 of Questionnaire R1 to Merchants and PSPs; see Article 11(9) of the Payments Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on Payment Services in the Internal Market.

373 Responses to questions 16 and 18 of Questionnaire R1 to Merchants and PSPs.

374 Responses to question 12 of Questionnaire R1 to Merchants and PSPs.

375 Responses to question 13 of Questionnaire R1 to Merchants and PSPs.

376 The Final Commitments also included certain clarificatory modifications that were not of major significance and so are not discussed in this decision.

(b) the Purchaser(s) must "*be capable of offering e-commerce merchant acquiring services to the transferred merchants, or be able to do so in the near future, in Belgium and/or Austria and/or Luxembourg, as relevant*"; and

(c) the Purchaser of the Luxembourg Divestment Business must "*already operate in a neighbouring geographic merchant acquiring market, e.g. in the Benelux region, Germany or France, with a sufficient presence to operate the Luxembourg Divestment Business in a viable and competitive manner*".

(421) Second, it was clarified that the Personnel shall be included within the scope of the Austria Divestment Business and Belgium Divestment Business only at the option of the Purchaser(s).

(422) All of these changes have been incorporated into and form an integral part of the Final Commitments annexed to this decision.

5.2.4. Assessment and conclusion on the Final Commitments

(423) The amendments introduced by the Parties into the Final Commitments resolve all of the concerns that the Commission had regarding the First Commitments. Accordingly, based on the information available to it, the Commission is satisfied that the Final Commitments are feasible, viable, competitive and marketable.

(424) Moreover, for the reasons outlined above, and in view of the results of the market test, the Commission concludes that the Final Commitments entered into by the undertakings concerned and as submitted to the Commission on 24 September 2020 are sufficient to eliminate the serious doubts as to the compatibility of the concentration with the internal market in respect of each of: (i) POS merchant acquiring and POS provision and management in Austria, (ii) POS merchant acquiring and POS provision and management in Belgium, and (iii) POS merchant acquiring in Luxembourg.

5.3. Conclusion on remedies

(425) Under the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering a notified concentration compatible with the internal market.

(426) 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 Parties. 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.

(427) In accordance with the distinction described in the previous paragraph, the decision in this case is conditioned on the full compliance with the requirements set out in

Section B of the Final Commitments (including the Schedule), which constitute conditions. The remaining requirements set out in the other Sections of the Final Commitments constitute obligations, as they concern the implementing steps that are necessary to achieve the modifications sought in a manner compatible with the internal market.

(428) The full text of the Final Commitments is annexed to this decision and forms an integral part thereof.

6. CONCLUSION

(429) For the above reasons, the Commission has decided not to oppose the proposed concentration as modified by the Final 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 Section B (including the Schedule) of the Final Commitments annexed to the present decision and with the obligations contained in the other sections of the said Final 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
Executive Vice-President

Case M.9776 – Worldline / Ingenico

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the "***Merger Regulation***"), Worldline S.A. (the "***Notifying Party***" or "***Worldline***") hereby enters into the following Commitments (the "***Commitments***") vis-à-vis the European Commission (the "***Commission***") with a view to rendering the acquisition of sole control of the whole Ingenico Group S.A. ("***Ingenico***") (Ingenico and Worldline are referred to as the "***Parties***", or post-transaction, the "***Combined Entity***") (the "***Concentration***") compatible with the internal market and the functioning of the EEA Agreement.

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

This text shall be interpreted in light of the Commission's decision pursuant to Article 6(1)(b) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (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 (the "***Remedies Notice***").

1. 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 (the "***Consolidated Jurisdictional Notice***").

Assets: the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Businesses as indicated in Section B, paragraph 8 (a), (b) and (c) and described more in detail in the Schedule.

Closing: the transfer of the legal title to the Divestment Businesses to the Purchaser.

Closing Date: the closing of the proposed transaction filed under case M.9776.

Closing Period: the period of 6 months from the approval of the Purchaser and the terms of sale by the Commission.

Combined Entity: Worldline and Ingenico post-transaction

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(es): Part of Ingenico's (in Belgium and Austria) and Worldline's (in Luxembourg) client portfolio, key assets and key personnel as defined and detailed in the Schedule which the Combined Entity commits to divest (respectively the Belgian Divestment Business, the Luxembourg Divestment Business and the Austrian Divestment Business).

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 Businesses to one or several Purchaser(s) at no minimum price at the expiry of the first Divestiture Period.

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of *[...]* from the Effective Date, as may be extended in the conditions set out in paragraph 45 of the present Commitments Letter.

Hold Separate Manager: the person appointed by Worldline for the Divestment Businesses to manage the day-to-day business under the supervision of the Monitoring Trustee.

Ingenico: Ingenico is a *société anonyme à conseil d'administration* incorporated under the laws of France and listed on Euronext Paris with a market capitalization of approx. EUR 6,7 billion as at January 31st, 2020. Ingenico has its official seat in Paris, France, and its registered office at 28/32 Boulevard de Grenelle, (75015) Paris, registered with the French Trade Register of the Chamber of Commerce under number 317 218 758 (Paris). Ingenico here refers to Ingenico Group S.A. and all controlled subsidiaries.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment Businesses, as listed in the Schedule, including the Hold Separate Manager.

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 and Ingenico's compliance with the conditions and obligations attached to the Decision.

Parties: the Notifying Party and the target of the concentration.

Personnel: all staff currently employed by the Divestment Businesses, including staff seconded to the Divestment Businesses, shared personnel as well as the additional personnel listed in the Schedule.

Purchaser(s): the entity(ies) approved by the Commission as acquirer(s) of all or part of the Divestment Businesses in accordance with the criteria set out in Section D.

Purchaser Criteria: the criteria laid down in paragraph 18 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

Schedule: the schedule to these Commitments describing more in detail the Divestment Businesses.

Trustee(s): the Monitoring Trustee and/or the Divestiture Trustee as the case may be.

Trustee Divestiture Period: the period of six months from the end of the First Divestiture Period.

Worldline: Worldline is a *société anonyme à conseil d'administration* incorporated under the laws of France and listed on Euronext Paris with a market capitalization of approximately EUR 11,6 billion as at January 31st, 2020. Worldline has its official seat in Bezons, France, and its registered office at 80 quai Voltaire, (95870) Bezons, registered with the French Trade Register of the Chamber of Commerce under number 378 901 946 (Pontoise).

2. SECTION B. THE COMMITMENT TO DIVEST AND THE DIVESTMENT BUSINESSES

Commitment to divest

2. In order to maintain effective competition, Worldline commits to divest, or procures the divestiture of the Divestment Businesses by the end of the Trustee Divestiture Period as a going concern to a one or more purchaser(s) and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 19 of these Commitments. To carry out the divestiture, Worldline commits to find one or several purchaser(s) and to enter into (a) final binding sale and purchase agreement(s) for the sale of the Divestment Businesses 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 Businesses in accordance with the procedure described in paragraph 32 in the Trustee Divestiture Period.

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 in paragraph 19; and

   (b) the Closing of the sale of the Divestment Businesses to the Purchaser(s) takes place within the Closing Period.

4. In order to reinforce the structural effect of the Commitments, the Combined Entity commits:

   i. in the event where less than ***[...]*** of the Divestment Businesses would be transferred to one or more Purchasers by the date of Closing due to a merchant's refusal, to substitute non transferred merchants by alternative merchants, at the choice of the Parties, either merchants from Worldline or from Ingenico, comparable[1] to those included in the Divestment Businesses "the ***Merchant Substitution***";

ii. in the event where more than ***[...]*** of the Divestment Businesses would be transferred to one or more Purchasers, to terminate, in compliance with legal requirements and the contractual terms, Ingenico's (in Belgium and Austria) and Worldline's (in Luxembourg) current acquiring contracts remaining in the scope of the Divestment Businesses at the expiry of the Closing Period, if any; for the avoidance of doubt, this termination will not concern merchants that have been kept by Worldline as a result of the Merchant Substitution pursuant to paragraph 4.i of the present Commitments Letter. The Combined Entity 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, the Combined Entity will endeavour its best efforts to procure the customer's consent (either the express or tacit consent).

6. In order to maintain the structural effect of the Commitments, the Notifying Party shall, for a period of 5 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Businesses, and in particular it shall (i) instruct commercial teams not to directly approach and (ii) not directly contract and on-board onto its acquiring system the customers of the Divestment Businesses, unless, following the submission of a reasoned request from the Notifying Party showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 46 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the Divestment Businesses (or absence of contracts with its customers) is no longer necessary to render the proposed concentration compatible with the internal market.

7. In addition, the Combined Entity commits to duly inform in writing its indirect sales channels partners in Belgium, Luxembourg and Austria (if any) no later than one week after the Effective Date that they will not be able to contract merchant acquiring

[1] With an equivalent merchant sales value.

or POS terminal provision and management services (as relevant) with customers that are part of the Divestment Businesses for a period of 5 years as from the Closing.

Structure and definition of the Divestment Businesses

8. The Divestment Businesses consists of (i) Ingenico's merchant acquiring business in Belgium and Austria and (ii) Worldline's merchant acquiring business in Luxembourg as detailed in the Schedule. The legal and functional structure of the Divestment Businesses as operated to date is described in the Schedule. The Divestment Businesses, described in more detail in the Schedule, includes all commercial assets in all three countries and related staff (except in Luxembourg) at the option of the Purchaser that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Businesses.

9. In addition, the Divestment Businesses include the benefit, for a transitional period of up to 24 months after Closing and on terms and conditions equivalent to those at present afforded to the Divestment Businesses, set at cost, of all current arrangements under which Ingenico, Worldline or their Affiliated Undertakings supply products or services to the Divestment Businesses, as detailed in the Schedule, unless otherwise agreed with the Purchaser. Strict Chinese wall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements (for example, product roadmaps) will not be shared with, or passed on to, anyone else.

3. SECTION C. RELATED COMMITMENTS

Preservation of viability, marketability and competitiveness

10. From the Effective Date until Closing, the Notifying Party shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Divestment Businesses, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Businesses. In particular the Combined Entity undertakes:

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

(b) to make available, or procure to make available, sufficient resources for the development of the Divestment Businesses, 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 Businesses, and not to solicit or move any Personnel to Worldline's remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Businesses, 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>

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

12. Until Closing, Worldline shall assist the Monitoring Trustee in ensuring that the Divestment Businesses are managed as a distinct and saleable entity separate from the business(es) which Worldline is retaining. 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 Businesses 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. 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 10(c) of these Commitments. The Commission may, after having heard Worldline, require Worldline to replace the Hold Separate Manager.

Ring-fencing

13. Worldline and Ingenico shall implement, or procure to implement, all necessary measures to ensure that they do not, after the Effective Date, obtain any Confidential Information relating to the Divestment Businesses and that any such Confidential Information obtained by Worldline or Ingenico before the Effective Date will be eliminated and not be used by either Worldline or Ingenico. In particular, the participation of the Divestment Businesses in any central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Businesses. Worldline and Ingenico may obtain or keep information relating to the Divestment Businesses which is reasonably necessary for the divestiture of the Divestment Businesses, or as agreed between Worldline and the Purchaser(s) in particular in the context of Transitional Services agreements, or the disclosure of which to Worldline or Ingenico is required by law.

Non-solicitation clause

14. 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 Businesses for a period of 2 years after Closing.

Due diligence

15. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Businesses, Worldline and Ingenico 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 Businesses;
    (b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

16. Worldline shall submit written reports in English on potential purchasers of the Divestment Businesses 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 all or part of the Divestment Businesses 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.

17. 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 and the Monitoring Trustee before sending the memorandum out to potential purchasers.

4. SECTION D. THE PURCHASER

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

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

(b) The Purchaser(s) shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business(es) as a viable and active competitive force in competition with the Parties and other competitors; in particular, the Purchaser(s) should have the necessary back-office resources for all Divestment Businesses and the POS management expertise for the Divestment Businesses in Austria and in Belgium.

(c) The Purchaser(s) shall have the required licenses or shall extend an existing EU license[2] for operating in Belgium, and/or Austria and/or Luxembourg.

(d) The Purchaser(s) shall be capable of offering e-commerce merchant acquiring services to the transferred merchants, or be able to do so in the near future in Belgium and/or Austria and/or Luxembourg, as relevant.

(e) The acquisition of the Divestment Business(es) by the Purchaser(s) 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(s) must reasonably be

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2 Extension of a payment institution license from an EU Member State to another Member State, referred to as "passporting", is a mere formality.

expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business(es).

(f) Specifically for the Luxembourg Divestment Business, the Purchaser(s) should (i) have the required personnel to operate it and (ii) already operate in a neighboring geographic merchant acquiring market, *e.g.* in the Benelux region, Germany or France with a sufficient presence to operate the Luxembourg Divestment Business in a viable and competitive manner.

19. The final binding sale and purchase agreement (as well as ancillary agreements) relating to the divestment of the Divestment Business(es) 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(es) is being sold in a manner consistent with the Commission's Decision and the Commitments.

20. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Criteria and that the Divestment Business(es) 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(es) 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(es) after the sale, taking account of the proposed purchaser.

5. SECTION E. TRUSTEE

I. Appointment procedure

21. Worldline shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. The Notifying Party commits not to close the Concentration before the appointment of a Monitoring Trustee.

22. If Worldline has not entered into a (or several) binding sale and purchase agreement(s) regarding the Divestment Businesses 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.

23. The Trustee shall:

(i) at the time of appointment, be independent of the Notifying Party and its Affiliated Undertakings;

(ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and

(iii) neither have nor become exposed to a Conflict of Interest.

24. 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 Businesses, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

Proposal by Worldline

25. No later than two weeks 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 23 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

26. 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 cause 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 among 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 Worldline

27. 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 21 and 26 of these Commitments.

Trustee nominated by the Commission

28. 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. <u>Functions of the Trustee</u>

29. 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

30. The Monitoring Trustee shall:

(i) propose in its first report to the Commission a detailed 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 Businesses with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by Worldline and Ingenico 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 Businesses, and the keeping separate of the Divestment Businesses from the business retained by the Parties, in accordance with paragraphs 10 and 11 of these Commitments;

(b) supervise the management of the Divestment Businesses as a distinct and saleable entity, in accordance with paragraph 12 of these Commitments;

(c) with respect to Confidential Information:

- determine all necessary measures to ensure that Worldline and Ingenico do not after the Effective Date obtain any Confidential Information relating to the Divestment Businesses,
- in particular strive for the severing of the Divestment Businesses' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Businesses,
- make sure that any Confidential Information relating to the Divestment Businesses obtained by Worldline and Ingenico before the Effective Date is eliminated and will not be used by either Worldline or Ingenico, and
- decide whether such information may be disclosed to or kept by Worldline or Ingenico as the disclosure is reasonably necessary to

allow them to carry out the divestiture (in particular in the context of Transitional Services agreements, any information as agreed by Worldline or Ingenico and the Purchaser(s)) or as the disclosure is required by law;

(d) monitor the splitting of assets and the allocation of Personnel between the Divestment Businesses and Worldline, Ingenico or Affiliated Undertakings;

(iii) propose to Worldline or Ingenico such measures as the Monitoring Trustee considers necessary to ensure their 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 Businesses, the holding separate of the Divestment Businesses 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 Businesses 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 Businesses 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 or Ingenico is failing to comply with these Commitments;

(viii) within one week after receipt of the documented proposal referred to in paragraph 19 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 Businesses after the Sale and as to whether the Divestment Businesses 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 Businesses without one or more Assets or not all of the Personnel affects the viability of the Divestment Businesses 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.

31. 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

32. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business(es) 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 in accordance with paragraphs 18 and 19 of these 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 and Ingenico, subject to the Notifying Party unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

33. 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 days after the end of every month with a simultaneous copy to

the Monitoring Trustee and a non-confidential copy to the Notifying Party.

III. Duties and obligations of the Parties

34. Worldline and Ingenico shall provide and shall cause their 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, Ingenico's or the Divestment Businesses' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and Worldline, Ingenico and the Divestment Businesses shall provide the Trustee upon request with copies of any document. Worldline, Ingenico and the Divestment Businesses 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.

35. Worldline and Ingenico shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Businesses. This shall include all administrative support functions relating to the Divestment Businesses which are currently carried out at headquarters level. Worldline and Ingenico shall provide and shall cause their 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.

36. 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.

37. 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 willful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.

38. 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 37 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.

39. Worldline agrees that the Commission may share Confidential Information proprietary to Worldline and Ingenico 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*.
40. The Notifying Party 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.

41. 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>

42. 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.

43. If the Trustee is removed according to paragraph 42 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 21-28 of these Commitments.

44. Unless removed according to paragraph 42 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.

6. SECTION F. THE REVIEW CLAUSE

45. 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 the Notifying Party. Only in exceptional circumstances shall Worldline be entitled to request an extension within the last month of any period.

46. The Commission may further, in response to a reasoned request from the Notifying Party 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 the Notifying Party. 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.

7. SECTION G. ENTRY INTO FORCE

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

duly authorised for and on behalf of Worldline

(Signed)

On 24 September 2020

duly authorised for and on behalf of Ingenico

(Signed)

On 24 September 2020

SCHEDULE

1. The Divestment Businesses as operated to date have the following legal and functional structure:

    - Belgium: The Belgian Divestment Business is operated directly by Ingenico from Belgium 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 Belgian Divestment Business:
        - all customer contracts, relating to the markets for POS merchant acquiring services and POS installed base, entered into between Ingenico and merchants having their registered office in Belgium and operating a business (sales of goods and /or services) in Belgium (the "***Ingenico Belgian Clients Portfolio***"[1] and the corresponding customer data and records;
        - at the option of the Purchaser, the relevant management, sales and customer support team associated to the Belgian Divestment Business, *i.e.* ***[...]*** employees.
    - Luxembourg: The Luxembourg Divestment Business is operated directly by Worldline from Luxembourg and consists in all commercial assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Luxembourg Divestment Business, which relates to (i) all customer contracts with local merchants (SMBs) relating to the market for POS merchant acquiring services, entered into between these merchants having their registered office in Luxembourg and operating a business (sales of goods and /or services) in Luxembourg and Worldline, before the acquisition of Six Payment Services ("**SPS**") which was closed in November 2018 and that are using the C-TAP protocol as a technical solution[2] and (ii) [0-10] Worldline local key account merchants ("***Worldline Luxembourg Clients Portfolio***"); and the corresponding customer data and records.
    - Austria: The Austrian Divestment Business is operated directly by Ingenico (Payone) from Austria and consists in all commercial assets and staff that contribute to the current operation or are necessary to

1 Except cross-border clients which have achieved in 2019 a Merchant Sales Value below 50% in Belgium and a few public entities.

2 Except a few public entities.

ensure the viability and competitiveness of the Austrian Divestment Business:

- all customer contracts, relating to the markets for POS merchant acquiring services and POS installed base, entered into between Ingenico and merchants having their registered office in Austria and operating a business (sales of goods and /or services) in Austria (the "***Ingenico Austrian Clients Portfolio***")[3] and the corresponding customer data and records;
- at the option of the Purchaser, the relevant management, sales and customer support team associated to the Austrian Divestment Business, *i.e.* ***[...]*** employees.

2. In accordance with paragraph 8 of these Commitments, the Divestment Businesses include, but are not limited to:

(a) the following main contracts, agreements, commitments and understanding:

- the customer contracts of the Ingenico Belgian and Austrian Clients Portfolio;
- the customer contracts of the Worldline Luxembourg Clients Portfolio.

(b) the following customer, credit and other records:

- to the best knowledge of the Combined Entity, the Ingenico Belgian Clients Portfolio is currently estimated at approx. [15000-20000] clients, the Worldline Luxembourg Clients Portfolio is currently estimated at approx. [1000-2000] clients and the Ingenico Austrian Clients Portfolio is currently estimated at approx. [10000-11000] clients. The exact portfolios will be confirmed at the Effective Date and regularly updated by the monitoring trustee;
- all corresponding merchant data and record.

3 Except cross-border merchants which have achieved in 2019 a Merchant Sales Value below 50% in Austria, and a few public entities.

(c) the following Personnel:

- the management, sales and customer support team associated to the Belgian Divestment Business, i.e. ***[...]*** employees, at the option of the Purchaser;
- all Ingenico's employees in Austria, i.e. ***[...]*** employees, at the option of the Purchaser.

(d) the Interim Service arrangements for the supply with the following products or services by Worldline, Ingenico or Affiliated Undertakings for a transitional period of up to 24 months after Closing, at the option of the purchaser, and provided at costs during that period of time:

- operations and product management, namely:
    i. transaction processing *i.e.* technical processing of transaction, namely authorization, clearing and settlement*;*
    ii. customer and acquirer servicing (such as the call center or fraud handling);
    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: Ingenico and Worldline have generic licenses for international payment schemes which are not specific to the Belgian, Luxembourg and Divestment Packages. The Purchaser(s) is/are reasonably expected to have such licenses or to obtain/extend them for operating in Belgium, Luxembourg and/or Austria. Operations under the interim service agreement will be conducted under Ingenico’s (in Belgium and Austria) or Worldline's (in Luxembourg) licenses while the business benefits and the financial risks will be transferred to the Purchaser(s).
- 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(s).

(e) the following Key Personnel: at the option of the Purchaser, all Personnel and the Hold Separate Manager that will be appointed at a later stage;

(f) the following main tangible assets: customer contracts with Ingenico Belgian and Austrian Clients Portfolio and customer contracts with

Worldline Luxembourg Clients Portfolio;

3. A list of all active merchants in 2019 included in the Ingenico Belgian and Austrian Clients Portfolio and the Worldline Luxembourg Clients Portfolio is provided as Annex A. Possible adjustments of the respective merchant lists will be made at Closing date in order to fully reflect updated active merchants at Closing date.

4. The Divestment Businesses shall not include:

   (a) cross-border merchants which have achieved less than 50% of their MSV in 2019 in Belgium for the Ingenico Belgian Clients, cross-border merchants which have achieved less than 50% of their MSV in 2019 in Austria for the Ingenico Austrian Clients Portfolio, as well as public entities merchants, to the extent that these assets are not necessary for the viability and the competitiveness of the Divestment Businesses;

   (b) trademarks, service marks or brands or any licenses thereto as there is no specific trademark for the business undertaken by Ingenico in Belgium or Austria, or by Worldline in Luxembourg;

   (c) 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(s);

   (d) 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(s).

5. If there is any asset or personnel which is not be covered by paragraph 2 of this Schedule but which is both used (exclusively or not) in the Divestment Businesses and necessary for the continued viability and competitiveness of the Divestment Businesses, that asset or adequate substitute will be offered to potential purchasers.

ANNEX 2

Clients with ACQ Services in SMB BE

[...]

	MSV 2019	TRX 2019	# merchants
TOTAL	[...]	[...]	[15000-20000]

ANNEX 3

Worldline local CTAP portfolio in Luxembourg in 2019

Billing ID	Merchant Billing Name	Sector	TRX 2019	MSV 2019	REV 2019
[1.000-2.000]			[...]	[...]	[...]

[...]

ANNEX 4

Clients with ACQ Services in SMB AT

[...]

	MSV 2019	TRX 2019	# merchants
TOTAL	[...]	[...]	[10000-11000]