



EUROPEAN COMMISSION

DG Competition

Case M.9744 – MASTERCARD / NETS

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 22(3)

Date: 2.4.2020



EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

**To the Konkurrence- og
Forbrugerstyrelsen**

Subject: Case M.9744 – MasterCard / Nets
Request for referral of 27 February 2020 by Denmark to the Commission pursuant to Article 22(1) of Council Regulation (EC) No. 139/2004¹ and Article 57 of the Agreement on the European Economic Area²

Ref.: Letter of the Danish Competition and Consumer Authority of 27 February 2020

Dear Sir or Madam,

1. INTRODUCTION

- (1) With the above-mentioned letter, the Danish Competition and Consumer Authority (the “DCCA”) formally requested the Commission to examine, in application of Article 22(3) of the Merger Regulation, the concentration whereby MasterCard Incorporated (“MasterCard”) acquires sole control of Nets’ A/S (“Nets”) account-to-account payment business (the “Target”) (the “Transaction”). The Target together with MasterCard are referred to as the “Parties”.

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

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

- (2) Pursuant to Article 22(1) of the Merger Regulation, one or more Member States³ may request the Commission to examine any concentration as defined in Article 3 of the Merger Regulation that does not have a Union dimension within the meaning of Article 1 of the Merger Regulation but affects trade between Member States and threatens to significantly affect competition within the territory of the Member State(s) making the request. Such a request must be made within 15 working days of the date of the notification of the concentration, or if notification is not required, otherwise made known to the Member State. Pursuant to Article 22(2) of the Merger Regulation, any other Member State may join the initial request within a period of 15 working days of being informed by the Commission of the initial request. Pursuant to Article 6(3) of Protocol 24 to the EEA Agreement, any EFTA State may join the request within a period of 15 working days from the day on which the Commission informed the EFTA Surveillance Authority of the initial request.
- (3) In the present case, MasterCard notified the Transaction to the DCCA on 21 February 2020.⁴
- (4) The Commission received the referral request made by Denmark pursuant to Article 22(1) of the Merger Regulation on 27 February 2020.
- (5) On 27 February 2020, in accordance with Article 22(2) of the Merger Regulation, the Commission informed of the above request (i) the competent authorities of Member States other than Denmark and (ii) the EFTA Surveillance Authority.
- (6) Norway (16 March 2020), the UK (16 March 2020), Sweden (18 March 2020), Austria (18 March 2020), and Finland (19 March 2020) joined the referral request made by Denmark. They did so within a period of 15 working days after being informed by the Commission of the referral request (on 27 February 2020), thus within the time limit of Article 22(2), second indent, of the Merger Regulation.

2. THE PARTIES AND THE OPERATION

- (7) MasterCard is a technology company operating in the global payments industry. MasterCard's main activities include ownership and operation of payment card schemes and provision of switching services for card transactions. In addition to card-related activities, MasterCard is engaged in alternative payment solutions (i.e. not involving cards) through its new payment platforms division. This division includes VocaLink Holdings Limited ("VocaLink").
- (8) The Target is a business division within Nets, a payment solutions provider headquartered in Denmark. The Target operates as a global payments business offering services in the Nordic region and also in the Single Euro Payments Area ("SEPA") for account-to-account (or "A2A") payment schemes. A2A payment

3 Pursuant to Article 127(6) of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ("Withdrawal Agreement"), during the transition period, any reference to Member States in Union law shall be understood as including the United Kingdom.

4 On 9 February 2020, the Transaction was notified to the Norwegian Competition Authority. Besides Denmark and Norway, in the EEA and the UK, the Transaction has not been notified in any other country. It is, however, notifiable in the UK.

schemes allow for payments directly from one bank account to another, without requiring the use of a card.

- (9) The Transaction notified to the DCCA consists in the acquisition of sole control by MasterCard over the Target. Therefore, the Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.
- (10) The Transaction would not constitute a concentration with a Union dimension within the meaning of Article 1 of the Merger Regulation, according to the information provided by the competent authorities.

3. ASSESSMENT OF THE REFERRAL REQUEST

- (11) In order for a referral to be made by a Member State, one procedural and two substantive conditions must be fulfilled pursuant to Article 22(1) of the Merger Regulation. The procedural condition is that the referral request shall be made at most within 15 working days of the date on which the concentration was notified, or if no notification is required, otherwise made known to the Member State concerned. As to the substantial conditions, the concentration must: (i) affect trade between Member States and (ii) threaten to significantly affect competition within the territory of the Member State(s) making the request.⁵
- (12) Once these legal requirements are fulfilled, the Commission has discretion whether to accept or reject the referral request. The Commission shall exercise its discretion based on the guidance of the Referral Notice.

3.1. Procedural condition

- (13) MasterCard formally notified the Transaction to the DCCA on 21 February 2020. The Commission received the referral request made by Denmark on 27 February 2020.
- (14) Therefore, the referral request was made within the deadline of Article 22(1), second indent, of the Merger Regulation.

3.2. Substantive conditions

- (15) The Parties' activities overlap horizontally in core infrastructure services ("CIS") for A2A payment schemes and possibly in the provision of invoice payment and open banking services.⁶ A2A CIS providers supply interbank schemes with the technology

5 See also Commission Notice on Case Referral in respect of concentrations (the "Referral Notice"), paragraphs 42-44 (OJ C 56, 05.03.2005, p. 2).

6 Invoice payment services allow for recurring and other payments involving the electronic credit transfer of funds directly from the payer's account to the payee's account (notably in the context of A2A schemes). Open Banking services enable third-party financial service providers to access and use banking, transaction, and other financial data of consumers for the provision of new and innovative financial services. The activities of the Parties in these areas could result in horizontal and/or vertical overlaps that could give rise to affected markets. The DCCA identified such possible overlaps in its referral request of 27 February 2020 but did not analyze them in detail. The Commission plans to investigate these plausible affected markets in its forthcoming market investigation. These plausible

(i.e. hardware, software, telecommunication networks and processes) required to effect the authorisation, clearing, and settlement of payments between issuing and acquiring accounts. A2A CIS providers can also be involved with the ongoing operation of the technology.

- (16) Both Parties currently offer or compete to offer, alone or in partnership with other providers, A2A CIS to interbank payment schemes across the EEA and the UK. MasterCard is currently active in A2A CIS in Sweden and in the UK and recently won a pan-Nordic tender (the “P27 tender”), covering Denmark, Finland, and Sweden. The Target currently provides A2A CIS in Denmark, Hungary, Italy, Norway, and Slovenia.

3.2.1. *Effect on trade between Member States*

- (17) According to paragraph 43 of the Referral Notice, the first substantive condition is fulfilled when a concentration is liable to have a discernible influence on the pattern of trade between Member States.
- (18) The DCCA argues that the market for A2A CIS is likely wider than national (i.e. regional (encompassing several Member States/EFTA States) or EEA/UK-wide), for the following reasons:
- (a) the provision of A2A CIS in the EEA and the UK is increasingly governed by international standards (e.g. the messaging standard ISO 20020);
 - (b) tenders for the provision of A2A CIS may take place at supranational level (e.g. pan-Nordic tender P27, recently won by MasterCard, or pan-European tender European Payments Initiative) and do not require prior local presence; and
 - (c) the main providers (including the Parties) compete across the EEA and the UK.⁷
- (19) The Parties do not contest the above and claim that the market is wider than national.⁸
- (20) It follows that the relevant market for A2A CIS is likely broader than national, which provides a strong indication in itself that trade between Member States may be affected.
- (21) Moreover, the Parties currently provide A2A CIS in several Member States and EFTA States even if their main A2A CIS operations and data centres are based in a

affected markets are not discussed further in the remainder of this decision as the referral request of the DCCA focuses on A2A CIS.

⁷ In 2016, in Case M.8149 – MasterCard/VocaLink (referral decision to the UK), the Commission held that the relevant market for the provision of A2A CIS was national in scope. However, relevant changes, which would support a wider geographic market definition, have occurred since then, including notably the creation of SEPA and the increasing adoption of the international messaging standard (ISO 20020) across the EEA and the UK.

⁸ According to the Parties, the market for A2A CIS is global in scope.

different country. For example, the Target provides A2A CIS across the EEA and the UK from [...]. In the same vein, MasterCard won the pan-Nordic P27 tender although its main A2A CIS operations were based in the UK and [...].

- (22) Based on the above, the Commission considers that the Transaction is capable of having an impact on effect on trade between Member States.
- (23) The Commission thus concludes that the first substantive legal requirement for an Article 22 referral request is met.

3.2.2. *Threat to significantly affect competition*

- (24) Regarding the second substantive condition, paragraph 44 of the Referral Notice provides that the referring Member State should demonstrate that there is a real risk that the transaction may have a significant adverse effect on competition within the territory of the Member State making the request, without prejudice to the outcome of a full investigation.
- (25) The DCCA submitted that in Denmark, the Transaction threatens to significantly affect competition because it combines the supplier of A2A CIS for the current and the future interbank payment schemes. Indeed, the Target currently has a monopoly in A2A CIS in Denmark, because it supplies all three existing inter-bank payment systems in the country, managed by FinansDanmark. MasterCard recently won the important P27 tender for the future provision of A2A CIS at pan-Nordic level (including Denmark).
- (26) The Parties disagree with the DCCA's assessment. The Parties recall that the P27 tender concerned the provision of A2A CIS in Denmark, Finland, and Sweden and that it was recently awarded to MasterCard for 10 years.⁹ The Parties claim that the Transaction does not threaten to affect competition in Denmark because no such competition will take place for the next 10 years.
- (27) However, the Commission's preliminary view is that, contrary to the Parties' claims, the award of the P27 tender does not mean that the relevant market is no longer contestable in Denmark:
 - (a) There is an intrinsic degree of uncertainty as to whether the P27 project, which is not operational yet, will go forward for the entire Nordic region, including Denmark. The P27 project originally was meant to cover Denmark, Finland, Norway, and Sweden but following the award of the P27 tender, Norwegian banks have abandoned the scheme. Moreover, the launch of P27 services is subject to a merger filing and clearing licence approval;
 - (b) It is uncertain whether the existing Danish scheme (owned by FinansDanmark) will be replaced by the P27 project or whether FinansDanmark will maintain the scheme and tender the provision of A2A CIS going forward (e.g. in the context of the renewal of the current contract); and

⁹ With a possibility for extension by an additional 4 years.

- (c) It is uncertain whether the next tender for A2A CIS in Denmark will be in 10 years (even assuming that the P27 will go forward and it will replace the FinansDanmark scheme). A new tender could happen faster to reflect the rapid technology evolution in A2A CIS.
- (28) According to the DCCA, the Transaction also threatens to affect competition in a plausible A2A CIS market covering the Nordic region (including Denmark)¹⁰ or the entire EEA and the UK (including Denmark). The Parties estimate that in 2018, they had a combined share of [60-70]% in A2A CIS in the Nordic region and [20-30]% in the EEA and the UK (based on the volume of transactions completed through the A2A schemes that the Parties serve).¹¹ However, the DCCA also noted that the market for A2A CIS has the characteristics of a bidding market¹² where market share data are “*less relevant than the ability of customers to choose alternative suppliers.*”¹³
- (29) According to the DCCA, the bidding data submitted by the Parties (covering the EEA and the UK and dating back to March 2014)¹⁴ suggest that:
- (a) MasterCard and the Target are the two suppliers who bid most frequently in A2A CIS tenders in the EEA and the UK. They are also the two suppliers who are most often shortlisted in A2A CIS tenders in the EEA and the UK. The Target has won most of the A2A CIS tenders in the EEA and the UK. MasterCard has won one tender only (the recent pan-Nordic P27) but it has the highest value compared to all other tenders in the EEA and the UK;
- (b) MasterCard and the Target likely face few credible alternative players in the EEA and the UK, namely Equens, STET and SIA. While the Parties argued that there are at least 21 suppliers competing in tenders across the EEA and the UK, the bidding data shows that only 10 of them have been shortlisted and only seven won at least once. The referral request of the DCCA suggests that [...] of these seven players ([...]) are unlikely to be credible players;¹⁵ and
- (c) MasterCard and the Target are likely close competitors. MasterCard competed in [70-80]% of the tenders where the Target participated and the

10 For the purposes of this decision, the Nordic region includes Denmark, Finland, Norway, and Sweden.

11 The DCCA flagged discrepancies in the market share information provided by the Parties and questioned whether this data accurately depicts the market power of the Parties in A2A CIS.

12 The tenders for the provision of A2A CIS typically contain a request for information ("RFI") phase. Following this phase, a number of suppliers are shortlisted for the subsequent stage (the request for proposal or "RFP" phase). In the RFP phase, suppliers are invited to submit their proposals. On this basis, the payment scheme operator chooses a small subset of bidders and conducts contract negotiations with them.

13 See e.g. Case M.3641 – BT/Infonet, paragraph 16 and Case T-210/01 – General Electric v. Commission, judgment of 14 December 2005, paragraph 149.

14 For the Nordic region, the Parties provided incomplete bidding data concerning only three tenders since March 2014. The Parties competed in two out of the three tenders (but the Parties did not have any information on the bidders or the outcome in the third tender). MasterCard won one of the three tenders (the P27). One other tender was cancelled while the Parties do not have information about the third tender.

15 [...].

Target competed in [70-80]% of the tenders where MasterCard participated. Each of the Parties was shortlisted [...] the other Party won a tender.

- (30) On the basis of this *prima facie* analysis submitted by the DCCA, the Commission considers, without prejudice to the outcome of its investigation that the concentration threatens to significantly affect competition within the territory of Denmark; within the Nordic region (including Denmark); and/or in the EEA and the UK (including Denmark).
- (31) The Commission thus concludes that the second substantive legal requirement for an Article 22 referral request is met.

3.3. Appropriateness of the referral

- (32) Pursuant to paragraph 45 of the Referral Notice, referrals of concentrations already notified should be limited to those cases which appear to present a real risk of negative effects on competition and trade between Member States and where it appears that these would be best addressed at EU level.
- (33) This Notice identifies two types of cases that are most appropriate for referral under Article 22:
- (a) cases which give rise to serious competition concerns in one or more markets which are wider than national in geographic scope, or where some of the potentially affected markets are wider than national, and where the main economic impact of the concentration is connected to such markets; and
 - (b) cases which give rise to serious competition concerns in a series of national or narrower than national markets located in a number of Member States, in circumstances where coherent treatment of the case (regarding possible remedies, but also, in appropriate cases, the investigative efforts as such) is considered desirable, and where the main economic impact of the concentration is connected to such markets.¹⁶
- (34) In the present case, it appears that the Transaction threatens to significantly affect competition in the market for A2A CIS, which is likely wider than national (i.e. regional (encompassing several Member States/EFTA States) or EEA/UK-wide) for the reasons explained in paragraph (18) above. The main economic impact of the Transaction is connected to the Nordic region and potentially the entire EEA and the UK for the reasons explained in paragraphs (24)ff. above. Thus, the Transaction falls within the first category of cases appropriate for referral under the Referral Notice.¹⁷
- (35) Moreover, a coherent treatment of the case at EEA/UK level is desirable for several reasons:
- (a) The Transaction is notifiable in three Member States/EFTA States (namely, in Denmark, Norway, and the UK). Multiple notifications of the same transaction increase legal uncertainty and may lead to conflicting

16 Referral Notice, paragraph 45.

17 See paragraph (33)(a)(33)(a) above.

assessments. In particular, in the absence of precedents from the Commission or national competition authorities in this sector, it is important to adopt a consistent product market definition across the EEA and the UK. All the more so, as the provision of A2A CIS is of broader interest to the Commission with respect to other ongoing merger cases¹⁸ and the development of the European Payments Initiative;

- (b) The Parties' competitors are active throughout the EEA and the UK and it would be more efficient for the Commission to centralise contacts with competitors in one merger review procedure; and
 - (c) A coherent treatment of the case in terms of potential remedies is desirable, taking into account the potential cross-border effects of the Transaction in the EEA and the UK.
- (36) Therefore, it is appropriate to refer the Transaction to the Commission pursuant to Article 22 of the Merger Regulation.

4. CONCLUSION

- (37) In view of the foregoing, the Commission has decided to examine the concentration by which MasterCard acquires sole control over the Target. This decision is based on Article 22(3) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President

18 E.g. in relation to the P27 project itself.