



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

Brussels, 02.04.2020
C(2020) 2178 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the Competition and Markets Authority

Subject: Case M.9744 – MasterCard / Nets
Request for referral of 16 March 2020 by the United Kingdom to the Commission pursuant to Article 22(2) of Council Regulation (EC) No. 139/2004¹ and Article 57 of the Agreement on the European Economic Area²

Ref.: Letter of the Competition and Markets Authority of 16 March 2020

Dear Sir or Madam,

1. INTRODUCTION

- (1) With the above-mentioned letter, the Competition and Markets Authority (the “CMA”) 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

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. This decision is made having regard to Article 131 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”).

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

payment business (the “Target”) (the “Transaction”). The Target together with MasterCard are referred to as the “Parties”.

- (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 Danish Competition and Consumer Authority (“DCCA”) on 21 February 2020.⁴
- (4) The Commission received from Denmark the referral request 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) On 16 March 2020, the CMA requested to join the referral request made by Denmark.⁵

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

³ Pursuant to Article 127(6) of the 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.

⁵ Norway (16 March 2020), Austria (18 March 2020), Finland (19 March 2020), and Sweden (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.

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 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 of the Merger Regulation. The procedural condition is that the initial 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, and other Member States may join the initial request within a period of 15 working days of being informed by the Commission of the initial request. 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.⁶
- (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, i.e. within the time limit foreseen in Article 22(1), second indent, of the Merger Regulation.
- (14) The Commission informed the competent authorities of the other Member States and the EFTA Surveillance Authority of the referral request made by Denmark on 27 February 2020. On 16 March 2020, the Commission received the UK’s request to join the initial referral request made by Denmark.
- (15) Therefore, the UK joined the initial referral request within 15 working days following the date on which it was informed of the referral request by the Commission, i.e. within the time limit foreseen in Article 22(2), second indent, of the Merger Regulation.

⁶ 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).

3.2. Substantive conditions

- (16) 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.⁷ A2A CIS providers supply interbank schemes with the technology (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.
- (17) 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*

- (18) According to paragraph 43 of the Referral Notice, the first substantive condition is fulfilled when a concentration is liable to have discernible influence on the pattern of trade between Member States.
- (19) 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.⁸

⁷ 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 affected markets are not discussed further in the remainder of this decision as the referral request of the DCCA focuses on A2A CIS.

⁸ 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,

- (20) The Parties do not contest the above and claim that the market is wider than national.⁹
- (21) 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.
- (22) 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 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 [...].
- (23) Based on the above, the Commission considers that the Transaction is capable of having an impact on effect on trade between Member States.
- (24) 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*

- (25) 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.
- (26) The CMA submitted that, in the UK, the Transaction threatens to significantly affect competition for the following reasons.
- (27) MasterCard, through VocaLink, currently operates three of the four existing domestic payments infrastructures in the UK, namely, Bacs,¹⁰ Faster Payments Service (“FPS”)¹¹ and LINK ATM Network.¹²
- (28) At the end of 2018, Pay.UK (i.e. the scheme owner) launched a tender process for the provision of A2A CIS in relation to the New Payment Architecture (“NPA”).¹³

including notably the creation of SEPA and the increasing adoption of the international messaging standard (ISO 20020) across the EEA and the UK.

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

10 Bacs is the interbank system for high-volume, regular payments. Bacs processes payments through two electric payment schemes: (i) Direct Debit, which is used by individuals to pay bills; and (ii) Bacs Direct Credits, which is used by employers to pay salaries and wages.

11 FPS is an interbank payment system that provides near real-time payments. Currently, FPS processes almost all Internet and telephone banking payments in the UK.

12 LINK is the UK’s main ATM network, which allows consumers to withdraw cash from ATMs which do not belong to their bank. Almost every ATM in the UK (both free and pay-to-use) is LINK enabled. All of the UK’s main debit and cash machine card issuers (predominantly banks and building societies) and the main cash machine operators (banks, building societies and independent ATM deployers) are members of LINK.

13 The scope of the tender organised by Pay.UK is wider than the provision of A2A CIS. Pay.UK seeks to appoint a strategic partner to build and operate the NPA (for a 10-year term). The tender includes in its scope a A2A CIS solution component, namely the real-time payment capability (“RTPC”).

The NPA aims to consolidate several existing domestic payments infrastructures (FPS, Bacs, and potentially Cheque and Credit Clearing)¹⁴ within one single clearing and settlement platform.

- (29) Prior to the announcement of the Transaction, the Parties were competing in this tender, which is still ongoing at the time of the present decision. The Target sought to pre-qualify as a bidder in a consortium with [...]. [...] would be the prime bidder and Nets entered as a sub-contractor to [...]. MasterCard is also participating in the tender through its subsidiary VocaLink, which is the incumbent provider. There are currently [...] prime bidders shortlisted in the context of the NPA tender: MasterCard through VocaLink, [...]. However, following the announcement of the Transaction, Nets withdrew from its consortium with [...] and thus from the NPA tender. The CMA submitted that Nets' withdrawal from the NPA tender might [...]. As a result, the competitive constraints faced by MasterCard in this tender would be [...] reduced.
- (31) To replace Nets' as a consortium partner, [...] recently selected [...]. However, the CMA takes the view that (i) [...] and (ii) other than [...], as some are already partnering with other bidders and others are not taking part in the tender.
- (32) The Parties argued that Nets' decision to withdraw from the consortium with [...] was taken unilaterally and not motivated by an input foreclosure strategy. The Parties admitted that Nets' decision to withdraw was related to the Transaction but claimed that it was actually a measure of competition law compliance, i.e. to avoid having access to sensitive commercial information on [...]’s bid.
- (33) The CMA did not identify sufficient evidence to substantiate the Parties' arguments. Rather, the CMA found that MasterCard is potentially the strongest bidder in the NPA tender, while [...]’Nets represented a strong alternative. [...]. Although Nets' withdrawal from the [...] consortium did not reduce the number of competitors from [...] to [...], it might have [...]. Thus, the CMA considers that Nets' withdrawal decision could be part of a strategy aimed at foreclosing [...] in the NPA tender, [...] and, more generally, weakening the competitive constraints over MasterCard.
- (34) In addition to the above, according to the DCCA, the Transaction also threatens to affect competition in a plausible A2A CIS market covering the entire EEA and the UK. The Parties estimate that in 2018, they had a combined share of [20-30]% in the EEA and the UK (based on the volume of transactions completed through the A2A schemes that the Parties serve).¹⁵ However, as the DCCA noted, the market for A2A CIS has the characteristics of a bidding market¹⁶ where market share data are “*less relevant than the ability of customers to choose alternative suppliers.*”¹⁷

14 The Cheque and Credit Clearing Company Limited (C&CCC) is a wholly owned subsidiary of Pay.UK. It manages the cheque and credit clearing system in the UK and, since 2017, it also manages the Image Clearing System, which enables digital images of cheques to be exchanged between banks and building societies across the whole of the UK for clearing and settlement.

15 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.

16 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

- (35) According to the DCCA and the CMA, the bidding data submitted by the Parties (covering the EEA and the UK and dating back to March 2014) 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;¹⁸ and
 - (c) MasterCard and the Target are likely close competitors. MasterCard competed in [70-80]% of the tenders where the Target participated and the Target competed in [70-80]% of the tenders where MasterCard participated. Each of the Parties was shortlisted [...] the other Party won a tender.
- (36) On the basis of the above *prima facie* analysis, the Commission considers, without prejudice to the outcome of its investigation, that the concentration threatens to significantly affect competition within the territory of the UK and/or in the EEA and the UK.
- (37) The Commission thus concludes that the second substantive legal requirement for an Article 22 referral request is met.

3.3. Appropriateness of the referral

- (38) 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.
- (39) 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

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.

17 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.

18 [...].

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.¹⁹
- (40) 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 (19) 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 (25)ff. above. Thus, the Transaction falls within the first category of cases appropriate for referral under the Referral Notice.²⁰
- (41) 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 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 cases²¹ 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.
- (42) Therefore, it is appropriate to refer the Transaction to the Commission pursuant to Article 22 of the Merger Regulation.

19 Referral Notice, paragraph 45.

20 See paragraph (39)(a) above.

21 E.g., in relation to the P27 project itself.

4. CONCLUSION

- (43) 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