EUROPEAN COMMISSION
DG Competition

Case M.9971 - P27 NPP / BANKGIROT

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 08/07/2021

In electronic form on the EUR-Lex website under document number 32021M9971

EUROPEAN COMMISSION

Brussels, 8.7.2021
C(2021) 5207 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

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__Subject__: **Case M.9971 – P27 NPP / BANKGIROT**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

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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").

Dear Sir or Madam,

(1) On 3 June 2021, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004, by which Danske Bank A/S ("**Danske Bank**", Denmark), Svenska Handelsbanken AB ("**Handelsbanken**", Sweden), Nordea Bank Abp ("**Nordea**", Finland), OP Corporate Bank plc ("**OP**", Finland), Skandinaviska Enskilda Banken AB ("**SEB**", Sweden) and Swedbank AB ("**Swedbank**", Sweden) (collectively referred to as the "**Parent Companies**") acquire, within the meaning of Articles 3(1)(b) and 3(4) of the Merger Regulation, joint control of Bankgirocentralen BGC AB ("**Bankgirot**", Sweden) through a newly-created joint-venture, P27 Nordic Payments Platform AB ("**P27**", Sweden) (the "**Transaction**"). The Parent Companies, P27 and Bankgirot are referred together as the "**Parties**".[3]

1. THE PARTIES

(2) The **Parent Companies** are six banking groups active primarily in the Nordics, offering a wide-range of financial services. Post-Transaction, the Parent Companies will retain their activities in the banking markets, including in particular the market for payment services to corporate and retail customers, which are downstream of the markets where P27 (including Bankgirot) will be active.

(3) **P27** is a newly created joint venture between the Parent Companies for the creation of a new payment platform at pan-Nordic level. More specifically, P27 will offer the following services:

- *Layer 1 services*: a pan-Nordic clearing system for batch and real-time payments covering domestic, cross-border and multi-currency transactions in Denmark, Finland, Sweden and potentially Norway (the "**P27 Clearing System**");

- *Layer 2 services*: a pan-Nordic invoice payment solution in Denmark, Finland, Sweden and potentially Norway (the "**P27 Bill Payment Solution**").[4]

(4) **Bankgirot** is the incumbent provider of the clearing infrastructure processing real time payments in Sweden. Bankgirot currently offers Layer 1 and Layer 2 services (in Sweden only). Bankgirot is owned by SEB, Swedbank, Handelsbanken, Nordea and Danske Bank (together, the "**BG Banks**").[5] None of them currently exerts joint or sole control over Bankgirot. The BG Banks and the Parent Companies largely overlap but the former do not include OP.

2. THE OPERATION AND ITS RATIONALE

2.1 Rationale of the Transaction

(5) The purpose of the establishment of P27 is to create a new pan-Nordic and cross-border payment platform. Once operational, P27 shall operate a new payment infrastructure, providing better services (more functionalities) at a lower price (economies of scale). Therefore, customers are expected to progressively migrate from the existing domestic payment infrastructures to P27 (see Section 6.1).

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3 Publication in the Official Journal of the European Union No C 221, 10.6.2021, p. 26.

4 In the future, Layer 2 services provided by P27 may also include additional value-added payment services that could benefit from a Nordic scale and scope (*e.g.* [types of value-added payment services that P27 potentially will offer], *etc.*). These potential future Layer 2 services are not defined yet.

5 The BG Banks account together for over [90-100]% of the shareholding in Bankgirot. Two other banks, namely Länsförsäkringar Bank Aktiebolag and Skandiabanken Aktiebolag each hold [0-5]% of Bankgirot, [future plans with shareholding].

(6) In Sweden, […][6] […]. The acquisition of Bankgirot by P27 (before the start of P27's operations and of the migration from existing domestic payment infrastructures to P27) aims at mitigating the above risk and, thus, preserving financial stability in Sweden.

2.2 Assessment of the joint control

(7) The Parent Companies hold equal shares and ownership in P27. [the Parent Companies veto rights related to Bankgirot].

(8) Moreover, pursuant to the Contract Note and the Bankgirot Shareholders' Agreement, both entered into by the Parties on 6 October 2020, P27 will acquire [90-100]% of the voting rights and share capital of Bankgirot.[7] Post-Transaction, the main guidelines of Bankgirot's budget and the business plan will be defined at P27 level. In particular, P27's budget and business plan will include specific provisions defining notably Bankgirot's (i) pricing policies (including pricing model and methods); (ii) scope of products and solutions (including product development policy); and (iii) detailed balance sheets and P&L statement. In view of the foregoing, the Commission concludes that the provisions in P27's budget and business plan related to Bankgirot – [the Parent Companies veto rights related to Bankgirot] – are sufficiently detailed to constitute strategic decisions within the meaning of the Consolidated Jurisdictional Notice[8] and, thus, to confer joint control over Bankgirot to each Parent Company.

2.3 Assessment of the full functionality

(9) Post-Transaction, P27 (including Bankgirot) will have its own market presence and sufficient resources to operate independently, including its own staff and management dedicated to its day-to-day operations, as well as sufficient financial resources.[9] In fact, Bankgirot is already pre-Transaction an existing company with its own market presence operating autonomously from its shareholders. Post-Transaction, P27 (including Bankgirot) will also provide its clearing and payment services to the Parent Companies and third parties on a fair, objective and non-discriminatory basis, applying to all customers a transparent "cost-plus" distribution model. Thus, the relationship between P27 operations and the Parent Companies will be commercial in character. Moreover, according to the Parties' forecasts, P27 will achieve a substantial share of its turnover through third parties, *i.e.* between […]% and […]% depending on the scenario.[10] Finally, P27 (including Bankgirot) will operate on a lasting basis. Therefore, P27 (including Bankgirot) will be full-function.

2.4 Conclusion

(10) In view of the above considerations, the Transaction constitutes a concentration within the meaning of Articles 3(1)(b) and 3(4) of the Merger Regulation.

3. UNION DIMENSION

(11) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (Danske Bank: […]; Handelsbanken: […]; Nordea: […]; OP: […]; SEB: […]; Swedbank: […]; and […]).[11] In addition, each of at least two of them has a

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6 Form CO, para. 108.

7 However, P27 will have no financial responsibility in relation to Bankgirot. […].

8 Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the "Consolidated Jurisdictional Notice") (OJ C 95, 16.4.2008, p.1), paras. 65 and ff.

9 In order to be active on the clearing market, P27 is required by law to obtain a license from the Swedish FSA (the "P27 Clearing License"). The latter has not been awarded yet. However, P27 will acquire the clearing license owned by Bankgirot.

10 See para. 98 of the Consolidated Jurisdictional Notice.

11 Turnover calculated in accordance with Article 5 of the Merger Regulation.

Union-wide turnover in excess of EUR 250 million (Danske Bank: […]; Handelsbanken: […]; Nordea: […]; OP: […]; SEB: […]; Swedbank: […]; and Bankgirot: […]) but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The Transaction therefore has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

4. OVERVIEW OF THE PARTIES' OVERLAPPING ACTIVITIES

(12) As detailed in Table 1, the Transaction gives rise to horizontal overlaps in Sweden between the future activities of P27 and Bankgirot's existing activities with respect to the provision of both clearing services (Layer 1) and account-to-account ("A2A") invoice payment services (Layer 2).

(13) The Transaction also gives rise to three vertical links between the provision of the following services (i) clearing services (*upstream*) and payment services to end-customers (*downstream*), (ii) A2A invoice payment services (*upstream*) and payment services to end-customers (*downstream*), and (iii) clearing services (Layer 1) (*upstream*) and A2A invoice payment services (Layer 2) (*downstream*).

TABLE 1 – HORIZONTAL OVERLAPS AND VERTICAL LINKS ARISING FROM THE TRANSACTION

Markets	**P27** (not yet active)	Bankgirot	Parent Companies
Clearing services (Layer 1)	x (Nordic region)	x (Sweden only)	
A2A invoice payment services (Layer 2)	x (Nordic region)	x (Sweden only)	
Payment services			x (Nordic region)

5. RELEVANT MARKETS

5.1 Product market definition

5.1.1 Payment clearing services (Layer 1 services)

(a) The Commission's precedents

(14) Payment clearing services refer to the processing of interbank payments prior to the completion of the transaction and the transfer of funds (*i.e.* the settlement). P27 and Bankgirot are active in the clearing process but do not conduct the settlement process, which is carried out by distinct providers (typically central banks). In other words, clearing services entail all the processes that precede the transfer of funds, such as transmitting and reconciling interbank payments, confirming verifying that there are funds or credit available on individual accounts, authorising the transactions, *etc.*

(15) In its past decisional practice,[12] the Commission considered a market for the provision of payment clearing systems for domestic and low-value payments but ultimately left open the exact scope of the product market.[13]

(b) The Parties' views

(16) The Parties consider that the market for interbank payment clearing services is distinct from other payment services such as those provided in-house by banks or by central bank

12 M.3894 – *Unicredito/HVB* (2005), paras. 38-39; M.2567- *Nordbanken/Postgirot* (2001), paras. 25-34.

13 In M.9744 – *Mastercard/Nets* (2020), the Commission considered the markets for the provision of account-to-account core infrastructure services ("A2A CIS"), *i.e.* the provision of the underlying technical infrastructure to suppliers of clearing services. None of the Parties is active on this market, which is upstream of the market for clearing services.

settlement systems.[14] They also assessed the following possible segmentations of the market for clearing services:

- *Segmentation between low-value and large-value payments*: the Parties agree with this segmentation envisaged in the past decisional practice. They submit that large-value payments (*i.e.* payment transactions between mainly financial institutions, which tend to have high-values and are usually time critical) and low-value (or retail) payments (*i.e.* payment transactions where at least one party to the transaction is not a financial institution, which typically have a much lower value) are typically processed through different payment systems. This is due to different safety requirements and the fact that some payment systems have an upper value limitation. The Parties' activities only overlap with respect low-value payments;[15]

- *Segmentation between domestic and cross-border payments*: the Parties submit that this segmentation envisaged in the past decisional practice is no longer relevant due to the increasing harmonisation of the regulation at EEA level, including in particular the introduction of Single Euro Payment Area ("SEPA"). They also argue that the establishment of P27 will remove many of the differences in treatment between domestic and cross-border payments in the Nordics. In their view, in the future, any payment system will be able to clear both domestic and cross-border payments. That said, the Parties also acknowledge that the domestic clearing systems currently available in the Nordics do not have the technical capabilities to clear cross-border payments; [16]

- *Segmentation between batch and instant payments*: clearing systems may provide (i) batch payment processing (*i.e.* processing together payment orders at discrete intervals of time) and/or (ii) instant (or real-time) payment processing (*i.e.* processing of payments on a transaction-by-transaction basis in real time). Historically, clearing systems only processed batch payments. However, with the emergence of instant payments in the last decade, the market is progressively migrating from batch payments to instant payments. The Parties consider that clearing systems for instant and batch payments are usually not substitutable, but rather complementary. However, they also note that most market players provide clearing services for both types of payments;[17]

- *Segmentation between A2A and card payments*: A2A payments allow the transfer of funds directly from the payer's account to the payee's account, without requiring the use of a payment card. According to the Parties, this distinction is irrelevant on the ground that, even if a payment order is initiated by a card, once it reaches the clearing system, it is technically cleared as an A2A transfer.[18]

(17) In any event, the Parties submit that the exact scope of the market for clearing services can be left open as no competition concern arises under any plausible market definitions.

(c) The Commission's assessment

(18) The market investigation was not fully conclusive regarding whether the market for clearing services should be further segmented or not:

- *Segmentation between low-value and large-value payments:* the results of the market investigation were mixed. A large majority of customers of payment clearing services

14 Form CO, paras. 352 to 364.

15 Form CO, paras. 365 to 367.

16 Form CO, paras. 368 to 371.

17 Form CO, paras. 389 and 390.

18 Form CO, paras. 382 to 385. According to the Parties, only the first steps of the clearing of card payments is done by the payment card scheme (*e.g.* Visa). The last step of the card payment clearing (*i.e.* the final calculation of the net payment between card issuers and acquirers) can be done through a clearing system. In such a case, this final step is processed by the clearing system as an A2A transfer between the bank accounts of the card issuer and acquirer.

consider that the two segments present similar competitive dynamics. However, virtually all providers of payment clearing services generally take the opposite view, stressing the existence of different providers and requirements, while acknowledging some convergence;[19]

- <u>*Segmentation between domestic and cross-border payments*</u>*:* the results of the market investigation suggest that the clearing of domestic payments and cross-border payments may constitute distinct markets. Around half of the respondents consider that the two segments present different competitive dynamics and landscape (due to the existence of different regulations, prices, currencies, *etc.*). However, a third of the respondents takes the opposite view and several of them stressed that the above distinction may become less relevant with P27;[20]

- <u>*Segmentation between batch and instant payments*</u>*:* the results of the market investigation suggest that the clearing of instant payments and batch payments could be part of the same market. For most participants, both types of payments are characterized by similar competitive dynamics and landscape;[21]

- <u>*Segmentation between A2A and card payments*</u>*:* most respondents consider that the clearing of card payments and A2A payments could be part of the same market. However, a significant minority takes the opposite view. A few market participants also stress a trend towards convergence. [22]

(19) In any event, for the purpose of this decision, the Commission concludes that the exact scope of the market for clearing services can be left open since the Transaction does not give rise to serious doubts as to its compatibility with the internal market and with the EEA Agreement under any of the above-mentioned plausible market definitions.

5.1.2 A2A invoice payment services (Layer 2 services)

(a) The Commission's precedents

(20) In *Mastercard/Nets*,[23] the Commission assessed the market for A2A invoice payment services, *i.e.* services/applications allowing end-users to transfer money from one bank account to another for the payment of invoices, which are mainly used for payments that are recurring (*e.g.* monthly utilities bill) but can also be used for the payment of one-off invoices. The Commission ultimately left open the question of whether A2A invoice payment services are part of a wider market for invoice payment services including recurring card-based payments, or segmented based on the types of transactions (*e.g.* C2B, B2B) and A2A payment methods (such as direct debit (*i.e.* A2A payment initiated by the payee on the basis of payer's consent), credit transfer (*i.e.* A2A payment initiated by payer), payment slip, *etc.*).

(b) The Parties' views

(21) In addition to the segmentations considered in the past decisional practice, the Parties envisage a distinction between (i) invoice messaging services (*i.e.* the technical validation and distribution of e-invoice messages allowing the processing and forwarding of payment requests but excluding the actual payment handling) (also referred as e-invoicing) and (ii) invoice payment services (*i.e.* including the actual payment handling). However, the Parties

19 Responses to question 9.3 of questionnaire Q1 to market participants.
20 Responses to question 9.1 of questionnaire Q1 to market participants.
21 Responses to question 9.2 of questionnaire Q1 to market participants. This is in line with the findings of the Commission in M.9744 – *Mastercard/Nets*, where the Commission found that, in the upstream market for the provision of A2A CIS, a distinction between batch and instant payments was not warranted (see paras. 24-29).
22 Responses to question 9.4 of questionnaire Q1 to market participants.
23 M.9744 – *Mastercard/Nets* (2020), paras. 101-106.

submit that the Commission does not need to define the exact scope of the market for invoice payment services as no competition concerns arise under any plausible market definitions.[24]

(c) The Commission's assessment

(22) The market investigation was not fully conclusive regarding the possible alternative segmentations of the market for A2A invoice payment services:

- *Segmentation between card-based and A2A services:* the results of the market investigation suggest that it may be relevant to distinguish card-based and A2A services. Most respondents consider that these different types of payments present different competitive dynamics (including different rules set for instance by global card players in relation to card payments) and are not interchangeable for customers, as they may correspond to different use cases;[25]

- *Segmentation by A2A payment methods (e.g. direct debit, credit transfer):* the results of the market investigation suggest that it may be relevant to distinguish direct debit and credit transfer. A small majority of respondents consider that these different types of payments present different competitive dynamics and are not interchangeable for customers. Others expect a convergence across payment methods in the future;[26]

- *Segmentation between instant and batch payment services*: the results of the market investigation were mixed. A majority of respondents indicate that the two types of payments are characterized by different competitive dynamics, in particular as they rely on different payment infrastructure. However, most respondents nonetheless consider that both types of payment services are interchangeable for customers;[27]

- *Segmentation by type of transactions (e.g. C2B, B2B):* the results of the market investigation were mixed regarding this potential distinction. Around half of respondents consider that the competitive dynamics do not differ across types of transactions, but a similar share consider that B2B and C2B invoice payment services are not interchangeable for customers;[28]

- *Segmentation between invoice messaging vs. invoice payment:* the results of the market investigation were inconclusive as to whether invoice messaging services would constitute different products from invoice payment solutions. While a majority of respondents consider that customers do not view these as interchangeable, they are mixed as to whether competitive dynamics differ between the two segments.[29] An overwhelming majority of respondents to the market investigation consider that invoice messaging services represent the core part of invoice payment solutions.[30] Lastly, the Commission notes that a potential distinction between invoice messaging services and invoice payment is not reflected in the Parties' own internal documents.[31]

(23) In any event, for the purpose of this decision, the Commission concludes that the exact scope of the market for A2A invoice payment services can be left open since the Transaction does not give rise to serious doubts as to its compatibility with the internal market and with the EEA Agreement under any of the above-mentioned plausible market definitions.

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24 Form CO, paras. 408 to 434.
25 Responses to questions 34.1 and 35.1 of questionnaire Q1 to market participants.
26 Responses to questions 34.2 and 35.2 of questionnaire Q1 to market participants.
27 Responses to questions 34.3 and 35.3 of questionnaire Q1 to market participants.
28 Responses to questions 34.4 and 35.4 of questionnaire Q1 to market participants.
29 Responses to questions 34.5 and 35.5 of questionnaire Q1 to market participants.
30 Responses to question 36 of questionnaire Q1 to market participants.
31 See *e.g.* BoD – Appendix 1 20200602 p.41 (Parties' reply to RFI 4, Appendix 34) referring to the "*bill pay market*" with no distinction between the invoice messaging services and invoice payment services.

5.1.3 Payment services to end-users

(a) The Commission's precedents

(24) Payment services include various types of cashless transactions, such as direct debits (*i.e.* A2A payments initiated by the payee on the basis of payer's consent), credit transfers (*i.e.* A2A payments initiated by payer), card payments, mobile payments, *etc.* provided to end-customers.

(25) In previous decisions, the Commission found that the provision of payment services constitutes a distinct product market, which could potentially be sub-segmented (i) between domestic and international payment services and (ii) between corporate and retail customers. The exact scope of the market was ultimately left open.[32]

(b) The Parties' views

(26) The Parties submit that payment services should not be further sub-divided, in particular between domestic and international payment services, or between corporate and retail customers. In any event, they consider that the Commission does not need to conclude on the exact delineation of the market as no competition concerns arise under any plausible market definitions.[33]

(c) The Commission's assessment

(27) No element of the market investigation suggests that, in the present decision, the Commission should depart from its previous practice regarding the potential sub-segmentations of the payment service market (i) between domestic and international payment services and (ii) between corporate and retail customers.

(28) For the purpose of this decision, the Commission concludes that the exact scope of the market for the provision of payment services to end-customers can be left open since the Transaction does not give rise to serious doubts as to its compatibility with the internal market and with the EEA Agreement under any of the above-mentioned plausible market definitions.

5.2 Geographic market definition

5.2.1 The Commission's precedents

(29) In its past decisional practice the Commission generally considered that (i) the market for payment clearing services;[34] (ii) the market for the provision of A2A invoice payment services;[35] and (iii) the market for payment services[36] are national or likely national in scope but ultimately left open the exact geographic scope of those markets.

5.2.2 The Parties' views

(30) The Parties stress the importance of recent regulatory changes such as the introduction of SEPA and the emergence of supranational payment systems (such as P27). However, the Parties also admit that the relevant markets are still national in scope, acknowledging that to

32 See *e.g.* M.8414 – *DNB/Nordea/Luminor Group* (2017), paras. 107-110. In some earlier decisions, the Commission also considered payment services as part of retail and corporate banking (*e.g.* M.4844 – *Fortis/ABN Amro Assets* (2007), paras. 20-23 and 34; M.5384 – *BNP Paribas/Fortis* (2008), para. 12).

33 Form CO, paras. 480 to 510.

34 M.3894 – *Unicredito / HVB*, para.42 and M.2567 – *Nordbanken / Postgirot*, para. 37.

35 M.9744 – *Mastercard/Nets* (2020), paras. 110-114.

36 See *e.g.* M.8414 – *DNB/Nordea/Luminor Group* (2017), paras. 111-114.

date the market conditions are not homogenous across the Nordics in terms of pricing, regulation and/or standards and competitive landscape.[37]

5.2.3 *The Commission's assessment*

(31) The market participants largely confirm that the competitive dynamics for the provision of clearing services and A2A invoice payment services are not homogenous across the Nordic region (due to the existence of national regulations and currencies)[38] Respondents also indicate that A2A invoice payment services are typically provided on a national basis.[39] However, the pan-Nordic scope of the P27 project suggest that those markets are moving toward a broader regional dimension.[40]

(32) Moreover, no element of the market investigation suggests that the Commission should depart from its previous practice regarding the likely national scope of the markets for the provision of payment services to end-customers in the present decision.

(33) For the purpose of this decision, the Commission considers that the exact scope of the markets for the provision of (i) payment clearing services, (ii) A2A invoice payment services and (iii) payment services to end-customers can be left open since the Transaction does not give rise to serious doubts as to its compatibility with the internal market and with the EEA Agreement, regardless of whether markets are considered national or Nordic-wide.

6. COMPETITIVE ASSESSMENT

6.1 Assessment of the horizontal effects

(34) The Transaction gives rise to horizontal overlaps between P27's and Bankgirot's activities in the Swedish markets for clearing services and invoice payment services where Bankgirot is the incumbent provider and P27 will be a new entrant.

(35) Article 2 of the Merger Regulation requires the Commission to examine whether notified concentrations are compatible with the internal market, by assessing whether they would significantly impede effective competition in the internal market or in a substantial part of it, in particular, as a result of the creation or strengthening of a dominant position or the removal of a significant competitive constraint.

(36) The Commission Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (the "Horizontal Merger Guidelines")[41] identify ways in which concentrations between actual or potential competitors may significantly impede effective competition. The Horizontal Merger Guidelines indicate in particular that mergers involving a potential competitor may restrict effective competition by ways of horizontal anti-competitive effects, either coordinated or non-coordinated. In this framework, "competition" is understood to mean product and price competition (actual or potential), as well as innovation competition.[42]

(37) The remainder of this Section will analyse the horizontal overlaps arising from the Transaction against this framework.

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37 Form CO paras. 399-407 (clearing services), 435-438 (invoice payment services) and 511-514 (payment services).
38 Responses to questions 10 and 38 of questionnaire Q1 to market participants.
39 Responses to question 37 of questionnaire Q1 to market participants.
40 Responses to question 10.1 of questionnaire Q1 to market participants.
41 OJ C31, of 5 February 2004, p.5.
42 M.8084 - *Bayer/Monsanto*, para. 48.

6.1.1 *Payment clearing services*

(a) Overview of the market and the Parties' activities

(38) Pre-Transaction, the markets for clearing services in Denmark, Finland and Sweden are characterised by the coexistence of various clearing systems at national level, as summarised in Table 2 below.

TABLE 2 – CLEARING SYSTEMS OVERVIEW IN THE NORDICS						
Clearing system	**Operator**	**Geographic scope**	**Currency**	**Payment value**	**Batch / Instant**	**Type of payments**
P27 Clearing System (not active to date)	**P27**	cross-border (Nordics)	DKK, SEK, EUR, (NOK)	low	batch, instant	A2A, card
Bankgirot Clearing	**Bankgirot**	domestic (Sweden)	SEK	low	batch	A2A, card
BiR					instant	A2A
Sum Clearing	Mastercard	domestic (Denmark)	DKK	low	batch	A2A, card
Intraday Clearing					batch	A2A
Express Clearing					instant	A2A
Siirto ARPP	Automatia	domestic (Finland)	EUR	low	instant	A2A
POPS	Finance Finland		EUR	high	batch	A2A
STEP2	EBA Clearing	cross-border (SEPA)	EUR	low	batch	A2A, card
RT1				low	instant	A2A
EURO1				high	batch	A2A
NICS	Bits[43]	domestic (Norway)	NOK	low, high	batch	A2A, card
Straks 2.0[44]		domestic (Norway)	NOK	low	instant	A2A

Source: Form CO

(39) As a result, an overlap arises between the future P27 Clearing System and Bankgirot's existing payment clearings services (Bankgirot Clearing for the clearing of A2A and card batch payments and BiR for the clearing of instant A2A payments) in Sweden.

(40) Market share estimates of the various existing providers of clearing services are provided in Table 3 below.

TABLE 3 – MARKET SHARES FOR THE PROVISION OF CLEARING SERVICES *(volume, 2019)*			
Operator	**Clearing systems**	**% of domestic (retail) payments**	**% of cross-border (retail) payments**
DENMARK			
Mastercard	Sum, Intraday & Express Clearing	[90-100]%	-
EBA Clearing	STEP2, RT1 & EURO1	-	[90-100]%
FINLAND			
EBA Clearing	STEP2, RT1 & EURO1	[90-100]%	[90-100]%
Finance Finland	POPS	[0-5]%	-
Automatia	Siirto ARPP	[0-5]%	-
SWEDEN			
Bankgirot	Bankgirot Clearing & BiR	[90-100]%	-
EBA Clearing	STEP2, RT1 & EURO1	-	[90-100]%

43 Bits is the operator of the payment clearing systems, while the underlying technical infrastructure (*i.e.* A2A CIS) is provided to Bits by Mastercard.

44 Norwegian banks started using Straks 2.0 during the spring of 2020.

TABLE 3 – MARKET SHARES FOR THE PROVISION OF CLEARING SERVICES *(volume, 2019)*			
Operator	**Clearing systems**	**% of domestic (retail) payments**	**% of cross-border (retail) payments**
NORWAY			
Bits	NICS, Straks 2.0	[90-100]%	-
EBA Clearing	STEP2, RT1 & EURO1	-	[90-100]%
NORDIC REGION			
Bits	NICS, Straks 2.0	[40-50]%	-
Bankgirot	Bankgirot Clearing & BiR	[30-40]%	-
Mastercard	Sum, Intraday & Express Clearing	[10-20]%	-
EBA Clearing	STEP2, RT1 & EURO1	[5-10]%	[90-100]%
Automatia	Siirto ARPP	[0-5]%	-
Finance Finland	POPS	[0-5]%	-

Source: Form CO

(b) The Parties' views

(41) The Parties consider that the Transaction will not give rise to a significant impediment to effective competition in payment clearing services, for two main reasons.[45] *First*, they submit that the competitive conditions will largely remain unchanged, as Bankgirot is the incumbent provider of clearing services in Sweden, [P27's future market strategy in relation to Bankgirot]. Once operational, the P27 Clearing System is expected to compete with EBA Clearing for domestic EUR-payments in Finland as well as cross-border EUR payments in Denmark, Sweden and Finland. *Second*, they argue that the introduction of P27 will lead to significant efficient gains, by (i) improving the quality of payments including allowing cross-country and cross-currency payments, (ii) benefiting from economies of scale, and (iii) providing a higher degree of security.

(c) The Commission's assessment

(42) The Commission's investigation indicates that regardless of whether the clearing services relate to (i) low or high value payments;[46] (ii) instant or batch payments, or (iii) A2A or card payments, the competitive dynamics remain similar. As such, the Commission's assessment focuses on the overall market for payment clearing services, as well as on its potential sub-segment for domestic and cross-border payments.

(43) *First*, the Commission's investigation indicates that payment clearing services present the characteristics of natural monopolies, with one single provider of these services at national level (i) for domestic transactions (*i.e.* Mastercard in Denmark, Bankgirot in Sweden, EBA Clearing in Finland, and Bits in Norway) and (ii) for cross-border transactions (*i.e.* EBA Clearing throughout the Nordic region), as evidenced by the current situation (see Table 3). A large majority of respondents to the market investigation confirmed that payment clearing services present the characteristics of natural monopolies, in particular due to strong network effects.[47] For instance, one respondent noted that "*the biggest hurdle is the network effects - that you need a large amount of financial institutions using the layer before it becomes viable*". Another one confirmed that there is "*only room for a few suppliers*" due to economies of scale.[48]

(44) *Second*, once fully operational, the P27 Clearing System will be able to process all types of payment transactions currently processed by the existing domestic clearing systems in

45 Form CO, paragraphs 604 to 629.
46 The Transaction does not give rise to overlap in the potential segment for the clearing of high-value payments where neither Bankgirot nor P27 is/will be active.
47 Responses to question 12 of questionnaire Q1 to market participants.
48 Responses to question 22.1 of questionnaire Q1 to market participants.

Sweden, Denmark and Finland. It is also expected to be substantially more innovative, faster and cheaper (owing largely to the abovementioned economies of scale) than the current domestic Layer 1 solutions, which are largely outdated.[49] Respondents to the market investigation consider that, pre-Transaction, the markets for payment clearing services are not particularly competitive, especially in Denmark and Sweden.[50] They highlight among the shortcomings of these domestic systems their outdated technology, high costs, as well as their limited scope (in terms of currency in particular) and lack of interoperability with other clearing systems.[51]

(45) *Third*, as a result of the above, a large share of the market participants expect existing domestic clearing infrastructures (including Bankgirot in Sweden) to be progressively phased out and replaced by the P27 Clearing System.[52] For instance, one respondent noted that *"once the [Tier 1] banks join P27, it will be hard for the other clearing system to afford the needed investments to adapt to a changing payment landscape*". A further respondent stated that *"if [it is] possible for P27 to provide a viable alternative to local solutions, [it is] possible this will lead to an out-phasing of existing solutions*". Another one noted that *"in the future [...] the number of clearing systems in the Nordics will decrease because of P27 in the long run*".[53] Payment clearing services are expected to progressively migrate from the existing domestic solutions to the P27 Clearing System within 3-5 years according to a large majority of respondents.[54] This future switch from domestic clearing systems to the P27 Clearing System is also confirmed by the Parties' internal documents, which foresee a full migration from domestic clearing systems to the P27 Clearing System within the short to medium term following the system's launch.[55]

(46) In this context, an overwhelming majority of respondents to the market investigation expect Bankgirot to be phased out irrespective its acquisition by P27.[56] One respondent states for instance that the "*instant payment infrastructure requires technical renewal in Sweden and standardisation, thus we believe Bankgirot system would be progressively phased out or replaced by some new solution*". In other words, while P27 and Bankgirot will be both active on the market for clearing systems in Sweden, the competition between their respective clearing systems would only be transitory and would unavoidably be resolved in favour of the P27 Clearing System.

(47) Conversely, respondents to the market investigation expect P27 to coexist with pan-European clearing systems (namely EBA Clearing's systems for EUR payments). EBA Clearing offers a SEPA-wide solution that goes beyond Finland and thus benefits itself from economies of scale. Virtually all respondents to the market investigation expect both systems to coexist in the Nordic region, which indicates the Transaction will lead to increased competition, in particular for cross-border payments, even if only at the margin. However, market participants generally consider that P27 and the pan-European clearing systems will be complementary rather than competitors, in particular as P27's scope is limited to the Nordic region.[57]

(48) It follows that the Transaction will not entail a reduction in the number of alternative clearing service providers available to customers neither in Sweden nor in the other Nordic countries, but rather the transfer of pre-existing monopolistic positions of domestic players

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49 Responses to question 18 of questionnaire Q1 to market participants.

50 Responses to question 14 of questionnaire Q1 to market participants.

51 Responses to question 19 of questionnaire Q1 to market participants.

52 Responses to question 27.1 of questionnaire Q1 to market participants. This expectation is in line with the results of the Commission's market investigation in M.9744 – *Mastercard/Nets* (see paras.76 of the decision).

53 Responses to question 27.1 of questionnaire Q1 to market participants.

54 Responses to question 27.3 of questionnaire Q1 to market participants.

55 See *e.g.* P27's business plan, Section, Section 7 ("*Implementation and migration timeline*") (Appendix 11 to the Form CO).

56 Responses to question 28 of questionnaire Q1 to market participants.

57 Responses to question 27.2 of questionnaire Q1 to market participants (e.g. "*We believe P27 and Pan-Euro systems both having a position to coexist as complementary, mainly due to different scope (EUR vs Krona-currencies)*").

(including Bankgirot in Sweden) to a new regional player (P27). In this respect, the impact of the Transaction on the clearing market will be more limited in Finland than in the other Nordic countries. Indeed, in this Eurozone country, the domestic clearing systems (*i.e.* POPS and Siirto AARP) account for a marginal share of the national clearing market, the latter being dominated by pan-European clearing systems, which are expected to coexist with the P27 Clearing System.

(49) Fourth, P27's pricing power will be constrained and limited by the fact that, in the Nordics, access to payment clearing services is provided on fair reasonable and non discriminatory ("FRAND") terms to market participants. As detailed in Section 6.2.3, this derives from regulatory requirements that currently apply to domestic payment systems (including Bankgirot)[58] and would equally apply to P27 post-Transaction, as confirmed by financial regulatory agencies in the relevant countries.

(50) Finally, market participants did not express concerns in relation to horizontal overlaps in payment clearing services. In fact, the overwhelming majority of respondents to the market investigation expect the Transaction to have a positive or neutral impact on the Nordic markets for payment clearing services.[59]

(d) Conclusion

(51) Based on the above considerations, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market and with the EEA Agreement in relation to the market for the provision of payment clearing services in any Nordic country or the wider Nordic region.

6.1.2 A2A Invoice payment services (Layer 2)

(a) Overview of the market and the Parties' activities

(52) Pre-Transaction, the markets for A2A invoice payment services in Denmark, Finland, Sweden, and Norway are characterised by the existence of the payment solutions laid out in Table 4 below.

TABLE 4 – A2A INVOICE PAYMENT SERVICES					
Provider	**Solution**	**Type of service**	**Batch and/or instant**	**Type of transactions**	**Market shares (volume)**
DENMARK					
Mastercard	Betalingsservice	direct debit	batch	C2B	[60-70]%
	Leverandørservice	direct debit	batch	B2B	[5-10]%
Nets A/S	FIK e-invoice	credit transfer	batch	C2B B2B	[20-30]%
Others					*[0-5]%*
FINLAND					
Finance Finland	eLasku	credit transfer	batch	C2B B2B	[80-90]%
Others					*[10-20]%*

58 An overwhelming majority of respondents confirmed that, in the Nordics, access is already granted pre-Transaction on FRAND terms (see Responses to question 15 of questionnaire Q1 to market participants).

59 Responses to question 31 of questionnaire Q1 to market participants. One respondent expects that in Finland, P27 may lead to higher prices due to the smaller scale of P27 as opposed to the EBA Clearing system which is SEPA-wide, stating that "*The Finnish community is currently leveraging a very competitive pricing due to the STEP2 economies of scale by far and large higher than those achievable by the P27 platform. Moreover, compliance with SEPA reachability rules would be much more expensive migrating onto the P27 platform*". However, EBA Clearing is expected to remain active on the markets post Transaction, and Finland only amounts to a fraction of the SEPA. As a result, the Transaction is expected to increase competition in Finland. Another respondent expects a negative impact in relation to the vertical integration between Layer 1 and Layer 2 services, which is assessed in Section 6.2.2.

TABLE 4 – A2A INVOICE PAYMENT SERVICES					
Provider	**Solution**	**Type of service**	**Batch and/or instant**	**Type of transactions**	**Market shares (volume)**
SWEDEN					
Bankgirot	Autogiro	direct debit	batch	C2B B2B	[50-60]-[60-70]%
	Bg E-invoice	direct debit	batch	C2B B2B	[0-5]%
CTDs[60]	E-Faktura	credit transfer	batch	C2B B2B	[10-20]%
Others					*[10-20]-[20-30]%*
NORWAY					
Mastercard	eFaktura	credit transfer	instant or batch	C2B P2P	[40-50]%
	Avtalegiro	direct debit	batch	C2B	[30-40]%
	Autogiro	direct debit	batch	B2B	[0-5]%
Others					*[10-20]-[20-30]%*

Source: Form CO

(b) The Parties' views

(53) The Parties consider that the Transaction will not give rise to a significant impediment to effective competition in A2A invoice payment services, for three main reasons:[61] *First*, the competitive conditions will largely remain unchanged, as Bankgirot is an incumbent provider of A2A payment services in Sweden, and will continue competing with CTDs locally. *Second*, the P27 Bill Payment Solution will coexist and compete with the solutions currently available on the market (see Table 4). *Third*, the creation of the P27 Bill Payment Solution will lead to efficiencies including (i) the commercialisation of new and innovative services, including by enabling banks and payment service providers ("PSPs") to create on top of it differentiated payment services offerings to end-customers (with e.g. different services, prices, terms and conditions) and (ii) further harmonization of the European payments landscape.

(c) The Commission's assessment

(54) As neither Bankgirot, nor P27 is or will be active in card-based invoice payment services, their activities only potentially overlap on the narrower possible market for A2A invoice payment services. On this possible market, it should be noted that, unless otherwise specified, the findings of the Commission, and in particular the results of the market investigation, do not materially differ depending on whether the A2A invoice payment services are segmented (i) by type of payment method (*e.g.* direct debit or credit transfer), (ii) by type of Transaction (*e.g.* B2B or C2B), (iii) between batch and instant payments and (iv) between invoice messaging and invoice payment services This is notably because (i) leading providers of A2A invoice payment services in the Nordics (*e.g.* Mastercard and Bankgirot) are generally active across various segments (covering *e.g.* different types of payment methods and transactions) and [P27's future market strategy regarding payment methods and transactions]; (ii) some segments are converging (*e.g.* batch and instant payments, direct debit and credit transfer), and (iii) invoice messaging services represent the core part of invoice payment solutions and both are intrinsically linked.[62] In view of the above, the Commission's assessment will primarily focus on the possible market for A2A payment services.

(55) *First*, the Commission found that A2A invoice payment services present, to some extent, characteristic of natural monopolies (due notably to strong network effects, large economies

60 Certified Technical Distributors for E-Faktura, *i.e.* an invoice payment solution affiliated to Nordea and Swedbank. The Parties submit that, in the context of E-Faktura, Nordea and Swedbank are not competitors of P27 and Bankgirot.
61 Form CO paras. 772 to 789.
62 See *e.g.* responses to questions 36, 41.12, 44.2, 44.3 of questionnaire Q1 to market participants.

of scale and high barriers to entry). This was confirmed by most market participants[63] and further evidenced by the fact that, already pre-Transaction, markets are typically dominated by one provider at national level, such as Bankgirot in Sweden (with a market share of [50-60]-[60-70]% that is likely underestimated - see below), Finance Finland in Finland ([80-90]%) and MasterCard in Denmark ([70-80]%) and Norway ([70-80]-[80-90]%). In this respect, the Commission notes that Table 4 likely underestimates the market shares of the abovementioned players, notably because the Parties have included in the category "*others*" ([10-20]-[20-30]%) non-interbank invoice payment solutions (*i.e.* closed solutions that are only provided for internal consumption, such Klarna or Qliro). This potential underestimation is also corroborated by the results of the market investigation where a number of market participants stressed the "*current state of the domestic Nordic A2A invoice services appear to reflect a monopoly*".[64] The Commission received similar feedback in *Mastercard/Nets* (2020) where, for example, several players stressed the quasi-monopoly of Mastercard's (then Net's) Betalingsservice in Denmark, attributing it a market share above [90-100]%.[65]

(56) That being said, some respondents to the market investigation also indicated that (i) there is some room for competition and differentiation in the A2A invoice payment markets (*e.g.* "*there is different needs for Layer 2 services depending the nature of companies (large international, utilities vs merchants, local small businesses) as well as different end user patterns to use channel applications/wallets. Thus, we see need or room for competitive, even specialized solutions to the market […]*");[66] and that (ii) the implementation of the European directive on payment services[67] has "*opened up*" the market allowing to some extent new players to challenge the incumbent providers in the coming years (*e.g.* "*Few players in each market for the larger transaction part. However there are many different payment service providers have started to use the PSD2 directive*").[68]

(57) *Second*, in line with the Parties' claim, the market investigation confirmed that the P27 Bill Payment Solution is expected to be substantially more competitive than the current domestic solutions. Respondents to the market investigation generally consider that, pre-Transaction, invoice payment solutions are rather not competitive (especially in Denmark and Sweden).[69] Respondents highlight among the shortcomings of these domestic solutions their outdated technology, high costs, as well as their limited scope.[70]

(58) *Third*, as a result of the above, the Commission found that the market for A2A invoice payment services is to a large extent expected to migrate from the existing A2A invoice payment solutions to the more innovative and cheaper P27 Bill Payment Solution, regardless of the type of A2A invoice payment solutions.

(59) The Parties dispute the above arguing that the P27 Bill Payment Solution will coexist and compete with the solutions currently available on the market. However, this claim is contradicted by the Parties' internal documents. For instance, a presentation dated March 2021 details the P27 Bill Payment Solution's "*Base Case*" according to which: [P27 Bill Payment Solution base case].[71] The Parties' claim is also contradicted by the fact that only a

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63 Responses to questions 39 and 39.1 of questionnaire Q1 to market participants. Some market participants also stressed that the provision of A2A invoice payment services require some centralisation. For instance; a competing bank explained that: "*in order to provide secure, cost efficient solutions with strong consumer protection in relatively small markets, you need at least some kind of centralized components*". Similarly, another player stated: "*we see need to centralize parts of services scope*".

64 Responses to questions 39 and 39.1 of questionnaire Q1 to market participants.

65 M.9744 – *Mastercard/Nets* (2020), paras. 122-123.

66 Responses to questions 39 and 39.1 of questionnaire Q1 to market participants.

67 Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market (OJ L337, of 23.12.2015, p.35) ("PSD2").

68 Responses to questions 39, 39.1 and 53 of questionnaire Q1 to market participants.

69 Responses to question 41 of questionnaire Q1 to market participants.

70 Responses to question 45 of questionnaire Q1 to market participants.

71 BoD - Attachment 7 (March 2021), p.5.

minority of market participants expects the existing domestic A2A invoice payment solutions to coexist with and to exert competitive constraints on the P27 Bill Payment Solution. In fact, most respondents consider that the existing domestic solutions will be either (i) progressively phased out and replaced by the P27 Bill Payment Solution (within the next 3-5 years) or (ii) complementary to the P27 Bill Payment Solutions (rather than exerting competitive constraints on the latter).[72] More specifically, all respondents to the market investigation expect Bankgirot's A2A invoice payment solutions to phase out irrespective of its acquisition by P27.[73]

(60) It follows that, at national level, the Transaction will not entail a reduction in the number of alternative A2A invoice payment solutions available to customer neither in Sweden nor in the other Nordic countries, but rather the transfer of pre-existing dominant positions of domestic national players (including Bankgirot in Sweden) to a new regional player (P27). Similarly, at Nordic level, the phasing out of the existing domestic solutions and their replacement by the P27 Bill Payment Solution will not entail a reduction in the number of providers from a customer perspective: the existing domestic A2A invoice payment solutions have different national scope and, thus, do not compete against each other pre-Transaction.

(61) *Fourth*, as explained in Section 6.2.4, the market investigation revealed that the P27 Bill Payment Solution will be subject to regulatory requirements of open access and FRAND terms. This will constrain P27 and limit its pricing power.

(62) *Finally*, the Commission notes that market participants did not express concerns in relation to the horizontal overlaps in A2A invoice payment services in the Nordics.[74] On the contrary, the vast majority of them expects the Transaction to have a positive impact on this market, in terms of "*lower transaction costs*", "*foster[ing] innovation*", possibly *"attract[ing] other providers if they can look at the Nordics as one market*", "*quality of service*" and "*security"*.[75]

(d) Conclusion

(63) Based on the above considerations, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market and with the EEA Agreement in relation to the market for the provision of A2A invoice payment services in any Nordic country or the wider Nordic region.

72 Responses to questions 54 and 54.2 of questionnaire Q1 to market participants. For instance, a market participant stated that: "*existing solutions will/should be progressively be phased out, though there can be significant differences timewise per country*". Another player indicated that "*some of the national, legacy services may be phased out and replaced with P27*". The above market feedback is consistent with the Commission's findings in M.9744 – *Mastercard/Nets* (2020) (see para. 131-139 of the decision).

73 Responses to questions 54 and 55 of questionnaire Q1 to market participants (*e.g.* "*We expect to phase out Autogiro and e-faktura and replace them with a new solution*", "*in Sweden, our bank services provider has already started the transition to the P27 Bill Payment Solution to replace Bankgirot for invoice payments services*", "*the einvoice solution in Sweden will be phased out*").

74 For completeness, concerns related to P27's ability to market other not-yet-defined Layer 2 services in the future that could have been developed independently by the banks and, in the absence of competition, offering them in higher prices given that the detailed pricing model for P27's Layer 2 services has not been settled yet. However, both the Commission and the company expressing concern acknowledge that (i) those concerns are rather uncertain at this stage; (ii) the pricing concerns is not really merger specific; and that (ii) the Transaction would most likely lead to cost and efficiency advantages. Besides, should the above concerns materialise, national competition authorities could potentially intervene in the future, as such restriction would unlikely qualify as ancillary restrictions, notably because they would not be "necessary to the implementation" of the Transaction in the sense that the Transaction could be implemented in the absence of such restrictions.

75 Response to question 62 of questionnaire Q1 to market participants.

6.2 Assessment of the vertical effects

6.2.1 Introduction

(64) As previously explained, the Transaction gives rise to three vertical links between the provision of:

- Layer 1 services (*upstream*) and Layer 2 services (*downstream*);
- Layer 1 services (*upstream*) and payment services to end-customers (*downstream*); and
- Layer 2 services (*upstream*) and payment services to end-customers (*downstream*).

(65) 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")[76] distinguish between two main ways in which vertical mergers may significantly impede effective competition, namely input foreclosure and customer foreclosure.

(66) For a Transaction to raise input foreclosure competition concerns, the merged entity must have a significant amount of market power upstream.[77] In assessing the likelihood of an anticompetitive input foreclosure strategy, the Commission has to examine whether (i) the merged entity would have the ability to substantially foreclose access to inputs, (ii) whether it would have the incentive to do so, and (iii) whether a foreclosure strategy would have a significant detrimental on competition downstream.[78]

(67) For a Transaction to raise customer foreclosure competition concerns, it must be the case that the vertical merger involves a company which is an important customer with a significant degree of market power in the downstream market.[79] In assessing the likelihood of an anticompetitive customer foreclosure scenario, the Commission has to examine whether (i) the merged entity would have the ability to foreclose access to downstream markets by reducing its purchases from its upstream rivals, (ii) whether it would have the incentive to reduce its purchases upstream, and (iii) whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market.[80]

(68) In the remainder of this Section, the Commission will analyse the vertical links arising from the Transaction against the above framework.

6.2.2 Vertical link between the Layer 1 and Layer 2 markets

(69) The Transaction gives rise to a vertical link between the Layer 1 services (payment clearing services) provided by P27 (and Bankgirot) (*upstream*) and the Layer 2 services (value added payment services, such as invoice payment services) provided by P27 including Bankgirot (*downstream*).

(a) The Parties' views

(70) The Parties do not discuss in detail the vertical link arising from the Transaction between the provision of Layer 1 and Layer 2. They only submit that the P27 Bill Payment Solution will be "*rail-agnostic*", *i.e.* that Layer 2 services can be processed by clearing systems other than

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76 OJ L24, 29.1.2004, p.1.

77 Non-horizontal Merger Guidelines, para. 35.

78 Non-horizontal Merger Guidelines, para. 32. Each of these points will be analysed separately although the Commission recognises that they are intertwined.

79 Non-horizontal Merger Guidelines, para. 61.

80 Non-horizontal Merger Guidelines, para. 59.

the P27 Clearing System. In other words, the P27 Clearing System and P27 Bill Payment Solution will not be integrated solutions. […].[81]

(b) The Commission's assessment

Assessment of the risk of input foreclosure

(71) During the pre-notification phase, one market participant contacted by the Commission expressed concerns about the Transaction claiming that the vertical link between the Layer 1 and Layer 2 markets arising from the Transaction would lead to a risk of foreclosure of third-party providers of Layer 2 services (input foreclosure). In particular, this participant feared that providers of Layer 2 services may be excluded (i) from future opportunities to supply P27 with technical services related to the Layer 2 services and (ii) from having access to the P27 Clearing System (Layer 1) to provide Layer 2 services. According to the company; the above risk of foreclosure is mainly due to three factors:

a. *The increased vertical integration* resulting from the Transaction, with P27 having the ability and incentive to offer integrated Layer 1 and Layer 2 services/solutions, which could lead to the creation of an integrated ecosystem and, thus, prevent third-party providers to compete effectively with P27 and the Parent Companies;

b. *The choice of Mastercard as P27 partner* for the Layers 1 and 2, which would enable Mastercard to be present throughout the entire payment value chain in the Nordics (both for card and A2A payments). According to this company, this constitutes a major competitive advantage and a unique market position that may enable Mastercard to prevent third-party provider to compete on the same level playing field for the provision of Layer 2 services in the Nordics;

c. *The consolidation of a large share of the payment volumes at pan-Nordic level* resulting from the Transaction and the partnership with Mastercard, which would make difficult for any players willing to enter the Nordic markets to build sufficient volumes, which would be all the more problematic considering that, in the payment value chain, profitability depends on the volumes of transactions processed.

(72) The market investigation did not confirm the above claims and, for the reasons set out below, the Commission concludes that the vertical link arising from the Transaction between the provision of Layer 1 services (*upstream*) and Layer 2 services (*downstream*) does not raise serious doubts as to the compatibility of the Transaction with the internal market and with the EEA Agreement.

(73) <u>*First*</u>, as previously indicated, the Commission found that access conditions to the Layer 1 for PSPs are protected by the existence of regulatory requirements of open access and FRAND terms applicable to the P27 Clearing System (see Section 6.2.3), which limits P27's ability to engage in a foreclosure strategy.

(74) Moreover, the evidence on file suggests that, in terms of ability to foreclose, the situation post-Transaction is largely similar to the situation pre-Transaction:

a. It is not clear to what extent the Transaction will materially increase the level of vertical integration between the Layer 1 and Layer 2 services in the Nordics. The feedback received from the market in that respect is very mixed.[82] In particular, several market participants stressed that, already pre-Transaction, in Sweden, the Layer 1 and Layer 2 markets are dominated by the same player (*i.e.* Bankgirot) and that the same applies in

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81 Form CO, paras. 247 and 266. For instance, the Parties explain that P27's future Layer 2 offering could potentially include fraud monitoring solutions and that such solutions would unlikely be rail-agnostic as they would need to use the data that is being processed via the P27 Clearing System.

82 Responses to question 60 of questionnaire Q1 to market participants.

Denmark and Norway with Mastercard (see Tables 3 and 4). As regards Finland, the Commission notes that, although there is no vertically integrated player pre-Transaction, it is not clear that the vertical integration of P27 will have a material impact in this Eurozone country where the upstream Layer 1 market is currently dominated by pan-European clearing systems, which are expected to coexist with the P27 Clearing System rather being phased out (see Section 6.1.1 and Table 3). The Commission also notes that, in contrast to its initial claims, the same company which initially raised concerns stated in response to the Commission's questionnaire that it "*does not know*" whether the Transaction would increase the level of integration between the two layers as it will depend on various factors (such as the "*rule books for Layer 2 services*");[83]

b. a large majority of respondents considers the barriers to entry in the Nordic markets for Layer 2 services will not increase as a result of the Transaction.[84] In this respect, the Commission also notes that, the company which raised concerns did not reiterate its initial claim according to which the consolidation of the Nordic payment volumes resulting from the Transaction will increase the barriers to entry. In contrast, the same company stated in response to the Commission's request for information that it "*does not know*" whether the Transaction would increase the barriers to entry (with no mention of the payment volume consolidation).[85]

(75) Second, in terms of incentives to foreclose, the Commission notes that internal documents of the Parties indicate that P27 will not have an incentive to engage in a foreclosure strategy. P27's business plan states that: [P27's future market strategy regarding Layer 2 services].[86] In addition, according to P27's Business Plan, the Layer 2 services falling within the scope of P27 will only include value-added payment services "*that benefit from a Nordic scale and scope*" and that all other value-added payment services build on top of the P27 Clearing System, constitute "Layer 3 services" that [P27's future market strategy regarding services] and whose development [P27's future market strategy regarding services].[87]

(76) Moreover, the company expressing concerns in pre-notification claims that the Parties may favour Mastercard for the provision of technical services relating to P27's future Layer 2 solutions, which could lead to the foreclosure of third-party providers. In this respect, the Commission observes that, even if there was the ability to foreclose, it is not evident that the Parties would have any incentive to engage in such a foreclosure strategy, which would mainly benefit Mastercard, rather than the Parent Companies. Indeed, the Parent Companies' incentive is instead to choose the most cost-efficient and highest quality technical service provider for P27, to increase the attractiveness of the platform. In any event, the Commission considers that the choice of Mastercard as P27's partner (for the provision of the underlying infrastructure) is the result of P27's procurement process (including an open competitive tender process in relation to the Layer 1) and, therefore, not merger specific.

(77) *Finally*, as regards the effects, the Commission notes that market participants did not echo the concerns raised in the pre-notification phase.[88] Market participants do not expect the Transaction to have a negative impact on the Layer 2 market. In fact, most of them anticipate efficiencies. Moreover, several market participants stressed that competition in the Layer 2 market is expect to increase in the coming years as a result of the implementation of the PSD2.

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83 Responses to question 60 of questionnaire Q1 to market participants.

84 Responses to question 51 of questionnaire Q1 to market participants.

85 Responses to question 60 of questionnaire Q1 to market participants.

86 Form CO, Appendix 11 (emphasis added).

87 Form CO, Appendix 11 (emphasis added), Sections 4.3 and 13. See also Section 4.2, which states that P27 will only offer Layer 2 services [P27's future market strategy regarding Layer 2 services].

88 Only one respondent raised similar concerns, in particular linked to the choice of Mastercard as the technical partner of P27, which, as mentioned is not merger specific.

Assessment of the risk of customer foreclosure

(78) The Commission considers that no risk of customer foreclosure arises from the vertical link between the provision of Layer 1 services (*upstream*) and Layer 2 services (*downstream*) in the Nordics given (i) the lack of upstream competitors to foreclose due to the monopolistic nature of the upstream Nordic Layer 1 markets (see Section 6.1.1) and (ii) the fact that none of the respondents to the market investigation raised concerns related to such a risk.

(c) Conclusion

(79) In view of the above considerations, the Commission conclude that the vertical link between the provision of Layer 1 services (payment clearing services) (*upstream*) and the provision of Layer 2 services (value added payment services, such as invoice payment services) (*downstream*) does not raise serious doubts as to the compatibility of the Transaction with the internal market and with the EEA Agreement.

6.2.3 Vertical link between the (upstream) supply of clearing services (Layer 1) and the (downstream) supply of payment services to end-customers

(80) The Transaction gives rise to a vertical link between the provision of payment clearing services (Layer 1) by P27 and Bankgirot *(upstream)* and the provision of payment services to end-customers by the Parent Companies *(downstream)*.

(a) The Parties' views

(81) The Parties submit that the above vertical link does not raise any risk input foreclosure for the following main reasons.[89]

(82) First, the Parties would not be able to foreclose downstream rivals on the grounds that (i) the P27 Clearing System will be subject to open access and neutrality regulatory requirements; (ii) the Transaction documents expressly provide that all PSPs fulfilling objective criteria (*i.e.* the eligible direct participants)[90] shall be granted access to the P27 Clearing System on objective, FRAND terms (including in relation to the pricing) and that all of them shall be treated equally irrespective of whether it is a Parent Company or a third party;[91] and (iii) the P27 Clearing System will be operated based on an open rulebook owned and managed by an independent third party association, namely the Nordic Payments Council (the "NPC").[92]

(83) *Second*, the Parties argue that the implementation of a customer foreclosure strategy would not be in their interest as it could undermine the success of the P27 Clearing System, whose business case relies on third-party volumes to achieve network effects and scale efficiencies, which is the reason why the participation model of the P27 Clearing System has been designed as being as inclusive as possible.

(84) *Finally*, the Parties claim that the provision of clearing services has a limited impact on the downstream market for the provision of payment services to end-customers. In their view,

89 Form CO, paras. 604 and ff. (The Parties do not discuss the risk of customer foreclosure.

90 The Parties explained that the participation to the P27 Clearing System will be open to all entities that fulfil objective access criteria (such as compliance with the PSD2 and with the regulatory requirements in relation to capital and liquidity), which are needed to protect the payment systems against financial risks. The market players that do not fulfil the above participation requirements can be an indirect participant, relying on a direct participant to access the P27 Clearing System, under terms and conditions agreed bilaterally.

91 P27 SHA, Articles 2.4.1 and 2.4.3 (Appendix 11 to the Form CO). See also Schedule 2.4 to the P27 SHA, Art. 6: "*the Company [P27] will under the participation agreement commit to apply the same unit transaction fees for all Participating Entities*".

92 See P27 SHA, Preamble recital I (Appendix 11 to the Form CO): "*The rulebooks will be managed by a separated rulebook management forum, fully detached from the governance of the Company [P27], to ensure openness towards all interested payment service providers and other relevant stakeholders*".

clearing services are underlying services offered to all PSPs, which do not constitute a differentiating parameter of competition on the downstream market and, thus, do not impact the end-customers' choice of PSPs. The Parties further submit that the competitive conditions on the upstream Layer 1 market will remain unchanged post-Transaction and that the establishment P27 will lead to significant efficiencies for Layer 1 customers (*e.g.* improved costs and quality of services) (see Section 6.1.1).

(b) The Commission's assessment

Assessment of the risk of input foreclosure

(85) The market investigation generally confirms the Parties' claims and, for the reasons set out below, the Commission concludes that the vertical link arising from the Transaction between the provision of payment clearing services (*upstream*) and payment services to end-customers (*downstream*) does not raise serious doubts as to the compatibility of the Transaction with the internal market and with the EEA Agreement.

(86) *First*, the Commission found that the Parties would not have the ability to foreclose the access to the P27 Clearing System given the existence of open access and FRAND regulatory requirements applicable for the provision of payment clearing services in the Nordics. This was confirmed by both the market participants and the Nordic financial regulators.[93] More specifically:

- *in Sweden*, (i) the Swedish Securities Markets Act (Chapter 20) and the Swedish Payment Services Act (Chapter 7) provide respectively that (i) clearing systems established under Swedish law (such as the Bankgirot and P27 clearing systems) are subject to open access and neutrality requirements and (ii) entities responsible for a payment system must ensure that their participation requirements are objective, non-discriminatory and proportionate. The Swedish FSA expressly confirmed that above requirements are already applicable today to Bankgirot and will also apply to P27;[94]

- *in Denmark*, pursuant to the Danish Capital Market Act, clearing systems registered at national level are subject to open access and FRAND requirements, under the supervision and oversight of the Danish central bank. Being a Swedish company, P27 is not automatically subject to the above domestic legislation. However, the Danish central bank indicated that, "*in the negotiations between P27 and Danmarks Nationalbank, it has [already] been agreed that P27's clearing of payments in Denmark will be subject to Danish law*". In other words, P27 has to register in Denmark and to obtain a Danish clearing license, and will thus become subject to the Danish open access and FRAND requirements;[95]

- *in Finland*, the Finnish regulator explained that the Layer 1 activities of P27 will be subject to the European Central Bank's oversight principles, including in particular principle 18 on "*Access and participation requirements*" pursuant to which "*[a financial market infrastructure] should have objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access*".[96] Similarly, the Parties also submit that P27 will be subject to open access and FRAND requirement laid down in Article 16 of the Regulation of the European Central Bank n° 795/2014 on oversight requirements for systemically important payment systems (applying to all systemically important payment systems in the Eurozone); and

93 Responses to question 15 of questionnaire Q1 to market participants and Responses to question 1 of the questionnaires to the Nordic financial regulators dated 07.06.2021.

94 Responses to question 1 of the questionnaires to the Nordic financial regulators dated 07.06.2021.

95 Responses to question 1 of the questionnaires to the Nordic financial regulators dated 07.06.2021.

96 Responses to question 1 of the questionnaires to the Nordic financial regulators dated 07.06.2021.

- *in Norway,* the Norwegian Payment Systems Act (Sections 5-2 and 5-3) implementing the PSD2 provides that rules on access of authorised or registered PSPs to payment systems shall be objective, non-discriminatory and proportionate and not inhibit access more than is necessary to safeguard against specific risks. The above rules do not apply to payment systems designated by Norway pursuant to the Settlement Finality Directive 98/26/EC (P27 could potentially fall within this category). However, in such a case, the regulation still requires (direct) participants in the designated payment system to allow requesting PSPs (that are not direct participants) to pass transfer orders through the designated payment system in an objective, proportionate and non-discriminatory manner.[97]

(87) Moreover, almost all respondents confirmed that the NPC, *i.e.* the Swedish non-profit association founded by national banking associations owning and managing the scheme rulebook (*i.e.* the set of rules regulating the payment scheme, including in terms of access to the system) used in the P27 Clearing System, is sufficiently independent from the Parties.[98]

(88) As a result of the above, the vast majority of market participant considers that, post-Transaction, the Parent Companies would not have the ability to restrict the access of competing banks and PSPs to the P27 Clearing System.[99]

(89) Second, the evidence in the Commission's file largely confirms that the Parent Companies would have no incentive to engage in input foreclosure as it could undermine the success of the P27 Clearing System, which depends on the combined volumes of the Parent Companies, third-party banks and other PSPs to achieve the optimal network effects and scale efficiencies. This is corroborated by the Parties' internal documents, including P27's business plan, which states that: [P27's Participation model strategy].[100] For instance, the Parties explained that to avoid any preferential treatment of the Parent Companies, the P27 Clearing System will apply to all customers a cost-plus distribution model, which will be fully transparent (with publicly available principles and computation methodology). In line with the above, the vast majority of respondents consider that the Parties would have no incentive to restrict the access to the P27 Clearing System to competing banks and PSPs.[101]

(90) Finally, none of the market participants expressed specific concerns about the above vertical link. On the contrary, virtually all of them expect the Transaction to have a positive or neutral impact on the concerned markets and on their business.[102]

Assessment of the risk of customer foreclosure

(91) As illustrated in Table 5, the Parent Companies are amongst the largest banks in the Nordics and account together for a very large share of the downstream Nordic markets for the provision of payment services to end-customers.[103]

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97 Responses to questions 15.4 and 15.5 of questionnaire Q1 to market participants.

98 Responses to question 30 of questionnaire Q1 to market participants. See also (i) the preamble of P27 SHA, recital I: "*the rulebooks will be managed by a separated rulebook management forum, fully detached from the governance of the Company [P27], to ensure openness towards all interested payment service providers and other relevant stakeholders.*" (Appendix 11 to the Form CO) and (ii) P27's business plan referring to the "*clear separation of scheme management (NPC) and operational activities (P27)*" and to the fact that NPC is "*an independent entity [...] separate from the P27 Nordic Payments Platform*" (Appendix 11 to the Form CO).

99 Responses to question 15 of questionnaire Q1 to market participants.

100 Appendix 11 to the Form CO.

101 Responses to question 30 of questionnaire Q1 to market participants.

102 Responses to questions 31, 63, 64 of questionnaire Q1 to market participants.

103 Most of the Parent Companies with the exception of Danske Bank, and Handelsbanken (save for Finland) are unable to provide marker shares segmented between corporate and retail payments. The Parties confirmed that to the best of their knowledge (i) SEB, Swedbank, OP and Nordea's market shares would not materially differ from those for the overall market for domestic transfers in each of the relevant countries and (ii) Handelsbanken's market share in Finland would not materially differ from those for domestic transfers in Finland. This is confirmed

TABLE 5 – MARKET SHARES FOR PAYMENT SERVICES TO END-CUSTOMERS (2019)[104]								
Provider	Denmark		Finland		Sweden		Norway	
	Domestic	International	Domestic	International	Domestic	International	Domestic	International
Danske Bank	[30-40]%	[20-30]%	[10-20]%	[10-20]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Handelsbanken	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[10-20]%	[10-20]%	[0-5]%	[0-5]%
Nordea	[10-20]%	[20-30]%	[20-30]%	[20-30]%	[10-20]%	[10-20]%	[10-20]%	[5-10]%
OP	-	-	[30-40]%	[30-40]%	-	-	-	-
SEB	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[10-20]%	[10-20]%	[0-5]%	[0-5]%
Swedbank	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[30-40]%	[20-30]%	-	-
combined	***[50-60]%***	***[50-60]%***	***[80-90]%***	***[70-80]%***	***[80-90]%***	***[70-80]%***	***[10-20]%***	***[10-20]%***
Others	[50-60]%	[40-50]%	[20-30]%	[20-30]%	[10-20]%	[20-30]%	[80-90]%	[80-90]%

Source: *Form CO, Appendix 33*

(92) However, the Commission notes that (i) given the monopolistic nature of the upstream Nordic clearing markets (see Section 6.1.1), there would be no upstream competitors to foreclose and that (ii) none of the respondents to the market investigation raised concerned related to such a risk. Therefore, the Commission considers that no risk of customer foreclosure arise from the vertical link between the provision of clearing services (*upstream*) and the provision of payment services to end-customers (*downstream*) in the Nordics.

(c) Conclusion

(93) In view of the above considerations, the Commission concludes that the vertical link between the provision of payment clearing services by P27 including Bankgirot (*upstream*) and the provision of payment services to end-customers by the Parent Companies (*downstream*) does not raise serious doubts as to the compatibility of the Transaction with the internal market and with the EEA Agreement.

6.2.4 Vertical link between the (upstream) supply of A2A invoice payment services (Layer 2) and the (downstream) supply of payment services to end-customers

(94) The Transaction gives rise to a vertical link between the A2A invoice payment services provided by P27 and Bankgirot (*upstream*) and the payment services provided by the Parent Companies to end-customers (*downstream*).

(a) The Parties' views

(95) The Parties submit that the above vertical link does not raise any risk input foreclosure for the following main reasons.[105]

(96) First, they argue that they would be unable to foreclose third-party banks and PSPs that are willing to offer to their end-customers payment services based on the P27 Bill Payment Solution. The Parties explain that, under the Transaction documents, access to P27's Layer 2 services (including the P27 Bill Payment Solution) shall be provided on FRAND terms (including in relation to pricing) to all PSPs fulfilling objective criteria (*i.e.* eligible direct participants), which shall be treated equally irrespective of whether they are a Parent Company or a third party.[106] The Parties also stress that the requirements defining the eligible direct participants will be objectively justified, *i.e.* P27 will only apply legitimate regulatory and technical requirements that are strictly necessary to secure the integrity and

by the fact that where the information (for Danske Bank and Handelsbanken) is provided, the market shares of the companies generally do not differ materially.

104 In terms of volume of transaction.

105 Form CO, paras. 772 and ff. The Parties do not discuss the risk of customer foreclosure.

106 P27 SHA, Articles 2.4.1 and 2.4.3, as well as Schedule 2.4 (Appendix 11 to the Form CO).

security of P27's Layer 2 solutions.[107] Moreover, the Parties stated that the regulatory requirement of open access and FRAND terms applicable to the Layer 1 (see Section 6.2.3) will also apply to Layer 2 services related to the P27 Clearing System. That being said, according to them, not all the Layer 2 services provided by P27 will automatically fall within this category as it will depend on an analysis of the specific service, which will be subject to discussions with the relevant financial regulators.

(97) Second, the Parties further submit that the competitive conditions on the upstream Layer 2 markets will *in fine* remain unchanged post-Transaction (see Section 6.1.2).

(98) Finally, it is also claimed that the introduction of the P27 Bill Payment Solution will lead to significant efficiencies (e.g. in terms of costs and quality of services) (see Section 6.1.2). In particular, the Parties submit that the P27 Bill Payment Solution will be pro-competitive as it will enable its (direct and indirect) participants (*i.e.* banks and other PSPs) to create on top of it new and differentiated payment services offerings to end-customers (with *e.g.* different services, prices, terms and conditions), which will increase competition on the downstream market for payment services.

(b) The Commission's assessment

Assessment of the risk of input foreclosure

(99) The market investigation generally confirms the Parties' claims and, for the reasons set out below, the Commission concludes that the vertical link arising from the Transaction between the provision of A2A invoice payment services (*upstream*) and payment services to end-customers (*downstream*) does not raise serious doubts as to the compatibility of the Transaction with the internal market and with the EEA Agreement.

(100) First, the Commission found that the Parties would not have the ability to restrict the access of third parties to P27's Layer 2 services (including the P27 Bill Payment Solution). Indeed, the market investigation revealed that, post-Transaction, P27 will be subject to regulatory obligations requiring it to provide its Layer 2 services (including the P27 Bill Payment Services) to all PSPs fulfilling objective criteria (*i.e.* eligible direct participants) on FRAND terms. This was confirmed by virtually all respondents, including the Nordic financial regulators.[108] In particular:

– *in Sweden,* the Swedish FSA expressly confirmed that all Layer 2 services performed by a clearing organisation (including the P27 Bill Payment Solution) are considered as "*activities related to the clearing organisation*" and, thus, subject to the above open access and FRAND requirements.[109] In case of breach of the above requirements, the Swedish FSA could impose penalty fees to P27 or, in case of a very serious infringement, decide to withdraw P27's clearing license;[110]

107 The market players that do not fulfil the above participation requirements can be indirect participants, relying on a direct participant to access P27's Layer 2 solution, under terms and conditions agreed bilaterally.

108 Responses to questions 42, 43.1 and 57 of questionnaire Q1 to market participants and Responses to the questionnaires to the Nordic financial regulators dated 07.06.2021, 16.06.2021 and 22.06.2021.

109 Responses to the questionnaires to the Nordic financial regulators dated 07.06.2021 (question 2), 16.06.2021 (question 1) and 22.06.2021 (question 1). The Parties do not dispute the above but submit that not all the Layer 2 services provided by P27 will automatically fall within this category and that it "*will depend on an analysis of the specific service, which will be subject to discussions with the relevant financial regulators*" (Form CO, fn. 294, emphasis added). This caveat notably reflects the fact that the scope and the content of the future Layer 2 services of P27 are still rather uncertain as they are not precisely defined yet. That being said, the Commission notes that the Swedish FSA expressly indicated that the above open access and FRAND requirements already apply to Bankgirot's Layer 2 services and will apply to the P27 Bill Payment Solution.

110 Responses to question 1 the questionnaires to the Nordic financial regulators dated 22.06.2021.

– *in Denmark, Finland and Norway,* the existence of domestic regulatory requirements of open access and FRAND terms applicable to P27's Layer 2 services is less clear.[111] In particular, the Danish regulators indicated that P27 Layer 2 services will be subject to the national requirement of open access and FRAND applicable to the Layer 1 "*in the event that the Level 2 services are considered payment systems*",[112] which will depend on the exact scope and content of the Layer 2 services offered by P27. The Finnish FSA indicated that, although there is no domestic legislation regulating the provision of Layer 2 services, "*if there were any reason to believe that the access were not open*", it could and would "*take actions*".[113]

(101) In any event, the evidence on file indicates that the Swedish regulatory requirements of open access and FRAND terms applicable to P27's Layer 2 services will most likely be implemented by P27 in all the Nordic countries where P27 is active, including Denmark, Finland and potentially Norway. This argument raised by the Parties is corroborated by the feedback received from the Nordic FSAs.[114] This is because, although, from a strict legal point of view, the Swedish regulation is only applicable in Sweden, in practice**,** it is very unlikely that P27 would apply different terms and conditions depending on the Nordic countries knowing that the purpose of P27 is precisely to establish a pan-Nordic cross-border payment platform.

(102) In addition, the market investigation revealed that the Nordic financial regulators are closely cooperating for the supervision and oversight of P27's Layer 1 and Layer 2 services. For instance, the Danish central bank explained that "*the Nordic authorities have already met several times and are expected that a formalised cooperation will be developed after P27 has obtained their licence in Sweden*". Similarly, the Finnish FSA explained that it is "*participating in the Nordic supervision and oversight cooperation*" and that "*through this cooperation with our Nordic colleagues FIN-FSA could take action* [if P27's Layer 2 were not open to all market participants]".[115]

(103) As a result of the above, a large majority of market participants considers that, post-Transaction, the Parent Companies would not have the ability to restrict the access of competing banks and PSPs to the P27 Bill Payment Solution.[116]

(104) <u>*Second*</u>**,** in terms of incentives, most respondents (including both market participants and Nordic financial regulators) indicated that it would not be in the Parent Companies' interest to restrict the access to the P27 Bill Payment Solution.[117] For instance, competing banks stated that "*There have to be non-discriminatory terms if P27 wants to succeed*" and that "*the P27 solution relies and scale as the enabler for profitability. […] there would be little incentive to restrict access to other than the founders of P27*".[118] Similarly, Nordic financial regulators indicated that "*neither P27 nor its parent companies will likely have any incentive to restrict access to their own solution*" and that "*it is in P27's own interest to increase the volume in the system, i.e. they do not seem to have an interest in restricting the access*".[119] The Parent Companies' incentives to open up P27's Layer 2 services is also illustrated by

111 Responses to questions 42 of questionnaire Q1 to market participants and Responses to the questionnaires to the Nordic financial regulators dated 07.06.2021, 16.06.2021 and 22.06.2021.
112 Responses to question 2 of the questionnaires to the Nordic financial regulators dated 07.06.2021.
113 Responses to the questionnaires to the Nordic financial regulators dated 07.06.2021 (question 2) and 22.06.2021 (question 1). In such a case, the intervention of the Finnish FSA would take place in the context of the Nordic supervision and oversight cooperation (see recital (102)).
114 Responses to the questionnaires to the Nordic financial regulators dated 07.06.2021 (question 1) and 22.06.2021 (question 2).
115 Responses to questionnaires to the Nordic financial regulators dated 07.06.2021 (question 3) and 22.06.2021 (question 1).
116 Responses to question 57 of questionnaire Q1 to market participants.
117 Responses to question 57 of questionnaire Q1 to market participants and Responses to question 2 of the questionnaires to the Nordic financial regulators dated 07.06.2021.
118 Responses to question 57 of questionnaire Q1 to market participants.
119 Responses to question 2 of the questionnaires to the Nordic financial regulators dated 07.06.2021.

the Transaction documents, pursuant to which access to these services shall be provided on FRAND terms to all eligible direct participants, with no distinction between the Parent Companies and third parties.[120]

(105) *Third*, the Commission found the Parties are currently envisaging to restrict the possibility for some specific PSPs, namely non-banks PSPs, to become direct participants of the P27 Bill Payment Solution. Under this so-called "*coupled model*", non-bank PSPs would only be able to become indirect participants (*i.e.* relying on an intermediary that is a direct participant). According to internal documents, this coupled model could potentially have a negative impact on competition (in terms *e.g.* of innovation and the P27 Bill Payment Solution's uptake and market reach).[121] However, the market investigation revealed that such restrictions (i) might be objectively justified notably to ensure sufficient protections against fraudulent or illegal payments (this claim raised by the Parties was largely confirmed by both market participants and the Nordic financial regulators);[122] and (ii) would lack merger-specificity since, already pre-Transaction, non-banks PSPs may be subject to similar restrictions (both with respect to Layer 1 and Layer 2 services), which, under certain circumstances, may be authorised by the regulatory frameworks applicable in the Nordics (including PSD2).[123] In any event, it is not clear that indirect participants would be less competitive than direct participants. The feedback received during the market investigation is very mixed in that respect. In particular, a non-bank PSP stated that "*market competition gives enough options for indirect participants to partner for P27 services, and thus will secure competitive position*".[124]

(106) *Finally*, subject to very limited exceptions, no market participants expressed specific concerned about the above vertical link. On the contrary, most of them expect the Transaction to have a positive impact on the concerned markets and on their business.[125]

Assessment of the risk of customer foreclosure

(107) The Commission considers that no risk of customer foreclosure arise from the vertical link between the provision of A2A invoice payment services (*upstream*) and the provision of payment services to end-customers (*downstream*) in the Nordics. Indeed, although the Parent Companies account together for a very large share of the downstream markets (see Table 5 above), the Commission notes that (i) given the monopolistic nature of the upstream Nordic market for A2A invoice payment services (see Section 6.1.2), there would be no upstream competitors to foreclose and that (ii) none of the respondents to the market investigation raised concerns related to such a risk.

(c) Conclusion

(108) In view of the above considerations, the Commission conclude that the vertical link between the provision of A2A invoice payment services by the JV (*upstream*) and the provision of payment services to end-customers by the Parent Companies (*downstream*) does not raise serious doubts as to the compatibility of the Transaction with the internal market and with the EEA Agreement.

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120 P27 SHA, Articles 2.4.1 and 2.4.3, as well as Schedule 2.4 (Appendix 11 to the Form CO).

121 20201211 Advisory Board v2, p.17 2021-02-05 Advisory Board v1, p.5.

122 Responses to question 59 of questionnaire Q1 to market participants and Responses to question 2 of the questionnaires to the Nordic financial regulators dated 07.06.2021. For instance, a Nordic Financial Regulator explained that "*concerns [over know-your-customers, anti-money-laundering and counter terrorism financing rules] are difficult to eliminate given the differences in customer relations between the two types of entities*".

123 See *e.g.* responses to questions 3 and 4 of the questionnaires to the Nordic financial regulators dated 22.06.2021.

124 Responses to question 58 of questionnaire Q1 to market participants.

125 Responses to questions 61 to 64 of questionnaire Q1 to market participants.

6.3 Assessment of the cooperative effects of the JV

(109) Under Article 2(4) of the Merger Regulation, where the creation of a full-function joint venture has as its object or effect the coordination of the competitive behaviour of undertakings that remain independent, such coordination shall be appraised under Article 101 TFEU. According to Article 2(5) of the Merger Regulation the Commission shall take into account in particular: (i) whether parent companies retain, to a significant extent, activities in the same market(s) as the joint venture or in a market which is downstream, upstream, or neighbouring; and (ii) whether the coordination which is the direct consequence of the creation of the joint venture affords the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products or services in question.

(110) Post-Transaction, the Parent Companies will retain their activities in the retail and corporate banking markets, including in particular the market for payment services, which are downstream of the markets where P27 (including Bankgirot) will be active.

(111) However, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market and with the EEA Agreement as a result of cooperative effects.

(112) *First*, the Commission notes that no market participants expressed concerns about a potential risk of cooperative effects resulting from the Transaction.

(113) *Second*, the structure of the relevant markets are not conducive to coordination between the Parent Companies. First, there is a relatively high number of parent companies (*i.e.* six), with asymmetric market shares in payment services to end-customers and different geographic footprints in the Nordics (see Table 5 above), which makes coordination less likely. In addition, post-Transaction, the Parent Companies will continue facing other competitors accounting for a large share of the markets for payment services to end-customers in each Nordic countries (see Table 5 above).

(114) *Third*, the comparison between the (expected) turnover of P27 with the turnover of the Parent Companies (in total and in the market for payment services) show that the activities of P27 are not economically significant in comparison.[126]

(115) *Fourth*, any coordination would not be a direct consequence of the creation of P27, which has its object the creation and operation of the P27 Clearing System and related value-added services including invoice payment services (as well as the operation of Bankgirot in Sweden until the roll-out of the P27). In fact, the Parent Companies have also implemented safeguards to prevent the exchange of commercially sensitive information. P27 will only receive information from P27 participants, including the Parent Companies, that is strictly necessary (including information on payee and payer, bank account number, alias etc.). P27 will not have access to any competitively sensitive information of participants (including the Parent Companies), such as prices of to end customers.

(116) *Finally*, in relation to Sweden specifically, any cooperation between the Parent Companies would lack merger-specificity, as pre-Transaction, five of the six Parent Companies (those with banking activities in Sweden) were already cooperating as shareholders of Bankgirot.

[126] P27's revenues are expected to be EUR [revenue forecast] at maturity in relation to clearing services. The Parties indicate that revenue forecasts do not exist for P27's Layer 2 services due to their premature development stage. However the Parties explicitly confirmed that the economic significance of P27 as a whole will be low compared to the (i) the total net turnover achieved by the Parent Companies (approximately […] in 2019) or (ii) the turnover achieved by the Parent Companies in the downstream market for payment services (approximately […] in 2019).

(117) Based on the above considerations, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market and with the EEA Agreement in relation to potential cooperative effects of the joint venture.

7. CONCLUSION

(118) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President