EUROPEAN COMMISSION
DG Competition

Case M.10935 - DNB / DANSKE BANK / SB1 / EIKA / BALDER / VIPPS / MOBILEPAY

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 21/10/2022

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EUROPEAN COMMISSION

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PUBLIC VERSION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

DNB Bank ASA
P.O. Box 1600 Sentrum
NO-0021 Oslo
Norway

Danske Bank A/S
Holmens Kanal 2-12
1092 Copenhagen K
Denmark

SpareBank 1 Betaling AS
Hammersborggata 2
0181 Oslo
Norway

Eika VBB AS
Parkveien 61
0254 Oslo
Norway

Balder Betaling AS
Jonsvollsgaten 2
5011 Bergen
Norway

Vipps Holding AS
P.O. Box 1600 Sentrum
NO-0021 Oslo
Norway

Subject: **Case M.10935 – DNB / DANSKE BANK / SB1 / EIKA / BALDER / VIPPS / MOBILEPAY**
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]

Dear Sir or Madam,

(1) On 16 September 2022, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Vipps AS ("Vipps", Norway) and MobilePay A/S ("MobilePay", Denmark) will be combined under a new entity, and DNB Bank ASA ("DNB", Norway), Danske Bank A/S ("Danske Bank", Denmark), SpareBank 1 Betaling AS ("SB1", Norway), Eika VBB AS ("Eika", Norway), Balder Betaling AS ("Balder", Norway) and Vipps Holding AS ("Vipps Holding", Norway) will acquire within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation joint control over the newly created entity ("Proposed Transaction" or "Transaction").[3]

(2) Vipps and MobilePay are hereinafter referred to as the "Merging Parties" and post-Transaction as the "Merged Entity". DNB, Danske Bank, SB1, Eika, Balder and Vipps Holding are hereinafter together referred to as the "Parent Companies" or the "Notifying Parties", and those of them with direct banking activities (DNB and Danske Bank) as the "Owner Banks". All the companies involved in the Transaction (*i.e.*, the Merging Parties and the Parent Companies) are referred to as the "Parties".

1. THE PARTIES

(3) Vipps is a provider of mobile payment services in Norway, with a customer base of approx. 4.15 million users. Vipps offers payment services adapted to a variety of different payment situations, including peer-to-peer ("P2P") payments, point-of-sale ("POS") payments, invoice payments/services ("invoicing") and online payments (e-Commerce). Vipps is currently wholly owned by Vipps Holding.

(4) MobilePay is a wholly owned subsidiary of Danske Bank and provides payment services in Denmark and Finland. MobilePay offers mobile payment services adapted to a variety of different payment situations, including P2P, POS, invoicing and e-Commerce.

(5) DNB is a full-service bank and the parent company of the DNB group. DNB is listed on the Oslo Stock Exchange. The DNB group provides banking, investment, insurance, asset management and real estate services to retail customers, corporate clients and the public sector.

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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').

3 Publication in the Official Journal of the European Union No C 367, 26.9.2022, p. 12.

(6) Danske Bank is a Nordic-based financial services company incorporated in Denmark. Danske Bank is a full-service bank that provides banking, pension scheme, insurance, mortgage finance, asset management, brokerage, real estate and leasing services to retail customers, corporate clients, and the public sector.

(7) SB1 is a holding company currently owned by 14 independent Norwegian banks[4] bearing the "Sparebank 1" name that cooperate on a common platform and under a common brand. None of SB1's shareholders exercises sole or joint control over SB1. The sole purpose of SB1 is to own and manage the owners' combined shareholding of approx. 23% in Vipps Holding.

(8) Eika is a holding company with the sole purpose of owning and managing a shareholding of approx. 8% in Vipps Holding on behalf of the Eika alliance that currently consists of 52 independent Norwegian banks.[5] None of Eika's shareholders exercises sole or joint control over Eika.

(9) Balder is a holding company owned by 13 independent Norwegian banks.[6] The main purpose of Balder is to own and manage the shareholding of approx. 10% in Vipps Holding on behalf of its shareholders. None of Balder's shareholders exercises sole or joint control over Balder.

(10) Vipps Holding owns all of Vipps' current shares. Vipps Holding is owned by several Norwegian banks and holding companies, including DNB, SB1, Eika and Balder. However, none of Vipps Holding's shareholders exercises sole or joint control over Vipps Holding.

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4 SB1 is owned by the independent banks in the SpareBank 1 Alliance. Since this is an alliance, existing members may exit, and new members may join, increasing or decreasing the proportion of ownership in Vipps Holding accordingly. As of 23 August 2022, the 14 banks are: SpareBank 1 Østfold Akershus, SpareBank 1 Lom og Skjåk, SpareBank 1 Gudbrandsdal, SpareBank 1 Ringerike Hadeland, SpareBank 1 Sørøst Norge, SpareBank 1 Hallingdal Valdres, SpareBank 1 Nordmøre, BN Bank ASA, SpareBank 1 Søre Sunnmøre, SpareBank 1 SMN, SpareBank 1 Nord-Norge, SpareBank 1 SR-Bank ASA, SpareBank 1 Østlandet, SpareBank 1 Helgeland.

5 Eika is owned by the independent banks in the Eika Alliance. Since this is an alliance, existing members may exit, and new members may join, increasing or decreasing the proportion of ownership in Vipps accordingly. As of 23 August 2022, the 52 banks are: Agder Sparebank, Andebu Sparebank, Aurskog Sparebank, Bank2 ASA, Berg Sparebank, Bien Sparebank AS, Birkenes Sparebank, Bjugn Sparebank, Blaker Sparebank, Eidsberg Sparebank, Etnedal Sparebank, Evje og Hornnes Sparebank, Oslofjord Sparebank, Gildeskål Sparebank, Grong Sparebank, Grue Sparebank, Haltdalen Sparebank, Hegra Sparebank, Hemne Sparebank, Hjartdal Banken, Hjelmeland Sparebank, Høland og Setskog Sparebank, Ibf bank og forsikring, Jæren Sparebank, Kvinesdal Sparebank, Larvikbanken, Marker Sparebank, Melhusbanken, Odal Sparebank, Opplandsbanken, Orkla Sparebank, Rindal Sparebank, Romerike Sparebank, Romsdalsbanken, Rørosbanken, Sandnes Sparebank, Skagerrak Sparebank, Skue Sparebank, Sogn Sparebank, Soknedal Sparebank, Sparebanken Narvik, Strømmen Sparebank, Sunndal Sparebank, Tinn Sparebank, Toten Sparebank, Trøgstad Sparebank, Tysnes Sparebank, Valdres Sparebank, Valle Sparebank, Vekselbanken, Ørskog Sparebank and Åfjord Sparebank.

6 The participating banks in Balder may exit, and new banks may join. Recently, two banks, Fana Sparebank and Helgeland Sparebank left Balder. It is expected that one more will exit within a short timeframe, and then another 10 banks will join during September 2022. As of 23 August 2022, the 13 banks are Sparebanken Vest, Sparebanken Sør, Sparebanken Sogn og Fjordane, Sparebanken Øst, Haugesund Sparebank, Spareskillingsbanken, Skudenes og Aakra Sparebank, Flekkefjord Sparebank, Voss Sparebank, Søgne og Greipstad Sparebank, Lillesands Sparebank, Luster Sparebank, Etne Sparebank.

(11) Following a merger with the companies BankID Norge AS and BankAxept AS in 2018, Vipps also offered authorisation services, electronic identification, trust services and payment system schemes. These business areas are not part of the Proposed Transaction; they were separated from Vipps on 19 July 2022 and transferred to BankID BankAxept AS, which is also owned and managed by Vipps Holding on behalf of its owners. Vipps Holding is the only company that has control over BankID and BankAxept.[7]

2. THE TRANSACTION

(12) The Merging Parties operate mobile wallets in Norway (Vipps), Denmark (MobilePay) and Finland (MobilePay).[8] Vipps is currently controlled by Vipps Holding, via which Vipps is owned (but not controlled) by – inter alia – DNB (approx. 46% shareholding), SB1 (approx. 23% shareholding), Eika (approx. 8% shareholding) and Balder (approx. 10% shareholding).[9] MobilePay is currently solely controlled by Danske Bank. The purpose of the Transaction is to create a provider of digital payment services with larger economies of scale and the financial ability to innovate, develop cross-border payments, and create the foundation for a new European provider of Payment Services.[10]

(13) The envisaged Transaction initially concerned a merger of Vipps, MobilePay and a third mobile wallet, the business of Pivo Wallet OY, a subsidiary of OP Cooperative. OP Cooperative was initially also intended to exercise joint control over the Merged Entity. The concentration under this structure was notified to the European Commission on 27 June 2022 under the case number *M.10398 – DNB / DANSKE BANK / OP / SB1 / EIKA / BALDER / VIPPS / MOBILEPAY / PIVO*. The initial concentration was ultimately withdrawn on 28 July 2022.

(14) On 15 September 2022, Vipps, MobilePay, Vipps Holding and Danske Bank entered into a Business Combination Agreement (the "BCA"), pursuant to which the Parties intend to combine the wallet businesses of Vipps and MobilePay into the Merged Entity, with Vipps as the surviving entity. As part of the Proposed Transaction:[11]

(a) On closing of the Transaction, Danske Bank will transfer its shares in MobilePay to Vipps in exchange for shares in Vipps.

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7 The demerger of BankID and BankAxept and the reorganisation of Vipps that resulted in the creation of Vipps Holding was an internal restructuring within the Vipps group, resulting in no change of control within the meaning of Article 3 of the Merger Regulation. According to the Notifying Parties, the internal restructuring was a condition for closing of the Transaction. However, the internal restructuring of the Vipps group was not dependent on the Transaction and has been carried out regardless of whether the Transaction later takes place.

8 The Merging Parties do not operate in Sweden.

9 In addition, Danske Bank owns 1.81% of the shares in Vipps today, and the ownership will be extended in the Merged Entity through ownership in Vipps Holding (Form CO, footnote 3). Additionally, the banks Nordea, Sparebanken Møre, Handelsbanken, Swedbank Norge, Storebrand Bank, Landkreditt Bank, Skandinaviska Enskilda Banken Santander Consumer Bank, Obosbanken, Bank Norwegian, Ya Bank, KLP Bank, Cultura Sparebank, Fana Sparebank, Brabank and Pareto Bank hold minority shares in Vipps Holding (Form CO, paragraph 203).

10 Form CO, paragraph 7.

11 Form CO, paragraphs 313 et seqq, and Appendix 34, Clauses 1.4 and 1.5.

(b) At closing, Danske Bank and Vipps Holding will enter into a Shareholders' Agreement, which will govern the ownership of the Merged Entity. Upon completion, Danske Bank will own a controlling stake of 27.8% in Vipps (with Vipps Holding owning the remaining 72.2%), and DNB, SB1, Eika and Balder will also establish indirect joint control via Vipps Holding.

(c) After closing of the Transaction, MobilePay will be merged into Vipps by way of a cross-border parent-subsidiary merger, forming the Merged Entity. In the cross-border merger, all rights, assets and liabilities of MobilePay will be transferred into the Merged Entity together with all rights, assets and liabilities of Vipps. The wallet business previously carried out by MobilePay in Denmark, Finland and Lithuania will continue to be carried out by the Merged Entity through branches in Denmark, Finland and Lithuania,[12] respectively.

(15) Recital 20 of the Merger Regulation states that "[i]*t is* [...] *appropriate to treat as a single concentration transactions that are closely connected in that they are linked by condition or take the form of a series of transactions in securities taking place within a reasonable short period of time*."

(16) The Commission Consolidated Jurisdictional Notice notes that "[t]*he required conditionality implies that none of the transactions would take place without the others and they therefore constitute a single operation. Such conditionality is normally demonstrated if the transactions are linked de jure, i.e. the agreements themselves are linked by mutual conditionality*."[13]

(17) The Commission therefore considers that (i) the combination of Vipps and MobilePay, and (ii) the establishment of joint control over the Merged Entity by Danske Bank, Vipps Holding, DNB, SB1, Eika and Balder constitute a single concentration within the meaning of Article 3 of the Merger Regulation.

Joint control

(18) Upon closing of the Transaction, Vipps Holding will directly own 72.2% of the shares in the Merged Entity and Danske Bank will directly own 27.8%. Through Vipps Holding, DNB will indirectly own approx. 33%, SB1 17%, Balder 7%, and Eika 6% of the shares in the Merged Entity.[14]

(19) Vipps Holding was established as Vipps' holding company on 18 July 2022; it is owned by the same companies that held shares in Vipps pre-Transaction – although without controlling it – with approximately the same distribution of shares. Post-Transaction, Vipps Holding will again hold its shares in the Merged Entity on behalf of the current owners of Vipps, while no owner will exercise sole or joint

[12] While MobilePay's offices are located in Denmark, Finland and Lithuania, it only operates mobile wallets in Denmark and Finland.

[13] Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, paragraph 43. See also paragraphs 46 and 47.

[14] Form CO, paragraphs 325-326. The Notifying Parties submit that an equity issue in Vipps Holding will take place before closing of the Transaction, which may somewhat alter the ownership percentages among the owners. However, the Notifying Parties confirm that the said equity issue will not in any way result in any change of control over the Merged Entity, within the meaning of Article 3 of the Merger Regulation (The Notifying Parties' reply to RFI 17, question 2).

control over Vipps Holding. Vipps Holding itself will hold strategic veto rights in the Merged Entity, together with its shareholders DNB, SB1, Eika and Balder.[15]

(20) By virtue of the Shareholders' Agreement, all shareholders which either directly or indirectly hold [STRATEGIC DECISION AND CONTRACTUAL RELATIONSHIPS] in the Merged Entity will have veto rights over a broad range of reserved matters, including [STRATEGIC DECISION AND CONTRACTUAL RELATIONSHIPS].[16] Therefore, pursuant to the Shareholders' Agreement, such veto rights are awarded to Danske Bank and Vipps Holding (as direct shareholders), and DNB, SB1, Eika and Balder (as indirect shareholders). With respect to Vipps Holding, [STRATEGIC DECISION AND CONTRACTUAL RELATIONSHIPS], it will nevertheless still have the same veto rights at the general meeting.[17]

(21) Therefore, each of Danske Bank, DNB, SB1, Eika, Balder and Vipps Holding will exercise joint control over the Merged Entity within the meaning of Article 3(1)(b) of the Merger Regulation.

Full functionality

(22) The Merged Entity will be a stand-alone business, independent of the Parent Companies. The Merged Entity will perform all the functions of an autonomous economic entity with respect to the mobile wallet business, as Vipps and MobilePay did pre-Transaction. First, the Merged Entity has its own sufficient resources to operate independently on the market, including its own management dedicated to its day-to-day operations, staff, financial resources, and assets. Second, it is established on a lasting basis. Third, it will conduct business with a wide range of actors, it will have full ownership of its own customer base, and any services provided to the Parent Companies will be provided on an arms' length basis. Any input required from the Parent Companies to the Merged Entity will also be procured in the open market.[18]

(23) In light of the above, the Merged Entity will be full-functional within the meaning of Article 3(4) of the Merger Regulation. The transaction is thus a concentration within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation.

3. UNION DIMENSION

(24) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (Vipps: EUR […] million, DNB: EUR […] million, Danske Bank (including MobilePay): EUR […] million, SB1: EUR […], Eika: EUR […] million, Balder: EUR […] million). At least two of them have a Union-wide turnover in excess of EUR 250 million (Vipps: EUR […], Danske Bank (including MobilePay): EUR […] million, DNB: EUR […] million, SB1: EUR […], Eika: EUR […], Balder: EUR […]), but they do not achieve more than two-

15 Form CO, paragraphs 328-332.
16 Form CO, paragraph 330.
17 Form CO, paragraphs 328-332, and Appendix 31, Clause 12.
18 Form CO, paragraphs 333 et seqq, and Appendix 31, Clauses 3.3 and 4.1.

thirds of their aggregate Union-wide turnover within one and the same Member State. The Transaction therefore has a Union dimension.

4. LEGAL FRAMEWORK

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

(26) A merger giving rise to a significant impediment of effective competition may do so as a result of the creation or strengthening of a dominant position in the relevant markets. Moreover, mergers in oligopolistic markets involving the elimination of important constraints that the parties previously exerted on each other, together with a reduction of competitive pressure on the remaining competitors, may also result in a significant impediment to effective competition, even in the absence of dominance.[19]

4.1 Horizontal effects

(27) The Horizontal Merger Guidelines describe horizontal non-coordinated effects as follows: "*A merger may significantly impede effective competition in a market by removing important competitive constraints on one or more sellers who consequently have increased market power. The most direct effect of the merger will be the loss of competition between the merging firms. For example, if prior to the merger one of the merging firms had raised its price, it would have lost some sales to the other merging firm. The merger removes this particular constraint. Non-merging firms in the same market can also benefit from the reduction of competitive pressure that results from the merger, since the merging firms' price increase may switch some demand to the rival firms, which, in turn, may find it profitable to increase their prices. The reduction in these competitive constraints could lead to significant price increases in the relevant market*".[20]

(28) The Horizontal Merger Guidelines list a number of factors which may influence whether or not significant horizontal non-coordinated effects are likely to result from a merger, such as the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers, or the fact that the merger would eliminate an important competitive force.[21] That list of factors applies equally regardless of whether a merger would create or strengthen a dominant position, or would otherwise significantly impede effective competition due to non-coordinated effects. Furthermore, not all of these factors need to be present to make significant non-coordinated effects likely and it is not an exhaustive list.[22]

(29) Further, the Horizontal Merger Guidelines clarify that a concentration where an undertaking already active on a relevant market merges with a potential competitor in this market can have a similar anti-competitive effects to mergers between two

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[19] Horizontal Merger Guidelines, paragraph 25.
[20] Horizontal Merger Guidelines, paragraph 24.
[21] Horizontal Merger Guidelines, paragraphs 27 et seqq.
[22] Horizontal Merger Guidelines, paragraph 26.

undertakings already active on the same relevant market.[23] For a merger with a potential competitor to have significant anti-competitive effects, two basic conditions must be fulfilled: (i) the potential competitor must already exert a significant constraining influence or there must be a significant likelihood that it would grow into an effective competitive force, and (ii) there must not be a sufficient number of other potential competitors, which could maintain sufficient competitive pressure after the merger.[24]

(30) Finally, the Horizontal Merger Guidelines describe a number of factors, which could counteract the harmful effects of the merger on competition, including the likelihood of buyer power, the entry of new competitors on the market, and efficiencies.[25]

4.2 Non-horizontal effects

(31) A merger between companies which operate at different levels of the supply chain may significantly impede effective competition if such merger gives rise to foreclosure.[26] Foreclosure occurs where actual or potential competitors' access to supplies or markets is hampered or eliminated as a result of the merger, thereby reducing those companies' ability and/or incentive to compete.[27] Such foreclosure may discourage entry or expansion of competitors or encourage their exit.[28]

(32) The Non-Horizontal Merger Guidelines distinguish between two forms of foreclosure. Input foreclosure occurs where the merger is likely to raise the costs of downstream competitors by restricting their access to an important input. Customer foreclosure occurs where the merger is likely to foreclose upstream competitors by restricting their access to a sufficient customer base.[29]

(33) Pursuant to the Non-Horizontal Merger Guidelines, input foreclosure arises where, post-merger, the new entity would be likely to restrict access to the products or services that it would have otherwise supplied absent the merger, thereby raising its downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger.[30]

(34) For input foreclosure to be a concern, the merged entity should have a significant degree of market power in the upstream market. Only when the merged entity has such a significant degree of market power, can it be expected that it will significantly influence the conditions of competition in the upstream market and thus, possibly, the prices and supply conditions in the downstream market.[31]

(35) In assessing the likelihood of an anticompetitive input foreclosure scenario, the Commission examines, first, whether the merged entity would have, post-merger, the ability to substantially foreclose access to inputs, second, whether it would have

23 Horizontal Merger Guidelines, paragraph 58.
24 Horizontal Merger Guidelines, paragraph 60.
25 Horizontal Merger Guidelines, paragraphs 64 and following.
26 Non-Horizontal Merger Guidelines, paragraphs 17-18.
27 Non-Horizontal Merger Guidelines, paragraph 18.
28 Non-Horizontal Merger Guidelines, paragraph 29.
29 Non-Horizontal Merger Guidelines, paragraph 30.
30 Non-Horizontal Merger Guidelines, paragraph 31.
31 Non-Horizontal Merger Guidelines, paragraph 35.

the incentive to do so, and third, whether a foreclosure strategy would have a significant detrimental effect on competition downstream.[32]

(36) Pursuant to the Non-Horizontal Merger Guidelines, customer foreclosure may occur when a supplier integrates with an important customer in the downstream market and because of this downstream presence, the merged entity may foreclose access to a sufficient customer base to its actual or potential rivals in the upstream market (the input market) and reduce their ability or incentive to compete, which in turn, may raise downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger. This may allow the merged entity profitably to establish higher prices on the downstream market.[33]

(37) For customer foreclosure to be a concern, a vertical merger must involve a company which is an important customer with a significant degree of market power in the downstream market. If, on the contrary, there is a sufficiently large customer base, at present or in the future, that is likely to turn to independent suppliers, the Commission is unlikely to raise competition concerns on that ground.[34]

(38) In assessing the likelihood of an anticompetitive customer foreclosure scenario, the Commission examines, first, whether the merged entity would have the ability to foreclose access to downstream markets by reducing its purchases from its upstream rivals, second, whether it would have the incentive to reduce its purchases upstream, and third, whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market.[35]

4.3 Cooperative effects

(39) Lastly, 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(1) and (3) TFEU.

(40) Under 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.

(41) A restriction of competition under Article 101(1) TFEU is established when the coordination of the parent companies' competitive behaviour is likely and appreciable and results from the creation of the joint venture, be it as its object or its effect.

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32 Non-Horizontal Merger Guidelines, paragraph 32.
33 Non-Horizontal Merger Guidelines, paragraph 58.
34 Non-Horizontal Merger Guidelines, paragraph 61.
35 Non-Horizontal Merger Guidelines, paragraph 59.

5. MARKET DEFINITIONS

5.1. Introduction to the relevant markets

(42) The Merging Parties provide applications that primarily enable end-customers to manage and make payments via a smartphone, *i.e.*, so-called mobile wallets. The main value proposition of mobile wallets is to facilitate the payment process and management for end-users.[36] Mobile wallets store existing payment credentials of users, such as payment cards or bank account details, and allow users to initiate payments via the smartphone application using the stored payment credentials. As such, payments made via mobile wallets are based on existing payment infrastructure, such as card schemes or interbank (account-to-account) payment infrastructure. Such payments initiated via a smartphone are referred to as "mobile payments".

(43) Within the respective smartphone applications, Vipps and MobilePay have several functionalities for different types of payments. Specific features exist, for example, for payments made between private individuals (P2P payments), for payments made in physical stores (POS payments) or for payments made when making purchases online (e-Commerce payments), or for the payment of invoices. The exact scope of services provided to the user, the technical functioning of the payment initiation process as well as the payment infrastructure used may differ between different payment situations, as well as between different mobile wallets.

(44) By way of example, Vipps offers a functionality specifically for P2P payments, Vipps Vennebetaling. The feature mainly uses account-to-account payment infrastructure and entails some ancillary functions.[37] To make a payment, the payer can select the payee, for example, from its contact list in the smartphone, *i.e.*, he/she does not need to know and type the account number of the payee. As another example, Vipps also offers the functionality Vipps QR I terminal, which is specifically designed for POS payments. To initiate the payment, the user must scan a QR code displayed on the payment terminal of the merchant and confirm the payment via smartphone. For e-Commerce, Vipps offers, for example, the service "Vipps på Nett", which includes an ID service and the possibility to read QR codes. For invoice payments, the service "Vipps eFaktura" offers Merchants the possibility of sending digital invoices to customers for processing in Vipps.[38]

(45) P2P payments are generally free of charge for end users. They can help mobile wallets to build a strong brand and large customer base. On such basis, revenues can be generated for the facilitation of payments in other payment situations in which fees are charged to merchants, *i.e.* POS, e-Commerce and invoice payments.[39] For example, the provision of mobile wallets in the e-Commerce

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36 In contrast to that, banking applications give customers access to their accounts and other retail banking services overall, which includes the possibility to make A2A payments.

37 Such as advanced payment planning or digital gift-wrapping in case the payment is meant as a gift for events such as birthdays or weddings.

38 Form CO, paragraph 114.

39 The Merging Parties also generate revenues from certain other sources that do not involve merchants, *e.g.*, from partner banks that distribute the wallet service to its customers and special features of P2P payments that are offered for a fee to end customers, or for high-volume PSP transactions (Form CO, paragraphs 119 and 137).

environment can be profitable as online merchants are charged a fee whenever the mobile wallet is used by the end customer. Often, the possibility to accept payments made via mobile wallets is distributed to online merchants via providers of so-called e-Commerce checkout solutions, some of them may also be distributed to merchants directly.

(46) Separately, the Owner Banks are active in the provision of retail banking services, *i.e.*, banking services to private individuals and very small enterprises. As part of such services, the Owner Banks offer accounts to their customers, including payment services such as the possibility to transfer money between accounts and pay bills via mobile banking apps. In addition to having access to the Owner Banks' own (mobile) banking apps, their end-customers have access to the respective mobile wallets (*i.e.*, Vipps or MobilePay, depending on the country).

5.2. Mobile payment services

5.2.1. Product market definition

5.2.1.1. The Commission's previous decisions

(47) The Commission has on several occasions assessed markets for mobile wallet services. The Commission has also in several instances considered markets for payment services, including online payments, which partly overlap with the provision of mobile wallet services / mobile payment services as provided by the Merging Parties.

(48) The Commission assessed mobile wallets in a decision of 2012,[40] concerning the creation of a joint venture that did not offer mobile wallet services to end-customers, but provided a platform for wallet services both in-store via Near Field Communication ("NFC") and online to business customers. The platform would support the supply of mobile wallet services by market players such as banks, other card issuers or retailers. Against this background, the Commission defined two separate markets for the wholesale supply of mobile wallet platforms to business customers, as well as a market for retail distribution of mobile wallet services to end-customers. The Commission considered the market for retail distribution may be downstream to the provision of the supply of wholesale supply of mobile wallet platforms, while acknowledging that "*some uncertainties as to the precise boundary between* [the two services] *may exist*."[41]

(49) As for the market for retail distribution of mobile wallets services, the Commission assessed whether the use of a mobile wallet constitutes a market separate from other means of payment.[42] First, the Commission assessed whether mobile wallets are separate from existing online payments, for example through credit/debit cards, PayPal, etc., via the internet on a static PC, tablet, or on a mobile handset. The Commission indicated that such differentiation may become less relevant in the

40 Case M.6314 – *Telefónica UK / Vodafone UK / Everything Everywhere / JV*, decision of 4 September 2012, paragraphs 90 et seqq.

41 Case M.6314 – *Telefónica UK / Vodafone UK / Everything Everywhere / JV*, decision of 4 September 2012, paragraph 101.

42 Case M.6314 – *Telefónica UK / Vodafone UK / Everything Everywhere / JV*, decision of 4 September 2012, paragraph 124 et seqq.

future due to technical developments and further spread of mobile internet coverage. Second, the Commission assessed whether mobile wallets are distinct from existing offline payments, such as (NFC-enabled) credit and debit cards and cash. The Commission noted that, “for the foreseeable future”, there may be a certain degree of substitutability between mobile and offline payments, and customers would want to be able to use several forms of payment. Third, the Commission assessed if separate markets exist between online and offline mobile wallets. Online mobile wallets would require the smartphone to be connected to the internet, while offline mobile wallets may be based on other technologies, *e.g.*, NFC. The Commission considered that online and offline mobile wallets may form separate markets, as they are used for different payment situations and offer a different user experience. Ultimately, the Commission left the exact market definition open as regards all three possible segmentations.

(50) This market definition was confirmed in a decision of 2013,[43] concerning a joint venture with the aim to create a “Virtual Community” of merchants and consumers, which could be accessed both via smartphone and via desktop. In this community, merchants could offer services such as loyalty schemes and coupons, and customers could upload credit and debit card as well as prepaid card details to make payments, as well as making peer-to-peer payments to other community members. The Commission found indications that the market for retail mobile wallet services was likely separate from existing “static” online payment services “through the use of credit/debit cards / PayPal, *etc.*, via the internet on a static PC, laptop or tablet”, due to different user experiences and potentially a higher degree of security. Similarly, the market for mobile wallets was likely distinct from offline payment services, and those means of payment would rather co-exist than being considered as substitutes by customers. Finally, the Commission found that P2P payments via a mobile wallet would be likely in the same market as traditional online banking or offline transactions between individuals. Again, the Commission left the exact product market definition open regarding all these aspects.

(51) Also in 2013,[44] the Commission assessed the creation of a joint venture to create a mobile wallet for smartphones of users with a mobile data subscription of specific providers. Within the wallet, there would be several retail payment wallets operated by financial institutions (*e.g.*, banks), which in turn could store several payment cards. The overall wallet, provided by the joint venture, would allocate a mobile ID to end-users to allow them to have access to services such as mobile payments, couponing, ticketing and loyalty programmes. The Commission noted such functionalities are different compared to previous cases as the wallet would only allow payments through independent mobile payment wallets, which are accessed via the wallet provided by the joint venture. The market investigation provided overall mixed results regarding potential market segmentations along the lines of previous cases, *i.e.*, payments via mobile wallets versus existing online and offline payments, and a potential segmentation between online and offline mobile payments. The Commission also investigated a potential segmentation between mobile wallets (as provided by the joint venture) and payment wallets (as provided

43 Case M.6956 – *Telefonica / Caixabank / Banco Santander / JV*, decision of 14 August 2013, paragraphs 28 et seqq.

44 Case M.6967 – *BNP Paribas Fortis / Belgacom / Belgian Mobile Wallet*, decision of 11 October 2013, paragraphs 28 et seqq.

independently by banks integrated in the wallet of the joint venture). For all potential delineations, the Commission left the product market open.[45]

(52) In a case in 2017,[46] the Commission assessed the creation of a joint venture to operate a new mobile payment ecosystem allowing consumers (*i.e.*, mobile telephony subscribers of the parent companies) and merchants to carry out and receive mobile payments both within the ecosystem as well as from external accounts. The Commission defined mobile payment services as "retail payments for which the payment data and instructions are initiated, transmitted or confirmed via a mobile phone". It further considered that mobile payments can be distinguished based on the location of the payee and the payer, *i.e.*, proximity/offline mobile payments when the payer and the payee are in the same location, and remote/online payments when that is not the case. Based on this potential distinction, the Commission assessed potential separate markets concerning (i) proximity/offline and remote/online payment services; (ii) mobile and non-mobile proximity/offline payment services; (iii) mobile and non-mobile remote/online payment services; and (iv) proximity/offline and remote/online mobile payment services. The Commission further assessed a potential distinction between mobile online/remote payment applications and other mobile/online remote payment solutions, for example via a mobile internet browser. Lastly, it considered potential separate markets for mobile remote/online payment applications and payment intermediation services, the latter being so-called payment over invoice services where customers can pay, *e.g.*, a bus or parking tickets by sending an SMS that is then reflected in the customer's mobile invoice. The Commission left the exact market definition open as regards all these potential segmentations.

(53) The Commission further assessed transactions concerning payment services not directly related to mobile wallets. In a recent case,[47] the Commission defined a plausible separate market for account-to-account ("A2A") payment services in the context of recurring payments (*e.g.*, monthly utility bills), and discussed whether such services would form part of a broader market for invoice payment services including recurring payments via card schemes. The Commission further considered that the type of transaction (business-to-business ("B2B"), customer-to-business ("C2B") or customer-to-customer ("C2C")) or the A2A payment models (direct debit, payment slips, A2A-transfers by banks, mobile payment solutions) may be plausible segmentations of the A2A payments market. Ultimately, the exact product market definition was left open.

(54) In another decision,[48] the Commission considered a plausible segmentation of the market for A2A invoice payment services by (i) card-based and A2A payments, (ii) A2A payment methods (*e.g.*, direct debit, credit transfer), (iii) instant and batch payment, (iv) type of transaction (*e.g.*, C2B, B2B) and invoice messaging vs. invoice payment, but left the exact product market definition open. In the same case, the Commission assessed a separate market for payment services to end-

[45] In a later decision, concerning Case M.8640 – *CVC / Blackstone / Paysafe*, decision of 21 November 2017, paragraph 4, the Commission referred to this precedent as *"provision of online payment services"*, without further discussing the exact product market definition.

[46] Case 8251 – *Bite / Tele2 / Telia Lietuva / JV*, decision of 19 July 2017, paragraphs 19 et seqq.

[47] Case M.9744 – *Mastercard/Nets*, decision of 17 August 2020, paragraphs 93 – 106.

[48] Case M.9971 – *P27 NPP / Bankgirot*, decision of 8 July 2021, paragraphs 20 - 28.

users, including a potential segmentation between (i) domestic and international payment services and (ii) corporate and retail customers, but left the exact market definition open.

5.2.1.2. The Notifying Parties' view

(55) The Notifying Parties submit[49] that the relevant product market should be defined as comprising all payment services due to close demand substitution between different means of payment, *e.g.*, cards, cash and credit transfers. Consumers would be used to the current market practice that payment services are free of charge for them and would switch to alternative payment methods in case of any increase in price or decrease in service quality.

(56) Alternatively, the Notifying Parties submit[50] that the relevant product market comprising all payment services could possibly be segmented according to different payment situations, namely into:

(a) **Peer-to-peer ("P2P") payments**, involving the transfer from one person to another, where the closest competitors to mobile wallets are cash and online and mobile banking,

(b) **Point-of-sale ("POS") payments** from consumers to merchants at the merchant's physical location, where the closest competitors to mobile wallets are cash and card payments,

(c) **Online payments ("e-Commerce"),** including electronic payments from consumers to merchants for online purchases of goods and services, where the closest competitors to mobile wallets are payment cards and invoices,

(d) **Invoice services**, especially online, including digitalised methods for sending and paying invoices, especially recurring payments and subscriptions. The closest competitors to mobile wallets are credit transfers and recurring card payments.

(57) In all those segments, however, there would be multiple widely used alternative payment methods apart from mobile wallets, as detailed above, which would reinforce the Notifying Parties' view that payments services should be considered as one overall product market.

(58) In any event, the Notifying Parties submit that the market for payment services should not be segmented further than by payment situation, as customers would have several payment methods available in each such situation which can be used interchangeably.[51]

(59) Even if a market for mobile payment services was defined, those would not be limited to mobile wallets, but would comprise different ways to pay with a mobile phone, such as banking apps, online banking with a mobile browser, bank buttons

49 Form CO, paragraphs 436-440.
50 Form CO, paragraphs 441-442.
51 Form CO, paragraph 443.

or card payments with card details stored in the phone. All these methods would have the same functions and would enable the customer to pay via phone.[52]

(60) Specifically for e-Commerce, the Notifying Parties submit that different methods in an online store would be presented in a checkout page as substitutable payment options. Those methods can all be used on a mobile phone and many of the checkouts are designed specifically for the use of a mobile device to ensure a user-friendliness for all payment methods. The Notifying Parties consider that even a hypothetical monopolist in mobile wallet services would not be able to profitably increase prices, because merchants would encourage customers to use other payment methods instead.[53]

5.2.1.3. The Commission's assessment

(61) The Merging Parties are only active in retail distribution of mobile wallet services, *i.e.*, in the provision of payment services via mobile wallets to end-consumers and merchants. The core function of the wallets provided by the Merging Parties is the management and initiation of payments, and the term mobile wallet as used in the present decision refers to mobile applications for payment services.[54]

(62) The main difference between the present case and previous decisions is the comprehensiveness of payment solutions integrated in the products of the Merging Parties. While past cases assessed by the Commission mainly dealt with mobile payment services in a POS environment, as well as to some degree online mobile purchases, the mobile wallets provided by the Merging Parties offer a variety of payment functionalities that allow customers to use the mobile wallet in different payment situations. Market participants indicated that mobile payments are a product characterised by a high degree of innovation and the development of new payment solutions.[55]

(63) As a starting point, the Commission therefore assessed a segmentation of payment services by payment situations, as proposed by the Notifying Parties, which has only implicitly been considered in past decisions. Indeed, market feedback confirmed that separate markets likely exist for different payment situations, namely for P2P transfers, payments in a POS environment, e-Commerce as well as invoice services.

(64) As for demand-side substitutability, the Commission notes that customers have generally different means of payment at their disposal depending on the payment situation, irrespective of the question whether those would ultimately constitute substitutable products or be part of separate product markets.[56] For payments where

[52] Form CO, paragraphs 443 and 445.

[53] Form CO, paragraphs 446-450.

[54] Therefore, a potential separate market for wallets without payment function, as considered in M.6967 – *BNP Parbias Fortis / Belgacom / Belgian Mobile Wallet*, decision of 11 October 2013, is not relevant for the assessment of the present Transaction. Note, however, that the term mobile wallets as used in this Decision does not include mobile payments conducted via mobile banking apps.

[55] For example, one competitor of the Notifying Parties noted: *"The evolution of the mobile wallet product is to consolidate all of these aspects* [*i.e.*, of different payment methods] *in one user experience."* Minutes of a call with a market participant, dated 17 January 2022.

[56] The question whether other means of payments would be part of the same or different product markets than mobile wallets is discussed for each payment situation in sections 5.2.1.3.1. to 5.2.1.3.4.

payer and payee are in the same location, for example in a POS environment, cash payments and payments by debit or credit card are potential alternatives, and, in theory, it could be envisaged that they may either potentially form part of the same product market or potentially act as an out of the market constraint. On the other hand, if payer and payee are in different locations, as it is the case for e-Commerce payments, cash is not an option, but online payments via an internet browser may be. Furthermore, different customer requirements may exist depending on the identity of the payee. In POS, e-Commerce and for invoice payments, the payee is a merchant that typically provides an infrastructure for the initiation of the payment (for example a physical terminal in a shop). In P2P situations, on the other hand, the payee is a private individual, and payments must therefore be initiated without a professional infrastructure (for example, card payments using a terminal are therefore not an option for payments between private individuals). This view was generally confirmed by the market investigation, where banks and payment service providers[57] responding to the market investigation indicated that the relevance and competitive strength of different payment methods (*e.g.*, card payments and mobile payments), differ across the four identified payment situations, and the competitive dynamics would be different.[58] In line with this, also the majority of merchants responding to the market investigation, who may accept the use of mobile wallets in e-Commerce, POS and invoice payment situations, indicated that the product market for payment solutions should be segmented according to the four abovementioned payment situations.[59]

(65) Providers of payment services further substantiated that different payment situations might belong to separate markets due to a lack of demand-side substitutability between available payment options. For example, one payment provider explained: "*The four use cases to be considered independently are P2P services (paying friends and family), PoS services (paying for goods in-store), bill payment services (paying one-off or recurring bills), and e-commerce (paying for goods and services online). Particularly P2P and PoS can be considered distinct markets, as they cannot be substituted from a customer perspective and the market structure is very different*."[60]

(66) From a supply-side perspective, the Commission notes that different requirements exist for providers of payment services depending on the payment situation. This is especially true with respect to access to the relevant payment infrastructure. Card schemes are typically used for payments between consumers and merchants, *i.e.*, in POS and e-Commerce, while account-to-account payments are the standard for payments between private individuals, *i.e.*, P2P payments, as well as in situations where a long-standing customer-relationship to a business exists, *i.e.*, (recurring) invoice payments. In the formal market investigation, a large share of banks and payment service providers indicated limited supply-side substitutability between different payment situations in the sense that a competitor active in one payment situation could not easily broaden its payment service offering by entering another

57 Payment service providers include other mobile wallets as well as providers of other forms of payment service to end-users and merchants, or providers of payment infrastructure or services ancillary to payment services (*e.g.* ID services).

58 Replies to question 6.2 of Questionnaire Q1 to Banks and PSPs. The Commission notes some feedback that the four payment situations may partly overlap, or may increasingly merge in future.

59 Replies to question 6.1 of Questionnaire Q3 to Merchants.

60 Minutes of a call with a market participant, dated 4 January 2022.

payment situation without significant time or investment needed.[61] One respondent explained: *"Expanding to another "payment situation" will require significant investments into both technical development as well as marketing and sales activities*."[62] In line with the above, a large majority of banks and payment service providers responding to the market investigation submitted that the market for payment methods should be segmented along the lines of different payment situations, *i.e.*, P2P, POS, e-commerce and invoice payment services.[63]

(67) Lastly, a segmentation of the payments market by payment situation is in line with findings of Commission's past cases. As explained in section 5.2.1.1. above, the Commission has, in the past, considered separate product markets specifically for mobile payments made in proximity/offline distinct from remote/online mobile payments. Such distinction is reflected in a potential market segmentation between POS payments, which are proximity payments, and e-Commerce payments, which are conducted remotely.[64] Further, as also detailed in section 5.2.1.1. above, the Commission has in the past looked into A2A payments,[65] and considered a product market segmentation by type of transactions, particularly C2C payments and C2B payments, which to some degree may correspond to P2P payments compared to payment situations involving a merchant. Lastly, the Commission has in the past considered a separate product market for A2A invoice payments.

(68) Considering all elements above, namely the explanations of the Notifying Parties, the feedback from other market participants on demand-side and supply-side substitutability, as well as the Commission's past practice, the Commission considers that payment services segmented by payment situations, *i.e.*, P2P transfers, payments in a POS environment, e-Commerce as well as invoice services, might each form separate product markets, which can each be further sub-segmented, as detailed below.

5.2.1.3.1. P2P payments

(69) P2P payments refer to payments between private individuals. Typical P2P payments include situations such as splitting bills or making presents to friends or family. Customers have, in general, different payment methods at their disposal to conduct P2P payments, such as cash, bank transfers or mobile wallets.[66] The Commission therefore assessed whether all payment methods for P2P payments constitute one product market, or if payments via mobile wallets would be separate from certain payment methods.

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61 Replies to question 7 of Questionnaire Q1 to Banks and PSPs.

62 Reply to question 7.1 of Questionnaire Q1 to Banks and PSPs.

63 Replies to question 6.1 of Questionnaire Q1 to Banks and PSPs.

64 P2P payments may be either initiated when payer and payee are in different locations, as well as in instances when both are in the same location.

65 With a focus on recurring A2A payments.

66 The Commission notes that card payments are not an available option for customers in P2P situations in the sense they exist in a POS environment, given the lack of payment infrastructure, *e.g.* terminals, for payments between private individuals. Payments via mobile wallets for which the underlying payment infrastructure is card based are considered as mobile wallet payments.

Mobile wallets vs. cash

(70) The Commission notes that cash is only a theoretical alternative to mobile wallets in P2P situations in which the payer and the payee are in the same location. However, P2P payments where the payer and the payee are in different locations, cash payments are excluded as alternative from the outset, which the Commission considers indication that cash is no substitute to P2P payments via mobile wallets.

(71) Furthermore, the market investigation confirmed that cash is no substitute for payments via mobile wallets in P2P payment situations, as confirmed by a clear majority of responding market participants such as banks or payment service providers.[67] Respondents explain that mobile wallets are significantly more convenient compared to cash payments, as cash payments would require a degree of previous planning (*i.e.*, the withdrawal and carrying of cash), the handling of change, and involve additional security issues.[68] One market participant explained: "*Cash demands both the payer and payee to be prepared for the payment and thus requires planning, carrying enough cash for potential needs (...)*". Another market participant stated: "*Customers seeks easy to handle and safe payment methods, and finds them amongst the digital solutions (...)*".[69] Overall, market participants confirmed that customers would not switch to cash in case of a small price increase of other P2P payment methods.[70,71]

(72) The Commission notes that the disadvantages of cash compared to mobile wallet P2P payments may be especially pronounced in the Nordics, where customers are largely relying on digital means of payments. This is confirmed by market participants indicating that customers in the Nordics would have replaced cash to a significant extent with other means of payment. One market participant respondent: "*Cash has been on decline in the Nordics for many years and will most likely continue to do so across all markets*."[72]

(73) Based on the above, the Commission concludes that cash payments are not part of the same product market as payments via mobile wallets in P2P payment situations.

Mobile wallets vs. online banking

(74) Customers can make P2P payments by transferring money electronically from the account of the payer to the account of the payee, *i.e.*, via online banking. Customers can typically access their accounts for the purpose of online banking with different hardware, *e.g.*, smartphones or laptops, and with different software, *e.g.*, a website or an application.

(75) With respect to online banking via a browser, either on a mobile device or a desktop, the market participants generally indicated that P2P payments via this

67 Replies to question 8.1 of Questionnaire.
68 Replies to question 8.1.1 of Questionnaire Q1 to Banks and PSPs.
69 Replies to question 8.1.1 of Questionnaire Q1 to Banks and PSPs.
70 Replies to question 9 of Questionnaire Q1 to Banks and PSPs.
71 The Commission notes that payment services are currently free of charge. Even though a price increase cannot be defined as a share of 5-10%, the Commission interprets responses as the introduction of a small charge *comparable to a price increase of 5-10%* for services for which a fee is already charged, or an equivalent degradation of service levels.
72 Reply to question 8.1.1 of Questionnaire Q1 to Banks and PSPs.

online banking channel is not a suitable alternative to P2P payments via mobile wallets.[73] As a result, in case of a small price increase of mobile wallets, market participants would likely not switch to online banking.[74]

(76) With respect to online banking via banking apps, the results are more mixed. Market respondents are generally split as to whether P2P payments via banking apps offer a suitable alternative to P2P payments via mobile wallets, and in tendency agree that banking apps may be a substitute to wallets.[75] Similarly, merchants offer different views as to whether, in case of a small price increase of P2P payments via mobile wallets, consumers would likely switch to online banking apps.[76] However, a number of factors indicate that P2P payments via mobile wallets constitute a separate product market:

(77) *First*, respondents who substantiated their views indicate either that switching is unlikely or that using banking apps would be less convenient. Banks and payment service providers for example explained:[77] *"The main drivers for people using mobile wallets are convenience, but also because there is no added cost involved with it. If a small transaction fee were to be introduced, most customer would most likely be willing to accept it. If the cost where to increase significantly beyond that, then more customers would be more likely to switch to 1) banking apps, 2) online banking in mobile browser, 3) online banking via desktop, in this priority order. However, if such price increases would occur the likel*[i]*hood of them being so large as to drive customer volumes away would be unlikely."* and *"All three examples above [mobile banking apps, online banking (mobile browser) and online banking (desktop)] are less convenient than mobile wallets"*. The Commission notes that the mobile wallets of the Parties allow customers to send money to private individuals by using their phone number, or in case the phone number is stored in the smartphone, by using the contact detail and confirming the payment by a swipe on the screen.[78] In the same sense, another market participant confirmed that switching from a mobile wallet to a banking application would constitute a significant change in current customer behaviour: *"To leave a mobile payment scheme and go for mobile banking to iban payment is a significant change for the consumer customer base especially since it would require downloading of new sw* [software] *into mobiles, learning new user interface and possibly losing the convenient mobile no/Iban proxy usage. In addition the issue with digital ID of the payer and confirmation of the payee´s iban would have to be solved in the replacing service."*[79]

(78) *Second*, in the market investigation, the majority of banks and payment service providers pointed at significant benefits for end users to conduct P2P payment via mobile wallets as compared to using online banking via smartphone, either on (mobile) browser or per banking application.[80] Respondents indicate foremost a

73 Replies to question 10 of Questionnaire Q3 to Merchants.
74 Replies to question 10 of Questionnaire Q1 to Banks and PSPs and Replies to question 11 of Questionnaire Q3 to Merchants.
75 Replies to question 10 of Questionnaire Q3 to Merchants.
76 Replies to question 11 of Questionnaire Q3 to Merchants.
77 Replies to question 10.1 of Questionnaire Q1 to Banks and PSPs.
78 Form CO, paragrapha 110 and 129.
79 Reply to question 10.2 of Questionnaire Q1 to Banks and PSPs.
80 Reply to question 11 of Questionnaire Q1 to Banks and PSPs.

superior ease of use of mobile wallets, for example because payer and payee would not need to exchange account details. One respondent explained: *"Mobile wallet services are prepared for the payment on the phone, normally rely on proxy (...) service making it possible to find the payee in the mobile phone directory without keying in payee iban. To use a mobile banking would require login into banking application, selecting money transfer service, key in iban... much more cumbersome for the payer."*[81] A second market participant confirmed such a *"(c)onvenience of making the transaction with one Swipe or click and no need to share account number info."*[82]

(79) *Third*, competitors confirm that the use of mobile wallets (and particular those of the Merging Parties) are very popular among customers for P2P payments in the relevant Nordic countries, described *inter alia* as *"de-facto standard"* at least in the case of Vipps in Norway and MobilePay in Denmark.[83] Similarly, merchants also explained:[84] *"They* [various online banking channels] *are all secondary to MobilePay app"*, and *"The payment methods cited above are alternatives to P2P payments. Danish citizens are however used to being able to make P2P payments with greater ease since MobilePay launched its app in 2013. Due to this, we do not see Mobile banking apps, browsers and desktop as alternatives to P2P, because they usually require more steps (i.e. clicks on the mobile device) and approvals to process the equivalent payment."*

(80) *Fourth*, one respondent explains that today mobile banking apps of banks would only be able to replace mobile wallets to a certain extent. However, "*It will probably require the banks in a region to agree on a common solution in order to create critical mass in a given banking solution."*[85] Therefore, banking apps today cannot be considered as substitutable to mobile wallets for conducting P2P payments.

(81) The Commission therefore notes that there are significant differences in convenience for end-users between the use of mobile wallets and online banking even in cases both would be conducted via a smartphone application.

(82) Based on the above, the Commission concludes that online banking (enabled through different hardware and software) is not part of the same product market as payments via mobile wallets in P2P payment situations.

5.2.1.3.2. POS payments

(83) POS payments refer to payments from consumers to merchants at the merchant's physical location. In such payment situation, customers have generally different methods at their disposal, including cash, card payments (typically initiated via a terminal) or mobile wallets. The Commission assessed whether those payment methods would form part of the same product market as mobile wallets in a POS payment environment.

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81 Reply to question 11.1 of Questionnaire Q1 to Banks and PSPs.
82 Reply to question 11.1 of Questionnaire Q1 to Banks and PSPs.
83 Minutes of calls with market participants, dated 20 December, 21 December 2021 and 4 January 2022.
84 Replies to question 10.1 of Questionnaire Q3 to Merchants.
85 Reply to question 10.1 of Questionnaire Q1 to Banks and PSPs.

(84) The Commission notes that there are different ways in which mobile wallets can be used in a POS payment situation, notably the use of NFC (by which the customer holds the mobile device close to the payment terminal to initiate the payment) or by other function, *e.g.* by scanning a QR-code with the camera of the mobile device. Vipps and MobilePay both do not use NFC technology, but rely mainly on QR-codes in a POS environment.[86]

Mobile wallets vs. cash

(85) In the market investigation, market participants indicated, in line with observations made for P2P payments as set out in section 5.2.1.3.1. above, that customers in the Nordics have largely replaced cash by the use of other payment methods. One market participant explained that it "*is still possible (though rather unusual) to pay with cash in many cases in Sweden / the Nordics, however gradually reducing. Over time it will move towards cash-less both driven by customer and merchant experience*."[87] Market feedback suggest that this trend has even accelerated during the Covid-19 pandemic, where customers replaced cash by digital payment means to avoid contacts. As explained in section 5.2.1.3.1. above, market participants point to the fact that the use of cash requires a greater planning effort for customers, as they would need to withdraw cash in advance and carry it in sufficient volumes to the point of sale, which market participants considered as less convenient than the use of cash-less payment methods.[88] In line with this, merchants responding to the market investigation rather confirmed that cash payments would not be a suitable substitute in POS payment situations.[89] One merchant described cash as *"crisis-mode payment method if card networks don't work"*, and continues to indicate that while there are certain benefits for merchants to accept cash payments, those would not be considered as providing the same benefits compared to cash-less means of payment.[90]

(86) Furthermore, market participants pointed at additional costs for merchants for providing cash as a payment method, such as the need for cash handling[91] and cash in transit services.[92] One market participant explained: *"(A)mid decreasing cash volumes, the supply of physical cash for consumers and unit cost of processing will increase significantly for merchants, in turn leading to lack of acceptance of cash in physical stores."* A second respondent pointed at the *"costs related to cash handling"* that a merchant would have to carry.[93]

(87) Based on the above, the Commission notes strong evidence that cash is not part of the same product market as payments via mobile wallets in POS payment situations. However, for the purpose of this decision, this question can ultimately be left open, as it does not change the assessment of the Transaction.

86 Form CO, paragraphs 114 and 129.
87 Reply to question 8.2.1 of Questionnaire Q1 to Banks and PSPs.
88 Replies to question 9 of Questionnaire Q1 to Banks and PSPs.
89 Replies to question 7.2 of Questionnaire Q3 to Merchants.
90 Replies to question 7.2.1 of Questionnaire Q3 to Merchants.
91 Cash handling refers to services such as packaging or counting of cash, while cash-in-transit services refer to the transportation of cash, *e.g.* between a bank and a shop.
92 Replies to question 9 of Questionnaire Q1 to Banks and PSPs.
93 Reply to question 8.2.1 of Questionnaire Q1 to Banks and PSPs.

Mobile wallets vs. card payments

(88) The market investigation provided inconclusive feedback whether card payments would be a substitute to payments via mobile wallets in a POS environment. A majority of respondents indicated that card payments could be used interchangeably with mobile wallets for POS payments.[94] Most banks and payment service providers responding to the market investigation indicated that, in the event of a small price increase in POS payments via mobile wallets, end-customers would substantially switch to cards, but emphasised that this would not be the case for all end customers and payments, only for a certain share thereof.[95] Market feedback by merchants was similarly inconclusive. While a majority of merchants responding to the market investigation consider cards to be substitutable to mobile payments,[96] merchants also indicate that customers who adopted mobile payments as their preferred way of payment would rather not switch back to card payments in case of a small price increase.[97]

(89) In qualitative feedback, respondents nuance that the preference for mobile wallets would depend on the tech affinity of the customer and indicate that most customers still prefer card payments over mobile wallets. For customers who have started to use mobile wallets in a POS environment, however, card payments may rather exist as a backup option than a full substitute. One market participant explained: "*Preferences will most likely differ between different customer segments. Some customers are "traditionalists" and will stick to the plastic card and are not ready to switch over to a mobile wallet. Other customers will go with mobile wallet only and use that whenever possible. However, mobile wallet penetration and usage is likely to gradually increase over time and finally become dominant. An important aspect though regarding of customer segments is that the physical card is not dependent on having a powered mobile device/the phone breaks down/gets stolen. It's an extra safety for customers having a physical card which they can independently use without the need of device.*"[98] Market feedback further suggests that the share of customers preferring payments via mobile wallets to cards in POS situations will increase in future.[99]

(90) Market feedback further suggests that mobile wallets using a NFC in a POS environment may be a substitute to wallets making use of a QR-code, but not *vice-versa*, due to a more limited customer experience. Banks and payment service providers responding to the market investigation generally describe the use of QR-codes as insufficient workaround used because Vipps and MobilePay do not have access to NFC on all mobile devices. One respondent explained: *"The situation in Norway is characterized by Apple Pay blocking Vipps and other payment apps from using the NFC chip/antenna on the phone. The consequences for Vipps and other payment apps are very devastating as they have a very reduced contactless user experience (...)."*[100] A second respondent confirmed that scanning a QR-code at the terminal would be perceived as more cumbersome compared to the use of

94 Reply to question 12 of Questionnaire Q1 to Banks and PSPs.
95 Replies to question 13 of Questionnaire Q1 to Banks and PSPs.
96 Replies to question 13 of Questionnaire Q3 to Merchants.
97 Replies to question 14 of Questionnaire Q3 to Merchants.
98 Reply to question 12.1 of Questionnaire Q1 to Banks and PSPs.
99 Replies to question 12.1 of Questionnaire Q1 to Banks and PSPs.
100 Replies to question 6.2.1 of Questionnaire Q1 to Banks and PSPs.

NFC: "*Today the mobile manufacturer´s wallets are close to as convenient as chip cards and all other mobile wallets are more cumbersome and demand the payer to do a lot of keying compared to a card payment at POS*."[101] As Vipps and MobilePay both offer QR-based mobile wallet services in POS, the question whether a separate market exists for mobile wallet services using a NFC technology and, thus, excluding QR-based mobile wallets can be left open.[102]

(91) Based on the above, the Commission notes that there is inconclusive feedback as to the substitutability of cards and mobile wallets in POS payment situations. For the purpose of this decision, this question can ultimately be left open, as it does not change the assessment of the Transaction.

5.2.1.3.3. e-Commerce payments

(92) E-commerce payments include electronic payments from consumers to merchants for online purchases of goods and services. For e-commerce payments, customers have generally different methods at their disposal, card payments, other online payments *(e.g.*, bank transfers and buy-now-pay-later solutions or "BNPL") and mobile wallets. In an online store, different payment methods are typically presented as different options on a webpage at the end of the shopping process, *i.e.*, an e-Commerce checkout, as further described in section 5.3 below. The Commission assessed whether card payments and other online payments would form part of the same or separate product market as mobile wallets in e-Commerce payment situations.

Mobile wallets vs. card payments

(93) The market investigation provided inconclusive feedback as to whether card payments would be a substitute to mobile wallets in an e-Commerce environment. A majority of respondents stated that customers consider card payments as substitutes to mobile wallets in an e-Commerce environment.[103] Most respondents indicated that, in the event of a small price increase in e-Commerce via mobile wallets, customers would switch to cards for a large portion, but not for all payments.[104] From qualitative feedback, the Commission understands that substitutability between mobile wallets and cards in an e-Commerce environment depend significantly on factors such as tech affinity of the user, the question whether card details are already stored with the online merchant (*i.e*., if the customer uses the shop frequently with a registered account), and if shopping is done via a desktop or a mobile device. One market participant explained: "*From a customer perspective, cards vs other payments methods for ecommerce payments cannot be seen as interchangeable. (…) When considering wallets with ecommerce checkout integrated solutions (one-click-buy buttons) these are also a much more convenient method for customer compared to cards (if we here talk about paying with cards by typing in card details in a checkout).*"[105] Some respondents further

101 Replies to question 12.1 of Questionnaire Q1 to Banks and PSPs.

102 The Commission further notes that QR-based solutions require a mobile internet connection, which may be relevant in some remote areas, which is not required for offline payment solutions.

103 Replies to question 14 of Questionnaire Q1 to Banks and PSPs.

104 Replies to question 15 of Questionnaire Q1 to Banks and PSPs.

105 Replies to question 14.1 of Questionnaire Q1 to Banks and PSPs.

indicated that card payments would offer a more secure payment compared to some other payment methods, which may be relevant in an e-Commerce environment.[106]

(94) Merchants responding to the market investigation indicated largely that cards would be suitable substitutes to payments via mobile wallets in e-Commerce payment situations.[107] However, customers using mobile payments would rather not switch back to card payments in case of a small price increase.[108] Furthermore, from qualitative feedback to the market investigation, the Commission understands the checkout rate (*i.e.*, the share of customers that do not abort the shopping process, for example at the payment stage) to play a very important role in e-Commerce, and that merchants aim at offering a range of payment methods to avoid customers dropping out of the shopping process before payment.[109] This is further confirmed by market feedback from banks and payment service providers. One market participant indicated in relation to different payment methods offered in e-Commerce: "*To some degree maybe these alternatives are substitutable for the time being as most consumers have cards, but they do not necessarily cover the same consumer needs today, and even less in the future. Furthermore, from the merchant's perspective, they would like to offer both, to catch all consumer preferences.*"[110] A second respondent explained: "*(...) all merchants provide their customers with as many payment methods as possible regardless of whether it is a mobile wallet, bank transfer, card payment etc. Ultimately consumers choose the payment method they prefer based on individual preferences.*"[111] In the light of this market feedback, the Commission considers that, while customers can generally use cards instead of mobile payments in e-Commerce, it is beneficial for merchants to offer both services in parallel to cater for different customer preferences.

(95) For the purpose of this decision, the question of whether card payments would be part of the same market as mobile wallet payments in an e-Commerce environment can ultimately be left open, as the assessment of the Transaction would not change.

Mobile wallets vs other online payments (incl. BNPL solutions)

(96) Feedback from the market investigation was further inconclusive regarding the question whether other online payments, such as account-to-account transfer, direct debit or BNPL solutions would form part of the same product market as mobile wallet services. Views of responding banks and payment service providers differed in this regard, even though rather indicating that those other online payment methods would not be substitutable to mobile payments in e-Commerce.[112] As for payment methods such as direct debit or account-to-account transfers, respondents indicated that those would be more burdensome for customers and that specifically direct debits would only rarely be used. One customer explained: "*With current limitations, in most cases the described payment solutions* [*i.e.* other online payment methods such as account-to-account or direct debit] *cannot compete based*

106 Replies to question 14.1 of Questionnaire Q1 to Banks and PSPs; the Commission acknowledges that mobile wallets may use card-based infrastructure for e-Commerce payments.
107 Replies to question 15 of Questionnaire Q3 to Merchants.
108 Replies to question 16 of Questionnaire Q3 to Merchants.
109 Replies to questions 16.1 and 19.1 and of Questionnaire Q3 to Merchants.
110 Replies to question 14.1 of Questionnaire Q1 to Banks and PSPs.
111 Replies to question 18.1 of Questionnaire Q1 to Banks and PSPs.
112 Replies to question 16 and 17 of Questionnaire Q1 to Banks and PSPs.

on convenience".[113] Specifically for BNPL products, some responding banks and payment service providers indicated that those could generally be used substitutable with mobile wallets,[114] but explained that BNPL solutions would fulfil a different purpose than mobile wallets and would not be available for all customers. One respondent explained: *"BNPL solutions require that the customer is credit worthy (each purchase is a loan agreement, even if paid in full) and willing to borrow money for shopping. Taking a loan cannot substitute a payment. It is though a complementary solution in some use cases."*[115] In line with this, also merchants responding to the market investigation rather do not consider other online payment methods as substitutes to mobile payments.[116]

(97) As explained in paragraph 94 above, merchants generally aim at offering different payment methods in their online store, catering for different customer needs. Therefore, as with card payments, other online payments are rather an addition to e-Commerce payments via mobile wallets, but not a fully substitutable solution.

(98) In any event, for the purpose of this decision, the question of whether other online payment methods would be part of the same market as mobile wallet payments in an e-Commerce environment can ultimately be left open, as the assessment of the Transaction would not change.[117]

5.2.1.3.4. Invoice payments (Invoice services to end-users)

(99) As for invoice payment services, the Commission takes note of the Notifying Parties' submission that they are not operators of A2A invoice payment service solutions (*e.g.*, eFaktura, Avtalegiro and Autogiro in Norway, eLasku in Finland and Betalingsservice and FIK e-invoice in Denmark), and that the Parties do not exercise control over any of the operators.[118] Rather, the Parties facilitate invoice payments to consumers either as direct A2A credit transfers or though the digital invoice solutions eFactura or AvtaleGiro in Norway.

(100) In past decisions in which the Commission considered possible segmentations of A2A recurring payments (discussed in Section 5.2.1.1.), the relevant market and the plausible segmentations were considered at the level of operators of the underlying invoicing payment service solutions (*e.g.*, eFaktura, Avtalegiro). Given that the Parties are not active at the level of such operators, most previously considered segmentations do not apply.

(101) Concretely, Vipps offers its service *"Vipps eFaktura"* as part of the eFaktura solution, which itself does not belong to Vipps. Vipps offers Merchants the possibility of sending digital invoices to customers for processing in Vipps, online

113 Replies to question 16.1 of Questionnaire Q1 to Banks and PSPs.
114 Replies to question 18 and 19 of Questionnaire Q1 to Banks and PSPs.
115 Replies to question 18.1 of Questionnaire Q1 to Banks and PSPs.
116 Replies to questions 17 to 20 of Questionnaire Q3 to Merchants.
117 The Commission notes, based on market feedback received from banks and payment service providers as well as merchants, as described above, that if customers would need to substitute mobile wallet services with other payment means, they would likely rather do so by use of card payments than other online payment solutions. Therefore, if other online payment solutions would form part of the same product market as mobile wallets, this market would likely also include card payments.
118 The Notifying Parties' reply to RFI 4, question 40 (paragraphs 216 – 219).

banking or other payment applications connected to the eFaktura solution.[119] MobilePay, on the other hand, offers its service *"Invoice"*, which enables Merchants to send digital invoices to their customers through MobilePay. MobilePay removes the manual entry of details and thereby eliminates the chances of incorrect entries. The product requires that the Merchant's existing accounting system is compatible with MobilePay. The customer can pay the invoice with a swipe in the app.[120]

(102) As such, the services provided by Vipps and MobilePay constitute invoice payment services to end users which have some similarities to a plausible market for invoice messaging, as discussed in M.9971 – *P27 NPP / Bankgirot,* defined as the technical validation and distribution of e-invoice messages allowing the processing and forwarding of payment requests but excluding the actual payment handling.[121] For the purpose of this decision, the Commission assessed whether for such invoice services to end-users, as provided by the Vipps and MobilePay, a separate market for mobile wallets only exist, or whether providing such services via other channels, such as e-mail, online banking or banking apps, would be part of the same product market.

Mobile wallets vs. other invoicing service methods

(103) In the market investigation, a clear majority of banks and payment service providers responding to the market investigation indicated that invoicing services to end users can be provided through a number of alternative channels, namely through online banking, mobile banking apps or e-mail, which would all constitute suitable substitutes to mobile wallet invoicing services.[122] In qualitative feedback, however, respondents indicated that mobile wallets might provide a superior user experience compared to online banking, mobile banking apps or e-mail, pointing at some limits of substitution between the different methods. One respondent explained: *"All other existing, less convenient / worse customer experience, methods could become applicable to the extent the mobile wallet service for some reason (pricing or other) etc is no longer preferred. However, again pricing sensitivity might not be extremely high as regards mobile wallets, given starting point (free usage or potentially a limited card fee)."*[123]

(104) This feedback was broadly confirmed by merchants responding to the market investigation. Responding merchants expressing an opinion indicated that online banking and mobile banking app would be suitable substitutes to invoice services to end-users through mobile wallets, while feedback was inconclusive as to the question whether services by e-mail would also be a suitable substitute.[124]

(105) In the light of the above, the Commission considers that invoice services to end-users, as provided by Vipps and MobilePay, could be provided via other channels as a substitute, such as online banking or banking apps. On the other hand, the

119 Form CO, paragraph 114.
120 Form CO, paragraph 129. MobilePay also offers a service called *"Subscriptions"*, which allows individuals to pay with one swipe recurring payments.
121 M.9971 – *P27 NPP / Bankgirot,* paragraph 21.
122 Replies to question 20 of Questionnaire Q1 to Banks and PSPs.
123 Reply to question 20.1 of Questionnaire Q1 to Banks and PSPs.
124 Replies to question 21 of Questionnaire Q3 to Merchants.

Commission acknowledges market feedback indicating a better user experience brought by mobile wallets compared to other channels. For the purpose of this decision, it can be left open if a separate market for invoice services to end-users via mobile wallets exist, or if the market was wider including other channels, namely online banking, mobile banking apps or e-mail, as it would not change the outcome of the assessment in this case.

5.2.1.4. Conclusion

(106) In conclusion, for the purpose of this decision, the Commission considers it relevant to assess the following plausible product markets for payment services:

- P2P payments via mobile wallets,
- POS payments overall, with potential segments for (i) POS payments excluding cash; (ii) POS payments excluding cash and cards (*i.e.* payments via mobile wallets),
- E-Commerce payments overall, with potential segments for (i) E-Commerce payments excluding other online payment methods, such as bank transfers, direct debit or BNPL (*i.e.* payments via mobile wallets); (ii) E-Commerce payments excluding other online card payment methods,
- Invoice services to end-users overall, and a plausible separate market for invoice services to end-users via mobile wallets (*i.e.* excluding other channels such as online banking, mobile banking apps or e-mail).

5.2.2. Geographic market definition

5.2.2.1. The Commission's previous decisions

(107) In the past,[125] the Commission considered the market for retail distribution of mobile wallets (and all its plausible segments) to be either national or wider than national. On the one hand, the Commission pointed towards elements suggesting a national delineation of the market (*e.g.,* legislative and regulatory differences, differences in consumer behaviour). On the other hand, elements suggested that the market should be wider than national (*e.g.,* certain services may be used cross-border and many providers operate across multiple countries). Ultimately, the exact geographic market definition was left open.

(108) In recent cases in which the Commission assessed the markets for A2A services in the context of invoice payments, the Commission similarly considered the markets to be likely national in scope, but ultimately left the exact geographic market definition open.[126] However, the Commission indicated that these markets are

125 Case M.6314 – *Telefónica UK / Vodafone UK / Everything Everywhere / JV*, decision of 4 September 2012, paragraph 240; Case M.6956 – *Telefonica / Caixabank / Banco Santander / JV*, decision of 14 August 2013, paragraphs 28 et seqq.; Case M.6967 – *BNP Paribas Fortis / Belgacom / Belgian Mobile Wallet*, decision of 11 October 2013, paragraphs 55 et seqq.; Case M.8640 – *CVC / Blackstone / Paysafe*, decision of 21 November 2017, paragraphs 20 et seqq.

126 Case M.9744 – *Mastercard / Nets*, decision of 17 August 2020, paragraphs 110 et seqq.; Case M.9971 – *P27 / Bankgirot,* decision of 8 July 2021, paragraph 33.

moving towards a broader regional dimension, and that in particular for card-based invoice payments competitive dynamics are usually more homogenous at supranational level.

5.2.2.2. The Notifying Parties' view

(109) The Notifying Parties submit that the market for payment services (including all plausible segments) is at least EEA-wide.[127] That is because a large number of international players' services (*e.g.*, Apple Pay, Google Pay, Samsung Pay, Garmin Pay, Klarna and PayPal) may be used across borders, and regularly expand into new countries. The Notifying Parties also explain that international presence would be necessary for achieving a required scale.

(110) However, the Notifying Parties acknowledge that the markets could also be segmented nationally, since there are still some payment services that cannot be used cross-border.[128]

5.2.2.3. The Commission's assessment

(111) In accordance with the above-discussed product market definition, the Commission has separately assessed the appropriate geographic scope of payment services in the four payment situations.

5.2.2.3.1. P2P payments

(112) For P2P payments, most banks and payment service providers responding to the market investigation indicated that markets are likely national in geographic scope, or alternatively EEA-wide, as competitive conditions would be similar across those geographies.[129] In qualitative feedback, market participants pointed at existent barriers to operate cross-border due to different technical payment infrastructure or standards, and due to different currencies that exist in the countries relevant for the assessment of the present Transaction. While some ongoing initiatives aim at facilitating cross-boarder payments, those are unlikely to show effect in the near future.[130] In that sense, one market participant explained: *"P2P payments are on national level today. I the future we expect increased competition from big techs."*[131] A further market participant *"estimates that these markets will likely remain national for the next three years, but notes a trend towards them becoming wider and more European"*.[132]

(113) Specifically for mobile payment services in P2P payment situations, the large majority of respondents further indicated that most mobile payment methods used in P2P payments are generally used in individual countries only. The Commission notes that this is in line with the fact that in a number of countries, such as Norway (Vipps), Denmark and Finland (MobilePay) and Sweden (Swish), very strong

127 Form CO, paragraphs 456 et seqq.
128 Form CO, paragraph 459.
129 Replies to question 21 of Questionnaire Q1 to Banks and PSPs.
130 For example by the P27 initiative, the European Mobile Payment System Association (EMPSA) and the European Payments Initiative.
131 Replies to question 21.1 of Questionnaire Q1 to Banks and PSPs.
132 Minutes of a call with a market participant, dated 20 December 2021.

national providers for mobile P2P payment services exist which, however, do not operate in other jurisdictions.[133] Against this background, market participants confirmed that "*today, there is limited overlap and competition in A2A between each domestic mobile payment solution (such as Swish, Mobilepay, Vipps and Pivo). Cross border A2A / P2P payments are yet basically non-existing in the Nordics.*"[134], "[m]*obile payment service markets are currently predominantly national in scope*"[135] and "[c]*urrently, mobile payment services are domestic*".[136]

(114) In view of the above, the Commission concludes that currently, payment service markets for P2P payments, and especially mobile P2P payment services, are national in geographic scope.

5.2.2.3.2. POS payments

(115) As for POS payments, a large majority of banks and payment service providers responding to the market investigation indicate that the market is EEA-wide in geographic scope, as competitive conditions would be similar across the EEA.[137] Merchants, on the other hand, indicate that POS markets may rather be national.[138] From qualitative feedback, the Commission understands that some payment methods used in POS payment situations are rather national in scope, while others are available at EEA-wide level.[139] Indeed, on the one hand, POS payment services provided for example by the Merging Parties' mobile wallets exhibit local characteristics and are not used outside of their respective countries.[140] On the other hand, there are many international players providing POS payment services across a large number of countries. This includes both providers of mobile wallets (*e.g.*, Apple Pay, Google Pay) as well as large international card schemes (Visa and Mastercard).[141]

(116) Based on the above, the Commission considers the geographic market for POS payments (and its plausible segments) as national or EEA-wide in scope. The exact geographic market definition can be left open for the purpose of this decision, as the outcome of the competitive assessment does not change under any plausible geographic market definition.

5.2.2.3.3. e-Commerce payments

(117) For e-Commerce payments, banks and payment service providers responding to the market investigation largely indicated that markets would be EEA-wide in

133 Only a small minority of respondents indicated that markets should be defined at regional level, *i.e*. the Nordics; Replies to question 21 and 22 of Questionnaire Q1 to Banks and PSPs.

134 Minutes of a call with a market participant, dated 17 January 2022.

135 Minutes of a call with a market participant, dated 4 January 2022.

136 Minutes of a call with a market participant, dated 18 January 2022.

137 Replies to question 21 of Questionnaire Q1 to Banks and PSPs.

138 Replies to question 22 of Questionnaire Q3 to Merchants.

139 Replies to question 22.1 of Questionnaire Q3 to Merchants.

140 In particular, it appears that the Merging Parties' mobile wallets are used in POS payment situation in sectors that appear largely local or national in scope. For example, a market participant explained: *"At this stage, all mobile wallets in the Nordics have entered at least the POS payments and are used mainly to pay small merchants, such as in flea markets, coffee shops, hairdressers etc."*; Minutes of a call with a market participant, dated 14 January 2022.

141 Only a small minority of respondents indicated that markets should be defined at regional level, *i.e*. the Nordics; replies to question 21 and 22 of Questionnaire Q1 to Banks and PSPs.

geographic scope.[142] On the other hand, market feedback from merchants regarding the geographic scope were inconclusive between national and EEA-wide.[143] Also for e-Commerce payments, the Commission notes that some methods, such as international card schemes, are available across the EEA, while other specific methods, including Vipps and MobilePay, currently have a strong national focus.[144] For example, one respondent explained: *"Answer depends on the merchant willingness to accept said payment methods. Local mobile payment applications are not interesting outside their geographical consumer reach but they might gain extremely strong market position locally."*[145] In line with this, particularly with regard to mobile payment services, views of market responding banks and payment service providers[146] as well as merchants are split if available methods would be similar at national or EEA-wide level.[147]

(118) Based on the above, the Commission considers the geographic market for e-Commerce payments (and its plausible segments) as national or EEA-wide in geographic scope. The exact geographic market definition can be left open for the purpose of this decision, as the outcome of the competitive assessment does not change under any plausible geographic market definition.

5.2.2.3.4. Invoice payments (Invoice services to end-users)

(119) In the market investigation, the large majority of responding banks and payment service providers indicated that invoice payments, or the invoicing services to end-users as provided by Vipps and MobilePay, are national in scope.[148] Respondents further indicated that they would not be able to use the same mobile payment methods for invoice services across countries, but that services would be rather used in individual countries only.[149, 150] These findings were broadly confirmed by merchants responding to the market investigation.[151, 152]

5.2.2.4. Conclusion

(120) In conclusion, for the purpose of this decision, the Commission considers it relevant to assess the following plausible geographic markets for payment services:

- The market for P2P payments via mobile wallets is national in scope.

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142 Replies to question 22.1 of Questionnaire Q1 to Banks and PSPs.
143 Replies to question 22 of Questionnaire Q3 to Merchants.
144 Only a small minority of respondents indicated that markets should be defined at regional level, *i.e.* the Nordics; Replies to question 21 and 22 of Questionnaire Q1 to Banks and PSPs.
145 Reply to question 22.1 of Questionnaire Q1 to Banks and PSPs.
146 Reply to question 22 of Questionnaire Q1 to Banks and PSPs.
147 Replies to question 23 of Questionnaire Q3 to Merchants.
148 Reply to question 21 of Questionnaire Q1 to Banks and PSPs.
149 Reply to question 22 of Questionnaire Q1 to Banks and PSPs.
150 Only a small minority of respondents indicated that markets should be defined at regional level, *i.e.* the Nordics; Replies to question 21 and 22 of Questionnaire Q1 to Banks and PSPs.
151 Replies to questions 22 and 23 of Questionnaire Q3 to Merchants.
152 The Commission notes that these findings are in line with considerations of the geographic scope of A2A services markets in the context of invoice payments, as explained in paragraph (108) which is not equivalent to the services provided by Vipps and MobilePay in this case, but related in the sense that they both concern the handling of invoice payments, albeit at different levels, as explained in paragraphs 101 and 102.

- The market for POS payments (and its plausible segments) is national or EEA-wide in scope;

- The market for E-Commerce payments (and its plausible segments) is national or EEA-wide in scope;

- The market for Invoice services to end-users (and a plausible market for invoice services to end-users via mobile wallets) is national in scope.

5.3. e-Commerce checkout solutions

5.3.1. Product market definition

(121) An e-Commerce checkout solution is a solution that provides online merchants the possibility to accept payments on their website, usually by providing an array of payment options (*e.g.,* payment cards, mobile wallets). From end-customers' point of view, it is the stage of an online shopping experience at which they select their payment method and execute the payment.

(122) In addition to the possibility to effect the payment, an e-Commerce checkout may include additional features to ease and optimise the shopping experience, *e.g.*, pre-filled information, choice of value-added services such as packaging and gift-wrapping, and return services). However, e-Commerce checkout solutions in the context of this Decision do not include any technical checkout solution or services that do not comprise the payment stage of the online shopping experience.[153]

(123) e-Commerce checkouts may be provided by certified Payment Service Providers ("PSPs") or specialised checkout providers. As such, they may be combined with (a variety of) other payment services (*e.g.*, merchant acquiring, provision of POS terminals) or be provided on a standalone basis.

5.3.1.1. The Commission's previous decisions

(124) In the past, the Commission has considered a separate market for e-Commerce acceptance, defined as solutions that can give the option to select multiple types of cards and can also rout payments with alternative payment methods (such as mobile wallets). The Commission did not consider any further plausible segmentations of this market.[154]

5.3.1.2. The Notifying Parties' view

(125) The Notifying Parties submit that the relevant product market should be defined as all payment services, *i.e.*, including both the direct provision of payment methods and the provision of payment methods via an e-Commerce checkout solution.[155] However, the Notifying Parties submit that if a further segmentation of the market

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[153] Technical solutions for online shops which do not comprise the final payment, have traditionally been offered to online merchants by so-called Webshop Vendors. When contracting with Webshop Vendors, merchants would typically need to contract with another party in order to be able to accept payments (Form CO, paragraph 575).

[154] Case M.9776 – *Worldline/Ingenico*, decision of 30 September 2020, paragraphs 13 and 97-98.

[155] Form CO, paragraphs 567-569.

for payment services was to exist, the provision of e-Commerce checkout solutions could be considered a distinct market. No further segmentation, *e.g.*, based on different types of providers or specific characteristics of the solution, would be appropriate.[156]

(126) The Notifying Parties further explain that merchants may also be able to "directly integrate" individual payment methods in their online shops or in an existing checkout solution provided by a PSP ("Direct Integration"). Direct Integration involves merchants entering into an agreement with a payment method provider and separately integrating this payment method into its online shop (*i.e.*, in addition to the payment methods that it obtains via its e-Commerce checkout provider). The Notifying Parties submit that most merchants are unlikely to consider Direct Integration of a single/multiple payment method(s) an alternative to an e-Commerce checkout, as an e-Commerce checkout consists of easy access to multiple payment methods while the merchant only deals with one point of contact. Instead, the merchants consider Direct Integration to be a valuable supplement to their e-Commerce checkout. The provision of payment methods via Direct Integration should therefore not be part of the plausible market for e-Commerce checkouts.[157]

5.3.1.3. The Commission's assessment

(127) First, the market investigation confirms that the provision of e-Commerce checkout solutions constitutes a separate market, distinct from the provision of any in-store (POS) payment services. In particular, from a supply side, while the majority of responding e-Commerce checkout solution providers also offers POS payment services (that can be offered on a standalone basis or together with an e-Commerce checkout),[158] e-Commerce checkout solution providers apply different terms (*e.g.*, pricing, payment methods, services) to an e-Commerce checkout solution compared to POS payment services.[159] In addition, from a demand side, most of responding merchants procure (or at least considered procuring) e-Commerce checkout solutions separately from POS payment services.[160]

(128) Second, while most of the responding merchants use Direct Integration, it is not clear whether they consider Direct Integration of specific payment method to offer a credible substitute for an e-Commerce checkout solution that already includes such payment method.[161] A merchant for example explained that "*[b]asically, we use both Gateway and Collecting PSPs. Sometimes even a direct integration of the payment service. The advantage of Gateway PSP is the pricing and the type of technical integration. Collect PSP offers plug and play integration for smaller shops, but no individual solutions. However, these individual solutions are often required for our service*". Another merchant mentioned that "*[i]t would require much more integration work and maintaining the integrations*", while another one

156 Form CO, paragraphs 572 et seqq.

157 Form CO, paragraphs 591-597.

158 Replies to questions 12 and 12.2 of Questionnaire Q2 to e-Commerce checkouts.

159 Replies to question 12.2.2 of Questionnaire Q2 to e-Commerce checkouts. One e-Commerce checkout provider for example explains: "[i]*n-store is a different context. Card is the most used payment method, and the user experience is good.*"

160 Replies to question 32 of Questionnaire Q3 to Merchants.

161 Replies to questions 34 and 35 of Questionnaire Q3 to Merchants.

notes that "*[f]or larger merchants, it could bring cost savings & better backend solutions*".[162] Similarly, market feedback from e-Commerce checkout solution providers about whether directly integrating a payment method is substitutable to a checkout that already includes such payment method is mixed.[163]

(129) Third, the Commission notes that e-Commerce checkout solutions may be provided by a variety of players, from large global PSPs to smaller local specialised providers. In addition, they may be bundled with a variety of different services, *e.g.*, merchant acquiring and settlement of funds. Almost all responding e-Commerce checkout providers consider that there are no substantial differences among the e-Commerce checkout solutions provided by the different types of providers.[164] In addition, the majority of responding e-Commerce checkout providers offer their e-Commerce checkout solution bundled with other services, such as merchant acquiring.[165]

(130) Merchants, on the other hand, believe that there is a substantial difference among the e-Commerce checkout solutions provided by the different types of providers. One merchant, for example, explains that "[m]*ain differences are available payment methods, integration possibilities, pricing*", while another one notes that "[t]*he difference is not that large. Mainly the implementation is different as they each have their own api's. Also what cards and payment types they support can differ (Mobilepay, apple/google pay, visa/master/diners etc.). Lastly some have extra features like mobilepay's subscription possibilities*".[166]

5.3.1.4. Conclusion

(131) In light of the above, for the purposes of this decision, the Commission considers that a separate product market exists for e-Commerce checkout solutions. However, the exact product market definition can be left open for the purpose of this decision, as the outcome of the competitive assessment does not change under any plausible product market definition.

5.3.2. Geographic market definition

5.3.2.1. The Commission's previous decisions

(132) In its previous decision, the Commission considered the geographic scope of the market for e-Commerce acceptance to be EEA-wide.[167]

5.3.2.2. The Notifying Parties' view

(133) The Notifying Parties submit that the geographic scope of the market for e-Commerce checkout solutions is EEA-wide.[168] However, if the market is to be defined at a narrower than the EEA level, the Notifying Parties submit that the geographic scope should be national (*i.e.*, not regional at the level of the Nordics).

162 Replies to questions 34.1 and 35.1 of Questionnaire Q3 to Merchants.
163 Replies to question 16 of Questionnaire Q2 to e-Commerce checkouts.
164 Replies to question 13 of Questionnaire Q2 to e-Commerce checkouts.
165 Replies to question 15 of Questionnaire Q2 to e-Commerce checkouts.
166 Replies to questions 33 and 33.1 of Questionnaire Q3 to Merchants.
167 Case M.9776 – *Worldline/Ingenico*, decision of 30 September 2020, paragraphs 102-104.
168 Form CO, paragraphs 598-599.

That is because regulatory, cultural, language and commercial practices or other potential barriers are specific to individual countries and not to the Nordic region as a whole.[169]

5.3.2.3. The Commission's assessment

(134) First, the feedback to the Commission's market investigation is mixed as to whether the market for e-Commerce checkout solutions is EEA-wide or narrower, at a regional level, *i.e.*, at the level of the Nordics. The majority of responding e-Commerce checkout providers uses a similar pricing strategy at the level of the Nordic countries and submits that their customers most often procure their e-Commerce checkout solution in the Nordics, as opposed to the EEA.[170] But the majority also stated that there are no factors, of *e.g.* a technical, economic, cultural (including language) or regulatory nature, preventing them from offering their solution to merchants active in either another Nordic country or another (non-Nordic) EEA country.[171] However, the majority of e-Commerce checkout providers responding to the Commission's market investigation considers the market to be wider than national in scope.[172]

(135) This is different for the merchants that responded to the market investigation. A slight majority of merchants considers that when selecting their e-Commerce checkout solution, they do so at the level of each individual country.[173] However, the Commission notes that these responses come mainly from companies that procure e-Commerce checkout solutions in one country only.[174] The fact that these merchants procure their e-Commerce checkout solution nationally is therefore not inconsistent with the responses from e-Commerce checkout providers.

(136) Second, the Parties seem to be assessing the region of the Nordics as [STRATEGIC INFORMATION] in their internal documents. For example, the Board of Vipps considers it "[STRATEGIC INFORMATION]".[175] Moreover, DNB explains that "[STRATEGIC INFORMATION]",[176] whereas Eika makes reference to "[STRATEGIC INFORMATION]".[177]

5.3.2.4. Conclusion

(137) In view of the above, the Commission finds that the relevant geographic scope of a market for e-Commerce checkout solutions is wider than national and either regional (*i.e.*, the Nordics) or EEA-wide. For the purpose of this decision, the Commission will assess the narrower regional market, at the level of the Nordics (for the purposes of this Decision defined to include Denmark, Finland, Norway and Sweden), where the focus of the Proposed Transaction is. The exact geographic market definition can be left open since the Transaction does not give rise to serious doubts as to its compatibility with the internal market or the

169 Form CO, paragraphs 600-602.
170 Replies to questions 17 and 18 of Questionnaire Q2 to e-Commerce checkouts.
171 Replies to questions 20.1 and 20.2 of Questionnaire Q2 to e-Commerce checkouts.
172 Replies to questions 17 and 18 of Questionnaire Q2 to e-Commerce checkouts.
173 Replies to question 37 of Questionnaire Q3 to Merchants.
174 Replies to question 3 of Questionnaire Q3 to Merchants.
175 Form CO, Section 5.4 documents, [STRATEGIC INFORMATION].
176 Form CO, Section 5.4 documents, [STRATEGIC INFORMATION].
177 Form CO, Section 5.4 documents, [STRATEGIC INFORMATION].

functioning of the EEA agreement under any plausible geographic market definition (*i.e.*, regional or EEA-wide).

5.4. Retail banking

5.4.1. Product market definition

5.4.1.1. The Commission's previous decisions

(138) In previous decisions, the Commission has considered a separate product market for retail banking, which includes all banking services to private individuals and very small enterprises.[178]

(139) The Commission has considered that retail banking can be further divided into a number of individual product markets, namely (personal) current accounts, saving accounts (deposits), personal loans, consumer loans, mortgages, distribution of mutual funds and other investment products, and private banking services. Ultimately, however, the exact product market definition has been left open.[179]

5.4.1.2. The Notifying Parties' view

(140) The Notifying Parties submit that the overall market for retail banking should not be further segmented as specific retail products are commonly included in a larger package and not purchased separately by the customer.[180]

5.4.1.3. The Commission's assessment

(141) The market investigation confirms the product market definition considered in previous Commission decision. In particular, virtually all responding market participants agree that there exists a distinct market for retail banking,[181] and a large majority of respondents considers that there may exist a distinct market for current accounts, separate from other retail banking services.[182]

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178 See *e.g.*, recently Case M.10378 – VUB/Slovenska Sporitelna/Tatra Banka/365.Bank/CSOB/JV, decision of 26 April 2022, paragraphs 41 and 45, Case M.9625 – *Banca Comerciala Romana/Raiffeisen Bank/BRD Societe Generale/Cit one*, decision of 10 March 2020, paragraph 26 and Case M.8553 – *Banco Santander/Banco Popular Group*, decision of 8 August 2017, paragraph 11. The Commission has in the past defined a possibly segmented separate market for corporate banking (see *e.g.*, Case M.8553 – *Banco Santander/Banco Popular Group*, decision of 8 August 2017, paragraph 11). However, given that the Merging Parties' mobile payment service are generally not available to non-personal banking customers (as payees), the Commission considers that no relevant vertical link exists between the Merging Parties' mobile payment services and Owner Banks' banking activities, and thus the market for corporate banking is not discussed further in this Decision.

179 See, *e.g.*, recently Case M.10378 – VUB/Slovenska Sporitelna/Tatra Banka/365.Bank/CSOB/JV, decision of 26 April 2022, paragraphs 41 and 45, Case M.9625 – Banca Comerciala Romana/Raiffeisen Bank/BRD Societe Generale/Cit one, decision of 10 March 2020, paragraph 26 and Case M.8553 – Banco Santander/Banco Popular Group, decision of 8 August 2017, paragraph 12.

180 Form CO, paragraph 467.

181 Replies to question 34 of Questionnaire Q1 to Banks and PSPs.

182 Replies to question 35 of Questionnaire Q1 to Banks and PSPs.

5.4.1.4. Conclusion

(142) In view of the above, the Commission will, for the purpose of this decision, assess a plausible market for retail banking, as well as a plausible narrower market for current accounts. In any case, the exact product market definition can be left open since the Transaction does not give rise to serious doubts as to its compatibility with the internal market or the functioning of the EEA agreement under any plausible market definition (*i.e.*, retail banking or the narrower segmentation set out in paragraph 139 above).

5.4.2. Geographic market definition

5.4.2.1. The Commission's previous decisions

(143) In past decisions, the Commission has generally considered the market for retail banking (and its plausible segments) as national markets, but has also looked, where relevant, at the regional distribution of branches in making its assessment.[183]

5.4.2.2. The Notifying Parties' view

(144) The Notifying Parties submit that the geographic scope of the market for retail banking and its plausible segments is at least national, but can in any case be left open.[184]

5.4.2.3. The Commission's assessment

(145) The market investigation did not provide any indication that would require the Commission to depart from its previous decisional practice on the geographic scope of the market for retail banking and its plausible segments. In particular, the majority of responding market participants consider that the geographic scope of the market for the provision of retail banking services (including the provision of bank accounts) is national.[185]

5.4.2.4. Conclusion

(146) Therefore, for the purposes of this decision, the Commission considers the geographic scope of the markets for retail banking and segments therein to be national in scope.

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183 See *e.g.*, recently Case M.10378 – *VUB/Slovenska Sporitelna/Tatra Banka/365.Bank/CSOB/JV*, decision of 26 April 2022, paragraph 49, Case M.9625 – *Banca Comerciala Romana/Raiffeisen Bank/BRD Societe Generale/Cit one*, decision of 10 March 2020, paragraph 36 and Case M.8553 – *Banco Santander/Banco Popular Group*, decision of 8 August 2017, paragraph 16.

184 Form CO, paragraphs 471 and 485.

185 Replies to question 36 of Questionnaire Q1 to Banks and PSPs.

5.5. Card issuing

5.5.1. Product market definition

5.5.1.1. The Commission's previous decisions

(147) The Commission has previously identified a separate product market for card issuing, distinct from merchant acquiring and card processing.[186]

(148) The Commission has further considered whether card issuing could be further segmented along the following lines: (i) debit and credit cards, (ii) personal and corporate cards, (iii) national and international cards, (iv) selective and general cards and (v) universal and special purpose cards.[187] The Commission has ultimately left the exact product market definition open.

5.5.1.2. The Notifying Parties' view

(149) The Notifying Parties submit that it would not be appropriate to further segment the market for card issuing since most issuers issue several different types of cards.[188]

5.5.1.3. The Commission's assessment

(150) The market investigation supports the product market definition considered in previous Commission decisions. In particular, virtually all responding market participants agree that there is a distinct market for card issuing, which may potentially be further divided into segments listed in paragraph 148 above.[189]

5.5.1.4. Conclusion

(151) In view of the above, the Commission will, for the purpose of this decision, assess a plausible market for card issuing, as well as the following plausible narrower segments: (i) debit and credit cards, (ii) personal and corporate cards, (iii) national and international cards, (iv) selective and general cards and (v) universal and special purpose cards. In any case, the exact product market definition can be left open since the Transaction does not give rise to serious doubts as to its compatibility with the internal market or the functioning of the EEA agreement under any plausible market definition (*i.e.* card issuing or the narrower segmentations).

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186 See e.g. recently Case M.8640 – *CVC/Blackstone/Paysafe*, decision of 21 November 2017, paragraphs 22 and 25, Case M.8073 – *Advent International/Bain Capital/Setefi Services/Intesa Sanpaolo Card*, Commission decision of 10.8.2016, paragraphs 16 – 17 and M.7711 – *Advent International/Bain Capital/ICBPI*, Commission decision of 16.9.2015, paragraph 20.

187 See e.g. recently Cases M.8553 – *Banco Santander/Banco Popular Group*, Commission decision of 8.8.2017, paragraph 32 and M.8073 – *Advent International/Bain Capital/Setefi Services/Intesa Sanpaolo Card*, Commission decision of 10.8.2016, paragraph 17.

188 Form CO, paragraph 489.

189 Replies to question 69 of Questionnaire Q1 to Banks and PSPs.

5.5.2. Geographic market definition

5.5.2.1. The Commission's previous decisions

(152) The Commission has considered the market for card issuing (and any segment therein) to be national in scope.[190]

5.5.2.2. The Notifying Parties' view

(153) The Notifying Parties consider the geographic scope of the market for card issuing and segments therein to be wider than national, as a vast number of payment cards may be used across borders and are licensed on at least a European scale.[191] In addition, with the emergence of neo-banks as well as traditional banks expanding their operations across national borders, the Notifying Parties argues that market players experience competition on an EEA-wide basis.[192]

(154) In any case, the exact definition can be left open as no concerns arise under any plausible geographic market definition.[193]

5.5.2.3. The Commission's assessment

(155) The Commission's investigation did not provide any indication that would require the Commission to depart from its previous decisional practice on the geographic scope of the market for card issuing and its plausible segments. In particular, the majority of the market investigation respondents consider the market for card issuing (and its plausible segments) to be national in scope.[194]

5.5.2.4. Conclusion

(156) Therefore, for the purposes of this decision, the Commission considers the geographic scope of the markets for card issuing and segments therein to be national in scope.

(157) At the same time, the Commission notes that if the market for card issuing (and its segments) was to be defined at EEA-wide level, as suggested by the Notifying Parties, the Parties' activities in card issuing would not give rise to any affected markets.

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190 See e.g. recently Case M.8640 – *CVC/Blackstone/Paysafe*, decision of 21 November 2017, paragraphs 24 and 25, Case M.8553 – *Banco Santander/Banco Popular Group*, Commission decision of 8.8.2017, paragraph 34 and M.8073 – *Advent International/Bain Capital/Setefi Services/Intesa Sanpaolo Card*, Commission decision of 10.8.2016, paragraph 17.

191 Form CO, paragraph 491.

192 Form CO, paragraph 492.

193 Form CO, paragraph 495.

194 Replies to question 70 of Questionnaire Q1 to Banks and PSPs.

5.6. Merchant acquiring

5.6.1. Product market definition

5.6.1.1. The Commission's previous decisions

(158) The Commission has previously defined separate markets for wholesale and retail merchant acquiring services specifically for Italy.[195] The Commission further concluded on a further segmentation between POS merchant acquiring and e-commerce merchant acquiring. It has left open if markets need to be further segmented by (i) payment card scheme (domestic or international); (ii) the payment card brand (*e.g.*, Visa or Mastercard), (iii) the payment card type (credit or debit), or (iv) the size of the merchant (large merchants or SMEs).[196]

(159) In addition, the Commission has in the past considered segmenting the merchant acquiring market on the basis of the following criteria: (i) types of payment card schemes (international/domestic), (ii) payment card brands (*e.g.*, Visa, Mastercard), (iii) type of payment card (debit/credit), and (iv) wholesale merchant acquiring (to banks) and retail merchant acquiring (to merchants).[197]

5.6.1.2. The Notifying Parties' view

(160) The Notifying Parties submit that the market for merchant acquiring should not be further segmented.[198]

5.6.1.3. The Commission's assessment

(161) In the market investigation, the majority of responding banks and payment service providers, including those with an own merchant acquiring offering, confirmed the Commission's past practice as regards the product market definition for merchant acquiring.[199] Therefore, the Commission has no reason to deviate from precedent cases for the purpose of this decision.

(162) In any case, the exact product market definition for merchant acquiring can be left open since the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible market definition (merchant acquiring or segments therein).[200]

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195 Case M.10358 – *Advent International / Eurazeo / Planet Payment Group*, Commission decision of 22.9.2021, paragraph 11; and Case M.10075 – *Nexi / Nets Group*, Commission decision of 7.9.2021, paragraph 19.

196 Case M.9776 – *Worldline / Ingenico*, Commission decision of 30.9.2020, paragraph 36; Case COMP/M.7873 – *Worldline / Equens / PaySquare*, Commission decision of 20.4.2016, paragraphs 17 et seqq.

197 Case M.10358 – *Advent International / Eurazeo / Planet Payment Group*, Commission decision of 22.9.2021, paragraph 11; and Case M.10075 – Nexi / Nets Group, Commission decision of 7.9.2021, paragraph 19, Case M.9776 – *Worldline/Ingenico*, Commission decision of 30.9.2020, paragraph 36.

198 Form CO, paragraph 496 et seqq.

199 Replies to question 62 of Questionnaire Q1 to Banks and PSPs.

200 As explained in more detail in Section 6.6 of this decision, the Parties are only active in the provision of retail merchant acquiring for the domestic debit card scheme BankAxept, which can only be used for POS payments. The Notifying Parties confirm that, to the best of their knowledge, market shares would not significantly differ if a segmentation by merchant size was applied.

5.6.1.4. Conclusion

(163) Based on the above, the Commission considers that merchant acquiring constitutes a distinct product market, segmented into POS and e-Commerce merchant acquiring, and potentially further segmented by (i) types of payment card schemes (international/domestic); (ii) payment card brands (*e.g.*, Visa, Mastercard); (iii) type of payment card (debit/credit); and (iv) wholesale merchant acquiring (to banks) and retail merchant acquiring (to merchants).[201] The exact product market definition can be left open in the present case.

5.6.2. Geographic market definition

5.6.2.1. The Commission's previous decisions

(164) In past decisions, the Commission has considered the market for merchant acquiring to be likely national in scope, except for e-commerce merchant acquiring services, which it considered to be at least EEA-wide.[202]

5.6.2.2. The Notifying Parties' view

(165) With respect to geographic scope of the market for merchant acquiring, the Notifying Parties submit that there is no reason to distinguish between POS and e-Commerce merchant acquiring.[203]

5.6.2.3. The Commission's assessment

(166) In the market investigation, the Commission received mixed feedback as to the exact geographic market definition of merchant acquiring or their plausible segments, while respondents pointed to a rather EEA-wide market.[204]

5.6.2.4. Conclusion

(167) For the purposes of this decision, it can be left open if merchant acquiring services (or potential segments thereof) are national or EEA-wide in scope, as it would not change the outcome of the assessment.

5.7. Payment systems

5.7.1. Product market definition

(168) In the processing of payments and other financial transactions, the information allowing the transaction to be effected needs to be submitted and then exchanged between the various parties involved in the payment chain, *e.g.* sent from

201 The Notifying Party provides that, to the best of their knowledge, no wholesale merchant acquiring exists in Norway, Denmark and Finland. Therefore, a distinction between wholesale and retail merchant acquiring is not relevant in the present case; see response to RDI 20, paragraph 2.

202 See Case M.10358 – *Advent International / Eurazeo / Planet Payment Group*, Commission decision of 22.9.2021, paragraph 11; and Case M.10075 – Nexi / Nets Group, Commission decision of 7.9.2021, paragraph 19, Case M.9776 – *Worldline/Ingenico*, Commission decision of 30.9.2020, paragraph 48.

203 Form CO, paragraph 501.

204 Replies to question 63 of Questionnaire Q1 to Banks and PSPs.

customers to their banks (possibly via intermediaries), processed within banks and exchanged between banks participating in clearing and settlement systems.[205]

(169) All non-cash payment methods, including mobile wallets such as the ones provided by the Merging Parties, rely on payment systems, mainly (i) card schemes, *i.e.* payment systems linked to payment cards, or (ii) interbank account-based systems.

5.7.1.1. The Commission's previous decisions

(170) The Commission has previously identified a separate product market for payment system services, upstream to the market for payment services.[206]

(171) In assessing payment clearing services, the Commission has considered potential segmentations between (i) low-value and large-value payments, (ii) domestic and cross-border payments, (iii) batch and instant payments, and (iv) account-to-account and card-based payments, although ultimately leaving the exact scope of the product market open.[207]

5.7.1.2. The Notifying Parties' view

(172) The Notifying Parties submit that the market for payment systems should not be further segmented, as account-based payment systems and card schemes cover the same end-user needs.[208]

5.7.1.3. The Commission's assessment

(173) The Commission's market investigation supports the product market definition considered in previous Commission decisions. In particular, the vast majority of responding market participants agree that there is a distinct market for payment systems, which may potentially be further divided into segments listed in paragraph 171 above.[209]

5.7.1.4. Conclusion

(174) In view of the above, for the purpose of the present decision, the Commission will assess a separate product market for payment systems. In any event, the exact product market definition can be left open since the Transaction does not give rise to serious doubts as to its compatibility with the internal market or the functioning of the EEA agreement under any plausible market definition (*i.e.* payment systems overall or further segmented by type of payments).

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205 European Central Bank, The Payment System; Payments, Securities and Derivatives, and the Role of the Eurosystem, 2010, p.34.

206 Case COMP/M.2567 – *Nordbanken/Postgirot*, decision of 8 November 2001, paragraphs 25-34.

207 Case M.9971 – *P27 NPP/Bankgirot*, decision of 8 July 2021, paragraphs 18-19.

208 Form CO, paragraph 527.

209 Replies to question 49 of Questionnaire Q1 to Banks and PSPs.

5.7.2. *Geographic market definition*

5.7.2.1. The Commission's previous decisions

(175) In its previous decision, the Commission has left the exact scope of the geographic market for payment system services open between national or wider than national.[210]

(176) In assessing payment clearing services, the Commission – although ultimately leaving it open – has considered that the competitive dynamics are not homogenous across the Nordic region but the pan-Nordic scope of the P27 project suggests that the market is moving towards a broader regional dimension.[211]

5.7.2.2. The Notifying Parties' view

(177) The Notifying Parties submit that payment systems have developed a more international dimension, particularly considering the introduction of SEPA and P27. However, the Notifying Parties also submit that the exact scope of the geographic market can be left open.[212]

5.7.2.3. The Commission's assessment

(178) The Commission's market investigation has indicated that for responding banks and payment service providers, competitive conditions are similar and competition generally still takes place at a national level.[213]

(179) However, market participants also point towards a broader regional dimension. For example, one market participant explained that "[g]*enerally, fundamental regulatory changes have had an effect in the Nordics. The introduction of SEPA pushes the banking sector in the Nordics, as in the rest of the EU, to move from country-based payment infrastructures with proprietary country solutions and regulators, towards a common EU – or in the case of P27 a pan-Nordic – infrastructure based on common ISO20022 payment standards and common regulation*". Another bank further explained that "[a]*ll alternatives are relevant for the scope of provisioning of payment services depending on the strategy of the actual PSP. Global players/bigtech such as VISA, Mastercard, ApplePay are examples of global players with extensive Nordic footprint. Nordic based PSPs such as i.e Klarna is targeting both the regional and international market*". In the same vein, another bank added that "[f]*or account to account payments in the Nordics the markets are national but for the cards market at least in Finland and Sweden we are on a pan-European market while Norway and Denmark are on a hybrid market due to their still domestic debit card schemes*".[214]

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210 Case COMP/M.2567 – *Nordbanken/Postgirot*, decision of 8 November 2001, paragraph 37.
211 Case M.9971 – *P27 NPP/Bankgirot*, decision of 8 July 2021, paragraphs 31-33.
212 Form CO, paragraphs 527-528.
213 Replies to question 50 of Questionnaire Q1 to Banks and PSPs.
214 Replies to question 50.1 of Questionnaire Q1 to Banks and PSPs.

5.7.2.4. Conclusion

(180) The Commission considers that the exact geographic market definition for payment systems may be left open as the Transaction does not give rise to serious doubts as to its compatibility with the internal market or the functioning of the EEA agreement under any plausible geographic market definition (*i.e.*, national, regional at the level of the Nordics or EEA-wide).

6. COMPETITIVE ASSESSMENT

6.1. Overview of the affected markets

(181) The Merging Parties are both active in the market for (mobile) payment services (and plausible segments), with Vipps being exclusively active in Norway and MobilePay in Denmark and Finland. In addition, the Merged Entity will be active in the market for e-Commerce checkout solutions via Vipps Checkout.

(182) The Owner Banks can also be considered as active in the market for payment services, as they offer online and mobile banking services (through which payments can be conducted) as part of their retail banking offering. In addition, the Owner Banks provide a number of services which could be considered as vertically linked to the provision of mobile payment services – these include retail banking (or a plausible segment for retail accounts), card issuing (and plausible segments), merchant acquiring (and plausible segments) and payment systems (and plausible segments). In terms of geographic footprint, DNB is active in Norway only, while Danske Bank has activities in Denmark, Finland and also limited activities in Norway.

(183) As the Parties are active mainly in the Nordic countries, their combined market share in any of the EEA-wide plausible markets discussed in Section 5 above is limited and well below 30%. Specifically, in EEA-wide markets for mobile payment services, the combined Parties' market share remains below 20% under any plausible market definition.

(184) Given the different geographic footprints of the Parties' activities, no Transaction-specific change occurs in Denmark and Finland in case of (i) horizontal overlaps in markets defined as national and (ii) vertical links with both upstream and downstream markets defined as national. That is because in Denmark and Finland, the only Owner Bank active is Danske Bank and the only Merging Party active is MobilePay, which is controlled by Danske Bank pre-Transaction. Therefore, any overlap between the Parties' activities limited to Denmark and Finland exists already pre-Transaction.

(185) In view of the market definitions discussed above, the Parties' activities give rise to the following affected markets, which are discussed in the following sections:

(a) Horizontal overlap in (mobile) payment services in some segments of POS and invoice payments in Norway, where depending on the exact product market definition, Vipps, DNB and Danske Bank are active.[215] This decision furthermore discusses potential competition between Vipps and MobilePay in Norway, Denmark and Finland (discussed in Section 6.2),

(b) Vertical link between: (i) the Merging Parties' mobile payment services in e-Commerce in Norway, Denmark and Finland (upstream) and (ii) Vipps' e-Commerce checkout solution in the Nordics (downstream) (discussed in Section 6.3),

(c) Vertical link between: (i) the Merging Parties' mobile payment services in P2P, POS, e-Commerce and invoice payment situations (or plausible segments) (upstream) and (ii) the Owner Banks' retail banking (or current account) activities in Norway (downstream) (discussed in Section 6.4),

(d) Vertical link between: (i) the Owner Banks' card issuing (or plausible segments) activities in Norway (upstream) and (ii) the Merging Parties' mobile payment services in P2P, POS, e-Commerce and invoice payment situations (or plausible segments) (downstream) (discussed in Section 6.5),

(e) Vertical link between: (i) the Owner Banks' merchant acquiring (or plausible segments) activities in Norway (upstream) and (ii) the Merging Parties' mobile payment services in P2P, POS, e-Commerce and invoice payment situations (or plausible segments) (downstream) (discussed in Section 6.6),

(f) Vertical link between: (i) the Owner Banks' payment systems (or plausible segments) activities in Norway, Denmark and Finland, and in the Nordics (upstream) and (ii) the Merging Parties' mobile payment services in P2P, POS, e-Commerce and invoice payment situations (or plausible segments) (downstream) (discussed in Section 6.7),

(g) Finally, Section 6.8 discusses potential cooperative effects in markets, in which the Owner Banks will independently retain activities and could be considered as vertically linked to the activities of the Merged Entity.

6.2. Mobile payment services

(186) The business activities of the Merging Parties are largely complementary in geographic scope, as Vipps is active in Norway, while MobilePay has business activities in Denmark and Finland. Therefore, the Transaction only leads to limited horizontal overlaps, which stem from the business activities of Vipps and those of the Owner Banks acquiring control of the Merging Parties, for three plausible markets in Norway, and with a minimal increment.[216] Furthermore, Vipps and MobilePay, while being currently active in different geographies, could be considered as potential competitors at national level.[217] This section will therefore

[215] Note that these overlaps arise only if the relevant product market is defined as wider than mobile wallets only.

[216] Based on market share estimates provided by the Notifying Parties, not additional horizontally affected markets arise under any plausible product and geographic market definition.

[217] Vipps and MobilePay already compete at a plausible EEA-wide market for POS and e-Commerce payments. However, there are no affected markets at EEA-level under any plausible product market definition.

discuss (i) the limited horizontal overlaps stemming from the Transaction; and (ii) potential competition between Vipps and MobilePay.

6.2.1. The Parties' activities

(187) As described in more detail in section 1 of this decision, Vipps and MobilePay provide mobile payment services for payments in P2P, POS, e-Commerce and Invoice payment situations. DNB and Danske Bank are active in retail banking, which includes the possibility for customers to make payments from their banking accounts, for example by way of online banking.[218] While Danske Bank already exercises control over MobilePay pre-Transaction, it acquires joint control over the Merged Entity (Vipps and MobilePay) through the Transaction. DNB acquires joint control over the Merged Entity through the Transaction.[219], even if it already partially owned Vipps pre-Transaction (without, however, having any joint control pre-Transaction).[220]

6.2.2. The Notifying Parties' view

(188) The Notifying Parties provide that the Transaction will not have an effect on the respective markets or consumers in the markets where business activities of the Parties horizontally overlap.[221]

6.2.3. The Commission's assessment

Horizontally affected markets between the Merging Parties and the Owner Banks

(189) The Transaction leads to three horizontally affected (potential) markets in POS and in Invoice payment situations, where the business activities in (mobile) payment services between DNB and Danske as well as those of Vipps overlap in Norway, depending on the exact product market definition. Those markets are presented in Table 1 below. No horizontal overlaps occur if markets were defined more narrowly, *i.e.* for payments made via mobile wallets excluding other means of payment.

Table 1: Horizontally affected markets, number of transactions, 2021

Product market	Geographic market	Vipps	DNB	Danske Bank	Combined
POS (including all means of payment)	Norway	[0-5]%	[20-30]%	[10-20]%	[40-50]%
POS (including all means of payment except for cash)	Norway	[0-5]%	[30-40]%	[10-20]%	[40-50]%
Invoice (including all means of payment)	Norway	[0-5]%	[20-30]%	[5-10]%	[30-40]%

Source: Notifying Parties, annexes 99 and 101.

218 Form CO, paragraphs 51 et seqq.
219 Form CO, paragraphs 47 and 52.
220 Form CO, paragraphs 47 and 52.
221 Form CO, paragraphs 777 et seq.

(190) As shown in Table 1 above, the increment brought by Vipps is minimal with [0-5]% market share in all three plausible markets, indicating Vipps' negligible market position in POS and Invoice payment situations compared to other payment methods, particularly card payments. Therefore, under a plausible product market definition including all means of payment,[222] the Transaction would have a negligible impact and not change the market structure in the abovementioned markets in Norway. Therefore, the Commission considers that the Transaction is unlikely to raise concerns due to horizontal overlaps as identified above.[223]

(191) The Commission stresses that, while DNB and Danske Bank both acquire joint control over Vipps, they remain independent in relation to their other activities, including other payment activities, post-Transaction. Potential cooperative effects due to the Transaction are discussed in Section 6.8 of this decision.

Potential competition between Vipps and MobilePay

(192) In the market investigation, a number of respondents indicated that Vipps and MobilePay are potential competitors, as both could potentially enter into each other's market (*i.e.*, Vipps could start providing mobile payment services in Denmark and/or Finland, or MobilePay could start providing mobile payment services in Norway).[224, 225] Due to the possibility of entering each other's markets, Vipps and MobilePay could already today exercise competitive pressure on each other. One market participant explained: *"Even though Vipps and MobilePay today are active on separate national markets they nonetheless apply competitive pressure on each other, with potential market entry into each other's markets if prices go up too much"*.[226] Therefore, the Commission assessed effects of the loss of potential competition due to the Transaction.

(193) The Horizontal Merger Guidelines provide that if an undertaking that is already active on a relevant market merges with a potential competitor in this market, such a concentration can have anti-competitive effects similar to a merger between two undertakings already active on the same relevant market.

(194) A merger with a potential competitor can generate horizontal anti-competitive effects, whether coordinated or non-coordinated, if the potential competitor significantly constrains the behaviour of the firms active in the market. This is the case if the potential competitor possesses assets that could easily be used to enter

222 Or excluding cash in the case of POS payments.

223 The Commission notes that DNB offers online banking services in Norway, while Vipps offers mobile payment services in Norway. As to potential competition in a P2P payment situation market, the Commission notes that (i) online banking, including through banking apps, do not belong to the same product market as mobile wallet P2P payments, as explained in section 5.2.1.3.1.; (ii) already pre-Transaction, DNB is a main shareholder of Vipps; and (iii) banks and payment services providers responding to the market investigation did not raise concerns in relation to a loss of competition between Vipps and DNB's banking app due to the Transaction (Replies to questions 29 and 29.1 of Questionnaire Q1 to Banks and PSPs).

224 Replies to question 24.1 of Questionnaire Q1 to Banks and PSPs. In addition, two third parties which had pre-notification contacts with the Commission and also participated in the market investigation have raised this concern (Third Party's Submission to the European Commission, 15 February 2022; Third Party's Submission to the European Commission, 29 September 2022).

225 If markets were defined at EEA-wide level, Vipps and MobilePay would already be competitors. However, no affected markets arise at EEA-wide level.

226 Reply to question 24.1 of Questionnaire Q1 to Banks and PSPs.

the market without incurring significant sunk costs. Anti-competitive effects may also occur where the merging partner is very likely to offset the necessary sunk costs to enter the market in a relatively short period of time after which this company would constrain the behaviour of the firms currently active in the market.

(195) For a merger with a potential competitor to have significant anti-competitive effects, two basic conditions must be fulfilled. *First*, the potential competitor must already exert a significant constraining influence or there must be a significant likelihood that it would grow into an effective competitive force. Evidence that a potential competitor has plans to enter a market in a significant way could help the Commission to reach such a conclusion. *Second*, there must not be a sufficient number of other potential competitors, which could maintain sufficient competitive pressure after the merger.[227]

(196) In the present case, the Commission considers that Vipps and MobilePay are currently not exerting a significant influence on each other, and that there is not a significant likelihood that they would grow into an effective competitive force,[228] for the following reasons:

(197) *First*, the Commission considers that there are particularly high barriers for Vipps and MobilePay to enter each other's national market(s). Today, Vipps has a very strong position as a local mobile wallet in Norway, while MobilePay has a similar position in Denmark, and a strong position in Finland.[229] If entering each other's market, Vipps and MobilePay respectively would need to win significant market shares from a currently dominant player to act as a credible competitive constraint with a product offering that is very similar today. This would require significant time and investment. In the market investigation, one respondent confirmed: *"It will be challenging for other local providers to enter new markets since the customer base would be very unlikely to switch from one to the other when both solutions have equal value proposition."*[230] Even if Vipps and MobilePay entered each other's market, it is therefore not likely that they would gain a sufficient customer base to recoup their sunk costs, *i.e.* investments made in the course of the market entry.

(198) *Second*, MobilePay has tried to enter the market in Norway in 2015, but failed to obtain a sustainable user base and ended its business activities in the country in 2018.[231] Against this background, the Commission finds it unlikely that MobilePay would try to re-enter the Norwegian market. This example illustrates the difficulties of market entry for mobile wallets.

(199) *Third,* the Commission found no evidence that [STRATEGIC INFORMATION].

(200) In addition, should Vipps and MobilePay be considered as potential competitors in spite of the above, which the Commission considers unlikely, other mobile wallets

227 Horizontal Merger Guidelines, paragraphs 58 to 60.

228 Contrary to the views of some respondents of the market investigation (Replies to question 24.1 of Questionnaire Q1 to Banks and PSPs).

229 Vipps has 4 million users in Norway, while MobilePay has 4.3 million users in Denmark and 2 million users in Finland.

230 Replies to question 24.1 of Questionnaire Q1 to Banks and PSPs.

231 Form CO, paragraph 70.

could potentially enter (or expand) in the markets in Norway, Denmark and/or Finland. This appears especially the case for international wallets, *i.e.* Apple Pay and Google Pay, who, while already being available to customers, significantly expand their market position in Denmark, Norway and Finland.

(201) *First*, the Commission notes that, in internal documents, the Notifying Parties discuss the impact of increased competition in a scenario in which [STRATEGIC INFORMATION]. Those discussions focus primarily on the payment situations of POS and e-Commerce.[232]

(202) *Second*, in the market investigation, respondents point out that especially Apple Pay and Google Pay could significantly increase their market position, particularly in POS and e-Commerce.[233, 234] One market participant explained: *"The domestic mobile wallet players (incl Vipps and MobilePay) would continue to have very strong footholds in their markets but the entrance of international players (Apple and others) could challenge this if the regional players are operating alone in these markets."*[235] The Commission further notes the existence of other local mobile wallets, such as Swish in Sweden.

(203) Therefore, the Commission considers that (i) Vipps and MobilePay do not exert a significant constraining influence on each other today, and that there is no significant likelihood that they would grow into an effective competitive force in each others' national markets, as such market entry seems unlikely to materialise in the foreseeable future; and (ii) there is a sufficient number of other mobile wallets that could enter or expand their business activities in Norway, Denmark and/or Finland.

6.2.4. Conclusion

(204) Based on the above, the Commission considers that the Transaction does not raise concerns due to horizontal overlaps between the Parties in the affected markets for POS payments (including all means of payment or including all means of payment except for cash) and Invoice payments (including all means of payment).

6.3. Mobile payment services (upstream) – e-Commerce checkouts (downstream)

6.3.1. The Parties' activities

(205) The Merging Parties are active upstream in the market for the provision of e-Commerce payments initiated via mobile wallets in Norway, Denmark and Finland, which could be considered an input into e-Commerce checkout solutions in the Nordics. Vipps and MobilePay payments can only be made via a smartphone application where the user is initiating the payment by selecting Vipps or

232 See internal document of [STRATEGIC INFORMATION]; internal document of [STRATEGIC INFORMATION]; internal document of [STRATEGIC INFORMATION].

233 Replies to question 25 of Questionnaire Q1 to Banks and PSPs.

234 The Commission notes that a market entry in P2P alone, without an offering in POS and e-Commerce, is unlikely, as P2P services are currently free of charge and would not likely allow for recouping sunk cost of the entrant. Furthermore, especially in P2P, a new entrant would be forced to generate instantly a very large customer base, since payments between private individuals require that both payer and payee use the same application, which leads to significant network effects.

235 Replies to question 26 of Questionnaire Q1 to Banks and PSPs.

MobilePay as the payment option at the merchant's website/online checkout. Vipps currently has a customer base of approx. 4.2 million users in Norway and MobilePay has a customer base of 4.3 million users in Denmark and 2 million users in Finland.[236]

(206) In the upstream national markets for e-Commerce payments, Vipps has a market share of [10-20]% in Norway and MobilePay has a market share of [10-20]% in Denmark and [5-10]% in Finland in the wider plausible product market, where mobile wallets compete against card payments and other online payment methods, such as banking apps. The Merging Parties' market share reaches [70-80]% in Norway, [80-90]% in Denmark and [70-80]% in Finland, in the narrowest plausible product market encompassing only mobile wallets.[237, 238]

(207) The Notifying Parties submit that the Merged Entity's payment method in the upstream market is intended to be available to online merchants in three different ways: (i) via a Direct Integration between the merchant and the Merged Entity, (ii) distributed through e-Commerce checkout solution providers, and (iii) through the Merged Entity's e-Commerce checkout solution.[239]

(208) In the downstream market of e-Commerce checkout solutions in the Nordics, Vipps has in 2022 launched Vipps Checkout, a pilot checkout solution ("Vipps Checkout"). The volumes of Vipps Checkout are currently marginal, and the checkout is currently [STRATEGIC INFORMATION].[240] The current market share of Vipps Checkout is therefore estimated to be below [0-5]%. The Notifying Parties explain that Vipps [STRATEGIC INFORMATION].[241] [STRATEGIC INFORMATION].[242]

(209) The Notifying Parties submit that the intention is to migrate the Merging Parties' operations to a single technology platform to be used across all the countries where the Merged Entity intends to operate. This single technology platform will be based on Vipps' current technology platform, with the addition of some functionalities from the MobilePay platform. The migration process is [STRATEGIC INFORMATION].[243]

6.3.2. *The Notifying Parties' view*

(210) The Notifying Parties submit that the Proposed Transaction does not give rise to input foreclosure concerns on the basis of the following considerations: (i) None of the Parties has an established substantial offering in the downstream market, while Vipps Checkout only has a marginal presence in Norway; (ii) The Proposed Transaction will result in a very limited structural change and will not change the Parties' ability or incentive to foreclose; (iii) The Merging Parties' market share in the e-Commerce payment situation overall is low or moderate in all plausible

236 Form CO, paragraphs 104-106 and 125-127.
237 Form CO, Appendix 100.
238 In a plausible EEA-wide market, the Merging Parties' combined market shares remain below 20% under any plausible product market definition.
239 Form CO, paragraph 722.
240 Form CO, paragraphs 661-664.
241 ` Form CO, paragraph 1098.
242 Form CO, Appendices 66-68.
243 Form CO, paragraphs 1108-1110.

geographic segments; (iv) There remain more widely used and preferred alternatives to the Merging Parties' mobile wallets in the upstream market, such as cards, global mobile wallets, payments by invoice, buy-now-pay-later ("BNPL") solutions, etc.; (v) The market is characterised by strong network effects and therefore the Merged Entity would have no incentive to engage in a foreclosure strategy and lose the wide reach they achieve through distribution via competing e-Commerce checkout solutions; (vi) Any potential foreclosure attempt would be counteracted by the e-Commerce checkout providers' effective and timely counter-strategies; and (vii) If the Merged Entity's payment method was no longer available post-Transaction, merchants would choose to directly integrate it instead of switching their e-Commerce checkout provider.[244]

6.3.3. *The Commission's assessment*

(211) The Transaction is unlikely to give rise to competition concerns in the downstream market for e-Commerce checkout solutions in the Nordics as a result of ***input foreclosure***, by which the Transaction would result in the Merged Entity restricting competing e-Commerce checkout providers from accessing its mobile wallets.[245]

6.3.3.1. Ability to foreclose

(212) As regards the Merged Entity's ability to engage in input foreclosure to the detriment of competing e-Commerce checkout providers in the Nordics, the Commission notes the following.

(213) *First*, the Commission's market investigation suggests that the Merging Parties' mobile wallets are an important input for e-Commerce checkout solutions in the downstream market. As one provider of e-Commerce checkout solutions explained during the Commission's market investigation, "[a]*n e-Commerce checkout must offer well-known payment methods in respective countries to remain competitive, as well as a range of different payment methods to cater for different consumers' individual needs and preferences. This* [is] *to prevent consumers abandoning their purchases at the payment stage of the purchase*".[246]

(214) The Commission's market investigation further confirms that the two most important payment methods providers of e-Commerce checkout solutions need to offer to their merchant customers in order to be able to offer a competitive checkout in the Nordics are international payment cards and local mobile wallets, such as Vipps and MobilePay.[247] In particular, respondents consider it extremely

[244] Form CO, paragraphs 722 and 1068 et seqq.

[245] One third party which had pre-notification contacts with the Commission and also participated in the market investigation has raised this concern as - in its view - the Transaction will increase the ability and incentive of the Merged Entity to deny third party checkout providers access to its payment methods or, in the alternative, to offer its payment methods on less favourable terms compared to the Merged Entity's in-house platform (Third Party's Submission to the European Commission, 15 February 2022, and Third Party's Submission to the European Commission, 30 September 2022). The same third-party also raised a concern by which the Owner Banks would foreclose competing e-Commerce checkout providers from accessing their direct bank transfer (account-to-account payment methods). Given that the Merged Entity does not provide bank transfer, these concerns are addressed in Section 6.8. on cooperative effects.

[246] Reply to question 24.1 of Questionnaire Q2 to e-Commerce checkouts.

[247] Replies to question 24 of Questionnaire Q2 to e-Commerce checkouts.

important to include in their offering Vipps in Norway and MobilePay in Denmark, and to a lesser extent, MobilePay in Finland.[248] For example, one e-Commerce checkout provider explains that the Merging Parties' mobile wallets are in each respective country among "*the most efficient and smooth payment methods for the consumer to conduct transactions in an e-commerce environment in the Nordic countries. A "must have" option*".[249] Another e-Commerce checkout provider notes that "[m]*erchants want to be able to offer as many payment methods as possible, and therefor we need to treat it equally as much as possible, so the merchant has the freedom to chose which methods they want to allow their customers to utilize*".[250] Responding merchants also indicate that international payment cards and the Merging Parties' local mobile wallets emerge as the two most important payment methods a merchant would expect in their e-Commerce checkout solution.[251]

(215) *Second*, the majority of e-Commerce checkout providers responding to the Commission's market investigation indicated that they consider it likely that their merchant customers would switch away in case they could not anymore offer the Merging Parties' mobile wallets or they had to introduce a significant additional fee for transactions conducted via the Merging Parties' mobile wallets.[252] Responding merchants also point towards the same direction.[253]

(216) However, the Commission's market investigation did not provide clear evidence that the Merged Entity would have the ability to restrict the overall availability of competing e-Commerce checkout solutions on the downstream market – either by increasing the prices or reducing the quality of its mobile wallets.[254]

(217) *First*, the Commission's market investigation indicated a high degree of substitutability among the different payment methods in the upstream market. In particular, both responding merchants and responding e-Commerce checkout providers consider online payment methods as substitutable to payment cards.[255] Given the particularities of the market, characterised by an increased demand from merchants for user-friendly solutions with high conversion rates, *i.e.* the number of end customers that actually complete their online purchase,[256] indeed mobile wallets emerge as an important input. However, it is not clear whether customers would indeed leave their online purchase incomplete in case they were not presented with the choice of Vipps or MobilePay in each respective country. For example, during the Commission's market investigation, one merchant that had to deactivate MobilePay in their website for technical reasons explained that "[c]*ustomers have switched to card payment. We have not lost any turnover*". Another merchant noted that "[f]*rom a customer perspective, all of our e-Commerce customers have cards but do not always have the different mobile*

248 Replies to question 29 of Questionnaire Q2 to e-Commerce checkouts.
249 Reply to question 29 of Questionnaire Q2 to e-Commerce checkouts.
250 Reply to question 6.1 of Questionnaire Q2 to e-Commerce checkouts.
251 Replies to question 40 of Questionnaire Q3 to Merchants.
252 Replies to questions 34 and 35 of Questionnaire Q2 to e-Commerce checkouts.
253 Replies to questions 46 and 47 of Questionnaire Q3 to Merchants.
254 Non-Horizontal Merger Guidelines, paragraph 36.
255 Replies to question 15 of Questionnaire Q3 to Merchants and to question 6 of Questionnaire Q2 to e-Commerce checkouts.
256 Form CO, paragraph 561.

payment methods available to them", while another one added that "[c]*ard payment is still very popular payment method*".[257] In addition, merchants explained that "[t]*he choice of payment methods is only one factor for successful order completion, which often does not justify the conversion of the entire payment infrastructure. Presumably, there will be another solution*".[258] As discussed in Section 5.2.1.3.3., the majority of merchants consider specifically card payments as suitable alternative to mobile wallets, which is also evident in certain market reports.[259]

(218) In addition, the Commission's market investigation indicated that most of the responding merchants directly integrate additional payment methods on top of their e-Commerce checkout solution of choice.[260] Most of the responding merchants submit that if they wished to provide an additional payment method that was not included in their e-Commerce checkout solution of choice, they would consider adding it by means of Direct Integration.[261] However, the merchants point out certain difficulties associated with Direct Integration as compared to obtaining all payment methods via one e-Commerce checkout solution, such as additional costs and time associated with *e.g.* additional technical integration and maintenance required.[262] In any event, merchants have explained that this is a matter of the merchant's business model. For example, one merchant explained that "[t]*here are many different payment methods and those cannot be reached through a single P*[S]*P provider*".[263] Another merchant also noted that "[b]*asically, we use both Gateway and Collecting PSPs. Sometimes even a direct integration of the payment service. The advantage of Gateway PSP is the pricing and the type of technical integration. Collect PSP offers plug and play integration for smaller shops, but no individual solutions. However, these individual solutions are often required for our service*".[264]

(219) *Second*, it appears from both the Notifying Parties' considerations and the Commission's market investigation that global mobile wallets, such as Google Pay and Apple Pay, are increasingly exerting competitive pressure on the Merging Parties' local mobile wallets and can be considered as satisfactory alternatives to the Merged Entity's upstream offering in the near future.

(220) During the Commission's market investigation, the majority of responding merchants submitted that if their current e-Commerce checkout provider was no longer able to provide Vipps and/or MobilePay or they would significantly increase their fee, the merchants would consider Google Pay and Apple Pay as

257 Replies to question 15 of Questionnaire Q3 to Merchants.

258 Replies to questions 46 and 47 of Questionnaire Q3 to Merchants.

259 *E.g.* an e-Commerce report prepared by Nets for 2020 (available online at https://www nets.eu/Media-and-press/news/Documents/Nets-e-commerce-2020-international.pdf (last accessed on 10 October 2022). According to the report, in Norway, card payments occupy 52% of the share of preferred payment methods, with VIPPS Vipps trailing at 21% as the next preferred option, and invoice and PayPal each taking 12%. In Denmark, card payments prevail by 62%, followed by MobilePay by 25%. In Finland, online banking ranks first at 38%, with cards following at 26%.

260 Replies to question 34 of Questionnaire Q3 to Merchants.

261 Replies to question 36 of Questionnaire Q3 to Merchants.

262 Ibid.

263 Reply to question 5 of Questionnaire Q3 to Merchants.

264 Reply to question 34 of Questionnaire Q3 to Merchants.

alternatives.[265] Some merchants pointed out that "*Google Pay will become the wallet of choice also for e-com for Android users*", "*Apple Pay is the best e-com wallet available already*", "[i]*n the future we could substitute VIPPS or Mobilepay with our complete payment mix (incl. GooglePay* [and Apple Pay]*)*", and "*Google Pay & Apple Pay are much more convenient to use as there is no need for 3DS/SCA process which is needed in MobilePay*".[266]

(221) In addition, both e-Commerce checkout providers and merchants expect the penetration of Google Pay and Apple Pay to increase in the near future.[267] In particular, one merchant commented that "[a]*s soon as PSP vendors provide Apple Pay into their e-com payment platforms, the usage will surpass MobilePay very quickly*".[268] Another merchant further noted that "*Apple Pay and Google Pay will rule supreme. Actually they will even if the Transaction will go through*".[269]

(222) In the same vein, the Notifying Parties submit that Google Pay and Apple Pay are supported by several card issuers in the Nordic countries.[270] The Notifying Parties estimate that in Denmark, 70% of retail banking customers have a product with a financial services provider that offers Apple Pay or Google Pay, in Norway, the percentage is 20% for Apple Pay and 60% for Google Pay, and in Finland, it is 90% for Apple Pay and 50% for Google Pay.[271] [STRATEGIC INFORMATION].[272]

(223) *Third*, the Notifying Parties estimate that even though Vipps is available to nearly all online merchants with activities towards Norwegian customers (through their e-Commerce checkout provider), only around [20-30]% of those merchants have chosen to provide Vipps via their e-Commerce checkout provider. Even when adding those merchants that have a Direct Integration agreement with Vipps, the latter is still not provided as a payment method by [40-50]% of merchants in Norway.[273] This suggests that Vipps might not be as important for merchants as suggested by the market investigation.

(224) *Fourth*, the Commission notes that at least as regards Vipps, the example of one strong player in the market for e-Commerce checkout solutions, *i.e.* Klarna, provides an insight in the importance of the input, as well as in the ability of Vipps to foreclose access. In particular, Klarna does not [STRATEGIC INFORMATION] offer it as a payment method to its merchant customers, yet it is the second strongest provider of e-Commerce checkout solutions in the Nordics, as indicated by the Commission's market investigation.[274] In addition, despite the fact that Klarna [STRATEGIC INFORMATION], it still offers to integrate it as a so-called "external payment method", whereby the merchant enters into a direct agreement

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265 Replies to questions 43 and 48 of Questionnaire Q3 to Merchants.
266 Replies to questions 43 and 48 of Questionnaire Q3 to Merchants.
267 Replies to questions 44 and 45 of Questionnaire Q3 to Merchants and to questions 32 and 33 of Questionnaire Q2 to e-Commerce checkouts.
268 Reply to question 45 of Questionnaire Q3 to Merchants.
269 Reply to question 30 of Questionnaire Q3 to Merchants.
270 Form CO, paragraph 63.
271 Form CO, Appendix 1.
272 Form CO, paragraphs 1124-1132.
273 Form CO, paragraphs 1147 and 1148.
274 Replies to question 40 of Questionnaire Q2 to e-Commerce checkouts.

with the payment method provider and Klarna redirects the user to the selected payment method without processing or finalising the purchase itself.[275]

(225) Post-Transaction, the Merged Entity's payment method is planned to continue to be available to merchants through Direct Integration (in addition to it being available through e-Commerce checkout solutions).[276] According to the Notifying Parties, the Merged Entity cannot prevent – either by technical or by any other means – competing e-Commerce checkout providers from allowing merchants to directly integrate its payment method, and cannot also prevent merchants with Direct Integration from having their own e-Commerce checkout provider.[277] While the Merged Entity could refuse Direct Integration to certain merchants, this would be contradictory to the current market practices of Vipps, as well as to the Merged Entity's financial incentives post-Transaction, [STRATEGIC INFORMATION].[278] Therefore, the Commission notes that in any event, an e-Commerce checkout provider may still indirectly be able to enable the Merged Entity's payment method for its merchant customers post-Transaction through encouraging these merchant customers to opt for Direct Integration of the possibility to accept payments made by the Merged Entity, in addition to the payment methods provided by their e-Commerce checkout solution provider.

(226) *Fifth*, there are certain legal limitations on the Merging Parties' ability to foreclose downstream competitors by restricting access to the Merged Entity's mobile wallets or by increasing prices in the short to medium term, as the Notifying Parties have [STRATEGIC DECISION AND CONTRACTUAL RELATIONSHIPS],[279] covering as such the large majority[280] of the downstream market.[281]

(227) Lastly, as regards potential counter-strategies, the Commission notes that while e-Commerce checkout providers submit that their bargaining power is little compared to Vipps in Norway and MobilePay in Denmark and Finland and that there are no effective mechanisms to exert pressure on the Merged Entity,[282] merchants on the other hand appear to have an important bargaining power towards their e-Commerce checkout providers,[283] and therefore, ultimately, also on the upstream market as they could turn to a different solution in case needed. For example, during the Commission's market investigation, merchants indicated that they could stop offering the Merging Parties' payment methods in the event of a price increase.[284]

(228) In light of the above, the Commission considers that post-Transaction, it is unclear whether the Merged Entity would be able to engage in input foreclosure to the detriment of e-Commerce checkout solution providers in the Nordic region.

275 Available online at https://docs.klarna.com/klarna-checkout/in-depth-knowledge/external-payment-methods/ (last accessed on 10 October 2022).
276 Form CO, paragraph 722.
277 Form CO, paragraph 689.
278 Form CO, paragraphs 691 and 1169.
279 [CONTRACTUAL AND STRATEGIC INFORMATION].
280 [CONTRACTUAL AND STRATEGIC INFORMATION]. The Notifying Parties' response to RFI18, dated 17 October 2022, Question 2.
281 Form CO, paragraphs 1071-1073, 1147-1148 and footnote 282.
282 Replies to questions 42 and 47 of Questionnaire Q2 to e-Commerce checkouts.
283 Replies to question 52 of Questionnaire Q3 to Merchants.
284 Replies to question 47 of Questionnaire Q3 to Merchants.

6.3.3.2. Incentive to foreclose

(229) The Merged Entity is unlikely to have the incentives to engage in foreclosure of competing e-Commerce checkout solution providers.

(230) On one hand, the following factors suggest that the Merged Entity could have the incentives to foreclose competing e-Commerce checkout solutions providers:

(a) Providing an e-Commerce checkout solution appears to be more profitable than providing an individual payment method. Specifically, the Notifying Parties submit that per transaction gross margins earned by Vipps Checkout since its launch were [STRATEGIC INFORMATION], while during the first quarter of 2022, Vipps' average gross margin per transaction from third party PSPs was [STRATEGIC INFORMATION].[285] At the same time, the financial performance data of Vipps Checkout is based on a very short time period and a limited number of transactions and is thus not a fully reliable estimate of its longer term financial performance,

(b) The Parties' internal documents suggest that [STRATEGIC INFORMATION],[286]

(c) The market investigation confirmed that an input foreclosure strategy (either total or partial) by the Merging Parties would likely result in some merchant customers switching away from competing e-Commerce checkout providers downstream to the Merged Entity's checkout solution.[287] However, a significant proportion of merchants are also unlikely to switch, explaining for example that in case of a price increase they would also consider stop accepting the Merged Entity's payment methods, or as one merchant stated:[288] "[w]*e would probably substitute Vipps and MobilePay with other payment providers (ApplePay/GooglePay)*",

(d) While Vipps Checkout, currently in its infancy, would not be able to instantly capture the switching merchants, [STRATEGIC INFORMATION][289] as well as the results of the market investigation[290] show that Vipps Checkout is expected to grow significantly in the near future. Most competing e-Commerce checkout providers consider, however, that despite its expected growth, Vipps Checkout will continue facing competition from large players.[291]

(231) Nevertheless, the following factors demonstrate that the Transaction is unlikely to increase the Parties' incentives to foreclose competing e-Commerce checkout solutions provider.

285 Form CO, paragraph 1169.

286 For example, Form CO, Section 5(4) documents, [STRATEGIC INFORMATION]*;* and [STRATEGIC INFORMATION].

287 Replies to questions 34 and 35 of Questionnaire Q2 to e-Commerce checkouts, and questions 46 and 47 of Questionnaire Q3 to Merchants.

288 Replies to question 47 of Questionnaire Q3 to Merchants.

289 [STRATEGIC INFORMATION].

290 Replies to question 40 and 52 of Questionnaire Q2 to e-Commerce checkouts.

291 Replies to question 40 of Questionnaire Q2 to e-Commerce checkouts.

(232) *First*, given the Merged Entity's distribution model and the characteristic of the market it is active in, any foreclosure strategy would result in significant losses for the Merged Entity. The sources of the losses are twofold.

(233) In the first place, Vipps and MobilePay rely heavily on distribution through e-Commerce checkouts, a channel through which they earn the large proportion of their revenues in e-Commerce (more than [60-70]% of MobilePay's and [30-40]% of Vipps' e-Commerce transactions are currently earned through e-Commerce checkouts).[292] A total foreclosure strategy would result in an immediate loss of these revenues.

(234) In the second place, the Merged Entity operates in a market highly characterised by cross-platform network effects and its core strategy is to be distributed and used as widely as possible. The Merged Entity is therefore unlikely to have the incentive to engage in a strategy that would materially and immediately reduce the Merged Entity's customer base and thus its attractiveness to users. The loss of customer base would therefore directly harm the attractiveness of the Merged Entity in e-Commerce payment situation. In addition, it would indirectly also harm its user acceptance in other payment situations (e.g. certain users might download the app with the intention to use it in e-Commerce only, and as a result end up using in POS situation as well – conversely, certain users might use less the app in POS situations if they tend to use it less in e-Commerce). The fact that an input foreclosure strategy is unlikely to be attractive for the Merged Entity is reflected in the responses to the market investigation, as the majority of the respondents consider that the Merged Entity would risk losing a significant customer base of merchant customers if it stopped distributing its payment methods in the Nordics via competing e-Commerce checkout solution providers,[293] and is unlikely to find it profitable to stop offering its mobile wallets as payment methods in competing e-Commerce checkout solutions.[294]

(235) *Second*, at the same time, a number of factors limit the potential gains of a foreclosure strategy. All these factors apply both in case of a total and a partial input foreclosure strategy.

(236) In the first place, the Merging Parties have [CONTRACTUAL AND STRATEGIC INFORMATION] (with a duration of [CONTRACTUAL AND STRATEGIC INFORMATION] from closing of the Transaction) in place with the large majority of e-Commerce checkout providers in the Nordics.[295] Therefore, there are certain legal limitations on the Merging Parties' ability to foreclose downstream competitors by restricting access to the Merged Entity's mobile wallets or by increasing prices during this period, as the [CONTRACTUAL AND STRATEGIC INFORMATION].[296] Any attempted input foreclosure strategy would therefore target only the remaining minority of e-Commerce checkout providers in the Nordics and result in only limited gains. Moreover, as discussed in the below

292 From CO, para. 1178.

293 Replies to question 48 of Questionnaire Q2 to e-Commerce checkouts.

294 Replies to question 46 of Questionnaire Q2 to e-Commerce checkouts.

295 [CONTRACTUAL AND STRATEGIC INFORMATION]. The Notifying Parties' response to RFI18, dated 17 October 2022, Question 2.

296 With the exceptions referred to in footnote 279 above. Form CO, paragraphs 1071-1073, 1147-1148 and footnote 282.

paragraph, it would further reduce the number of merchants switching to Vipps Checkout specifically as the Merging Parties' mobile wallets would remain available via a large proportion of e-Commerce checkouts in the Nordics.

(237) In the second place, switching to Vipps Checkout specifically appears unlikely. Around half of the responding merchants suggest they would switch their e-Commerce checkout solution in case of a total or partial input foreclosure, while the other half would not.[297] However, the large majority of e-Commerce checkouts in the Nordics will continue having access to the Merging Parties' mobile wallets, pursuant to the agreements discussed in the paragraph above. Even if customers from the remaining e-Commerce checkouts that do not have long-term agreements would switch, they would more likely switch to another checkout service provider that is able to offer the Merging Parties' mobile wallet rather than the currently marginal Vipps checkout solution. Moreover, a number of other factors limit the number of merchants switching to Vipps Checkout in case of a total or partial input foreclosure: (i) A number of merchants indicated that they would consider stopping to accept the Merging Parties' payment method.[298] They explained for example:[299] *"The choice of payment methods is only one factor for successful order completion, which often does not justify the conversion of the entire payment infrastructure."* and "*If MobilePay were to introduce a significantly higher fee for transactions, we would consider whether to continue using Mobilepay";* (ii) The large majority of merchants considers that other alternative payment methods, including other mobile wallets, offer satisfactory alternatives to Vipps and MobilePay[300] (see for further details also Sections 5.2.1.3.3 and 6.3.3.1.). They explained for example: *"We would probably substitute Vipps and MobilePay with other payment providers (ApplePay/GooglePay)"*[301] and *"For technical reasons we had to deactivate Mobilepay. Customers have switched to card payment. We have not lost any turnover"*[302]; (iii) As further discussed below in paragraph 245, many merchants would consider adding individual payment methods by means of Direct Integration in case these were no longer available in the e-Commerce checkout of their choice. All these factors would limit the number of merchants switching to Vipps Checkout and thus limit the gains of any input foreclosure strategy.

(238) In any case, it is unclear how many switching merchants Vipps Checkout would be able to capture [STRATEGIC INFORMATION].[303] the switching to Vipps Checkout is unlikely to be sufficient to offset the large losses described above.

(239) The fact that the distribution of payment methods via competing e-Commerce checkout solutions is likely to remain valuable to the Merged Entity is demonstrated by a large number of vertically integrated providers. There are at least 11 vertically integrated players in the Nordics who offer both an e-Commerce

297 Replies to question 46 and 47 of Questionnaire Q3 to Merchants.
298 Replies to question 46 and 47 of Questionnaire Q3 to Merchants.
299 Replies to question 46 and 47 of Questionnaire Q3 to Merchants.
300 Replies to question 43 of Questionnaire Q3 to Merchants.
301 Reply to question and 47 of Questionnaire Q3 to Merchants.
302 Reply to question 15 of Questionnaire Q3 to Merchants.
303 Form CO, paragraph 664.

checkout solutions and a payment method, and continue to distribute their payment method via competing e-Commerce checkout solutions.[304]

(240) In view of the above, the Commission considers that the Merged Entity is unlikely to have the incentives to foreclose competing e-Commerce checkout solution providers at a detriment of their mobile wallets. In addition, at least with regard to Norway, any incentive to foreclose would not be merger-specific, as in Norway Vipps is already vertically integrated and present in both the upstream and the downstream markets.

6.3.3.3. Overall likely impact on effective competition

(241) In general, a merger will raise competition concerns because of input foreclosure when it would lead to increased prices in the downstream market thereby significantly impeding effective competition. The relevant benchmark is whether the increased input costs would lead to higher prices for consumers.[305]

(242) *First*, the Commission's market investigation indicated that the impact of the Proposed Transaction on the market for (mobile) payment services and its segments, as well as the downstream market for e-Commerce checkout solutions in the Nordics is overall expected to be either positive or neutral.[306] In fact, several merchants noted that they view the Transaction rather positively: "[b]*etter change for a solution that covers all the Nordics and is able to compete with global players*", "[w]*e expect the Transaction to have neutral - if not positive - effects both on the overall market and on market participants on the demand side. As regards the competitive landscape, a merged entity could increase pressure on highly established and market-strong competitors in the Nordics, such as Paypal and Klarna, having positive effects on pricing, overall conditions and innovation in the market. For e-commerce platforms offering such payment services to end customers, a consolidation of service providers across countries could simplify the technical implementation, onboarding processes, contractual negotiations etc*", "*people from other Nordic countries might be able to pay through our mobilepay implementation – which would be positive*", "[o]*ne tech platform with less integration variation between the three countries*", "[w]*e would finally be able to choose one partner in the Nordics*".[307]

(243) *Second*, the Commission notes that even if the downstream market of e-Commerce checkout solutions was indeed affected by a potential input foreclosure upstream, it would seem unlikely that this would lead to higher prices.

(244) In the first place, the Commission's market investigation revealed a high degree of multi-homing on the side of merchants. In particular, the majority of merchants have agreements with multiple e-Commerce checkout providers at the same time, while at least half of the responding merchants have agreements with multiple

304 Form CO, Appendix 94 and Replies to questions 44 and 45 of Questionnaire Q2 to e-Commerce checkouts. These include: Nets, Klarna, Swedbank Pay, Svea, PayPal, Collector Bank, Amazon, Arvato, Qliro, and Dintero.

305 Non-Horizontal Merger Guidelines, paragraphs 31 and 47.

306 Replies to questions 54 and 55 of Questionnaire Q3 to Merchants and to question 53 of Questionnaire Q2 to e-Commerce checkouts.

307 Replies to questions 54-57 of Questionnaire Q3 to Merchants.

providers for at least some of the Nordic countries.[308] As one merchant explained, "[t]*here are many different payment methods and those cannot be reached through a single P*[S]*P provider*".[309]

(245) In the second place, most of the responding merchants also directly integrate additional payment methods on top of their e-Commerce checkout solution and further indicate that in case one of the payment methods they would consider important was not included in their e-Commerce checkout solution of choice, they would consider adding it by means of Direct Integration.[310] One merchant noted that "[i]*f our customers preferred to use a payment method not already included in our eCommerce checkout solution of choice, we would consider initiating actions to integrate such a method directly into our online store. Such integrations may take some time and may face some technical challenges, but our online stores are constantly being developed to ensure the best possible customer experience*".[311]

(246) On the mix among the different providers, from a Direct Integration with the payment method provider to specialised e-Commerce checkout providers, responding merchants have indicated the following: "[b]*asically, we use both Gateway and Collecting PSPs. Sometimes even a direct integration of the payment service. The advantage of Gateway PSP is the pricing and the type of technical integration. Collect PSP offers plug and play integration for smaller shops, but no individual solutions. However, these individual solutions are often required for our service*";[312] "[t]*ypically,* [the merchant] *has a balanced approach when it comes to picking PSP for acquiring local payment methods. To achieve better commercial terms as well for a more improved customer experience we prefer a direct integration to the payment method. In other instances, when* [the merchant] *wants to gain speed on go-to-market strategy we would enable additional local payment methods through an existing 3rd party provider - eg. Adyen*";[313] "[the merchant] *has an agreement with Adyen for its PSP services. Adyen does not however have an agreement with Mobilepay to use standard e-Commerce checkout flow in Adyens. As a result,* [the merchant] *has also entered into a direct agreement with MobilePay to use its payment method in its ecommerce checkout flow*".[314]

(247) In the third place, any increase of the fees by the Merged Entity is unlikely to affect the competing e-Commerce checkouts' ability to effectively compete (by significantly increasing their costs) and they are unlikely to pass such fees on to merchant customers. This is also corroborated by the following considerations. Firstly, merchants appear significantly price-sensitive in their choice of e-Commerce checkout provider(s).[315] At the same time, the majority of responding merchants consider that they have an equal or higher bargaining power when negotiating with e-Commerce checkout providers.[316] This appears to be particularly the case for larger merchants with significant transaction volumes. This is also

[308] Replies to questions 5 and 53 of Questionnaire Q3 to Merchants.
[309] Reply to question 5 of Questionnaire Q3 to Merchants.
[310] Replies to questions 34 and 36 of Questionnaire Q3 to Merchants.
[311] Reply to question 36 of Questionnaire Q3 to Merchants.
[312] Reply to question 34 of Questionnaire Q3 to Merchants.
[313] Reply to question 5 of Questionnaire Q3 to Merchants.
[314] Reply to question 5 of Questionnaire Q3 to Merchants.
[315] Replies to question 50 of Questionnaire Q3 to Merchants.
[316] Replies to question 52 of Questionnaire Q3 to Merchants.

evidenced by the responses of e-Commerce checkout providers to the Commission's market investigation indicating that they mostly choose what to offer in their e-Commerce checkout solution on the basis of merchant requests.[317] Secondly, the downstream market for e-Commerce checkout solutions appears to be highly competitive[318] and there remain sufficient credible downstream competitors whose [STRATEGIC INFORMATION] as they have long-term distribution agreement with the Merging Parties that [STRATEGIC INFORMATION] (see also above in paragraph 226). Thirdly, even if the Merged Entity was to introduce fees, most of e-Commerce checkout providers would likely be able to absorb such an increase in their costs. That is because e-Commerce checkout providers typically generate revenues across a larger part of the value chain, *e.g.* from their own in-house payment methods to merchant acquiring and settlement of funds, and many of them are large international players with a large number of revenue generating activities.

(248) Therefore, the Commission considers that even if the Merged Entity engaged in any input foreclosure strategy upstream, the effect on e-Commerce checkout providers downstream, and also on their merchant customers and ultimately end consumers, would not be likely to be negative.

(249) Lastly, any effect of a potential input foreclosure strategy on the downstream market for e-Commerce checkout solutions would have a limited impact on e-Commerce checkout providers operating in Sweden and their merchant and end customers located in Sweden. That is because the Merging Parties do not operate a mobile wallet in Sweden and therefore do not provide inputs for e-Commerce checkout providers operating in Sweden. This would dilute any impact on the broader plausible Nordic market for e-Commerce checkouts.

(250) In light of the above, the Commission considers that the overall impact on effective competition in the downstream market for e-Commerce checkout solutions in the Nordics is not likely to be negative post-Transaction.

6.3.4. Conclusion

(251) In light of the above, the Commission concludes that the Transaction does not give rise to serious doubts regarding its compatibility with the internal market as a result of a total or partial input foreclosure, in particular due to the lack of incentive of the Merged Entity to foreclose e-Commerce checkout providers in the Nordics[319] and because such foreclosure strategy would not have a significant detrimental effect on effective competition post-Transaction.

[317] Replies to question 25 of of Questionnaire Q2 to e-Commerce checkouts.

[318] Replies to question 40 of Questionnaire Q2 to e-Commerce checkouts.

[319] The Commission's assessment and conclusion in this Section also applies to a potential input foreclosure strategy of the Merged Entity to the detriment of e-Commerce checkout providers in a wider EEA-wide market.

6.4. Mobile payment services (upstream) – Retail banking (downstream)

6.4.1. The Parties' activities

(252) Owner Banks are active in retail banking (and segments therein). Mobile payment services provided by the Merging Parties could be considered an input for Owner Banks' retail banking (or if segmented into current account) offering given that retail banking customers expect their current accounts to be compatible with mobile payment services, such as the Merging Parties'.[320, 321]

(253) The Transaction results in a vertical link, which gives rise to the following set of affected markets: mobile payment services in P2P, POS, e-Commerce and invoice payment situations (upstream) and retail banking (and a plausible segment for current accounts) (downstream) in Norway.[322, 323]

(254) With respect to the upstream market for mobile payment services in all payment situations in Norway, Vipps is the only Merging Party active. Depending on the exact market definition,[324] Vipps' market shares reach up to [90-100]% in P2P and Invoice payment situation, up to [50-60]% in POS and up to [70-80]% in e-Commerce.

(255) With respect to the downstream market, the Owner Banks' combined market share in the market for current accounts in Norway in 2021 is [30-40]%, of which DNB has a [20-30]% market share and Danske Bank [5-10]%.[325] The shares in a plausible wider market for retail banking would not differ materially from the shares in current accounts.[326]

6.4.2. The Notifying Parties' view

(256) The Notifying Parties submit that the Merged Entity would not have the ability to foreclose downstream competitors because the combined market share of the Merging Parties in the upstream market for all payment services (which the

320 Similar consideration would apply to card issuing, *i.e*. Owner Banks' customers expect their payment cards to be compatible with mobile payment services such as the Merging Parties'. This is discussed in Section 6.5.

321 Note that the relationship between mobile payment services and retail banking could also be considered as retail banking being upstream of mobile payment services. That is because elements of retail banking (*e.g*. current accounts) could be considered an input into mobile payment services such as the Merging Parties'. In this case, the same competitive assessment applies with the assessment of input foreclosure concerns addressing customer foreclosure concerns and vice versa.

322 In Finland and Denmark, the vertical link exists pre-Transaction (and is not affected by the Transaction) as the only Owner Bank active in retail banking is Danske Bank and the only Merging Party active is MobilePay (controlled by Danske Bank pre-Transaction). In Norway, the Transaction gives rise to an affected market because DNB did not control Vipps pre-Transaction and due to Danske Bank's activities in Norway.

323 In plausible EEA-wide markets for mobile payment services, the combined Parties' market share is below 20% under all plausible product market definitions. In light of the Parties' limited position in any plausible EEA-wide market and the downstream market for retail banking being defined as national, the assessment of this vertical link focuses on the national market in Norway only.

324 Note that, depending on the exact market definition, the Owner Banks also have activities in these plausible markets, but these cannot be considered an input into retail banking and are thus not discussed further.

325 Form CO, Appendix 97.

326 Form CO, paragraph 821.

Notifying Parties consider the appropriate product market definition) is significantly below 30% and the Merging Parties' mobile wallets are easily substitutable by payment cards, banking apps and account-to-account solutions.[327]

(257) The Notifying Parties submit that the Merged Entity would not have the incentive to foreclose downstream competitors because widespread user adoption remains critical for the Merging Parties' mobile wallets and banks are not in any event required to have entered into a distribution agreement with the Merging Parties in order for the former's customers to use their issued card or account in the latter's mobile wallets.[328]

(258) With respect to current accounts specifically, the Notifying Parties submit that the Owner Banks will not have the ability to foreclose upstream competitors in mobile payment services as the relevant provisions of PSD2[329] legally prevent them from foreclosing third party access to their current accounts (when the competitor provides payment initiation services and account information services within the meaning of PSD2).[330] The Owner Banks will also not have an incentive to do so as any foreclosure attempt would put them at a competitive disadvantage vis-à-vis competing banks.[331]

6.4.3. *The Commission's assessment*

6.4.3.1. Input foreclosure

(259) The Transaction is unlikely to give rise to competition concerns in the downstream markets for retail banking (or the plausible segments for current accounts) as a result of input foreclosure, by which services of the Merged Entity would no longer be available to competing retail banking providers in Norway.

(260) *First*, the *ability* of the Merged Entity to restrict access to an important input appears restricted to only a limited proportion of all retail banks in Norway:

(a) The results of the market investigation suggest that having access to Vipps in Norway is very important in order to remain competitive in the market for retail banking or current accounts.[332] A competitor for example explains: *"Vipps has gained a significant market position both in P2P payments and eCommerce. Not having access to Vipps would be a great disadvantage."*[333] Moreover, suitable alternatives do not appear to be readily available.[334]

(b) However, in addition to Danske Bank and DNB, a significant proportion of retail banks in Norway are members of SB1, Eika and Balder. These Parent

327 Form CO, paragraphs 823 et seqq.
328 Form CO, paragraphs 831 et seqq.
329 Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (Text with EEA relevance).
330 Form CO, paragraphs 870 et seqq.
331 Form CO, paragraphs 872 et seqq.
332 Replies to question 37 of Questionnaire Q1 to Banks and PSPs.
333 Reply to question 37 of Questionnaire Q1 to Banks and PSPs.
334 Replies to question 40 of Questionnaire Q1 to Banks and PSPs.

Companies are associations of banks in Norway with the main purpose of holding and managing the member banks' shares in the Merged Entity. As such, they are unlikely to support a foreclosure strategy that would harm any of their members. Any ability of the Merged Entity to foreclose access to important inputs is therefore limited to downstream bank rivals, which are *not* part of SB1, Eika and Balder ("third-party banks"). These banks account for [20-30]% of the market.[335] Moreover, virtually all of the third-party banks are in fact minority shareholders of the Merged Entity. While these banks do not exert control in the Merged Entity, it appears unlikely that the Merged Entity would foreclose its own minority shareholders.

(c) Moreover, the Merged Entity is unlikely to have the ability to engage in a partial foreclosure by increasing the fees charged to third-party banks, because such fees present only a minor part of the total costs of offering retail current accounts.[336] The Notifying Parties estimate that if the Merged Entity was to introduce fees per transaction for all transactions conducted by the third-party banks' retail banking customers, comparable to the fees currently charged to merchants in e-Commerce, these fees would likely represent less than [0-5]% of total costs of the provision of retail banking (or current accounts).[337]

(d) Finally, the Transaction does not increase the ability to pursue such a foreclosure strategy. Already before the Transaction, a majority among DNB, SB1, Eika and Balder could try to foreclose Danske Bank and third-party banks by not granting access to Vipps. The only change caused by the Transaction is that Danske Bank by acquiring control over the Merged Entity could not be foreclosed anymore.

(261) *Second*, the Merged Entity is unlikely to have the *incentive* to engage in input foreclosure as a result of the Transaction:

(a) The Merged Entity operates in a market highly characterised by network effects and its core strategy is to be distributed and used as widely as possible. The Merged Entity is therefore unlikely to have the incentive to engage in a strategy that would materially and immediately significantly reduce the Merged Entity's customer base and thus its attractiveness to users. This is confirmed by the market investigation, as the majority of the respondents do not consider it realistic that, as the result of this Transaction, the Merged Entity will be likely to engage in input foreclosure.[338] Respondents explain for example: *"Although theoretically possible and possibly naturally incentivised we would not expect that. Driving scale is important to futureproof businesses and in that regard all volumes are good volumes."*[339], and *"To be an interoperable payment solution is not in the interest to make the wallets unavailable to other banks."*[340]

335 Form CO, Appendix 104.
336 Form CO, paragraph 848.
337 Form CO, Appendix 80.
338 Replies to question 38 of Questionnaire Q1 to Banks and PSPs.
339 Reply to question 38 of Questionnaire Q1 to Banks and PSPs.
340 Reply to question 41 of Questionnaire Q1 to Banks and PSPs.

(b) The above is evident from the fact that today MobilePay is available to all Danish users, regardless of their banking relationship, even though MobilePay is controlled by the leading retail bank in Denmark, Danske Bank (with a market share similar to that of the Owner Banks in Norway). Similarly, Vipps is available to all Norwegian users, while already today its largest shareholder is DNB. Moreover, at the moment, it is not a requirement for a bank to enter into an agreement with Vipps/MobilePay in order for its customer to be able to their mobile wallets.[341]

(c) The fact that a large customer base is crucial for mobile wallet's success could also be demonstrated by the example of Swipp. Swipp was a mobile wallet launched in Denmark in 2013 (shortly after Danske Bank launched MobilePay) by a group of co-operating banks.[342] An important difference between MobilePay and Swipp was that MobilePay is available to all users in Denmark (regardless of whether they have an account with Danske Bank), while the usage of Swipp was restricted to banking customers' of Swipp's parents. Eventually, MobilePay became the most widely used mobile wallet in Denmark, while Swipp failed to gain traction and exited the market in 2016.[343] The Merged Entity's incentive to remain distributed to as large a customer base as possible is also demonstrated [STRATEGIC DECISION AND CONTRACTUAL RELATIONSHIPS].[344] Moreover, there is no indication in the Parties' internal documents suggesting otherwise.

(d) Moreover, a foreclosure strategy would require an alignment of all the Parents' incentives, which is highly unlikely to be the case. That is because such a foreclosure strategy would significantly harm the Merged Entity (and thus equally harm all the Parents), while disproportionally benefiting the Owner Banks with stronger direct retail banking activities in Norway. Parents with limited or no retail banking activities in Norway would thus have no incentive to support such a foreclosure strategy of either current or potential retail banking players.

(e) This vertical link is largely pre-existing, as pre-Transaction DNB is already the largest shareholder of Vipps. The Transaction leads only to a limited structural change and is thus unlikely to materially change the Parties' incentives, which is confirmed by the market investigation. The majority of the respondents consider that the Transaction will not increase the Merging Parties' incentives to not make the services of their mobile wallets available to other banks due to the Transaction.[345] One respondent for example stated: *"The service would still be available to other banks as it is today"*.[346]

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341 Form CO, footnotes 42 and 211.

342 Nordea, Jyske Bank and 70 regional banks.

343 See for example for further reference Moritz K.H, Stadtmann G. and Stadtmann T. (2018, November). Re: MobilePay versus Swipp – *Main insights from a Nordic country for mobile payment apps*, European University Viadrina Frankfurt. https://www.wiwi.europa-uni.de/de/forschung/publikationen-projekte/dp/_dokumente/406_Moritz_Stadtmann_Stadtmann.pdf (last accessed on 10 October 2022).

344 Form CO, paragraph 827.

345 Replies to question 41 of Questionnaire Q1 to Banks and PSPs.

346 Reply to question 41 of Questionnaire Q1 to Banks and PSPs.

(262) *Third*, an input foreclosure strategy arising as a result from the Transaction is likely to have no *impact* on effective competition in the downstream retail banking market (or the segment for current accounts) in Norway.

(a) As mentioned, any foreclosure strategy would be able to target at most third-party banks, which represent only [20-30]% of the retail banking (or current account) market in Norway. According to the Non-horizontal Merger Guidelines, *"[s]ignificant harm to effective competition normally requires that the foreclosed firms play a sufficiently important role in the competitive process on the down market"*, which is more likely to be the case if a higher proportion of downstream rivals is foreclosed.[347] A foreclosure strategy targeting at most [20-30]% of the retail banking market in Norway (and likely less as discussed in paragraph 260(b) above) is unlikely to have significant effect on effective competition.

(263) As a result, the majority of retail banking competitors responding to the market investigation expect the Transaction to have a positive or neutral impact on their company as well as on the market for retail banking (or a segment for current accounts).[348] Only one respondent considers that the Transaction will have a negative impact on the market for retail banking services.[349] However, the respondent did not substantiate its concerns by explaining how this Transaction in particular could impact the Parties' abilities and incentives to engage in the outlined input foreclosure strategy in Norway.

6.4.3.2. Customer foreclosure

(264) The Transaction is unlikely to give rise to competition concerns in the upstream markets for mobile payment services as a result of ***customer foreclosure***, by which competing mobile payment services providers would no longer have access to the retail banking customers (specifically their current accounts[350]) of the Owner Banks.

(265) *First*, the *ability* of the Owner Banks to engage in customer foreclosure by restricting access to a significant customer base is limited:

(a) The Owner Banks do not hold a significant degree of market power in the downstream market for retail banking or current accounts in Norway. The Owner Banks' combined market share in the downstream market for retail banking (current accounts) is limited at [30-40]%. This is only just above the threshold set out in the Non-Horizontal Merger Guidelines, below which the Commission is *"unlikely to find concerns in non-horizontal mergers"*.[351]

(b) Moreover, the Owner Banks will remain separate competing entities, making their own strategic decisions. Their individual market shares remain below the above-mentioned threshold, and each individual Owner Bank is thus

347 Non-horizontal Merger Guidelines, para. 48.
348 Replies to question 42 of Questionnaire Q1 to Banks and PSPs.
349 Ibid.
350 Competing mobile payment services providers not having access to the card issues by the Owner Banks is discussed in Section 6.5.
351 Non-horizontal Merger Guidelines, paragraph 25.

unlikely to have any degree of market power in the upstream market. In addition, DNB is already pre-Transaction the largest shareholder (46%) of Vipps, and the Transaction does not in any manner change its ability to engage in customer foreclosure.

(c) The Owner Banks' ability will also be restricted by the relevant regulation in place. In particular, provisions of PSD2 and Commission Delegated Regulation (EU) 2018/389[352] legally prevent the Owner Banks from restricting access to the current accounts operated by them, when the competitor provides payment initiation services and account information services.

(d) Nevertheless, the respondents to the market investigation are split as to whether the Transaction will grant the Merged Entity or the Owner Banks the ability to foreclose them from a significant share of their customer base.[353] However, some respondents appear to reference the ability to engage in input foreclosure (discussed in Section 6.4.3.1. above) and no respondents explain how the ability will change due to the Transaction.

(266) *Second*, the Owner Banks are unlikely to have the *incentive* to engage in customer foreclosure as a result of the Transaction:

(a) This vertical link is largely pre-existing. The Transaction leads only to a limited structural change and is thus unlikely to materially change the Owner Banks' incentives. In particular, DNB (which holds a [20-30]% market share in the downstream market) is pre-Transaction already the largest (non-controlling) shareholder of Vipps[354] and there is no indication that it is engaging in customer foreclosure pre-Transaction.

(b) The Transaction could be considered as reducing DNB's incentive to engage in foreclosure strategies, which would benefit the Merged Entity at a detriment of DNB's other (including retail banking) activities. While pre-Transaction it held a 45% share of Vipps, it will only hold 33% in the Merged Entity. Therefore, the Transaction will dilute DNB's gains (but not losses) of any foreclosure strategy that would benefit the Merged Entity.

(c) More generally, the Owner Banks will remain separate competing entities in the market for retail banking in Norway. Individually, they are unlikely to engage in a foreclosure strategy harming their retail banking position, in order to benefit the Merged Entity, whose profits will be shared among a large number of Parents. At the same time, the Owner Banks are unlikely to coordinate their behaviour, including in the market for retail banking (or a segment for current accounts), as discussed in Section 6.8.

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352 Commission Delegated Regulation (EU) 2018/389 of 27 November 2017 supplementing Directive (EU) 2015/2366 of the European Parliament and of the Council with regard to regulatory technical standards for strong customer authentication and common and secure open standards of communication, OJ L 69, 13.3.2018, p. 23–43.

353 Replies to question 44 of Questionnaire Q1 to Banks and PSPs.

354 Note that the change in control by DNB over Vipps is of limited relevance for this customer foreclosure assessment, as customer foreclosure would be implemented by DNB (who has control over its downstream activities pre- and post-Transaction) and not the Merged Entity.

(d) Nevertheless, the responders to the market investigation are split as to whether, as a result of the Transaction, the Merged Entity or the Owner Banks will be likely to foreclose them from a significant share of their customer base in relation to retail banking or current accounts.[355] However, some respondents appear to reference the incentive to engage in input foreclosure (discussed in Section 6.4.3.1. above) and no respondents explain how the incentives will change due to the Transaction.

(267) As the Commission found that the combined entity would have no ability or incentive to foreclose its upstream rivals in mobile payment services in P2P, POS, e-Commerce and invoice payment situations (and plausible segments) in Norway, it is not necessary to assess in detail the overall impact of the Transaction on competition.

(268) Finally, the majority of respondents to the market investigation expecting the Transaction to have a positive or neutral impact on their company as well as on the market for mobile payment services.[356]

6.4.4. Conclusion

(269) In light of the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA agreement as a result of either input or customer foreclosure on the markets for mobile payment services in P2P, POS, e-Commerce and invoice payments (and plausible segments thereof) (upstream) and retail banking (and a plausible segment for current accounts) (downstream) in Norway.

6.5. Card issuing (upstream) – Mobile payment services (downstream)

6.5.1. The Parties' activities

(270) Owner Banks issue debit cards as part of their retail banking services and issue credit cards to both their banking customers and customers who do not have a bank account with them. As the Merging Parties rely on payment cards to facilitate transactions (in all payment situations except for invoice payments), card issuing can be considered an input into mobile payment methods of the Merged Entity.

(271) The Transaction results in a vertical link, which gives rise to the following set of affected markets: card issuing (and plausible segments) (upstream) and mobile payment services in P2P, POS, e-Commerce and invoice payment situations (or plausible segments) (downstream) in Norway.[357]

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355 Replies to question 44 of Questionnaire Q1 to Banks and PSPs.

356 Replies to question 46 of Questionnaire Q1 to Banks and PSPs.

357 In Finland and Denmark, the vertical link exists pre-Transaction (and is not affected by the Transaction) as the only Owner Bank active in card issuing is Danske Bank and the only Merging Party active is MobilePay (controlled by Danske Bank pre-Transaction). In Norway, the Transaction gives rise to an affected market because DNB did not control Vipps pre-Transaction and due to Danske Bank's activities in Norway.

(272) With respect to the upstream market, the Owner Banks' combined market share in the market for card issuing in Norway in 2021 is [30-40]%, of which DNB has a [30-40]% market share and Danske Bank [0-5]%.[358]

(273) With respect to the downstream market for mobile payment services in all payment situations in Norway, where Vipps is the only Merging Party active, Vipps' market shares, depending on the exact market definition,[359] reach up to [90-100]% in P2P and Invoice payment situation, up to [50-60]% in POS and up to [70-80]% in e-Commerce.

6.5.2. *The Notifying Parties' view*

(274) The Notifying Parties submit that the Owner Banks will not have the ability to foreclose competing mobile payment service providers from conducting transactions via cards issued by the Owner Banks as (i) international card schemes (Mastercard and Visa) as well as BankAxept in Norway do not allow issuers of their cards to block transaction from certain merchants, (ii) providers of mobile payment services do not require an agreement with the card issuer in order to make their services compatible with international card schemes, (iii) even in a hypothetical event that competing mobile payment service providers would not be able to use cards issued by Owner Banks, they would still be able to offer A2A payment services based on PSD2.[360] In addition, the Combined Entity would have no incentive to engage in such strategy as (i) this would require the Combined Entity to forego the interchange fee income from the transactions on the competing mobile payment services (and potentially from all future customer's transactions if a customer is lost), (ii) such an attempt would place the Owner Banks at a competitive disadvantage, (iii) international card schemes (Mastercard and Visa) would be a countervailing force and (iv) Owner Banks will continue to operate independently post-Transaction, which limits their incentive to favour the Merged Entity.[361]

(275) The Notifying Parties also submit that the Merged Entity will not have the ability to foreclose competing card issuer because the Merged Entity accounts for a minor share of the total volume of card transactions. Moreover, such a strategy would go directly against the Merged Entity main objectives, as it would immediately and materially reduce its customer base and specifically fees earned from merchants.[362]

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358 Form CO, Appendix 97. In various plausible segments of card issuing previously considered by the Commission, the Owner Banks' market shares do not differ materially or is lower from the market shares in the overall card issuing market and the combined market share of the Owner Banks remains below [40-50]%. The only plausible segment where the combined market share exceeds [40-50]% include is card issuing of Visa branded cards (Danske Bank [0-5]%, DNB [40-50]%). The competitive assessment presented in this section applies equally to all the plausible segmentations of the market for card issuing.

359 Note that, depending on the exact market definition, the Owner Banks also have activities in these plausible markets, but as card issuing cannot be considered an input into these, they are not discussed further.

360 Form CO, paragraphs 919 et seqq.

361 Form CO, paragraphs 933 et seqq.

362 Form CO, paragraphs 951 et seqq.

6.5.3. *The Commission's assessment*

6.5.3.1. Input foreclosure

(276) The Transaction is unlikely to give rise to competition concerns in the downstream markets for mobile payment services in P2P, POS, e-Commerce and invoice payment situations (and plausible segments) in Norway as a result of ***input foreclosure***, by which the Transaction would result in Owner Banks further preventing competing mobile payment services from conducting transaction via card issued by the Owner Banks.

(277) *First*, the Transaction is unlikely to increase the Owner Banks' *ability* to further restrict access to important inputs for competitors in the downstream market:

(a) The combined Owner Banks' market share in the upstream market is limited at [30-40]%, which is close to the threshold set out in the Non-Horizontal Merger Guidelines, below which the Commission is *"unlikely to find concerns in non-horizontal mergers"*.[363] Therefore, competing mobile payment services providers would continue to have access to a large number of cards issued in Norway. Given that most consumers have more than one card, the cards issued by non-Owner Banks likely represent more than [60-70]% of Norwegian end users.

(b) Moreover, given that DNB is already today the majority (albeit non-controlling) shareholder of Vipps,[364] the relevant change in the ability is contributed by the activities of Danske Bank in Norway. The increment contributed by Danske Bank is, at [0-5]%, limited and unlikely to change the Owner Banks' ability to restrict access to important inputs.

(c) In addition, any mobile payment service provider that operates a so-called staged digital wallet,[365] which is also the primary method used by MobilePay and Vipps, does not require a contract with a card issuer in order to provide card-based payments. In this setup, the Owner Banks have no ability to restrict downstream competitors from conducting payments via their cards, as card scheme rules prevent card issuers from arbitrarily blocking transactions.

(d) The above is confirmed by the market investigation. The majority of competing mobile payment services providers who responded to the market investigation, consider that the Transaction will not grant the Owner Banks

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363 Non-horizontal Merger Guidelines, paragraph 25.

364 Note that the change in control by DNB over Vipps is of limited relevance for this input foreclosure assessment, as input foreclosure would be implemented by DNB (who has control over its upstream activities pre- and post-Transaction) and not the Merged Entity.

365 A staged digital wallet utilizes a 2-stage payment process, which can be divided into a funding stage and a payment stage, and working through these stages means that the digital wallets does not pass card details to the card brand or issuer. In this setup, the mobile payment service provider would contract directly with a merchant acquirer (and by-pass the need to contract with a card issuer) to allow its users to make card-based payments. The alternative is a pass-through digital wallet, in which the card payment information is utilised directly and is passed on to the issuer and the card network. Provider of pass-through digital wallets require to contract with the relevant card issuer(s).

the ability to foreclose them from important inputs in relation to card issuing.[366]

(278) *Second,* the Transaction is unlikely to increase the Owner Banks' *incentives* to foreclose competing mobile payment service providers at a detriment of their card issuing activities:

(a) This vertical link is largely pre-existing. The Transaction leads only to a limited structural change and is thus unlikely to materially change the Owner Banks' incentives.

(b) If anything, the Transaction will reduce DNB's incentive to engage in any foreclosure strategies, which would benefit the Merged Entity at a detriment of DNB's other (including card issuing) activities. While pre-Transaction DNB held a 45% share of Vipps, it will only hold 33% in the Merged Entity. Therefore, the Transaction will dilute DNB's gains (but not losses) of any foreclosure strategy benefiting the Merged Entity in Norway.

(c) At the same time, Danske Bank, which will remain a separate competing entity, is unlikely to have the incentive to harm its position in the upstream market for card issuing (where profits are not shared with any other party), in order to benefit the Merged Entity (of which profits are shared among all the Parent Companies). In addition, Danske Bank's limited position in the upstream market severely restricts Danske Bank's gains from such a strategy and thus its incentives.

(d) Finally, the Owner Banks are unlikely to coordinate their behaviour, including in the upstream market for card issuing, as discussed in Section 6.8.

(279) As the Commission found that the combined entity would have no ability or incentive to foreclose its downstream rivals in mobile payment services in P2P, POS, e-Commerce and invoice payment situations (and plausible segments) in Norway, it is not necessary to assess in detail the overall impact of the Transaction on competition.

(280) Finally, during the course of its investigation, only two third parties raised concerns with respect to this vertical link.[367] However, they did not substantiate their concerns by explaining how this Transaction specifically could impact the Parties' abilities and incentives to engage in the outlined input foreclosure strategy.

6.5.3.2. Customer foreclosure

(281) The Transaction is unlikely to give rise to competition concerns in the upstream market for card issuing (and plausible segments) as a result of ***customer foreclosure***, by which the Merged Entity's mobile wallets would no longer support transactions via cards issued by non-Owner Banks.

366 Replies to question 71 of Questionnaire Q1 to Banks and PSPs.

367 Third Party's Submission to the European Commission, 5 October 2022; Replies to Questionnaire Q1 to Banks and PSPs.

(282) *First*, the Merged Entity does not seem to have the *ability* to engage in customer foreclosure to the detriment of card issuing rivals by restricting access to a significant customer base:

(a) Transactions conducted via Vipps account for only a minor ([0-5]%) share of all card transactions in Norway.[368] The Merged Entity therefore cannot be considered an important customer for card issuers in Norway, who would continue to have access to the vast majority of card transactions in Norway.

(b) The above is confirmed by the market investigation. The majority of competing card issuers, who responded to the market investigation, consider that the Transaction will not grant the Merged Entity the ability to foreclose them from an important share of their (potential) customer base.[369]

(283) *Second*, the Transaction is unlikely to increase the Parties' incentives to foreclose competing card issuers:

(a) The losses that the Merged Entity would incur in case of a potential customer foreclosure appear significant. Given the strong network effects in the mobile payment services markets, the Merged Entity's core strategy is to have as wide a customer base as possible. A foreclosure strategy that would immediately and significantly reduce the Merged Entity's customer base, and thus its attractiveness for users, is likely to result in significant losses.

(b) On the other hand, any potential gains for the Owner Banks' card issuing activities are unclear and, importantly, unevenly distributed among the Parents. In particular, while it might benefit DNB's card issuing activities, the gains for other Parent Companies with little to no direct card issuing activities would be limited to none. The Parents Companies' incentives to support such a foreclosure strategy, which would significantly harm the Merged Entity and disproportionally benefit only certain Parents, are therefore unlikely to be aligned.

(284) As the Commission found that the Merged Entity would have no ability or incentive to foreclose its upstream rivals in card issuing (and plausible segments) in Norway, it is not necessary to assess in detail the overall impact of the Transaction on competition.

(285) Finally, during the course of its investigation, no market participant expressed concerns with respect to a potential customer foreclosure in relation to this vertical link.

6.5.4. Conclusion

(286) In light of the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA agreement as a result of either input or customer foreclosure on the markets for card issuing (and plausible segments

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368 Form CO, paragraph 953. This proportion could increase up to [10-20]% if only Mastercard and/or Visa transactions are considered, but which does not affect the assessment.

369 Replies to question 72 of Questionnaire Q1 to Banks and PSPs.

thereof) (upstream) and mobile payment services in P2P, POS, e-Commerce and invoice payments (and plausible segments thereof) (downstream) in Norway.

6.6. Merchant acquiring (upstream) – Mobile payment services (downstream)

6.6.1. The Parties' activities

(287) A merchant acquirer manages the merchant's account and forwards information resulting from a card transaction for further processing and provides settlement to the merchant. Merchant acquiring could thus be considered an input into payment methods based on card infrastructure, including those of the Merging Parties.

(288) The only relevant upstream activities are that Danske Bank and DNB provide retail[370] merchant acquiring of the domestic card scheme BankAxept in Norway.[371] BankAxept cards can only be used in POS payment situations.

(289) On the upstream market, the Owner Banks (*i.e.* DNB and Danske Bank) would have a [30-40]% market share in the overall retail merchant acquiring market in Norway and [40-50]% for retail POS-merchant acquiring. Combined market shares in retail merchant acquiring of the BankAxept domestic scheme, which can only be used for POS payments, would be [50-60]%.[372] The Notifying Parties confirm that, to the best of their knowledge, the market structure would not materially change if a segmentation by merchant size was applied.[373, 374]

(290) Downstream, Vipps provides mobile payment services in POS payment situations. It has to be noted that Vipps mobile payment services almost exclusively rely on either A2A payments or international card schemes, *i.e.* Visa and MasterCard. Only Vipps terminal service *"Vipps QR I terminal"* allows customers to initiate payments with a BankAxept card linked to the wallet in POS by scanning an QR code presented in the payment terminal.[375]

(291) Downstream, the combined market shares of the Owner Banks exceed [30-40]% in plausible POS payments markets for POS payments overall ([40-50]%), for POS payments excluding cash ([40-50]%)[376] and for a market for POS payments by mobile wallets ([50-60]%).[377]

370 The Notifying Parties provide that, to the best of their knowledge, no wholesale merchant acquiring exists in Norway, Denmark and Finland. The Notifying Parties confirm that the Owner Banks are only active in retail merchant acquiring in Norway; see response to RFI 20, paragraphs 1 and 2.

371 Form CO, paragraphs 960 and 961.

372 Form CO, tables 28, 30, 31 and 32.

373 Response to RFI 20, paragraph 4. The Commission therefore notes that market shares for merchant acquiring of the BankAxept scheme in Norway is the most narrow plausible product market definition where the Parties are active, taking into account that a segmentation by merchant size would not change the market structure.

374 The Commission notes that acquiring of BankAxept payments in Norway would therefore be the narrowest plausible market definition, and that the Owner Banks are only active in this segment.

375 Form CO, paragraphs 114 and 973.

376 For POS payments overall and POS payments excluding cash, the increment brought by Vipps amounts to [0-5]% market share.

377 Form CO, annex 99.

6.6.2. The Notifying Parties' view

(292) The Notifying Parties submit that the Combined Entity will not have the ability and incentive to foreclose competing mobile payment services providers by not acquiring (or do so on unfair terms) BankAxept transactions initiated by competing mobile payment service providers for the following reasons: (i) the vast majority of Norwegian consumers have both a BankAxept and Visa/Mastercard card, (ii) BankAxept acquiring is not a critical input into the provision of mobile payment services as all mobile payment providers in Norway rely on international card infrastructure as the underlying card payment, and (iii) are prevented from doing so by BankAxept infrastructure rules. The Merged Entity would also have no incentive to do so as such input foreclosure would have a direct negative impact on Danske Bank's and/or DNB's profit, which would not be recuperated by the Merged Entity (and even if it would, it would be shared among all the Parent Companies).[378]

(293) The Notifying Parties also submit that the Merged Entity will not have the ability to foreclose competing providers of merchant acquiring as the volume of mobile payments is marginal compared to the volume of all card payments.[379]

6.6.3. The Commission's assessment

6.6.3.1. Input foreclosure

(294) The Transaction is unlikely to give rise to competition concerns in the downstream markets for payment services in POS payment situations (and plausible segments) in Norway as a result of input foreclosure, by which the Transaction would result in Owner Banks foreclosing competing payment services merchant acquiring services of the BankAxept payment scheme.

(295) The Parties do not have the ability to restrict access to important inputs for competitors downstream:

a) Under all plausible market definitions for merchant acquiring services, at least two significant competitors, namely Nets and Nordea, would remain available for downstream competitors;[380]

b) Post-Transaction, DNB and Danske Bank remain separate entities without having control over each other. Separately, only the market shares of DNB in a plausible segment for retail merchant acquiring services of the Bank Axept domestic scheme would exceed 30% (with [30-40]% market share);[381]

c) Downstream competitors do not rely on BankAxept as payment route for card-based POS transaction, as those can also be conducted via international card schemes, such as Visa and MasterCard, who currently account around 20% of all card-based transactions in Norway.[382]

378 Form CO, paragraphs 969 et seqq.
379 Form CO, paragraphs 993 et seqq.
380 Form CO, tables 28, 30, 31 and 32.
381 Form CO, tables 28, 30, 31 and 32.
382 Response to RFI 18, question 6.

d) The majority of banks and payment service providers responding to the market investigation consider that the Parties will not have the ability for input foreclosure in relation to merchant acquiring due to the Transaction.[383]

(296) The Parties do not have the incentive to restrict access to important inputs for competitors downstream:

a) In an input foreclosure scenario, DNB and Danske Bank would individually lose their revenues currently generated with BankAxept merchant acquiring services, while both entities would share potential gains downstream with all parent companies of the Merged Entity,

b) Lost upstream revenues cannot be recouped by increased business activities of Vipps downstream, as Vipps does not generate incremental income from additional POS BankAxept transactions,[384]

c) The link between DNB and Vipps is largely existing prior to the Transaction, due to DNB's 44% shareholding in Vipps. If DNB had the incentive of foreclosing downstream competitors of Vipps from merchant acquiring services, it could already do so today without acquiring control over Vipps.

(297) Lastly, any input foreclosure is unlikely to have any <u>impact</u> on the downstream market for (mobile) payment services:

a) If DNB and Danske Bank would foreclose downstream competitors of merchant acquiring services for BankAxept in POS, those competitors could source those services form other upstream suppliers, or use international card schemes such as Visa and MasterCard,

b) In the market investigation, the majority of banks and payment service providers responding to the market investigation do not have concerns in relation to merchant acquiring.[385]

6.6.3.2. Customer foreclosure

(298) The Transaction is unlikely to give rise to competition concerns in the downstream markets for payment services in POS payment situations (and plausible segments) in Norway as a result of ***customer foreclosure***, by which the Transaction would result in Owner Banks foreclosing competing merchant acquirers from an important customer base, *i.e.* customers of Vipps.

(299) The Parties do not have the ability to restrict access to an important customer base for upstream competitors.

a) The only structural change by the Transaction is the acquisition of control over the Merged Entity (including Vipps) by DNB and Danske Bank. However,

383 Replies to question 64 of Questionnaire Q1 to Banks and PSPs.

384 Form CO, paragraph 989, and response to RFI 18, question 7.

385 Replies to question 66 of Questionnaire Q1 to Banks and PSPs; the Commission notes that concerns raised where largely either formulated in relation to an e-Commerce checkout solution or not specific to the Transaction.

BankAxept POS payments initiated through Vipps only account for a marginal share of all BankAxept POS payments of below [0-5]%.[386] Therefore, while Vipps' market shares reach [50-60]% in a plausible market for mobile wallet POS payments in Norway, those transactions would only account for a negligible share of the overall customer base of merchant acquirers.

b) The majority of banks and payment service providers responding to the market investigation state that the Parties will not have the ability to foreclose other merchant acquirers form a significant customer base due to the Transaction.[387]

(300) The Parties do not have the incentive of restricting upstream competitors from a downstream customer base:

a) As Vipps only accounts for a marginal share of the overall downstream customer base, customer foreclosure would not be suitable to raise costs for upstream competitors, and therefore would not have any benefit for DNB and Danske Bank.

b) The Commission notes that only two of the entities, namely DNB and Danske Bank, would benefit from potential customer foreclosure, while all controlling parent companies of the Merged Entity would need to agree to a customer foreclosure strategy.

(301) Any input foreclosure would not have an impact on competitors on the upstream market:

a) As indicated, Vipps only accounts for a marginal share of the overall customer base of competing merchant acquirers, and any customer foreclosure would not have an impact on costs of upstream rivals.

b) In the market investigation, the majority of banks and payment service providers responding to the market investigation do not have concerns in relation to merchant acquiring.[388]

6.6.4. Conclusion

(302) In light of the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA agreement as a result of either input or customer foreclosure on the markets for merchant acquiring (and plausible segments) (upstream) and (mobile) payment services in POS in Norway.

386 Response to RFI 18, question 8.

387 Replies to question 65 of Questionnaire Q1 to Banks and PSPs.

388 Replies to question 66 of Questionnaire Q1 to Banks and PSPs; the Commission notes that concerns raised where largely either formulated in relation to an e-Commerce checkout solution or not specific to the Transaction.

6.7. Payment systems (upstream) – Mobile payment services (downstream)

6.7.1. The Parties' activities

(303) The Merging Parties' mobile wallets rely on one or both of two alternative payment systems in order to conduct payments, *i.e.* (i) card-based payment systems/card schemes, and (ii) account-based/interbank payment systems. In particular, payments made with Vipps or MobilePay are based on funds available on cards or bank accounts and utilise existing payment infrastructures, *i.e.* payment systems, in order to be completed. Therefore, payment systems can be considered services upstream to the downstream market for mobile payment services in all payment situations.[389]

(a) **Card-based payment systems/card schemes** can be further categorised into international card schemes (*e.g.*, Visa, Mastercard) and domestic card schemes (*e.g.*, BankAxept in Norway, Dankort in Denmark). Some card schemes support both debit and credit payments.

(b) **Account-based/interbank payment systems** are systems that enable credit transfers and direct debits from the payer's account to the payee's account. Payments based on account-based payment systems are mostly executed through an online or mobile bank and are widely used for invoices, recurring payments and bulk payments (such as salary payments).

(304) In the upstream market for payment systems, the Parties' activities consist of Vipps Holding's ownership of the domestic BankAxept card scheme in Norway and Danske Bank's jointly controlling interest of approx. [STRATEGIC INFORMATION] in P27 Nordic Payments Platform AB ("P27").[390]

(305) However, the Commission notes that the Transaction does not change the vertical relationship between BankAxept (upstream) and the Merged Entity (downstream)[391] because Vipps and BankAxept are already pre-Transaction both controlled by Vipps Holding, which will continue being the case post-Transaction. Moreover, BankAxept is not part of the Proposed Transaction. The Commission also notes that BankAxept is a domestic card scheme relevant to Norway only, and the relationship between Vipps and BankAxept is currently governed by the commitments put in place by the Norwegian Competition Authority.[392]

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389 Form CO, paragraphs 105, 116, 143 503, 508, 998.

390 Form CO, paragraphs 374 et seqq.

391 This also applies to BankID, which offers payment authorisation services, electronic identification and trust services (Form CO, paragraph 17). BankID and BankAxept were separated from Vipps on 19 July 2022 and transferred to BankID BankAxept AS, which is also owned and managed by Vipps Holding on behalf of its owners. Vipps Holding is the only company that has control over BankID and BankAxept.

392 One third party which had pre-notification contacts with the Commission and also participated in the market investigation has raised this concern (Third Party's Submission to the European Commission, 15 February 2022). However, the Commission notes the following: Vipps merged with BankID Norge AS and BankAxept AS in 2018. The merger was assessed and approved by the Norwegian Competition Authority under certain conditions on 26 April 2018. The conditions stipulated that the new company had to offer BankAxept and BankID to all third-party providers of Payment Services on non-discriminatory conditions. The conditions were valid for three years and were renewed for an additional three years by the Norwegian Competition Authority's decision of 26 April 2021 (Form

(306) Therefore, the remainder of this Section will focus on the vertical link with Danske Bank's activities in P27. P27 will be a pan-Nordic clearing payment system enabling cross-border payments across the Nordics in multiple currencies. According to the Parties, P27's solutions are of such a nature that they could potentially be utilised by the Merged Entity in the future, as they are intended to replace the more costly interbank solutions, such as SWIFT and SEPA.[393] However, P27 is not yet operational and the Notifying Parties estimate that it will start providing its services in Denmark and Finland at the earliest during 2025.[394]

(307) With respect to the downstream market for mobile payment services in all payment situations and in any plausible geographic market: (i) Vipps' market shares, depending on the exact market definition, reach up to [50-60]% in POS, [70-80]% in e-Commerce, [90-100]% in invoice payment situation, and [90-100]% in P2P in Norway, (ii) MobilePay's market shares, depending on the exact market definition, reach up to [20-30]% in POS, [80-90]% in e-Commerce, [90-100]% in invoice payment situation, and [80-90]% in P2P in Denmark, (iii) MobilePay's market shares, depending on the exact market definition, reach up to [10-20]% in POS, [70-80]% in e-Commerce, [90-100]% in invoice payment situation, and [70-80]% in P2P in Finland, (iv) the Merging Parties' market shares remain below 20% under any plausible product market definition in the EEA.

6.7.2. *The Notifying Parties' view*

(308) The Notifying Parties submit that post-Transaction they would not have the ability to foreclose payment system service providers, in particular card schemes, from a significant customer base because (i) card transactions through the Merging Parties' mobile wallets represent a low proportion of all card transactions, (ii) card schemes offer an important route for a large volume of the transactions conducted via the Merging Parties' mobile wallets, and (iii) card payments are widespread around the EEA and in the Nordic countries.[395]

6.7.3. *The Commission's assessment*

(309) The Transaction is unlikely to give rise to competition concerns in the upstream market for payment systems (and plausible segments) under any plausible geographic market definition as a result of ***customer foreclosure***, by which the

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CO, paragraph 109). However, on 19 July 2022, BankID and BankAxept demerged from Vipps and were transferred to BankID BankAxept AS, which is currently wholly owned by Vipps Holding (Form CO, paragraph 112). Vipps Holding is owned by the same companies that held shares in Vipps pre-Transaction – although without controlling it – with approximately the same distribution of shares. Given that BankID and BankAxept were pre-Transaction merged with Vipps and therefore owned by the same companies that currently hold Vipps Holding, there was no change of control with regard to BankID and BankAxept. Post-Transaction, the same owners will hold approximately the same shares in BankID and BankAxept, with no parent exercising control over Vipps Holding. Therefore, the only legal entity that will post-Transaction exercise control in the Merged Entity and will simultaneously control BankID and BankAxept is Vipps Holding. However, in the latter case, Vipps Holding only acts as a corporate vehicle through which the parent companies hold their shares as in the pre-Transaction structure. Therefore, there is no change in the vertical relationship between BankAxept (upstream) and the Merged Entity (downstream) that can be brought about by the Proposed Transaction.

393 Form CO, paragraphs 519-521.

394 Form CO, paragraph 522.

395 Form CO, paragraphs 1045 et seqq.

Merged Entity would no longer utilise other payment systems for the transactions conducted through the Merged Entity's mobile wallet.

(310) *First*, the Merged Entity does not seem to have the *ability* to engage in customer foreclosure to the detriment of payment systems competing with P27 by restricting access to a significant customer base for the following reasons:[396]

(a) P27, which is not yet operational and is expected to start providing its services in Denmark and Finland at the earliest during 2025,[397] will mainly provide its services to banks in the Nordic countries. Although the Merged Entity will not have banking activities, it could be an indirect customer of P27 as a payment initiation service provider.[398] However, this will not make the Merged Entity a significant customer.[399]

(b) In particular with regard to card-based payment systems,[400] transactions conducted via the Merging Parties' mobile wallets account for only a minor (less or equal to [0-5%]) share of all card-based transactions in Norway, Denmark, Finland or the Nordic or EEA countries overall.[401] The Merged Entity therefore cannot be considered an important customer for card-based payment systems.

(c) Generally, the choice of the payment route depends on the combination of the payee's ability to accept payments through different routes and the funding mechanisms that the payer has added to their wallet.[402] Therefore, and even if the Merging Parties would have a commercial incentive to favour account-to-account payments over card payments due to lower end-to-end costs,[403] it is ultimately the payer and the payee that decide which payment system will be used.

(d) The above is confirmed by the Commission's market investigation. The majority of responding banks and other payment service providers consider that the Transaction will not grant the Merged Entity the ability to foreclose them with regard to payment system services.[404]

(311) *Second*, the Proposed Transaction is unlikely to increase the Parties' incentives to foreclose competing payment systems for the following reasons:

396 The competitive assessment applies equally to plausible national (in Denmark, Finland and Norway) or regional (*i.e.* Nordic-wide) markets for payment systems.

397 Form CO, paragraph 523.

398 As defined in Article 4 of the Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (Text with EEA relevance).

399 Form CO, paragraph 1043 and the Notifying Parties' reply to RFI 16, question 5.

400 One third party that participated in the Commission's market investigation has raised this concern (Third Party's Submission to the European Commission, 29 September 2022).

401 Form CO, paragraph 953 and Tables 24-27. This proportion could increase up to [10-20]% if only Mastercard and/or Visa transactions are considered, but which does not affect the assessment.

402 Form CO, paragraphs 510 et seqq.

403 Form CO, paragraph 509.

404 Replies to question 54 of Questionnaire Q1 to Banks and PSPs.

(a) Danske Bank is the only one of the six controlling parents to the Merged Entity that also (jointly) controls P27. It is therefore unlikely that all remaining Parent Companies, including all the banks that are behind SB1, Eika, Balder and Vipps Holding, would have the incentive to harm the Merged Entity's position downstream in order to benefit P27's profits upstream.

(b) If at some point in the future the Merged Entity were to decide to favour certain payment systems over others, such decision would therefore likely be based on a commercial decision, *e.g.*, because the favoured payment system is widely used and less costly than others. Given the ownership structure over the Merged Entity, such decision would be very unlikely to be influenced by the limited vertical link that is being created by the Transaction.

(c) In particular with regard to card-based payment systems, and as described above, the choice of the payment route also depends on the payer and the payee. Therefore, it is unlikely that the Merged Entity would have the incentive to stop relying to card-based payment systems overall.

(d) If the Merged Entity would force customers to use payment systems other than card payments, *e.g.*, by discontinuing support for card payments, some customers will likely stop using the Merged Entity's wallet and either use another mobile wallet that supports card payments or use their credit card as payment method without a mobile wallet. Given the widespread use of credit card in e-Commerce at the time of this decision, foreclosing credit card payment systems would likely trigger a noticeable churn from the Merged Entity.

(312) *Third*, it is unlikely that a potential foreclosure strategy on the side of the Merged Entity would have a significant detrimental *impact* on competition upstream, given the Merged Entity's overall position as a customer of payment systems. This has also been confirmed by the Commission's market investigation, where the majority of responding banks and other payment service providers expressed no concerns with regard to payment systems.[405]

6.7.4. Conclusion

(313) In light of the above considerations, the Commission concludes that the Proposed Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA agreement as a result of customer foreclosure in the upstream market for payment systems (and plausible segments) under any plausible geographic market definition.

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[405] Replies to question 56 of Questionnaire Q1 to Banks and PSPs.

6.8. Assessment of the cooperative effects of the joint venture

(314) Post-Transaction, the Owner Banks will independently retain their other banking activities, including in retail banking, card issuing and merchant acquiring ("related markets") in Norway, Denmark and Finland.[406]

(315) However, the assessment of cooperative effects is not relevant for Denmark and Finland, as Danske Bank is the only Owner Bank active in any vertically linked markets in Denmark and Finland, and the only Merging Party active is MobilePay (which is already controlled by Danske Bank pre-Transaction). Given that all the relevant related markets are considered as national in scope, there will be no Transaction-specific change in Denmark and Finland, and this section therefore focuses on Norway only.

(316) Potential cooperative effects in Norway are further complicated by the ownership structure of the Merged Entity. Only the Owner Banks have direct banking activities. However, SB1, Balder and Eika represent a large number of smaller banks active in Norway. Coordination including such large number of small banks that are only indirectly represented in the Merged Entity seems unlikely. At the same time, the presence of these holding companies and the control they exercise over the Merged Entity also make coordination between the Owner Banks more difficult as compared to a joint venture owned and controlled only by the Owner Banks.

6.8.1. The Notifying Parties' view

(317) The Notifying Parties submit that the Transaction will not lead to coordination between the Parent Companies in any markets vertically linked to mobile payment services markets, where the Merged Entity will be active. This is because:[407] (i) the Owner Banks' customer-facing activities in the upstream markets are not closely related to the Merged Entity's activities; (ii) the activities of the Merged Entity constitute only a minor proportion of the Owner Banks' overall business activities and as such the Merged Entity will not provide a viable forum for coordination; and (iii) the Parties aim to have internal policies in place to cater for a sound compliance regime and prevent sharing of commercially sensitive information.

6.8.2. The Commission's assessment

(318) 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 for the following reasons.

(319) *First*, the structure of the relevant markets is not conducive to coordination between the Owner Banks in Norway. The two Owner Banks have very asymmetric positions in all the related markets, with DNB's position being significantly stronger than Danske Bank's, and Danske Bank having only limited activities (please see Sections 6.4, 6.5, and 6.6 for the relevant market shares). In addition, in all banking markets, the Transaction does not eliminate any player and

406 In addition, Vipps Holding will via BankID and BankAxept retain their activities in ID authentication and payment systems in Norway, but which do not overlap with any of the Owner Banks' activities.

407 Form CO, paragraphs 1540 et seqq.

the Owner Banks will continue to face other competitors accounting for a large share of each of the markets in Norway. Moreover, the Merged Entity itself will not become a vertically integrated player and will not be active in any of the vertically linked markets.

(320) *Second*, the small size of the activities of the Merged Entity relative to the Owner Banks' total activities makes it unlikely that the Transaction would change the Owner Banks' incentive to coordinate their competitive behaviour. The Merging Parties' combined turnover constitutes less than 1% of the Owner Banks' total turnover.[408] In line with the Commission's conclusions in precedent cases, this suggests that the conduct of the Owner Banks on the markets is unlikely to be influenced by their cooperation in the Merged Entity.[409]

(321) *Third*, any coordination would not be a direct consequence of the creation of the Merged Entity, the objective of which is to create a market player that will compete mainly in the markets for payment services. In fact, the Parties aim to have internal policies in place that will, in accordance with the relevant competition law, ensure (i) that the Merged Entity's owners cannot disseminate competitively sensitive information through the Merged Entity and (ii) that the Merged Entity's owners will not receive sensitive information from the Merged Entity or any of its other owners.[410]

(322) *Fourth*, the Merged Entity's mobile payment services are only one of the components of competition in the related markets, which takes place at a large number of other competitive factors. For example, competition in retail banking takes form of a long-term service relationship and consumers choose their retail-banking provider based on a number of other factors. The Merged Entity therefore does not affect the key facets of competition between the Owner Banks.

(323) *Fifth*, the Commission notes that a number of respondents to the market investigation indicated that the creation of the Merged Entity would increase the likelihood that the Owner Banks will be able to coordinate their behaviour.[411] However, the respondents substantiated their views by describing possibilities for coordination that are not linked to the creation of the Merged Entity and are not facilitated by the Merged Entity.

6.8.3. Conclusion

(324) Based on the above, 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.

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408 Form CO, paragraph 1544.

409 See *e.g.* recently Case M.10070 – *Eurofiber/Proximus/JV*, decision of 26 July 2021, paragraph 221 and Case M.9971 – *P27 NPP/Bankgirot*, decision of 8 July 2021, paragraph 114, and Case M.9802 - *Liberty Global/DPG Media/JV*, decision of 5 July 2020, paragraph 341.

410 Form CO, paragraphs 1545 et seqq. [CONTRACTUAL AND STRATEGIC INFORMATION]

411 Replies to question 30 of Questionnaire 1 to Banks and PSPs, and Replies to question 31 of Questionnaire 3 to Merchants.

7. CONCLUSION

(325) 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