DETERMINATION OF MERGER NOTIFICATION

M/21/004
AIB/BOI/PTSB – Synch Payments JV

16 June 2022

Coimisiún um Iomaíocht agus Cosaint Tomhaltóirí
Competition and Consumer Protection Commission

Table of Contents

1. INTRODUCTION

Introduction

1.1 On 8 April 2021, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (the "Act"), the Competition and Consumer Protection Commission (the "Commission") received a notification of the proposed creation of a joint venture, Synch Payments D.A.C. ("Synch"), between Allied Irish Banks, P.L.C. ("AIB"); the Governor and Company of the Bank of Ireland ("BOI"); Permanent TSB P.L.C. ("PTSB"); and KBC Bank Ireland P.L.C. ("KBC") ("the "Proposed Transaction"). AIB, BOI, PTSB, KBC and Synch are the parties (the "Parties").

The Proposed Transaction

1.2 The Proposed Transaction will be implemented pursuant to a Joint Venture and Shareholders Agreement dated 21 December 2020 between AIB, BOI, PTSB, KBC, Synch, and the Banking & Payments Federation Ireland Company Limited by Guarantee ("BPFI")[1] as amended by way of a Variation Agreement between the same parties dated 7 April 2021 (together, the "JV Agreement").

1.3 Pursuant to the JV Agreement, AIB, BOI and PTSB will hold 46.3%, 34.9% and 17.1% respectively of the total issued share capital of Synch. Under the terms of the JV Agreement, the rights afforded to each of AIB, BOI and PTSB are such as to give rise to a position whereby each of AIB, BOI and PTSB will acquire joint control of Synch within the meaning of section 16 of the Act.[2] Pursuant to the JV Agreement, KBC will hold 1.7% of the total issued share capital of Synch, but will not have joint control of Synch. AIB, BOI, PTSB and KBC are the joint venture parents (the "JV Parents").

[1] BPFI is not a member of Synch. However, under the terms of the JV Agreement BPFI has the right to appoint a director to the board of Synch.

[2] Pursuant to section 16(4) of the Act, the creation of a joint venture to perform, on a lasting basis, all the functions of an autonomous economic entity shall constitute a merger falling within section 16(1)(b) of the Act.

The Parties

AIB

1.4 AIB is a direct subsidiary of AIB Group P.L.C. ("AIB Public"), a public limited company incorporated in the State and listed on the Irish Stock Exchange.

1.5 AIB Public and its subsidiaries (the "AIB Group") provide a range of banking products and services to personal, business and corporate customers in the State and the United Kingdom. In the State, the AIB Group provides two types of banking products and services:

a) **Retail Banking** – includes mortgages, consumer lending, small and medium-sized enterprise lending, asset-backed lending, wealth management, and daily banking.

b) **Corporate, Institutional and Business Banking** – includes specialised finance, commercial finance, syndicated finance, and corporate finance advisory services. In addition, the AIB Group provides private banking services and advice to corporate clients.

1.6 The AIB Group also participates in international syndicated finance transactions through teams based in New York and Dublin.

1.7 For the financial year ending 31 December 2020, AIB's worldwide turnover was approximately €2,373 million, of which, approximately €2,116 million was generated in the State.

BOI

1.8 The BOI group of companies (the "BOI Group") is a financial services group providing a range of banking and financial services in the State and the United Kingdom. BOI is the main operating entity and licensed bank of the BOI Group.

The parent company of BOI, Bank of Ireland Group P.L.C., is a public limited company incorporated in the State.

1.9 In the State, BOI is active in the provision of retail banking products and services to personal and business customers. As part of its retail banking activities in the State, BOI provides residential/owner occupier mortgages and buy-to-let mortgages at a variety of fixed and variable rates. BOI also provides services including current and deposit accounts, associated services such as payment cards and overdraft facilities, and credit facilities to personal and business customers in the State.

1.10 For the financial year ending 31 December 2020, BOI's worldwide turnover was approximately €3.3 billion, of which, approximately €2.2 billion million was generated in the State.

PTSB

1.11 PTSB, a public limited company incorporated in the State, is a subsidiary of Permanent TSB Group Holdings P.L.C. ("PTSB Group"). PTSB Group provides a range of banking and financial services to personal and small business customers in the State.

1.12 For the financial year ending 31 December 2020, PTSB's worldwide turnover was €341 million, the vast majority of which was generated in the State.

KBC

1.13 KBC Group N.V. is a limited liability company registered in Belgium, whose principal activity is the provision of integrated bank-insurance services. KBC Group provides banking, investment and insurance products and services worldwide.

1.14 In the State, KBC Group N.V. is active through its indirectly wholly owned subsidiary KBC, which provides retail banking products and services to personal and business customers through its branches and through electronic channels. As part of its retail banking activities in the State, KBC provides residential mortgages and buy-to-let mortgages at a variety of fixed and variable rates. KBC also provides services such as current and deposit accounts, associated services including payment cards and overdraft facilities, unsecured loans, and credit facilities, to personal and business customers in the State.

1.15 For the financial year ending 31 December 2020, KBC Group's worldwide turnover was approximately €7,195 million, of which, approximately €277 million was generated in the State.

The Joint Venture – Synch

1.16 Synch is a designated activity company incorporated in the State (registered number 679126) whose registered office is at Floor 3, One Molesworth Street, Dublin 2. In the notification form (the "Merger Notification Form"), the Parties submit that Synch will operate as a full-function joint venture jointly controlled by AIB, BOI and PTSB. Following the implementation of the Proposed Transaction, Synch will create a mobile instant payments service (the "Synch Mobile Payments Service") under the brand […]. The Parties state the following in the Merger Notification Form:

> *"Synch will create a new industry wide, common solution and open payment service in Ireland that can be used, subject to the Draft Synch Licence Agreement and the standard participant eligibility requirements, by all financial institutions (including consortia of smaller financial institutions) that issue Euro denominated IBANs to Irish customers."*

1.17 The proposal for the mobile instant payments service which ultimately resulted in the Proposed Transaction was initiated in 2017 and coordinated by the BPFI. The BPFI, in consultation with Deloitte Ireland LLP ("Deloitte"), arranged regular meetings with each of the main banks in the State (i.e., AIB, BOI, PTSB, KBC and Ulster Bank[3]) from 2017 onwards.

1.18 The objective of Synch is to develop, operate and manage an instant mobile payments service in Ireland. Through its smartphone app, Synch will facilitate instant peer-to-peer ("P2P") payments between customers of financial institutions (including but not limited to the JV Parents) that are licensed participants of the Synch Mobile Payments Service. Synch will also provide instant person-to-business ("P2B") payments services which can be used by online merchants on their websites, or by point of sale ("POS") merchants through the use of QR codes, to allow consumers to pay for goods and services.[4]

1.19 In a presentation by Synch to the Commission on 18 June 2021, Synch listed the benefits to consumers as being convenience and increased competition, increased security, and health and safety.[5] Synch would allow consumers the ability to make all payment types from one app from accounts across multiple financial institutions and using Strong Customer Authentication ("SCA") to verify payments, without the need to supply a card number or International Bank Account Number ("IBAN") to other people and companies or carry plastic cards or cash.[6]

1.20 Synch will link participating payment service providers ("Participating PSPs") through its smartphone app. Payments between these Participating PSPs will be completed using mobile phone numbers linked to IBANs. This is a similar concept to existing intra-bank mobile payments services such as those provided by Revolut Payments Ireland Limited ("Revolut") or N26 Gmbh ("N26") (also referred to as

[3] Ulster Bank Ireland D.A.C.
[4] In Synch's Presentation to the CCPC on 18 June, it was explained that the launch of P2B payments on Synch would occur further down Synch's "roadmap", with Synch focusing on providing P2P payments initially. As the merger review progressed, the Commission became aware that Synch planned on making the P2B payment functionality available from Synch's launch day. See Slide 15 Synch's Presentation to the CCPC on 18 June 2021 [MD5 Hash: efabdc0733ff4ac576f6543fe0164466]
[5] See Synch's Presentation to the CCPC on 18 June 2021 [MD5 Hash: efabdc0733ff4ac576f6543fe0164466]
[6] See Synch's Presentation to the CCPC on 18 June 2021 [MD5 Hash: efabdc0733ff4ac576f6543fe0164466]

closed-loop mobile payments services) with the key difference being that any Participating PSP's customer can make payments to any other Participating PSP's customer (i.e., it is an interbank, or open loop, mobile payments service). The Synch smartphone app will also offer additional services such as the ability to split bills.

1.21 The key components required to deliver the mobile payments service are as follows:

i. a proxy database that contains cross-references for mobile numbers / IBANs and retailer QR codes / IBANs;

ii. a smartphone app capable of initiating a QR business payment and initiating a phone contact look-up payment; and,

iii. a set of Application Programming Interfaces ("APIs") to enable banks and acquirers to look up the proxy database and to facilitate payments between banks and acquirers.[7] Participating PSPs will need to integrate to the Synch Mobile Payments Service via the standard APIs.

1.22 The Commission drew on numerous documents relating to Synch in drafting this determination. Many of these documents were provided to the Commission by the Parties in draft form, with certain issues remaining to be determined by the Parties.

1.23 The Synch Information Guide (the "Information Guide")[8] is the main source of information about Synch, including eligibility criteria, responsibilities, ongoing

[7] An acquirer is a company that provides retailers and companies with the services to accept, manage and settle electronic payments they receive (e.g. card payments, contactless payments).
[8] The Commission has reviewed the latest version of the Synch Information Guide that was provided to the Commission on 18 February 2022, which is the Draft Synch Information Guide Version 1.0. See document entitled Synch Payments DAC Information Guide v1.0 [MD5 Hash: c5644fabad2ea25bc172fac28547ae66]

obligations, relevant standards for becoming and remaining a participant, and details about products offered by Synch. The Commission understands that the Information Guide is not yet in final agreed form and it has been amended on several occasions during the course of the Commission's merger investigation. The description of Synch given below is based on the most up-to-date documentation provided to the Commission.

1.24 It is stated in the Information Guide that Synch is not a regulated or authorised entity and is not providing a regulated payment service.

Synch Governance[9]

1.25 The initial proposals for governance were set out in the Merger Notification Form. The Merger Notification Form stated that the General Manager of Synch[10] will be responsible for the day-to-day management of Synch and will report to the board of Synch (the "Board" or the "Synch Board").

1.26 The proposed composition and operation of the Synch Board is detailed in the JV Agreement. According to the JV Agreement, the Synch Board will be made up of directors appointed by each of the JV Parents (i.e., AIB, BOI, PTSB and KBC)[11] as well as a BPFI nominee. The JV Parents can appoint up to two directors each, while the BPFI can appoint a single nominee. The Synch Board will be responsible for the overall direction, supervision and management of Synch.

1.27 According to the JV Agreement, each director appointed by a JV Parent will have one vote on any resolution before the Board.[12] The BPFI nominee will not have a

[9] The section describes Synch's governance as provided in the Merger Notification Form and JV Agreement dated 21 December 2021. Synch's governance will change as a result of the agreed proposals described in Section 6 below.
[10] Referred to in the JV Agreement as the General Manager.
[11] There is currently no mechanism for a non-founding participating PSP to either become a shareholder of Synch or to have the right to nominate a member of the Board of Synch.
[12] One vote per shareholder, as detailed in Clause 10.12 through to Clause 10.15 of the JV Agreement.

vote but can participate in Synch Board meetings. For non-reserved matters, Board resolutions will be approved by simple majority. For reserved matters,[13] a resolution before the Synch Board can only be approved where more votes are cast in favour of the proposal than against it, and where the directors voting in favour have been appointed by JV Parents whose relevant funding proportions[14] together exceed 50%. For certain reserved matters,[15] resolutions must be approved unanimously. Resolutions pertaining to the appointment or removal of the General Manager will only be approved if unanimously approved by the directors appointed by AIB, BOI and PTSB.[16]

1.28 The JV Agreement also provided that Synch will operate an Advisory Forum, which will comprise Synch's General Manager, a person nominated by the BPFI and a representative of each Participating PSP (the "Advisory Forum").[17] Synch notes in its response to the Synch Phase 2 Information Request[18] that the purpose of the Advisory Forum is to update Participating PSPs on the development plans for Synch, as determined by Synch management (including the impact of any such plans on participants, e.g., technological, operational, or legal impact). The Advisory Forum is intended to facilitate communication with Participating PSPs.

Pricing for Participating PSPs

1.29 Initial proposals for pricing for Participating PSPs were set out in the draft license agreement. Participating PSPs will enter into a licence agreement with Synch to

[13] Reserved matters include: pricing of the services, use of contingency funds, changes in the scope of the budget other than in the ordinary course of business, amendments to the business plan, and adoption of any subsequent business plan.
[14] The respective proportions in which the Shareholders have in aggregate provided any funding to Synch (through share subscription or otherwise). According to Schedule 2 of the JV Agreement these proportions are as follows: AIB (46.3%), BOI (34.9%), PTSB (17.1%) and KBC (1.7%).
[15] These matters include: changes to the Constitution proposed to be put to a resolution of the shareholders; changes to the periodic funding amount or the additional funding amount; entry of new members to Synch (by issuance of new shares or transfer of shares); and voluntary winding-up of the joint venture.
[16] See Clause 10.17.3 of the JV Agreement, as inserted by the Variation Agreement dated 7 April 2021 in respect of the JV Agreement.
[17] See Clause 9.15 of the JV Agreement [MD5 Hash: c4ab430610e12ce56d2a9af08a4007eb]
[18] On 23 December 2021, the Commission served an informal information request on Synch (the "Synch Phase 2 Information Request").

offer Synch products to their respective customers. As part of this licence agreement each Participating PSP will pay certain fees to Synch. At the time of notification, the Commission understood that these fees had yet to be finalised, but they were outlined in the draft licence agreement submitted to the Commission by the Parties with the Merger Notification Form.

1.30 The Commission understands that each participant in Synch will pay an entry fee when joining Synch and an annual licensing fee thereafter. The annual licensing fee will be the same for all Participating PSPs. Participating PSPs will also pay a certification fee. This fee relates to the certification of a Participating PSP's system after any change or upgrade is carried out. The certification process often carries a charge or fee to contribute towards the costs of certification. Synch intends to waive this fee for the initial year following launch, subject to the finalisation of Synch fees.

1.31 All Synch participants will also pay a fee per completed transaction. These transaction fees differ depending on the type of transaction. For example, in the Synch Phase 1 RFI Response of 12 August 2021, Synch noted that […] the payment service provider of the person who is sending the payment (the "Payer's PSP") and the payment service provider of the person to whom the payment is being sent (the "Payee's PSP") […].[19]

[19] See Synch's response to question 8 of its Phase 1 RFI [MD5 Hash: 07953fc9f8b57edcc07490b05cb58930]

Payments on Synch

1.32 Synch describes itself as the "*glue that links customers of different [Participating PSPs] through a smartphone App and allows payments be completed using mobile phone numbers and account numbers*".[20]

1.33 Synch plans to offer P2P payments and P2B payments from launch. Synch also plans to offer its users additional features, such as enabling users to request a P2P payment and the ability to split a bill.

1.34 In the Synch Phase 1 RFI Response of 12 August 2021, Synch states that it "*will not offer any of its products directly to market as it is not a regulated entity. The Synch products can only be offered to the market through a licensed participant (merchant acquirers / banks) many of whom will add this to their own existing product offering ranges*".[21] While users will execute the payment on the Synch app, settlement occurs outside of Synch. As outlined in more detail below, Synch sends requests to the relevant Participating PSPs to execute the payment and settle these payments.

SEPA Standard and SEPA Instant

1.35 From a customer perspective, payments made via the Synch Mobile Payments Service will appear to be completed instantly. In all transactions made through Synch, the payer will be debited instantly and the payee will be credited with the funds instantly. However, as explained further in the following paragraphs, these payments will not be cleared instantly in all cases.

1.36 Payments made via the Synch Mobile Payments Service will be settled either through SEPA Standard or SEPA Instant, and will be processed and settled in

[20] See submission of the Parties to the Commission dated 15 December 2021. [MD5 Hash: 7588a8588a1dfd48eaab909011cc5a6d]
[21] See Synch's response to question 11 of its Phase 1 RFI [MD5 Hash: 07953fc9f8b57edcc07490b05cb58930]

accordance with SEPA rules as defined by the European Payments Council and as discussed in further detail below at paragraphs 2.7 to 2.21. Participating PSPs will need to integrate to the Synch Mobile Payments Service via standard API's and these API's contain the identifier for which SEPA 'rail'[22] was used for each, and every payment.

1.37 For a P2P payment made through the Synch Mobile Payments Service, where both the payee and the payer's Participating PSP have adopted SEPA Instant, the payment will be settled and cleared through SEPA Instant. Where only one Participating PSP to a transaction has adopted SEPA Instant, the payment will be settled and cleared via SEPA Standard. Where neither the payer's Participating PSP nor the payee's Participating PSP has adopted SEPA Instant, the payment will be settled and cleared via SEPA Standard.

1.38 When a Synch payment is settled via SEPA Instant, settlement between the Participating PSPs will be instantaneous, and the payer's and payee's account will reflect this. Where the payment is settled via SEPA Standard, settlement will occur during set clearing cycles throughout the day. However, as outlined in more detail below, the payee's Participating PSP will credit the payment amount into the payee's account prior to settlement between the two Participating PSPs (before the payee's Participating PSP receives the funds from the payer Participating PSP). Consequently, the payment is instant from the consumer perspective but is not instant from the payee Participating PSP's perspective as the settlement and clearing of the payment is not instant. These payments made through the Synch Mobile Payments Service are therefore referred to as "pseudo-instant payments".

[22] The choice of "rail" being either the SEPA Instant or SEPA Standard.

1.39 As none of the JV Parents have implemented SEPA Instant yet and given the very high combined share of the JV Parents in the provision of current accounts in the State (approximately 81-83%)[23], the vast majority of instant inter-bank payments made through the Synch Mobile Payments Service will initially be settled and cleared via SEPA Standard.

1.40 The Commission understands that the Synch Mobile Payments Service was initially planned to be a mobile payments solution in which all payments would be settled and cleared through the SEPA Instant payment scheme. Internal documents provided to the Commission indicate that […].[24] In November 2019, however, it was agreed by the JV Parents (primarily AIB and BOI) that […].[25]

1.41 The respective transaction fee will be the same whether the payment is settled via SEPA Standard or SEPA Instant.

Rationale for the Proposed Transaction

1.42 The Parties stated the following in the Merger Notification Form:

> *"1.1.23 Card payments are currently the most used payment instruments in Ireland, accounting for more than 67% of the total payment volume. This is set against a stated EU objective to develop alternatives to card payments across Europe. The Synch Mobile Payments Service is fully aligned to this stated EU objective.*

[23] Each of BOI, PTSB and AIB's market share in the provision of current accounts in the State is likely to rise with the anticipated exit of KBC and Ulster Bank from the market. Figures estimated by BOI and AIB in response to their respective Phase 1 RFIs. BOI's RFI response can be found at the following MD5 Hash: 66a2834adddb27d6d075367285b6ca5a, and AIB RFI Response can be found at the following MD5 Hash: 7adec49aa7d9430301a5921517d35b65

[24] See document provided by AIB, PTSB and KBC to the Commission entitled "BPFI Meeting Minutes" dated 26 September 2018. [MD5 Hash: ca078c5cd992e960cd138ee040424269]

[25] Internal document provided by BOI to the Commission entitled "07112019 Pegasus Design Authority Minutes", attached to an email with the subject "PEGASUS Design Authority 07112019" dated 10 November 2019. [MD5 Hash: 8d691d3563166ef267b6600bc16e6e04]

1.1.24 European Central Bank data states that the adoption rate of card payments by Irish customers is the highest in the EU (the volume of card payments has doubled in the last four years), the lack of viable alternatives is cited as a reason for this dominance. Currently, Ireland lags behind most EU countries in terms of volume of credit transfers per capita. […]

1.1.25 As an alternative to existing international digital wallet solutions operating in the Irish marketplace (including Revolut, ApplePay and GooglePay wallets), Synch aims to develop a new industry wide mobile instant and frictionless payments solution.

1.1.26 It is envisaged that Synch, and the Synch Mobile Payments Service, will also help drive payment innovation, and meet growing customer demand and expectations, within the Irish mobile payment services market. […]

1.1.27 The Synch Mobile Payments Service will be an open eco-system, available to all financial institutions (including consortia of smaller financial institutions) that issue Euro denominated IBANs to Irish customers and satisfy the standard participant eligibility requirements thereby increasing the level of competition in the mobile payments market in Ireland generally, and increasing the options (e.g. instant P2P, P2m, P2eM and P2M payments and associated benefits)[26] *that customers of participating financial institutions in Ireland will be able to avail of. Customers of participating financial institutions will be able to decide which accounts (if any) to enrol in the Synch service and can at any time change their preferences. […]"*

[26] P2eM payments refers to person to electronic merchant payments, P2m payments refers to person to small merchant payments, and P2M payments refers to person to large merchant payments.

Preliminary Investigation ("Phase 1")

Contact with the Undertakings Involved

1.43 On 19 May 2021, the Commission served a Requirement for Further Information ("RFI") on each of AIB, BOI, PTSB, and Synch pursuant to section 20(2) of the Act. The issuing of these RFIs (the "Phase 1 RFIs") adjusted the deadline within which the Commission had to conclude its assessment of the Proposed Transaction in Phase 1. The Commission also issued an information request to KBC.

1.44 Upon receipt of a full response to the Phase 1 RFIs, the "appropriate date" (as defined in Section 19(6)(b)(i) of the Act) became 29 October 2021.[27]

1.45 During the Phase 1 investigation, the Commission requested and received further information and clarifications from the Parties on an ongoing basis.

1.46 On 30 November 2021, the Commission held a state-of-play meeting with Synch and with its legal representatives (who were attending on behalf of the Parties collectively). The Commission informed the Parties that, following its Phase 1 review, the Commission had identified a number of preliminary competition concerns. The Commission informed the Parties that it was likely that the Commission would be unable to form the view, at the conclusion of the Phase 1 merger review, that the result of the Proposed Transaction would not be to substantially lessen competition in any market for goods or services in the State.

Third Party Submissions

1.47 During the Phase 1 investigation, the Commission received submissions from six third parties in relation to the Proposed Transaction.[28] The Commission engaged with these third parties to discuss their submissions in greater detail. The

[27] The "appropriate date" is the date from which the time limits for making both Phase 1 and Phase 2 determinations begin to run.
[28] These are: (i) Electronic Money Association ("EMA"); (ii) Fire Financial Services Limited ("Fire"); (iii) Ged Nash TD; (iv) Professor Michael Dowling; (v) Revolut Limited; and (vi) the Social Democrats political party.

submissions were fully considered by the Commission insofar as they related to potential competition concerns arising from the Proposed Transaction.

Market Enquiries

1.48 The Commission conducted market enquiries which included sending questionnaires to competitors of the Parties as well as to other industry stakeholders. In some cases, the Commission also contacted third parties by telephone and/or e-mail to seek further information or clarification regarding their responses.

1.49 During the Phase 1 investigation, the Commission contacted and held calls with various third-party industry stakeholders. Such stakeholders included:

- The Central Bank of Ireland ("CBI");
- The Department of Finance;
- The European Central Bank;
- The European Commission;
- Seven national competition authorities ("NCAs");
- NatWest Group P.L.C. ("NatWest"); and,
- Industry competitors or potential competitors.[29]

1.50 During the Phase 1 review of the Proposed Transaction, the Commission also sought expert economic advice and analysis from Dr Christian Koboldt of DotEcon Limited and Mr Pat Massey of Compecon Limited. Although the Commission benefitted from their expert advice, the Commission alone is responsible for the views expressed in this determination.

[29] These are: (i) Starling Bank Limited ("Starling"); (ii) N26 GmbH ("N26"); and (iii) An Post.

The Phase 1 Investigation

1.51 Having considered all the available information in its possession at the time, the Commission was unable to form the view at the conclusion of the Phase 1 investigation that the result of the Proposed Transaction would not be to substantially lessen competition in any market for goods or services in the State.

1.52 On 8 December 2021, the Commission determined, in accordance with section 21(2)(b) of the Act, to carry out a full investigation under section 22 of the Act.

Full Investigation ("Phase 2")

Third Party Submissions

1.53 During the Phase 2 investigation of the Proposed Transaction, the Commission received three third-party submissions in relation to the Proposed Transaction.[30] The submissions were fully considered by the Commission insofar as they related to potential competition concerns arising from the Proposed Transaction.

Market Enquiries

1.54 During the Phase 2 merger review, the Commission continued the process initiated during the Phase 1 merger review of seeking the views of and engaging with third parties in relation to the potential competitive effects of the Proposed Transaction, including competitors and industry stakeholders.[31]

1.55 During the Phase 2 merger review, the Commission held calls with third parties to seek their views on the proposals submitted by the Parties to the Commission on 21 March 2022 and 1 April 2022 (see paragraphs 6.2 to 6.12 of Section 6 below for further detail on these proposals). The Commission also issued an information

[30] These are: (i) CUSOP (Payments) D.A.C. ("CUSOP"); (ii) Payac Services C.L.G. ("Payac"); and (iii) Complainant 1.
[31] These included CUSOP, Payac, and the BPFI.

request to Ulster Bank on 7 February 2022, which was responded to on 7 March 2022.

Information Sources Relied Upon

1.56 During the Phase 2 merger review, the Commission sought expert economic advice and analysis from Dr Christian Koboldt of DotEcon Ltd. Dr Koboldt's advice is incorporated into the Commission's analysis of the Proposed Transaction and, although the Commission benefitted from his expert advice, the Commission alone is responsible for the views expressed in this determination.

1.57 In forming its views on the Proposed Transaction, as set out in this determination, the Commission has considered all the relevant information available to it at the time of making the determination and in particular information provided by the Parties in response to the Commission's RFIs and information requests, information obtained from third parties, and other information available in the public domain.

Contacts with the Undertakings Involved

1.58 During the Phase 2 merger review, the Commission requested and received further information and clarifications from the Parties on an ongoing basis.

1.59 On 15 December 2021, pursuant to section 20(3) of the Act, the Parties provided a submission to the Commission containing proposals aimed at mitigating any effects of the Proposed Transaction on competition in markets for goods or services in the State (the "December Submission"). This December Submission contained: (i) proposals aimed at addressing the Commission's preliminary competition concerns; and (ii) information regarding each preliminary competition concern and reasons why, in the view of the Parties, the Proposed Transaction does not raise any competition concerns.

1.60 On 23 December 2021, the Commission served an informal information request on Synch (the "Synch Phase 2 Information Request"). On the same date, the Commission also served an informal information request on KBC (the "KBC Phase 2 Information Request"). Synch provided a full response to the Synch Phase 2 Information Request on 26 January 2022. KBC provided its response to the KBC Phase 2 Information Request on 17 February 2022.

1.61 On 6 January 2022, the Commission served an RFI on PTSB pursuant to section 20(2) of the Act (the "PTSB Phase 2 RFI"). On 12 January 2022, the Commission served an RFI on BOI pursuant to section 20(2) of the Act (the "BOI Phase 2 RFI").[32] The issuance of the PTSB and BOI Phase 2 RFIs adjusted the deadline by which the Commission is required to make a determination under section 22 of the Act (and, accordingly, to issue its assessment of the Proposed Transaction in Phase 2). PTSB submitted its response to the PTSB Phase 2 RFI on 16 February 2022. BOI provided its full response to the BOI Phase 2 RFI on 28 February 2022. BOI's response to the BOI Phase 2 RFI resumed the period of time within which the Commission has to issue its determination.

1.62 On 24 January 2022 the Commission served an RFI on AIB pursuant to section 20(2) of the Act (the "AIB Phase 2 RFI"). The issuance of this RFI did not suspend the period of time within which the Commission has to make a Phase 2 Determination pursuant to section 22(4A) of the Act as it was issued later than 30 working days from the date of the Phase 1 Determination. AIB provided its full response to the AIB RFI on 28 February 2022.

1.63 On 8 March 2022, the Commission held a state-of-play meeting with Synch and with its legal representatives (who were attending on behalf of the Parties collectively). The Commission informed the Parties that, following its review of the

[32] The RFIs referred to in this paragraph and the paragraph immediately following may be collectively described as the "Phase 2 RFIs" and each of them may be described as a "Phase 2 RFI".

Phase 2 RFIs, and in the light of its Phase 2 review so far, a number of the Commission's preliminary competition concerns still remained. At this meeting, the Commission informed the Parties that they could agree to extending the date by which the Commission must issue an Assessment should they wish to submit revised proposals to the Commission, and that this would give the Commission the opportunity to review the revised proposals in advance of issuing an Assessment.

1.64 On 10 March 2022, the Parties informed the Commission that they agreed to extend the date by which the Commission must issue an Assessment by 15 working days, making the Assessment date 19 April 2022. This date was further extended to 28 April 2022 by agreement with the Parties.

1.65 On 21 March and 1 April 2022, the Parties submitted revised joint proposals to the Commission. These draft joint proposals contained proposed remedies aimed at mitigating the Commission's competition concerns namely that the Proposed Transaction may lead to: (i) coordinated effects; (ii) foreclosure; (iii) the stifling of innovation; and, (iv) liquidity risk.[33] The Commission engaged with Synch and its legal representatives (on behalf of the Parties collectively) to formulate proposals which would mitigate the preliminary competition concerns identified by the Commission. See paragraphs 6.2 to 6.12 of Section 6 below for more detail on the proposals submitted by the Parties.

1.66 During the Phase 2 merger review, the Commission had ongoing discussions with Synch and its legal representatives including follow-up questions on the technical aspects of the Synch Mobile Payments Service.

[33] See Section 5 below for a detailed discussion on the Commission's competition concerns.

1.67 The Commission issued its Assessment to the Parties on 28 April 2022 in accordance with its Mergers and Acquisitions Procedures.[34]

1.68 Synch requested access to the Commission's file. According to the Commission's procedures,[35] the Parties are to be given access to the Commission's file upon request, during the 15 working day period following receipt of the Commission's Assessment. The Commission provided Synch with schedules of all of the third-party documents included in the file and a schedule of all of the Parties' documents included in the file. Access to the file was granted during the 15 working day period.

1.69 During the Commission's access to the file process, Synch requested and was granted access to all accessible third party documents in the schedules.

1.70 Synch made a written submission on 18 May 2022 in response to the Commission's Assessment (the "Written Response").

1.71 Synch made an oral submission (the "Oral Response") to Commission Members on 20 May 2022.

Phase 2 Proposals

1.72 As mentioned in paragraph 1.65 above, the Parties submitted draft joint proposals pursuant to section 20(3) of the Act. In the draft joint proposals, the Parties committed to measures which are discussed in further detail in Section 6 below.

1.73 Over the period 4 April to 12 April 2022, the Commission market tested the draft proposals. This is discussed in further detail in paragraphs 6.13 to 6.17 of Section 6 below.

[34] See paragraph 3.8 of the Commission's "Mergers and Acquisitions Procedures", dated 31 October 2014.
[35] Article 5.1 of the Commission's "Access to the File in Merger Cases", dated 31 October 2014.

1.74 The Commission engaged further with Synch and its legal advisors (on behalf of the Parties collectively) concerning the draft joint proposals and provided Synch and its legal advisors with feedback on the draft joint proposals. Following this engagement, Synch also submitted additional proposals to the Commission pursuant to section 20(3) of the Act on 26 May 2022. The details of the Synch's draft proposals are discussed in Section 6 below.

1.75 The Commission engaged with Synch and its legal advisors to formulate proposals which would mitigate the preliminary competition concerns identified by the Commission. On 15 June 2022, the Parties submitted to the Commission final proposals under section 20(3) of the Act (the "Joint Proposals") with a view to the Joint Proposals becoming binding on the Parties.

1.76 On 15 June 2022, Synch also submitted to the Commission final proposals under section 20(3) of the Act (the "Synch Proposals") with a view to the Synch Proposals becoming binding on Synch.

1.77 The Joint Proposals and the Synch Proposals are appended to this determination.

2. INDUSTRY BACKGROUND

2.1 This section provides an overview of:

(i) Payment services in the European Union, including a description of the relevant legislation, SEPA, and mobile payments services which operate at a Member State level; and

(ii) Payment services in the State, including existing mobile payments services (such as Revolut and N26) and P2B payments.

Payment services in the European Union

Background

2.2 The European Commission is working to create an efficient and integrated market for payment services in the EU, which would guarantee the same rules throughout the EU, clear information on payments, fast payments, consumer protection, and a wide choice of payment services. The European Commission's aim is to create a single payment area which lets citizens and businesses make cross-border payments easily and safely without additional charges.[36]

EU legislative framework on payment services

2.3 The European Union established rules for payments with the adoption of the first Payment Services Directive[37] ("PSD") in 2007. The PSD created a single market for payments within the European Economic Area by establishing common rules for electronic payments such as credit transfers, direct debits, card payments, and mobile and online payments. The PSD set out rules about information that must be

[36] https://ec.europa.eu/info/business-economy-euro/banking-and-finance/consumer-finance-and-payments/payment-services/payment-services_en

[37] Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC. See here: https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32007L0064

given to consumers by PSPs and introduced a new category of PSPs separate from traditional banks, which has increased competition and choice for consumers. The PSD laid the groundwork for the Single European Payments Area ("SEPA"), which is discussed further at paragraphs 2.7 to 2.21 below.[38]

2.4 In 2015, the European Commission adopted a new payment services directive ("PSD2")[39] to improve the existing rules and take new digital payment services into account. The directive entered into force in January 2018. PSD2 builds on the PSD by updating it to reflect the increasing digitalisation of the European economy, with the aim of making internet payments easier and safer, increasing consumer protection against fraud and abuse, and fostering innovation and competition while ensuring a level playing field for all players, including new ones.[40]

2.5 Among other things, PSD2 mandates the provision of access to customer information and existing banking systems to qualified third-party PSPs, laying the groundwork for open banking and lowering the barriers to entry for new entrants. Specifically, PSD2 is expected to open payment services to competition by regulating new categories of PSPs known as Payment Initiation Service Providers ("PISPs") and Account Information Service Providers ("AISPs"). PISPs help to facilitate the use of online banking to make internet payments between different PSPs without the need for a credit or debit card. Customers agree to share their bank details with the PISP, and then the PISP will initiate the payment for the customer, and the bank(s) then execute the payment. Examples of PISPs are Sofort, Trustly or iDEAL, while PayPal is very similar but a consumer's Paypal account is not linked to the consumer's bank account. AISPs can collect and consolidate information on a consumer's different bank

[38] https://ec.europa.eu/info/business-economy-euro/banking-and-finance/consumer-finance-and-payments/payment-services/payment-services_en

[39] Directive 2015/2366/EU of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (accessible at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L2366)

[40] https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX:32015L2366

accounts in a single place allowing the consumer to have an overview of their financial situation and be able to better manage their personal finances.[41] In the State, there are currently 4 AISPs registered with the Central Bank of Ireland (CBI),[42] which are Circit, CRIF Realtime Ireland, Verge Capital Limited[43] and Loanitt.[44]

2.6 The European Commission adopted a retail payments strategy for the EU on 24 September 2020. This strategy focuses on: creating conditions to make the development of instant payments and EU-wide payment solutions possible; consumer protection and ensuring payment solutions are safe; and promoting home-grown and pan-European payment solutions to lessen dependency on other global players.[45]

Single European Payments Area ("SEPA")

2.7 The EU institutions[46] and the European Payments Council ("EPC"), a not-for-profit organisation representing the European banking and payments industry, launched SEPA in 2008.[47]

2.8 SEPA created a single market for euro-denominated retail payments which allows customers to make cashless euro-denominated payments to anywhere in the EU, as well as a number of non-EU countries (namely, the United Kingdom, Iceland, Norway, Liechtenstein, Switzerland, Monaco, San Marino, Andorra and Vatican City State).[48]

[41] https://ec.europa.eu/commission/presscorner/detail/fr/MEMO_15_5793
[42] See Register of Account Information Service Providers as at 21 February 2022: http://registers.centralbank.ie/DownloadsPage.aspx
[43] Verge Capital is trading as Finclude, Finstream, Verge.Capital.
[44] The AISPs registered in the State are engaged in a variety of different businesses like helping consumers access credit (Loanitt, Verge Capital) and a confirmations platform for auditors (Circit).
[45] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0592
[46] The development of SEPA was supported by the European Commission, the European Central Bank, the European Parliament and the Council of the EU (the Economic and Financial Affairs Council specifically). The European Central Bank steered the SEPA process from its inception until 2013, when it set up the Euro Retail Payments Board, which is a high-level strategic body that fosters the integration, innovation and competitiveness of euro retail payments in the European Union in the areas of instant payments, payment initiation services, P2P mobile payments, and contactless payments.
[47] https://www.europeanpaymentscouncil.eu/about-us/epc-and-sepa-process
[48] https://www.europeanpaymentscouncil.eu/about-sepa/

SEPA allows customers, businesses and public administrations to make and receive credit transfers, direct debit payments and card payments under the same basic terms and conditions, using just one payment account and a single set of payment instruments.[49]

2.9 The EPC asserts that the benefits of SEPA are as follows:

> *"Simplicity, convenience and efficiency are the three core benefits of SEPA. Consumers can now rely on one payment account and card to make euro payments wherever they are in Europe, which provides them peace of mind when they are travelling in Europe or making online purchases on websites based in other SEPA countries. Equally, enterprises see increased business opportunities and can more easily access a broad European market. As they do not have to deal with multiple payment card standards for euro payments, they save time and money.*
>
> *In addition, SEPA creates a single market for payment services. The increased competition between SEPA and card service providers benefits consumers and companies alike, as they can enjoy a greater choice of highly competitive services driven by technological innovation."*[50]

2.10 The EPC has created four euro payment schemes which facilitate economic exchanges in SEPA for consumers and businesses. These schemes are:

(i) SEPA Standard[51] (see paragraphs 2.13 to 2.16 below);

(ii) Direct Debit Core ("SDD Core") (see paragraphs 2.20 to 2.21 below);

[49] https://ec.europa.eu/info/business-economy-euro/banking-and-finance/consumer-finance-and-payments/payment-services/single-euro-payments-area-sepa_en
[50] https://www.europeanpaymentscouncil.eu/about-sepa/sepa-goals-and-benefits
[51] Also referred to as "SEPA CT" or "SCT".

(iii) Direct Debit Business-to-Business ("SDD B2B") (see paragraphs 2.20 to 2.21 below); and

(iv) SEPA Instant [52] (see paragraphs 2.17 to 2.19 below).

2.11 Each of these four payment schemes consist of rulebooks, implementation guidelines, and SEPA Payment Scheme Management Rules (this document is common to all schemes), which set out an agreed set of rules that PSPs can use to execute transactions through specific payment instruments (e.g., credit transfer, direct debit, card, etc.). The rulebooks are regularly updated to reflect market needs and evolutions in technical standards.[53]

2.12 The deadline for PSPs to migrate to SEPA Standard and SDD Core was August 2014 in the euro area and October 2016 in the non-euro area. SEPA Instant and SDD B2B are currently optional for PSPs, but SEPA Instant is set to be mandated in the second half of 2022 as discussed below.[54]

SEPA Credit Transfer

2.13 SEPA credit transfer enables any individual or business to move money from one account to another, and it can be used for one-off or recurring payments (e.g., a standing order to pay rent or transfer money from a current account to a savings account), and for single or bulk payments (e.g., one debit from the payer's account with multiple credits to different beneficiaries, such as payroll).[55]

2.14 The vast majority of euro credit transfers in SEPA are based on the SEPA Standard scheme. Of the 20 billion euro credit transfers carried out annually, just over 10% are carried out on SEPA Instant, with the remainder on SEPA Standard.[56] SEPA Standard

[52] Also referred to as "SCT Inst".
[53] https://www.europeanpaymentscouncil.eu/what-we-do
[54] Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009. See https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02012R0260-20140131
[55] https://www.europeanpaymentscouncil.eu/what-we-do/sepa-credit-transfer
[56] https://www.ecb.europa.eu/paym/integration/retail/instant_payments/html/

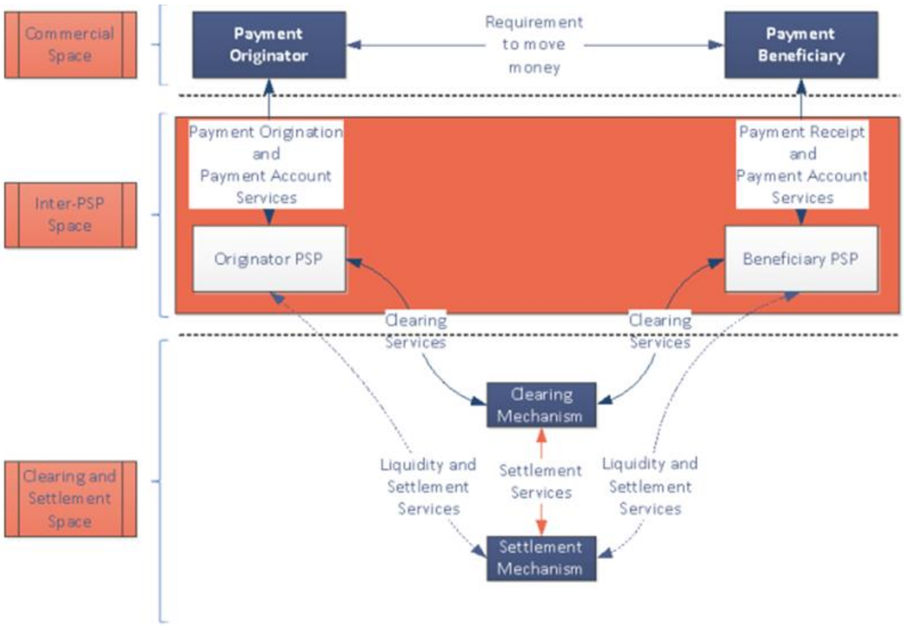
operates using the account-holder’s IBAN to facilitate the transfer, and the transfer is completed within one business day. The transfer limit for SEPA Standard payments is €999,999,999.99.

2.15 The SEPA Standard rulebook sets out the rules, practices and standards of the scheme, and provides the relevant information required for participants, clearing and settlement mechanisms[57] and technology suppliers to support development and operational activities.[58] An overview of the SEPA Standard process from the rulebook is shown in Figure 1 below:

[57] Clearing and Settlement Mechanisms (CSMs) are the processes underlying all payment transactions exchanged between two PSPs.

[58] SEPA Credit Transfer Scheme Rulebook can be found here: https://www.europeanpaymentscouncil.eu/sites/default/files/kb/file/2021-12/EPC125-05%202021%20SCT%20Rulebook%20version%201.1_0.pdf

Figure 1: Credit Transfer Overview[59]



2.16 The rulebook states that "SEPA Credit Transfers will be automated, based on the use of open standards and the best practices of straight through processing without manual intervention". Payments within the SEPA Standard scheme are made for the full original amount without deductions.[60]

SEPA Instant Credit Transfer

2.17 In an increasingly digital world, payments have to be easier and faster to keep up with consumers who can make purchases anywhere at any time (including evening hours, weekends and holidays) and with suppliers which want to be paid as soon as they sell their goods and services. The SEPA Instant scheme became operational in November 2017 and it enables the electronic transfer of funds

[59] https://www.europeanpaymentscouncil.eu/sites/default/files/kb/file/2021-12/EPC125-05%202021%20SCT%20Rulebook%20version%201.1_0.pdf
[60] https://www.europeanpaymentscouncil.eu/what-we-do/sepa-credit-transfer

within SEPA in less than 10 seconds, 24 hours a day, seven days a week and 365 days a year.[61]

2.18 The default scheme maximum transfer amount is currently €100,000.[62] If the maximum execution time of ten seconds cannot be met due to exceptional processing circumstances, the SEPA Instant rulebook foresees a hard time-out deadline of 20 seconds. PSPs can bilaterally or multilaterally agree on a higher maximum transfer amount, shorter execution time or shorter hard time-out deadline.[63] For example, in the Netherlands, the instant payments credit transfer is processed within 5 seconds with a hard time-out deadline of 7 seconds, and there is no transfer value limit.[64]

2.19 PSPs operating within SEPA are not currently obliged to operate using the SEPA Instant scheme. However, the Commission understands that the implementation of SEPA Instant is likely to be mandated by the European Commission by the second half of 2022, with the deadline for implementation likely to be within the next two years. On 9 February 2022, the European Commissioner for Financial Stability, Financial Services and the Capital Markets Union, Mairead McGuinness, stated the following on the Twitter social media platform: "*Today I'm confirming the Commission will present a legislative initiative on instant payments in the second half of 2022. We need this to accelerate the roll-out of instant payments in the EU*."[65] The EPC reports that 2,336 PSPs have already joined the SEPA Instant scheme, which amounts to over 60% of all European PSPs using SEPA Standard.[66]

[61] https://www.europeanpaymentscouncil.eu/what-we-do/sepa-instant-credit-transfer
[62] This amount will be reviewed annually and will progressively make the scheme more attractive to larger companies. The scheme originally had a limit of €15,000 and was increased to €100,000 as of 1 July 2020.
[63] https://www.europeanpaymentscouncil.eu/what-we-do/sepa-payment-schemes/sepa-instant-credit-transfer/sepa-instant-credit-transfer-options
[64] https://www.betaalvereniging.nl/en/focus/instant-payments/
[65] https://twitter.com/McGuinnessEU/status/1491346216902619138
[66] https://www.europeanpaymentscouncil.eu/what-we-do/sepa-instant-credit-transfer

SEPA Direct Debit Core and Business-to-Business

2.20 The two SEPA direct debit schemes, SDD Core and SDD B2B, automate transactions, which is especially useful for recurring payments and ensures that consumers avoid the risk of missing a payment deadline, of being charged additional fees for late payments, or of suffering an interruption of service. In both schemes, the biller requests money from the payer with the payer's prior approval (i.e., a signed mandate prepared by the biller) and the sum is credited to the biller's account.

2.21 The two direct debit schemes can be used for one-off transactions or for recurring payments, and they have a number of rules in place which ensure complete security for payers. For instance, each direct debit mandate is uniquely identifiable so each collection can be traced. Further, under SDD Core, a payer can request a refund up to eight weeks after a transaction without offering a justification, and in the case of an unauthorized direct debit a refund request can be made up to 13 months after the transaction.

Europe-wide Payment Solutions

2.22 The European Commission's Communication on a Retail Payments Strategy for the EU, published in September 2020, states that payments have become "*strategically significant*" and "*the lifeblood of the European economy*" and that the European Commission's objective is accordingly "*a highly competitive payments market, benefitting all Member States, whichever currency they use, where all market participants are able to compete on fair and equal terms to offer innovative and state-of-the-art payment solutions in full respect of the EU's international commitments*".[67]

[67] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0592&from=EN

2.23 To contribute to pan-European cooperation between mobile payments services, the EPC launched the SEPA Proxy Lookup scheme in 2019 with the aim of facilitating interoperability between participating mobile payments services by enabling the conversion of a proxy (i.e., mobile phone number or e-mail address) into a payment account identifier (currently an IBAN) across SEPA.[68] The scheme covers the exchange of data necessary to initiate payments between proxy-based mobile payments services (which would include the Synch Mobile Payments Service) on a pan-European level, and as such is limited to a look-up function with the actual payment being outside the scheme.

2.24 There are several different pan-European instant payment systems in development at present, including the European Payments Initiative (the “EPI”), and the European Mobile Payment Systems Association (“EMPSA”), although none have yet been launched. The P27 initiative, while not an instant payment system itself, will allow interoperability of several Nordic instant payment schemes, which are discussed further in the following paragraphs.

European Payments Initiative – EPI

2.25 In July 2020, in response to a growing number of instant payment services at the national level, a group of 16 European banks and credit institutions (in Belgium, France, Germany, the Netherlands and Spain) announced the launch of the EPI. The EPI aims to compete with Visa and Mastercard by creating a unified pan-European payment solution based on SEPA Instant which would offer consumers and merchants a unified card and digital wallet that can be used across Europe for in-store, online, person-to-person payments, and cash withdrawals. The EPI hopes

[68] https://www.europeanpaymentscouncil.eu/what-we-do/other-sepa-payments/sepa-goes-mobile/mobile-p2p-payments

its payment network would replace the fragmented national schemes for card (based on Visa and Mastercard), online and mobile payments.[69]

2.26 Although originally a number of further European banks and credit unions had decided to join the EPI after the initiative was announced in July 2020, many shareholders have now exited the project potentially over costs.[70]

2.27 On the date of the Determination, the information available on the EPI is that the thirteen remaining shareholders "*remain convinced of the strategic value of a unified payment solution ready for commerce leveraging especially instant payments" and therefore, the EPI Interim Company is "now adapting its scope and objectives to this new dimension*".[71]

European Mobile Payments Systems Association – EMPSA

2.28 Fourteen mobile payments services operating in Europe, representing more than 70 million mobile payment users, more than one million merchant acceptance points, and hundreds of European banks, have joined EMPSA. EMPSA's vision is "*to unify the payment landscape across European borders and technologies*" and one of its first projects is the establishment and implementation of a cross-platform framework which connects all EMPSA members and allows for effortless payment processing for millions of customers.[72] This framework would join together the users of the participating payment system to enable seamless mobile payments across Europe. Some of EMPSA'S members include Swish, Vipps, and

[69] https://www.epicompany.eu/
[70] In November 2021 the EPI appealed for public money and stated that its private backers were not prepared to fully fund the initiative. See https://www.reuters.com/article/eu-payments-idCAKBN2I11VH
https://www.reuters.com/business/finance/new-european-payments-project-hits-major-snag-2021-12-23/
https://thepaypers.com/online-payments/the-european-payments-initiative-appeals-for-public-funding--1252898
[71] https://www.epicompany.eu/
[72] https://empsa.org/

MobilePay which provide a similar offering to the Synch Mobile payments Service (these are discussed in further detail below).

P27

2.29 While not Europe-wide, the P27 Nordic Payments initiative was started in 2017 as a joint Nordic bank[73] project. It is expected that P27 project will operate a new payment infrastructure which will enable domestic and cross-border mobile payments in real-time, in batches and in multiple currencies (Nordic currencies and the euro) throughout the Nordic region.[74] Although not an instant payment scheme itself, one outcome of the P27 project is that by harmonising the underlying payment infrastructure to SEPA standards across the Nordic region, mobile payments services from different countries like Swish, Vipps, and MobilePay can be used interchangeably across the region.

2.30 In 2021, P27 Nordic Payments secured merger approval from the European Commission.[75]

Mobile Payment Solutions Across Europe

2.31 Although no pan-European mobile payments service exists as yet, many mobile payments services have already been successfully introduced in individual EU Member States. While these mobile payments services are limited to the national level, they have become very popular in their respective countries, with many services having significant user numbers and high usage growth.

2.32 Most European Union Member States already have an established mobile payments service operating on a national level. These mobile payments providers have different ownership structures, as well as different offerings to consumers

[73] The banks involved are: Danske Bank (Denmark); Handelsbanken (Sweden); Nordea (Finland); OP Financial Group (Finland); SEB (Sweden); and Swedbank (Sweden).
[74] https://nordicpayments.eu/about/
[75] See M.9971 - https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9971

and merchants, and distribution channels. Distribution channels include: (i) a single, standalone app only (this is referred to as closed distribution); (ii) integration of payment functionality within a third-party app (e.g. a PSP's own app) (this is referred to as open distribution); or (iii) a combination of both a standalone app and the ability to integrate functionality with a PSP's own app. A selection of different mobile payments services from across Europe are highlighted in this section.

2.33 In the Merger Notification Form, the Parties state that "*it is envisaged that the Synch Mobile Payments Service will adopt a similar business model, and be similar to mobile payment services, already established and available in a number of other European markets*" including Swish in Sweden, MobilePay in Denmark, Vipps in Norway, Payconiq in Belgium, the Netherlands and Luxembourg, and Bizum in Spain.[76]

Swish – Sweden

2.34 Swish was launched in 2012 as a cooperation between six of the largest banks in Sweden: Danske Bank, Handelsbanken, Länsförsäkringar, Nordea, SEB and Swedbank and Sparbankerna. Swish initially began as a P2P payments app, but has gradually added P2B (2014) and eCommerce (2016) functionality, as well as QR codes[77] (2017), payment requests (2020) and a business app for companies to make payments, view incoming payments, administer sales shifts and charge customers via QR code (2021). Swish has over 8 million private users and nearly 300,000 companies are connected to Swish with 12 banks currently offering Swish

[76] Merger Notification Form at paras 1.1.7 [MD5 Hash: 01bf65b52e4db378a6e5b1c5dbd16ab1].

[77] Users can scan a QR code to make a payment, show their QR code to someone (instead of providing a phone number) who would then scan it to make a payment, or create a custom QR code which can be prefilled with recipient, amount and message which can be sent to someone.

to their customers, covering nearly the entire Swedish market. Each bank is responsible for the offer, terms and any fees for the Swish services they offer.[78]

2.35 To use Swish, a user must download the Swish app, sign in to their online banking service and connect their phone number to one of their bank accounts. Users also need to download and activate Mobile BankID which is used for identification purposes. In the app, users can make a payment to a contact's phone number, a company's Swish number or scan a QR code, and once the payment information has been entered on Swish, the payment just has to be approved in the Mobile BankID app.[79]

2.36 Swish is very similar to the Synch proposition in terms of its ownership and functionality. In the Merger Notification Form, the Parties state that *"the 'Synch' model has been closely based on the model adopted by 'Swish'"*.[80] Swish was started by a group of six large banks with similar market share as the JV Parents and since then six participants have joined […]. At launch in 2012 Swish only offered users the opportunity to make P2P payments but has since expanded into offering additional payment services and it is a very popular brand in Sweden. Swish is currently only offered as a standalone mobile app (i.e. it operates on a closed distribution basis), and although the option of embedding it within third party apps has been discussed, this has not been done and [...].[81]

MobilePay – Denmark and Finland

2.37 MobilePay was launched by Danske Bank in 2013 in Denmark and Finland initially for P2P transfers of up to DKK 1,000.[82] At the same time, a consortium of other

[78] See https://www.swish.nu/about-swish
[79] https://www.swish.nu/private
[80] Merger Notification Form at para 1.1.7.1 [MD5 Hash: 01bf65b52e4db378a6e5b1c5dbd16ab1]
[81] See note of call with Swish dated 20 April 2022, with document name "2022.04.20 Call with Swish"
[82] Approximately €134.42 as on 23/02/2022.

banks including Nordea, Jyske Bank and other regional banks launched Swipp, but MobilePay gained more traction so the development of Swipp was ended in 2016 and all banks switched to MobilePay.[83] Today, over 6.2 million people use MobilePay, and there is collaboration with over 50 partner banks in the Nordic region with over 220,000 Nordic shops and webshops offering MobilePay payment and 90% of smartphones in Denmark having the app installed.[84]

2.38 Through its app, MobilePay offers users extensive payment services, with functionality including sending and receiving money, paying in-store, in-apps and online, donating money, sending gift cards, paying bills, splitting bills, signing up for fixed payment agreements, collecting money in a common box, adding loyalty cards and more.

2.39 MobilePay is also similar to Synch but can be distinguished in the fact that although it is an independent entity, it is wholly owned by one bank rather than a joint venture between several banks. The product offering of MobilePay is extensive and has evolved over the years of its operations, similar to Synch's roadmap. MobilePay has a closed distribution system and therefore is only offered as a standalone app, but this app operates in parallel with other banking apps, including that of Danske Bank. MobilePay advised the Commission that while there is some small overlap between its app and banking apps, the apps serve different purposes. For example, MobilePay is used for its convenience in sending money to friends without needing an IBAN number, and sending money to children, and banking apps are used to manage loans and mortgages. MobilePay also [...].[85]

[83] See https://www.wiwi.europa-uni.de/de/forschung/publikationen-projekte/dp/_dokumente/406_Moritz_Stadtmann_Stadtmann.pdf
[84] https://www.mobilepaygroup.com/about-us
[85] See note of call with MobilePay dated 28 March 2022, with document name "2022.03.28 MobilePay Call Note"

Vipps - Norway

2.40 Vipps is a mobile payments service and was launched in Norway in 2015 by DNB Bank, Norway's largest financial services group. In February 2017, Vipps became an autonomous company with DNB Bank as the largest shareholder, and the SpareBank1 alliance (consisting of 16 independent banks), the Eika alliance (consisting of 73 local banks), Sparebanken Møre, and 15 independent savings banks becoming co-owners and integrating their competing mobile payments solution mCASH.[86] In October 2017, Danske Bank terminated its MobilePay app in Norway, and both Danske Bank and Nordea entered distribution agreements to offer Vipps to their Norwegian private users and businesses, without taking a stake.[87] In 2018, Norwegian card scheme BankAxept and identity scheme BankID merged with Vipps.[88]

2.41 Vipps is a mobile payments service that can be used by consumers and businesses. Businesses can take payment over the counter or online, let customers pay for subscriptions, make donations or repeat payment, and pay bills. Consumers can use Vipps to send and receive money, pay bills, pay in-store at terminals, split expenses among a group, and also withdraw and deposit cash in certain stores.[89] While Vipps is primarily used as an app, it has an open distribution model and so also partners with companies who may integrate Vipps into a system they offer consumers and offers APIs for PSP partners.[90]

2.42 Vipps is very popular in Norway with over 3 million users, covering over 75% of the population in Norway.[91] Norges Bank, the central bank of Norway, has reported that mobile payments are the second most used transfer service (behind

[86] See https://www.sparebank1.no/nb/ostlandet/om-oss/presse/pressemeldinger/arkiv/2017/2017-01b-Vipps.html
[87] https://www.reuters.com/article/nordea-bank-dnb-idUSL8N1MM1BT
[88] Information to suppliers regarding the merger between BankID Norge, Vipps and BankAxept - BankID
[89] https://vipps.no/produkter-og-tjenester/bedrift/
[90] https://vipps.no/developer/bli-partner/
[91] https://www.independent.ie/business/world/norwegians-stop-using-cash-as-vipps-payment-app-thrives-38161720.html

online and mobile banking), and for transfers between private individuals, four out of five such payments are made using mobile phones, primarily using the Vipps mobile payments app.[92]

2.43 In June 2021, Vipps agreed to merge with MobilePay (operating in Denmark and Finland) and Pivo (operating in Finland and owned by OP Financial Group, Finland's largest bank), which could create one of the largest bank-owned mobile payments providers in the region. The planned ownership structure of the new company would be that Vipps (i.e., the banks with collective ownership of Vipps) will own 65%, Danske Bank will own 25%, and OP Financial Group will own 10%.[93] This combined payment service would have a combined user base of 11 million consumers, performing over 700 million yearly transactions and reaching 330,000 businesses across Finland, Denmark and Norway. This merger is under review by the European Commission.[94]

2.44 Vipps is also a very similar proposition to Synch with ownership being made up of large banks. While Vipps is offered as an app, it has an open distribution model and can be interfaced with other apps, for example to allow merchants to initiate payments, cancel payments and refund payments. Vipps provides an extensive offering to its customers, and is similar to what Synch proposes to offer in the future according to the Synch roadmap.

Jiffy - Italy

2.45 In Italy, technology provider, SIA Group, launched Jiffy in 2015 which was a mobile P2P payment service in which customers could send and receive payments based

[92] https://www.norges-bank.no/contentassets/b29d4d26c2f34625917b06392f44021d/papers_2_21-retail-payment-services.pdf?v=05/19/2021220248&ft=.pdf
[93] https://danskebank.com/news-and-insights/news-archive/company-announcements/2021/ca30062021
[94] https://www.mobilepay.dk/nyheder/2021/06/30/mobilepay-to-merge-with-norwegian-vipps-and-finnish-pivo

on a contact's mobile number.[95] In 2017 Jiffy expanded to offering P2B transactions across 2000 retailers, and in 2018 Jiffy had 5 million customers and over 130 banks were subscribed (representing 32 million accounts or 80% of bank accounts in Italy).[96]

2.46 In 2018, SIA signed an agreement with Bancomat, Italy's domestic debit network, to integrate Jiffy services into its system, so users of the PagoBancomat debit cards can make instore and online payments, as well as send and receive P2P payments on their mobile phones. This new service called Bancomat Pay is available to the Bancomat network, including all PagoBancomat cardholders (roughly 37 million) and 440 banks via individuals bank apps or through the Bancomat Pay app.[97]

2.47 SIA is the technology provider for Synch[98] and therefore Jiffy, before it was integrated with Bancomat, is a good example of what Synch might offer at the outset as a standalone app. However, Jiffy was limited to P2P payments while Synch plans to offer P2P and P2B mobile payments from launch. As well, Synch has a roadmap with plans to expand its offering while remaining independent, while Jiffy has now been integrated within another app which offers a comprehensive suite of services.

Payconiq by Bancontact – Belgium, Luxembourg and The Netherlands

2.48 In 2018, Bancontact Company and Payconiq Belgium merged into a single entity called Bancontact Payconiq Company. Before the merger, the two companies offered two separate payment apps, but in 2019, a new product called Payconiq

[95] https://jiffy.sia.eu/en
[96] https://jiffy.sia.eu/doc/cs/en/pr_sia_jiffy_5_million_users_en.pdf
[97] https://www.sia.eu/en/media-events/news-press-releases/introducing-bancomat-pay-new-digital-payment-services-for-37-million-italians
[98] https://www.irishtimes.com/business/financial-services/irish-banks-select-italian-fintech-sia-to-develop-app-to-rival-revolut-1.4456721#:~:text=Synch%20Payments%20is%20a%20joint,Ireland%2C%20Permanent%20TSB%20and%20KBC&text=The%20group%20of%20Irish%20banks,the%20technology%2C%20according%20to%20sources.

by Bancontact was released. Bancontact Payconiq is owned by five major banks in Belgium, AXA Bank, BNP Paribas Fortis, Belfius, ING and KBC.[99]

2.49 Through its app, Payconiq by Bancontact allows consumers to make payments in store and online, pay invoices with a QR code, pay contacts via mobile phone or QR code, save loyalty cards and pay for public transport.[100] Customers can add up to 5 Bancontact cards to their account.[101] For businesses Payconiq by Bancontact offers QR codes which can be used to collect payment in-person, online, or on paper invoices.[102]

2.50 Payconiq by Bancontact has 4.9 million users and more than 80,000 retail businesses are offering mobile payments via QR code.

2.51 Payconiq by Bancocontact is the product of a company owned by five major banks, and accordingly is similar to Synch's ownership. While the distribution method is closed, meaning it is limited to the standalone app, the product offering is extensive and is similar to what Synch proposes to offer in the future after it has become established within the State.

MBWay - Portugal

2.52 In Portugal, MBWay was launched in 2015 by SIBS, an interbank payment network that runs the country's 'Multibanco' ATM network and is owned by the five largest banks in Portugal. In 2019, MBWay surpassed 2 million users.[103] MBWay has 28 participating banks with coverage of more than 95% of Portuguese banks, and is available on its own app and in select bank apps where it has been integrated.[104]

[99] https://newsroom.ing.be/bancontact-company-and-payconiq-belgium-bringing-their-expertise-and-innovative-skills-under-one-roof
[100] https://www.payconiq.be/en/private/paying-mobile#in-a-store-online
[101] https://www.payconiq.be/en/faq/how-do-i-install-the-payconiq-by-bancontact-app
[102] https://www.payconiq.be/en/professional
[103] https://www.sibs.com/wp-content/uploads/sites/13/2019/11/2019-11-28_MB-WAY_2-Million-Users.pdf
[104] https://www.mbway.pt/perguntas/

2.53 MBWay allows users to make instant P2P transfers using a contact's mobile phone number, make purchases online using their mobile number, paying and in-store (using QR codes or NFC), and also withdraw money from Multibanco. Users can also request a payment, split bills, make donations and generate virtual cards which can be used for single purchases, multiple purchases or recurring payments.[105]

2.54 While the MBWay service was initially free, the banks later began imposing fees on consumers' instant payments and after significant public outcry the Portuguese parliament introduced legislation to cap the applicable fees.[106] The legislation imposed limits on the collection of commissions by PSPs for withdrawals of funds, payments of services or transfers in or through third party payment applications. However, the legislation allows PSPs to charge consumers when transactions exceed €30 per transaction, €150 per month, or 25 bank transfers per month. Above these limits, European Commission transfer regulation rules apply which entails a 0.2% interchange fee for debit cards and 0.3% interchange fee for credit cards.[107]

2.55 MBWay has an open distribution system as it is offered both through its own app and is also integrated in a few banking apps, which is similar to how Synch may operate in the State once the capabilities for embedding the functionality have been established according to the Synch roadmap. While Synch will charge Participating PSPs fees, it will be up to the Participating PSPs to decide what fee, if any, to charge their customers who are users of Synch.

[105] https://www.mbway.pt/
[106] Law 53/20202 of 26 August 2020 - https://dre.pt/dre/detalhe/lei/53-2020-141214377
[107] https://espanhaassociados.pt/extending-consumer-protection-of-financial-services-mbway-fees-and-others/?lang=en

Payments and Instant Payments in the State

The Payments Landscape in the State

2.56 The payments landscape in the State has evolved over the last number of years. Consumer preferences and behaviours have changed with the digitalisation of payments and the introduction of contactless payments before the COVID-19 pandemic of 2020-22. The pandemic further accelerated this trend, leading to an increase in the number of online transactions and contactless payments, and a decrease in consumers' demand for cash. In the *BPFI's Contactless Update* data series, the BPFI reported that monthly contactless payment volumes rose by 29% year on year to 77.5 million or 2.5 million payments per day in July 2021, the highest daily level since the BPFI began its data series in 2016.[108] As the number of card and contactless payments has been increasing, the demand for cash has been decreasing. According to the CBI, the number of ATM cash withdrawals by Irish residents fell by 40% in 2020 when compared to 2019.[109]

2.57 The CBI deputy governor Sharon Donnery gave a presentation at the Irish Retail Payments Forum on "*The Future of Payments in Ireland and Europe*" in April 2021.[110] Ms Donnery noted that two key trends have been shaping the payments landscape: speed and innovation. Ms Donnery stated that "*the expectation of speed, of instant delivery and removal of cross border frictions to payments has grown stronger*".[111]

2.58 Survey data indicates that a consumer preference for mobile payments exists. The BPFI conducted market research in […] by running a survey over a […] period which captured both quantitative and qualitative feedback from […] respondents. This survey showed that there is a strong and increasing demand for a mobile

[108] See https://bpfi.ie/wp-content/uploads/2021/09/BPFI-Payments-Monitor-Contactless-Update-Jul-2021.pdf
[109] See https://www.centralbank.ie/statistics/data-and-analysis/payments-services-statistics
[110] See https://www.centralbank.ie/news/article/speech-Sharon-Donnery-payments-ireland-and-europe-28-April-2021
[111] *Ibid*

payments service in the State. The survey found that […] of respondents had used a mobile app to make a payment in the previous month, compared to […] of respondents when a similar study was conducted by the BPFI in […]. Additionally, […] of respondents had used contactless card payments in the previous month, an increase of […] on the […] survey data. In […], […] of respondents would prefer to use a payment app such as […] to pay friends and family, whereas only […] of […] respondents ([…] %) indicated this in […]. [112]

Views on Instant Payments

2.59 Ms Donnery stated in her aforementioned April 2021 presentation that the CBI supports the development of an instant payments solution in Ireland that is linked to pan-European systems.[113] The CBI encourages the implementation of instant payment solutions by PSPs in the near term for use by consumers and businesses. Ms Donnery stated that "*Irish providers need to adopt a forward-looking strategic outlook towards payments rather than wait for instant payments to become a mandatory requirement*".[114] However, Ms Donnery stated that it was important for instant payment solutions and systems at national level to "*interact seamlessly with European counterparts. In more technical terms,* [the CBI] *need to ensure interoperability*".[115]

2.60 The European Central Bank (ECB) published the "*Eurosystem's retail payments strategy*" in 2021.[116] The main goal of the Eurosystem's retail payments strategy is the full deployment of instant payments across Europe. The ECB notes that, just as the instant delivery of digital services has become the norm in today's society, instant payments are also expected to become the 'new normal' for payments.[117]

[112] See internal document provided to the Commission by AIB, BOI, PTSB and KBC entitled "*Project Pegasus – Consumer Research Update*" dated April 2020. [MD5 Hash: 952a1b9c86e55d6aacd68f0000772a17]
[113] See https://www.centralbank.ie/news/article/speech-Sharon-Donnery-payments-ireland-and-europe-28-April-2021
[114] *Ibid*
[115] *Ibid*
[116] See https://www.ecb.europa.eu/pub/pdf/other/ecb.eurosystemretailpaymentsstrategy~5a74eb9ac1.en.pdf
[117] *Ibid*

In addition to encouraging banks and other PSPs to implement SEPA Instant, the ECB also sets out objectives for the deployment of instant payments. The ECB's objectives for instant payments are:

> *"1. Attractive conditions for end users such as availability on all commonly used electronic channels and a set of features (e.g. for one-off and recurring payments, single or bulk payments) to encourage the use of instant payments as the new normal;*
>
> *2. Availability of additional pan-European functionalities that support the provision of end user solutions, such as Request to Pay;*
>
> *3. Overcoming the barriers to using instant payments, including the number of rejections, which is currently high compared with other SEPA schemes, partly due to difficulties with anti-money laundering/combating the financing of terrorism screening."*[118]

P2P Payments in the State

2.61 In the State, P2P bank payments can be carried out through an online bank transfer on a bank's mobile app. To carry out a P2P bank transfer, a customer of a bank initially needs to "create a payee". To do so, the payer[119] requires the payee's[120] IBAN and Bank Identifier Code ("BIC"). The payer is then required to activate the payee by inputting a code from a security text message. This payee is then saved to the payer's online banking for future payments.

[118] *Ibid*
[119] The sender of the payments.
[120] The receiver of the payments.

2.62 An inter-bank P2P transfer takes at least one business day to clear as all inter-bank payments in the State are currently cleared[121] through SEPA Standard. Instant inter-bank payments cannot currently be facilitated in the State as no retail bank in the State has implemented SEPA Instant.[122]

2.63 All intra-bank payments made in the State (i.e., payments made by and to customers of the same bank) although also cleared on SEPA Standard, can be cleared instantly.

2.64 Further to the above-noted process for "creating a payee", AIB, BOI and Ulster Bank have each recently introduced a service on their respective mobile banking apps which allows their customers to make intra-bank transfers to other customers using only the customer's mobile number as an identifier, instead of an IBAN and BIC.[123] These services require payees and payers to register for the service by linking their mobile numbers to their desired account, following which they will be able to send and receive money using only their mobile number. These services allow customers to more easily send money to contacts, subject to a transaction limit,[124] and as it is an intra-bank transfer it is instantaneous. These intra-bank bank transfer services are closed-loop systems as the transfer of funds is internal to the bank itself and does not leave its systems – as such there is no settlement process.

[121] Clearing is defined by the European Central Bank as "*the process of transmitting, reconciling and, in some cases, confirming transfer orders prior to settlement, potentially including the netting of orders and the establishment of final positions for settlement*." See paragraphs 2.832.83 to 2.852.85 below for more detail.
[122] The following PSPs have implemented SEPA Instant in the State, however: Bank of America Europe DAC, Barclays Bank Limited PLC, Modulr FS Europe Limited, Paysafe Prepaid Services Limited, PFS Card Services Ireland Limited, SumUp Limited, Revolut and N26. None of these PSPs are retail banks in the State and, aside from N26 and Revolut, they do not offer personal bank accounts in the State.
[123] AIB's "Pay a Contact" scheme: https://aib.ie/help-and-guidance/pay-a-contact-q-a
BOI's "Pay to Mobile" scheme: https://personalbanking.bankofireland.com/ways-to-bank/mobile-banking/pay-to-mobile/
Ulster Bank's "Pay your Contacts" scheme: https://www.ulsterbank.ie/ways-to-bank/mobile-banking/mobile-app-payments.html
[124] AIB has a maximum transfer amount of €1000. BOI allows customers to send up to €100/£100 in one transaction and up to €300/£300 a day, and to receive up to €600/£600 daily. Ulster Bank has a €250 daily limit totalling up to a maximum of €1000 weekly.

2.65 In addition to this new service option offered by AIB, BOI and Ulster Bank, consumers can avail of instant payment services in the State by joining other closed-loop systems such as Revolut or N26, as described below, where both the payer and payee are customers of the relevant PSP.

Revolut

2.66 Revolut is a UK-based financial technology company founded in 2015. Prior to the United Kingdom's exit from the European Union ("Brexit"), Revolut had an e-money license in the UK which it used to operate in the State. After Brexit, Revolut operated in the State as Revolut Payments UAB on an e-money license issued by the Bank of Lithuania through EU passporting rules and issued customers in the State a Lithuanian IBAN.[125] In December 2021 Revolut received a European Central Bank banking license which allows it to offer additional services, including personal loans which were launched in February 2022.[126] In March 2022, Revolut launched deposit accounts in Ireland whereby customer' funds of up to €100,000 would be protected under the Lithuanian Deposit Guarantee Scheme.[127] On 1 July 2022, Revolut Payments UAB will be merged into Revolut Bank UAB and all customers in the State will be migrated to Revolut Bank UAB.

2.67 Revolut has experienced rapid growth in the State in recent years, with a reported customer reach of 1.5 million users and further ambitions to reach 2 million.[128]

---

[125] See footnote 134 for more information.

[126] https://www.irishtimes.com/business/financial-services/revolut-to-use-ecb-banking-licence-to-offer-personal-loans-to-irish-customers-1.4790823

[127] https://www.rte.ie/news/business/2022/0324/1288098-revolut-deposit-accounts/

[128] https://www.irishtimes.com/business/technology/revolut-valued-at-33bn-after-raising-800m-from-backers-1.4621242?mode=sample&auth-failed=1&pw-origin=https%3A%2F%2Fwww.irishtimes.com%2Fbusiness%2Ftechnology%2Frevolut-valued-at-33bn-after-raising-800m-from-backers-1.4621242.

2.68 Revolut launched as a money-transfer service but has since expanded its services significantly. In the State, Revolut offers its customers payment account services similar to those offered by retail banks including the provision of a debit card which can be used for Chip&Pin, contactless payments and cash withdrawals, as well as virtual and disposable debit cards for secure transactions online.[129] Revolut also offers customers a range of additional services including Revolut Junior, the ability to link external accounts to the Revolut app, a rewards programme, the ability to donate money, the ability to buy cryptocurrency, US-listed shares, and make international transfers, as well as a number of budgeting and analytical tools.[130] Revolut also offers customers two types of instant transfer, as explained below.

2.69 To make a payment on Revolut, customers must have a balance in their Revolut account. As Revolut customers in the State generally tend to have a primary personal banking account alongside their Revolut account, to use Revolut, customers must add money to their Revolut account by either a bank transfer, debit or credit card payment. These transfers are conducted on SEPA Standard. There is also an option to receive payments like payroll directly to a Revolut account.

2.70 Revolut offers customers two types of instant transfer. First, Revolut offers instant P2P transfer of funds between Revolut customers using their mobile phones. Revolut links customers' IBANs to their mobile phone numbers, and Revolut customers can choose to send money to anyone in the mobile contacts list. This was the first mainstream instant payment service offered to Revolut customers in the State.[131] The manner in which these funds are transferred is similar to how an

[129] Revolut offers 4 different Plans for its customers with different offerings at each level: Standard (free), Plus (€2.99/month), Premium (€7.99/month) and Metal (€13.99/month). There are no charges for transaction fees for contactless and online payments.
[130] https://www.revolut.com/en-IE
[131] See Revolut's third party submission dated 21 April 2021, with document name "2021.06.25 Redacted_Revolut_CCPC Submission".

intra-bank transfer is conducted. The funds are transferred through a closed-loop system, meaning the transfer is internal to Revolut and does not leave its systems – as such there is no settlement process.

2.71 Second, since August 2020, Revolut has also offered its European Union customers the ability to transfer funds from their Revolut account through SEPA Instant (although the Commission understands that the Payer will need to have access to the IBAN of the Payee in order to make the transfer). Revolut informed the Commission that its customers can transfer money instantly to any customer of any other PSP in Europe which participates in the SEPA Instant scheme, up to a maximum transfer limit of €100,000.[132] As no bank in the State currently participates in the SEPA Instant scheme, Revolut customers cannot transfer money instantly to retail banks in the State. Revolut customers can transfer money to or from accounts held with the main retail banks in the State but these transfers are conducted on SEPA Standard and, as mentioned above, such payments take one working day to clear.

2.72 Revolut also offers its customers the ability to pay businesses. Customers of Revolut have a virtual debit card, which is a Visa or MasterCard debit card that exists in virtual form. It can be used to make purchases online. It can also be used to make purchases in-store if it is connected to a mobile payments service such as ApplePay or GooglePay.[133] Revolut's virtual card cannot be used to withdraw cash. Revolut customers can also apply to receive a physical debit card for a fee which can be used to pay merchants online and in-store, and to withdraw cash from an ATM.

[132] *Ibid*
[133] https://blog.revolut.com/a/virtual-card/

N26

2.73 N26 is a fully licensed digital bank launched in Germany in 2015. N26 operates across Europe on a "European Passport", a banking licence which allows a bank or financial institution which is licensed in one EU country to use (or 'passport') that licence to operate in another country without having to get regulatory approval in that other country.[134] In October 2021, N26 had over 200,000 customers based in the State.[135]

2.74 In the State, N26 offers a current account, in partnership with MasterCard as regards the provision of debit cards. N26 also has an integrated partnership with TransferWise[136] to facilitate international transfers. N26 offers three premium accounts with a range of benefits such as phone insurance and travel insurance, but also offers a standard free account. N26 informed the Commission that it is primarily used as a secondary bank account, with the estimated proportion of users using it as a primary account being 10-15%.[137]

2.75 Similar to Revolut, N26 offers two methods by which its customers can transfer money instantly. First, N26 offers its customers N26-internal transactions through a service called "MoneyBeam".[138] MoneyBeam allows N26 customers to instantly request, send and receive money from others who also hold accounts with N26, without having to enter their bank details.[139] This method of instant payments is

[134] See the CBI's notice on passporting, available at: https://www.centralbank.ie/regulation/industry-market-sectors/credit-institutions/authorisation-process/passporting.
[135] https://www.bonkers.ie/blog/banking/n26-versus-revolut-how-do-they-compare/.
[136] Wise Europe SA ("TransferWise")
[137] See page 2 of the N26 Response to Questionnaire, dated 6 September 2021, with document name "2021.09.06 N26 Response - redacted".
[138] See page 1 of the N26 Response to Questionnaire, dated 6 September 2021, with document name "2021.09.06 N26 Response - redacted"
[139] See https://n26.com/en-eu/instant-payments

similar to how an intra-bank payment is conducted and is free for all N26 customers.

2.76 Second, N26 customers can also send and receive instant payments to and from banks through SEPA Instant, so long as the bank to which the N26 account is sending and receiving money from is reachable by SEPA Instant. Receiving instant bank transfers is free for all N26 customers. Sending instant bank transfers is free for all N26 premium account holders: for standard N26 customers a €0.99 fee applies.[140]

P2B Payments in the State

2.77 P2B payments comprise of Person to Merchant ("P2M") payments, whereby a consumer makes a purchase in a physical store, and Person to eMerchant ("P2eM") payments, whereby a consumer makes an online purchase. At present digital P2B payments may only be made via one of the main card payment systems or via a digital wallet (which also relies on the main card schemes), as further detailed in the following paragraphs.

Visa Europe Limited ("Visa") and MasterCard SA ("MasterCard")

2.78 Visa and Mastercard are international card payment schemes which serve the Irish credit and debit card markets.[141] A Visa or MasterCard credit or debit card can be used to: (i) make online or in-store purchases; (ii) carry out bank transactions or withdraw cash at a branch or through an ATM; and, (iii) pay in a contactless manner (including through digital wallets such as Apple Pay). In order to execute these transactions, customers must use a personal identification number ("PIN").

[140] See https://n26.com/en-eu/instant-payments
[141] See https://www.centralbank.ie/docs/default-source/financial-system/financial-stability/payments-and-security-settlements/payment-and-securities-settlement-infrastructures.pdf?sfvrsn=4

Acquirers

2.79 A merchant or electronic merchant will partner with card schemes such as Visa or Mastercard through varying types of service agreements. When a consumer purchases goods or services from a merchant at a POS or online and pays with a VISA or a MasterCard, the merchant's POS system captures the customer's account information and securely sends it to the acquirer (i.e., the entity that manages the account of the merchant).[142] The acquirer submits a request to the issuer (i.e., the bank which issued the card to the customer) via the card payment scheme to ensure there are sufficient funds in the customer's account and then an authorisation hold is placed on the consumer's account. The card payment scheme calculates the amount for settlement and funds are exchanged between the acquirer and the issuer for the net value of the cleared transactions. The acquirer provides the merchant with funds due. The authorisation process generally takes place within seconds, while the clearing and settlement of a transaction (i.e., the transfer of funds into the merchant's payment account) may take a number of days to complete in full.[143] Examples of acquirers in the State are AIB Merchant Services, Elavon, BOI Payment Acceptance and Stripe.

Mobile Contactless Payments and Digital Wallets

2.80 Consumers can also make P2B payments using digital wallets such as ApplePay and GooglePay. ApplePay is a mobile contactless payments system and digital wallet service that Apple Inc. ("Apple") introduced in 2014.[144] A customer can add their Visa and/or MasterCard debit and/or credit cards issued by their banks to

[142] https://www.centralbank.ie/docs/default-source/statistics/data-and-analysis/payment-services/explanatory-notes.pdf?sfvrsn=4#:~:text=The%20acquirer%20is%20the%20entity%20that%20manages%20the%20account%20of%20the%20merchant.&text=In%20ATM%20transactions%2C%20the%20entity,use%20of%20third%2Dparty%20providers.&text=The%20entity%20which%20provides%20terminals,the%20ownership%20of%20the%20terminals.

[143] See https://www.centralbank.ie/docs/default-source/financial-system/financial-stability/payments-and-security-settlements/payment-and-securities-settlement-infrastructures.pdf?sfvrsn=4

[144] See https://www.apple.com/ie/apple-pay/

their digital Apple Wallet app on their Apple device. ApplePay allows a customer to make mobile contactless payments by holding their Apple device near a card reader at POS to merchants who accept ApplePay.[145] Online purchases can also be paid for with ApplePay, using any card the customer has saved to their Apple Wallet.

2.81 GooglePay is similar to ApplePay and can be used with Android devices. It allows customers to add their debit and credit cards to their GooglePay wallet and make a contactless payment.[146] Neither ApplePay nor GooglePay charge the merchant extra fees when a customer uses these digital wallets to make a purchase.[147] In the State, Apple does not charge customers fees to use ApplePay. However, banks charge the normal transaction fees and charges, depending on the bank and bank account type.[148]

2.82 It is important to note that P2B payments made through digital wallets such as ApplePay or GooglePay are not instantaneous: they are cleared in the same manner as a payment made using a debit or credit card (i.e., it takes a number of days to clear and settle the payment).

Settlement and Clearing

2.83 Once a payment (whether P2P or P2B) is made in a manner discussed above, it must be then settled and cleared. Clearing refers to the "*process of transmitting, reconciling and, in some cases, confirming transfer orders prior to settlement, potentially including the netting of orders and the establishment of final positions*

[145] See https://personalbanking.bankofireland.com/apple-pay/
[146] See https://support.google.com/pay/merchants/answer/6288970?hl=en&ref_topic=7105427
[147] See https://support.google.com/pay/merchants/answer/6288971?hl=en and https://www.apple.com/ie/apple-pay/
[148] See, for example https://www.bankofireland.com/help-centre/faq/are-there-fees-and-charges-for-apple-pay/#:~:text=In%2DStore%3A%20As%20with%20existing,(maximum%20%E2%82%AC11.43%20charge) and https://aib.ie/help-and-guidance/applepay-faqs

for settlement".[149] The process of clearing the payment (e.g., a SEPA Standard payment or a card payment) is carried out by an Automated Clearing House ("ACH") which is an "*an electronic clearing system in which payment orders are exchanged among participants (primarily via electronic media) and handled by a data-processing centre*".[150]

2.84 In 2014, the clearing and settlement of Ireland's electronic payments (credit transfers and direct debits) migrated to STEP2, a pan-European automated clearing house (PE-ACH) managed and operated by EBA Clearing, which is owned by 48 of the major banks operating in Europe.[151] STEP2 is one of the key clearing mechanisms in the SEPA area, both in terms of processing values and volumes and in terms of participating institutions.[152] The clearance of payments made through the card payments schemes (i.e., VISA and MasterCard) depend on the relationships between the individual issuer, the acquirer and the card payment scheme. Some parties settle in-house (e.g., intra-group), others settle via EBA Clearing's STEP2 and some settle via TARGET2 (see below) following processing within the card scheme's internal network.

2.85 Settlement is the "*the completion of a transaction or of processing with the aim of discharging participants' obligations through the transfer of funds*."[153] Payments made in SEPA are settled through TARGET2. TARGET2 is the real-time gross settlement owned and operated by the Eurosystem.[154] Central banks and commercial banks can submit payment orders denominated in euro to TARGET2,

[149] ECB, see https://www.europeanpaymentscouncil.eu/what-we-do/sepa-payment-scheme-management/clearing-and-settlement-mechanisms
[150] https://www.centralbank.ie/docs/default-source/financial-system/financial-stability/payments-and-security-settlements/payment-and-securities-settlement-infrastructures.pdf?sfvrsn=4
[151] AIB is one of the 48 shareholders of EBA Clearing.
[152] https://www.centralbank.ie/docs/default-source/financial-system/financial-stability/payments-and-security-settlements/payment-and-securities-settlement-infrastructures.pdf?sfvrsn=4
[153] See: https://www.europeanpaymentscouncil.eu/what-we-do/sepa-payment-scheme-management/clearing-and-settlement-mechanisms
[154] See https://www.centralbank.ie/financial-system/payments-and-securities-settlements/target-services/target2

where they are processed in real time and settled in central bank money, i.e., money held in an account with a central bank. TARGET2 settles payments related to the Eurosystem's monetary policy operations, as well as bank-to-bank and commercial transactions.[155]

[155] See https://www.centralbank.ie/financial-system/payments-and-securities-settlements/target-services/target2

3. RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

Introduction

3.1 In this section, the Commission identifies the potential product and geographic markets that are relevant for the assessment of the likely effects of the Proposed Transaction. It summarises the general principles that apply to the market definition, describes the activities of the Parties and then sets out the Commission's view of the potential relevant product and geographic markets.

3.2 When carrying out its merger review functions, the Commission focuses on the areas of overlap in the activities or the parties and part(s) of the economy most likely to be affected by the transaction under review. This involves defining relevant product and geographic markets to the extent necessary depending on the particular circumstances of a given case.

3.3 Market definition provides an analytical framework for assessing the competitive effects of a merger. The boundaries of a market do not determine the outcome of the analysis of the competitive effects of the merger, as there can be constraints on the merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints will be more significant than others.[156] The Commission takes such factors into account in its assessment of competitive effects.

3.4 The Commission has identified a number of horizontal overlaps between the business activities of the JV Parents. The Commission has also identified a vertical relationship between Synch and the JV Parents. The horizontal overlaps relate to the relationships between the downstream products and services offered to customers by Synch and the JV Parents, while the vertical overlap

[156] See paragraph 2.3 of the Guidelines for Merger Analysis adopted by the Commission on 31 October 2014 (the "Merger Guidelines").

relates to the upstream inputs required from Synch and the JV Parents in order to offer the downstream services. Horizontal and vertical overlaps are discussed in turn below.

Relevant Principles

3.5 The role of market definition is explained in the Commission's Merger Guidelines. Market definition is a conceptual framework within which relevant information can be organised for the purpose of assessing the competitive effects of a merger.[157]

3.6 According to the Commission's Merger Guidelines:

> *"The relevant product market is defined in terms of products rather than producers. It is the set of products that customers consider to be close substitutes. In identifying the relevant product market, the Commission will pay particular attention to the behaviour of customers, i.e., demand-side substitution. Supply-side substitution (i.e., the behaviour of existing and/or potential suppliers in the short term) may also be considered".*[158]

3.7 The relevant market contains the most significant alternative products or services available to the customers or consumers of the merging parties. Identifying the precise relevant market involves an element of judgement, with appropriate weight being given to factors on both the demand and supply side.[159]

3.8 The Commission's Merger Guidelines note that:

[157] Merger Guidelines, paragraph 2.1.
[158] Merger Guidelines, paragraph 2.8.
[159] Merger Guidelines, paragraph 2.2.

"Whether or not a product is a close substitute of a product supplied by one or more of the merging parties will depend on the willingness of customers to switch from one product to the other in response to a small but significant and non-transitory increase in price (or an equivalent decrease in quality). This will involve an assessment of the characteristics and functions of the products in question".[160]

3.9 The standard economic test for defining the relevant market is the small but significant non-transitory increase in price (''SSNIP'') test. The SSNIP test seeks to identify the smallest group of products and geographic areas within which a hypothetical monopolist could profitably impose a SSNIP without a sufficient number of consumers/service purchasers switching to alternative products to render the price increase non-profitable. However, the Commission notes that the SSNIP test is just one of the tools that may be used in defining the relevant product market in a given case. A substantial emphasis should also be placed on product characteristics, price and intended use as well as observed substitution patterns between various products that can potentially be included in the same product market.

3.10 It may not be possible to draw a clear line around the fields of rivalry. That being so, it may be misleading to regard as relevant to the competition analysis only those products defined as falling within the relevant market and to disregard any competitive pressure from those products defined as falling outside it. The Commission may therefore consider segmentation within the relevant market or factors outside the relevant market that impose competitive constraints on firms in the relevant market.[161]

[160] Merger Guidelines, paragraph 2.9.
[161] Merger Guidelines, paragraph 2.1.

3.11 Ultimately, the Commission's definition of the relevant market or markets depends on the specific facts, circumstances, and evidence of the merger under investigation.[162]

Horizontal Overlaps

Previous Determinations

3.12 The Commission (including its predecessor the Competition Authority) has not previously examined the potential market for the provision of mobile payments services in the State.

3.13 The European Commission has considered concentrations in relation to the provision of mobile payments services in a number of its merger decisions. In each case, the European Commission left open the question of the precise relevant product market as the relevant transaction did not raise any concerns under any possible relevant product market. A summary of the salient points from each of the European Commission's relevant merger decisions is provided in the following paragraphs.

Telefonica UK/Vodafone UK/Everything Everywhere/JV

3.14 In *Telefonica UK/Vodafone UK/Everything Everywhere/JV*[163], the joint venture parties sought to establish a new joint venture to offer various services directed at business customers in the United Kingdom, including a platform enabling the supply of offline and online transaction services, the provision and sourcing of mobile advertising platform services and the provision of data analytics services to business customers. In its decision, the European Commission noted a distinction between a market for the wholesale supply of mobile wallet

[162] Merger Guidelines, paragraph 2.6.
[163] Case COMP/M.6314 – *Telefonica UK/ Vodafone UK/ Everything Everywhere/ JV,* decision of 4 September 2012, available at: https://ec.europa.eu/competition/mergers/cases/decisions/m6314_20120904_20682_2898627_EN.pdf ("*Telefonica UK/ Vodafone UK/Everything Everywhere/JV*")

platforms and a market for the retail distribution of mobile wallet services, but ultimately left the precise definition open.

3.15 During the European Commission's phase II investigation, it assessed whether the retail market for the provision of mobile wallet services (including both offline and online mobile payments) would constitute a separate product market from existing online payment services (e.g., through credit/debit cards, PayPal, etc. via the internet on a static PC, tablet, or on a mobile handset) or from existing offline payment methods (e.g., contactless (also referred to as NFC-enabled) credit and debit cards, and traditional means of payment such as credit, debit cards and cash), and whether the retail market for the provision of mobile wallet services should be further subdivided between offline and online mobile payments.

3.16 Based on its market investigation, the European Commission found that mobile payments are likely to continue to coexist in the foreseeable future with non-mobile means of payment including contactless and non-contactless credit and debit cards. The European Commission in its decision noted that: "*Consumers will want to continue using several means of payment and suppliers of means of payment and retailers have an incentive to continue to supply and accept means of payment used by their customers. Even if these means of payments have characteristics that distinguish them from mobile payments, a certain degree of substitutability is most likely to exist, most notably between mobile payments and NFC-enabled credit and debit cards, implying that currently existing means of off-line payment may exert competitive pressure on retail suppliers of mobile payment services*".[164]

3.17 The European Commission's market investigation also highlighted the potential that online mobile payments would be different from contactless offline mobile

[164] *Ibid*, paragraph 135.

payments from a user experience perspective. The decision notes that "*A majority of respondents did not consider them to be interchangeable for consumers, at least not at present. The main differentiating factors were: limited 3G coverage, different user experience, security conditions, infrastructure requirements and functionalities*".[165] The European Commission considered that online and offline mobile payments were not likely to be a part of the same relevant product market at least at the time of making its decision on the merger, but noted that the evolution in the short to medium term was not entirely clear and for the purposes of the merger in question left the product market open.

Telefonica/Caixabank/Banco Santander/JV

3.18 In *Telefonica/Caixabank/Banco Santander/JV*[166], the European Commission considered a joint venture which was established to provide digital advertising services, ancillary analytics services to merchants, and digital wallet services to consumers. The digital wallet would include a repository of payment methods, an identification system, and ancillary P2P payment services to consumers. These P2P payments would require a virtual prepaid card issued by a financial institution (stored value account) to be inserted into the wallet.

3.19 In its decision, the European Commission considered that the retail distribution of digital wallet services allowing consumers to upload their payment card details into a digital wallet and use their mobile handset, tablet, laptop or static PC to access their digital wallet and carry out financial transactions, can be distinguished as a separate market or, at least, as a separate segment, from other existing (online and offline) means of payments.[167]

[165] *Ibid*, paragraph 136.
[166] Case COMP/M.6956 – *Telefonica/Caixabank/Banco Santander/JV,* decision of 14 August 2013, available at: https://ec.europa.eu/competition/mergers/cases/decisions/m6956_235_2.pdf ("*Telefonica/Caixabank/Banco Santander/JV*").
[167] *Ibid*, paragraph 34.

3.20 Regarding a potential sub-segmentation for the provision of P2P payment services to consumers, the European Commission's market investigation indicated that, from a demand-side perspective, P2P payments services through a digital wallet were interchangeable with traditional online banking or off-line transactions. The European Commission stated in its decision: "*In particular, the market investigation provided indications that in Spain there are already a number of mobile/online P2P payment applications which are offered to consumers to carry out transactions with end-users, and which are substitutable with traditional online payments, such as money transfers, or direct debit*." Ultimately, the European Commission left the precise definition of the product market open and assessed the transaction with respect to the retail provision of digital wallet services.

3.21 The European Commission noted a number of other players who offered or intended to start offering credible alternative digital wallet services in Spain including multinational players (PayPal, Google, Apple, Amazon, Facebook), global card scheme brands (Visa – V.me account), Mastercard (MasterPass wallet) and American Express (Serve), as well as local startups.

BNP Paribas Fortis/Belgacom/Belgian Mobile Wallet

3.22 In *BNP Paribas Fortis/Belgacom/Belgian Mobile Wallet*[168], the European Commission considered a joint venture set up by a financial group and telecommunications operator which would be a mobile wallet solution for smartphones (the "Bm wallet"). Within the Bm wallet there would be one or several retail payment wallets (e.g., wallets operated by financial institutions, PayPal, etc.) which would give access to payment cards stored within each

[168] Case COMP/M.6967 – *BNP Paribas Fortis/ Belgacom/ Belgian Mobile Wallet*, decision of 11 October 2013, available at: https://ec.europa.eu/competition/mergers/cases/decisions/m6967_20131011_20310_3325609_EN.pdf ("*BNP Paribas Fortis/Belgacom/Belgian Mobile Wallet*")

payment wallet and consumers could transact mobile payments through the payment wallets. The Bm wallet does not enable mobile payments in itself, but rather the Bm wallet is linked with a consumer's retail payment wallet(s).

3.23 In its decision, the European Commission noted that it is difficult to define the exact scope of the rapidly evolving payment landscape with new innovative technologies and platforms being developed all the time. The European Commission's market investigation revealed no consensus among respondents (including financial institutions, card schemes, mobile network operators, or competing mobile wallet providers) regarding the definition of the relevant product markets. Specifically, the European Commission's market investigation enquired about the distinction between mobile payments versus existing online payments, mobile payments versus existing offline payments, offline versus online mobile wallet services, and mobile wallets versus payment wallets. Ultimately the Commission left the question of the precise relevant market for the retail distribution of mobile wallet services open.

Bite/Tele2/Telia Lietuva/JV

3.24 In *Bite/Tele2/Telia Lietuva/JV*[169], the European Commission considered a joint venture set up by three mobile network operators to provide mobile payments services in Lithuania. The joint venture would operate as an electronic money institution and payment services provider, subject to regulatory supervision by the Bank of Lithuania. The joint venture would operate a new mobile payments ecosystem which would allow consumers (mobile telephony subscribers of the notifying parties) and merchants (who enter into an agreement with the joint venture company) to carry out and receive mobile payments both within the joint venture's ecosystem and to and from accounts held at other PSPs.

[169] Case M.8251 – *Bite/TELE2/ Telia Lietuva/ JV,* decision of 19 July 2017, available at: https://ec.europa.eu/competition/mergers/cases/decisions/m8251_296_3.pdf ("*Bite/TELE2/Telia Lietuva/ JV*")

3.25 One of the product markets examined by the European Commission was the retail provision of mobile payments services. For the purposes of its decision, the European Commission left the exact product market definition open, but undertook the assessment of the effects of the transaction in the possible product markets for the retail provision of: (i) mobile payments services overall;[170] (ii) proximity/offline mobile payments;[171] and, (iii) remote/online mobile payments[172] (whether or not including payment intermediation services[173]).

3.26 The European Commission noted that the markets for the provision of mobile payments services in Lithuania are still nascent and by introducing a new player into the market, competition in the market will increase, especially given evidence that absent the transaction the notifying parties would not have made the investments to enter the market unilaterally. However, the European Commission investigated whether the notifying parties could have the ability and/or incentive to foreclose rival mobile payments providers as the transaction gives rise to a series of non-horizontally affected markets due to the notifying parties' market positions. The European Commission ultimately found that the notifying parties would not have the ability and incentive to foreclose competing providers because the parties don't have the ability to technically or commercially foreclose the use of alternative mobile payments services, they cannot pre-install the joint venture's app on mobile devices they sell, and even if they were to have the ability and incentive, this foreclosure is unlikely to have an overall negative impact on competition in the market because a significant share of smartphones are sold by retailers independent of the notifying parties.

[170] This encompasses all payments for which the payment data and instructions are initiated, transmitted or confirmed via a mobile phone.
[171] That is, payments that are made when the payer and the payee are in the same location.
[172] That is, payments that are made when the payer and the payee are not in the same location.
[173] Payment intermediation services allow customers to pay bus or parking tickets by sending an SMS that is then reflected in the customer's mobile invoice.

3.27 The European Commission took the view that the transaction was unlikely to give rise to coordinated behaviour by the notifying parties as there was a confidentiality agreement in place, and the activities of the joint venture were expected to be relatively limited in terms of value compared to their respective activities in their core markets and therefore their incentive to coordinate competitive behaviour was low.

CVC/Blackstone/Paysafe

3.28 In *CVC/Blackstone/Paysafe*[174], the European Commission considered the joint purchase of Paysafe by CVC and Blackstone. Paysafe is a global provider of end-to-end payment solutions and its products and services are used by consumers and businesses to connect and transact through payment processing, digital wallets, and online payment solutions, geared towards mobile initiated transactions, real-time analytics, and the convergence between bricks-and-mortar and online payments. When considering the product market definition for mobile payments, the European Commission noted that in its previous decisions (referring to *BNP Paribas Fortis/Belgacom/Belgian Mobile Wallet* discussed above) it had left open the question of whether mobile payments are in a separate product market from online payment methods (e.g., via the internet) and/or offline payment systems at the point of sale. The European Commission's decision also notes that in previous cases it has also left open the issue of whether there are distinct narrower product markets for digital wallets and/or prepaid products. Ultimately in *CVC/Blackstone/Paysafe*, the European Commission found no reason to deviate from its previous decisions and left the question of the precise relevant product market open as the transaction did not

[174] Case M.8640 – *CVC/Blackstone/Paysafe*, decision of 21 November 2017, available at: https://ec.europa.eu/competition/mergers/cases/decisions/m8640_106_3.pdf ("*CVC/Blackstone/Paysafe*")

raise any competition concerns in the market for the provision of online payment services under any of the possible market definitions.

Google/Fitbit

3.29 In *Google/Fitbit,*[175] the European Commission considered the acquisition by Google of sole control of Fitbit. The European Commission reviewed the market for mobile payment services as both parties supply mobile payment apps. Google's Google Pay is a digital wallet app that enables both online and offline payment methods on mobile devices and wearable devices and some of Fitbit's wearable (including fitness trackers and smartwatches) devices offer the ability to perform in-store contactless payments. The European Commission reviewed its precedents as follows:

> *"In previous cases, the Commission has found that there are likely separate markets in the retail payments space – concerning payment transactions where at least one party to the transaction is not a financial institution – for (i) online payments (for example, through credit cards, debit cards, and PayPal via an internet browser irrespective of the device used), (ii) offline payments (for example, NFC-enabled credit and debit cards, and traditional means of payment such as credit and debit cards and cash), and (iii) mobile payments.[[176]] The Commission defined mobile payment services as retail payments for which the payment data and instructions are initiated, transmitted or confirmed via a smart mobile device.[[177]] The Commission has also considered to further differentiate mobile payment services based on the location of the payee and the payer between: (i)*

[175] Case M.9660 – *Google/Fitbit,* decision of 17 December 2020, available at https://ec.europa.eu/competition/mergers/cases1/202120/m9660_3314_3.pdf ("*Google/Fitbit*")
[176] Commission decision of 4 September 2012 in case M.6314 – Telefónica UK/Vodafone UK/Everything Everywhere/JV, recitals 124 et seq; Commission decision of 19 July 2017 in case M.8251 – Bite/Tele2/Telia Lietuva/JV, paragraphs 19 et seq.; Commission decision of 21 November 2017 in case M.8640 – CVC/Blackstone/Paysafe, paragraph 19.
[177] Commission decision of 19 July 2017 in case M.8251 – Bite/Tele2/Telia Lietuva/JV, paragraph 20

proximity/offline mobile payments when the payer and the payee are in the same location, and (ii) remote/online payments when that is not the case.[[178]] Ultimately, the Commission has left the exact market definition open pointing to the ongoing developing of technologies and consumer preferences."[179]

3.30 In *Google/Fitbit,* the European Commission considered whether payment services on wearable devices are part of the overall market for mobile payments services. For the purpose of assessing the transaction, the European Commission considered that the relevant product market was the market for the retail provision of mobile payments services. However, the European Commission ultimately left open the question of whether the retail provision of mobile payments services should be further segmented: (i) between proximity/offline mobile payments and remote/online mobile payments (including or not payment intermediation services); (ii) based on the platform used (smart mobile and wrist worn wearable devices); as well as (iii) based on the operating system used, as it would not affect the outcome of the competitive assessment in that case.

Views of the Parties

3.31 In the Merger Notification Form, the Parties expressed the view that there is no significant horizontal overlap between the products and services offered by each of the JV Parents and the product and service proposed to be provided by Synch:

"Whilst each of AIB, BOI, PTSB and KBC provide payment services to their own respective customers, and each have their own respective mobile applications for their own respective customers, none of AIB, BOI, PTSB or KBC currently provide mobile instant and frictionless payment services to

[178] Commission decision of 19 July 2017 in case M.8251 – Bite/Tele2/Telia Lietuva/JV, paragraphs 20 and 28.
[179] See para 195 of *Google/Fitbit*

their respective customers in Ireland (including instantaneously making and receiving payments with the payments being immediately credited to the customer's account and to which they have access to without a time delay through the clearing system)."[180]

3.32 The Parties also expressed the following view in the Merger Notification Form:

"In the present case, the Parties are of the view that the [Commission] *does not need to come to a definitive view on the precise relevant product market in relation to the Proposed Transaction because:*

in the absence of any meaningful horizontal or vertical overlaps;

given that it is intended that the Synch Mobile Payments Service will be a new open eco-system available to all financial institutions (including consortia of smaller financial institutions) that issue Euro denominated IBANs to Irish customers that satisfy the standard Participant Eligibility requirements; and

Synch intends to provide access to mobile instant and frictionless payment services to as many customers of such financial institutions as possible across Ireland,

the [Commission]*'s conclusion on the competitive impact of the Proposed Transaction will be unaffected regardless of how the market is defined".*[181]

[180] Since the date of the Merger Notification Form, AIB, BOI and Ulster Bank have each now independently launched a service whereby customers can make a mobile instant payment to a contact's phone number, but only for intrabank transfers. See paragraph 2.64 above for more information.

[181] Merger Notification Form para 5.1.2 [MD5 Hash: 01bf65b52e4db378a6e5b1c5dbd16ab1]

3.33 The Parties did not express any views in relation to the potential market for the provision of the wide range of banking products and services in the State currently offered by the JV Parents.

3.34 With respect to the relevant geographic market, the Parties state the following in the Merger Notification Form: "*the Parties are of the view that, while from a geographical perspective the market could be potentially EU-wide that would be un-realistic without substantial investment and co-operation building eco-system partners and therefore the product and geographic market is the market for mobile payment services in Ireland*."

Views of the Commission

<u>Potential market for the provision of banking products and services (including current accounts)</u>

3.35 The Commission's view is that there is a horizontal overlap between the JV Parents in the provision of a wide range of banking products and services in the State, including (but not limited to) mortgages, loans, deposit account and current accounts (personal, SME and corporate).

3.36 The Commission has considered whether to define individual narrow product markets or a broader product market which encompasses all the banking products and services which are provided by the JV Parents in the State. The Commission's view is that it is appropriate to consider the likely competitive impact of the Proposed Transaction in the potential broad market for the provision of banking products and services in which the JV Parents overlap horizontally, which includes the provision of current account services to personal, SME and corporate customers.[182] In this instance, it is not necessary

[182] This approach is consistent with the European Commission's approach in Case COMP/M.8414 – DNB/Nordea/Luminor Group, decision of 14 September 2017, available at:

for the Commission to define the precise relevant product market since its conclusion on the likely competitive impact of the Proposed Transaction will be unaffected whether the relevant product market is defined narrowly (i.e., the provision of current account services to personal, SME and corporate customers) or broadly to encompass the provision of banking products and services (including current accounts). For the purposes of assessing whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has analysed the likely competitive impact of the Proposed Transaction in the potential product market for the provision of banking products and services (including current accounts).

<u>Potential market for the provision of payment services</u>

3.37 With regard to payment services, there is a horizontal overlap between some of the JV Parents in the provision of mobile payments services in the State.[183] Accordingly, following implementation of the Proposed Transaction, there will be a horizontal overlap between some of the JV Parents and Synch in the provision of mobile payments services in the State. The horizontal overlap would be between the JV parents' provision of mobile payments services to their own customers (i.e., intrabank) and Synch's provision of mobile payments services to customers seeking to make an intrabank transaction.

3.38 The Commission notes that, in order to avail of services provided by Synch, a consumer must also separately have a current account with one of the Participating PSPs. The requirement for each customer of Synch to have a

https://ec.europa.eu/competition/mergers/cases/decisions/m8414_977_3.pdf. In that case, the European Commission left open whether individual retail banking products represent separate relevant product markets or whether several retail banking products may form part of a single relevant product market.

[183] While none of the JV Parents currently provide instant interbank payments services in the State, each of AIB and BOI currently provides mobile instant intrabank payments services in the State through their own individual banking apps.

current account with a Participating PSP creates a vertical relationship between Synch and the Participating PSPs, and this is discussed further below.

3.39 The Parties stated in the Merger Notification Form that the service that Synch proposes to provide to consumers is a mobile payments service which allows for P2B and interbank P2P mobile payments to be made instantly by linking mobile phone numbers to IBANs (referred to for the purposes of this determination collectively as a "Mobile Instant Payments Service").[184] The Commission has taken this as its starting point for the process of defining the relevant product market. The Commission has considered whether the relevant product market, by reference to this starting point, should be:

- Defined more widely, to include all mobile payments services (i.e., not only Mobile Instant Payments Services) or even all payments services, or

- Defined more narrowly, for example by differentiating between P2P Mobile Instant Payments Services and P2B Mobile Instant Payments Services.

Should the relevant product market be defined more widely than Mobile Instant Payments Services?

3.40 The Mobile Instant Payments Service which is the focus of the Proposed Transaction will be a new payments service offering in the State. The Commission notes that in the majority of cases cited above, the European Commission considered various possible product market definitions relating to possible distinctions between mobile payments, mobile wallets, online payments by

[184] The Commission notes that this market definition excludes intrabank mobile payment services such as Revolut, AIB's *Pay a Contact*, BOI's *Pay to Mobile* and mobile wallet services such as GooglePay and ApplePay. These services are included where the Commission refers to mobile payment services which have been defined by the European Commission as retail payments for which the payment data and instructions are initiated, transmitted or confirmed via a smart mobile device (see footnote 180).

various means, and broader payment services. In all the cases cited above, the European Commission left the question of the precise relevant product market definition open.

3.41 The Commission's view is that, in line with the European Commission cases outlined above, there are functional differences between different types of payment services that are likely to affect the choices that consumers make, and the extent to which different payment services are likely to be seen as substitutes. The Commission notes that many consumers already have access to several payment services and use them for different purposes. Merchants also have the incentive to supply and accept different means of payment used by customers. However, these payment services may be complements rather than substitutes.

Should the relevant product market be defined more narrowly than Mobile Instant Payments Services?

3.42 The Commission has also considered whether the relevant potential product market should be defined more narrowly, in particular whether the following would be regarded as separate potential product markets: (i) the provision of P2P Mobile Instant Payments Services, and, (ii) the provision of P2B Mobile Instant Payments Services.

3.43 The Commission's view is that, from a demand-side perspective, Mobile Instant Payments Services and alternative payments services (such as, for example, a debit or credit card, a credit transfer, or an intrabank P2P mobile payment service) are not functional substitutes. While a customer can find alternative ways to make a payment, the characteristics of the alternatives are such that a customer of a Mobile Instant Payments Service wishing to make an interbank P2P mobile instant payment is unlikely to be able to substitute to an alternative payments service offering the same functionality.

3.44 The Commission's view is that an intrabank P2P mobile payment service (also sometimes referred to as a closed loop payment service offered by a single PSP in which both the payer and the payee must maintain a current account with that PSP to transact) does not provide a customer with the ability to make a P2P mobile instant payment to a payee who has a current account with a different PSP (even if both PSPs have implemented SEPA Instant).[185] The Commission considers that while providers of intrabank P2P mobile payment services may exercise a competitive constraint on the Synch Mobile Payment Service, they are unable to provide the same "*frictionless*" Mobile Instant Payment Service and are therefore not operating in the same potential market as the Synch Mobile Payments Service. This view is consistent with the view of the Parties outlined above which distinguishes between the current P2P offerings of the JV Parents and the Synch Mobile Payments Service.

3.45 The Commission also notes that Mobile Instant Payments Services have developed in a number of EU Member States in parallel to intrabank P2P mobile payment services (see paragraphs 2.31 to 2.55 above for a detailed discussion). For example, in Denmark 90% of smartphones have the MobilePay app (a comparator Mobile Instant Payment Service discussed at paragraphs 2.37 to 2.39) installed and it has over 6.2 million users. However, the Commission understands that MobilePay operates in parallel to other banking apps, suggesting that the two services may serve different purposes.

3.46 For these reasons, the Commission's view is that for P2P payments, the relevant product market is unlikely to be wider than P2P Mobile Instant Payments Services. The Commission considers that this potential product market definition is consistent with that proposed by the Parties in this respect.

[185] The economic benefit to a PSP of being a Participating PSP in a Mobile Instant Interbank Payments Service can be described as a "network effect" where the value of a network connection for a user depends on the number of other users already connected. This is discussed in detail in paragraph 5.91 and footnote 187 below.

3.47 However, a customer of a Mobile Instant Payments Service wishing to make a P2B mobile instant payment (both online and offline) may regard alternative non-instant mobile payment methods such as a digital wallet (e.g., Google Pay, Apple Pay) to be a substitute. This is because, for a customer wishing to make a P2B mobile instant payment, the use of an alternative such as a digital wallet would offer the same functionality as a Mobile Instant Payments Service. This is not the case for P2P payments, where the functionality of alternative payment methods differs. For this reason, the Commission's view is that for P2B payments, the relevant product market is likely to be wider than P2B Mobile Instant Payments Services and should include other mobile payments services.

3.48 For these reasons, the Commission's view is that there may be two potential downstream product markets impacted by the Proposed Transaction: (i) the provision of P2P Mobile Instant Payments Services; and, (ii) the provision of P2B mobile payments services.

Geographic market

3.49 The Commission's view is that the markets for the provision of P2P Mobile Instant Payments Services and the provision of P2B mobile payments services are national in scope. The Commission has seen no evidence to suggest that a finding of narrower, subnational markets would be warranted.

3.50 Given differences in competitive conditions between jurisdictions and the lack of a definitive Europe-wide mobile payments service proposition, the Commission agrees with the Parties that, while the markets could potentially be wider than the State, this would involve significant investment and coordination. The Commission has formed the view that a finding of a wider cross-border or supranational geographic market would not be appropriate.

Vertical Relationship

Previous Determinations

3.51 In order to provide a Mobile Instant Payments Service to consumers, a service provider (whether a PSP or a merchant) would need to acquire the upstream inputs required to offer such services. The Commission has not previously examined a potential market upstream from the provision of Mobile Instant Payments Service. Furthermore, the Commission is not aware of any relevant decisions of the European Commission pertaining to this potential relevant market.

Views of the Parties

3.52 According to the Parties:

> *"Subject to Synch commencing the Synch Mobile Payments Service, each of AIB, BOI, PTSB and KBC will, just like any other financial institution wishing to avail of the Synch Mobile Payments Service, first have to enter into the standard Synch Licence Agreement providing for the provision of the Synch Mobile Payments Service to it."*[186]

Views of the Commission

3.53 Following implementation of the Proposed Transaction, there will be a vertical relationship between Synch and the JV Parents in relation to the supply of access to the upstream inputs required to offer Mobile Instant Payments Services in the State. Access to a facility for providing interbank connectivity is a key input for potential providers of Mobile Instant Payments Services in the State.[187] The

[186] Merger Notification Form para 4.2.1 [MD5 Hash: 01bf65b52e4db378a6e5b1c5dbd16ab1]

[187] The economic benefit of being a participant in the Synch Mobile Payments Service can be thought of as a "network effect" where the value of a network connection for a user depends on the number of other users already connected. In the case of the Synch Mobile Payments Service, a participating PSP is likely to receive significant economic benefits because the vast

Commission has also considered the vertical relationship between Synch and the JV Parents resulting from the need for all customers of Synch to hold a current account.

3.54 Dealing first of all with access to the upstream inputs, the Commission understands that the Synch Mobile Payments Service comprises the following technical components:

> *"a proxy database that contains cross references for mobile numbers / IBANs and retailer QR codes / IBANs;*
>
> *an App capable of initiating a QR business payment and initiating a contact lookup payment; and*
>
> *a set of APIs for banks and acquirers to lookup the proxy database and facilitate payments between banks and acquirers".*[188]

3.55 According to Synch, in addition to the technical components listed above, the Synch Mobile Payments Service also includes the following non-technical components:

> *"a common brand […] so all payees and payers know where they can make such payments – fundamental to any eco-system;*

majority of current account holders in the State will be reachable by a participant's customers due to the very high combined market share of the JV Parents in the provision of current account services in the State. Network effects have the potential to enhance the market position of the largest players in a market. In theory, this can raise entry barriers or lead to a vicious circle where large firms become larger, and smaller firms find it difficult to compete effectively. This could result in a market reaching an equilibrium where everyone joins only one of the networks (sometimes referred to as market 'tipping') and only one firm, with monopoly profits, is left.

[188] As described by Synch in the December Submission to the Commission dated 15 December 2021 [MD5 Hash: 7588a8588a1dfd48eaab909011cc5a6d]

the service rules for licencing to join the eco-system, including management of proxy data and obligations of all participants in the eco-system; and

the recruitment and licencing of participants to get on board (and prove) the eco-system".

3.56 The Commission's understanding is that enrolment into the Synch proxy database is initiated by the relevant Participating PSP, which can enrol eligible customers.[189] Synch then completes its activation processes with the customer. Finally, once all Synch authorisation steps are successfully completed, the customer is presented with a list of their eligible payment account(s) enrolled by their Participating PSP. To enable their customers to make P2P mobile instant payments to the customers of the other Participating PSPs (i.e., an interbank P2P mobile instant payment) whose details are contained in the proxy database, all Participating PSPs will require access to the Synch Mobile Payments Service.

3.57 As noted by the Parties in the December Submission, "*The Synch Mobile Payments Service is the 'glue' that links customers of different PSP's through a smartphone App and allows payments be completed using mobile phone numbers and account numbers*."[190] The Commission's understanding is that the Synch Mobile Payments Service is an upstream service which links the customers of different Participating PSPs and facilitates interbank P2P mobile instant payments (as well as P2B mobile instant payments).

3.58 The Commission's view is that, for PSPs seeking to provide Mobile Instant Payments Services in the State, developing and implementing their own intrabank

[189] According to paragraph 1.1.35 of the Merger Notification Form, an eligible customer *"…must have an active eligible payment account and they must not have opted out of the Synch Mobile Payments Service"* [MD5 Hash: 01bf65b52e4db378a6e5b1c5dbd16ab1]

[190] See the December Submission dated 15 December 2021 [MD5 Hash: 7588a8588a1dfd48eaab909011cc5a6d]

mobile payments service is not a substitute for access to the upstream inputs required to offer Mobile Instant Payments Services.[191] This is because the economic benefits to a PSP of being a participant in an upstream service that offers the ability to offer customers the facility to make interbank P2P mobile instant payments cannot be replicated by developing and implementing a single intrabank mobile payments service in the State. Although some of the main banks (e.g., AIB's Pay a Contact, BOI's Pay to Mobile) in the State, as well as challengers such as Revolut, have developed an intrabank P2P mobile payments service, the Commission notes that an *inter*bank service cannot be provided unilaterally – by its nature an interbank service requires a network of Participating PSPs so that consumers are able to make payments to consumers who hold an account with a different PSP.

3.59 The second issue explored by the Commission in considering the vertical relationship between Synch and the JV Parents is the relationship between the Synch service and current accounts. Since the JV Parents have a very high combined share in the provision of current account services in the State (approximately 81-83%),[192] and all users of Synch must have a current account with a Synch Participating PSP, the Synch Mobile Payments Service's proxy database has the potential to include the vast majority of current account holders in the State. In the Commission's view, this constitutes a very close vertical relationship between, on the one hand, the JV Parents which "own" the current accounts held by all consumers who register for Synch, and, on the other hand, Synch in its offering of Mobile Instant Payments Services to consumers.

[191] An intrabank Mobile Instant Payments Service refers to a mobile payments service offered by a single central PSP in which both the payer and the payee must maintain an account with that PSP to transact.

[192] Each of BOI, PTSB and AIB's market share in the provision of current accounts in the State is likely to rise with the anticipated exit of KBC and Ulster Bank from the market. Figures estimated by BOI and AIB in response to their respective Phase 1 RFIs. BOI's RFI response can be found at the following MD5 Hash: 66a2834adddb27d6d075367285b6ca5a , and AIB RFI Response can be found at the following MD5 Hash: 7adec49aa7d9430301a5921517d35b65

3.60 As discussed in paragraph 3.36 above, the Commission's view is that there is a separate related potential product market for the provision of banking products and services (including current accounts). As each user of Synch will also be required to have a current account with a Participating PSP, the potential product market for the provision of banking products and services (including current accounts) in the State is related to the markets for: (i) the provision of P2P Mobile Instant Payments Services in the State; and (ii) the provision of P2B mobile payments services in the State.

3.61 For these reasons, the Commission's view is that there is an upstream market impacted by the Proposed Transaction which is the potential market for the upstream inputs as described in paragraphs 3.543.56 required to offer Mobile Instant Payments Services in the State. There is a separate market for the provision of banking products and services.

Geographic market

3.62 The Commission's view is that the markets for the upstream inputs required to offer Mobile Instant Payments Services and for the provision of banking products and services are national in scope. The Commission has seen no evidence to suggest that a finding of narrower, subnational markets would be warranted.

3.63 Given differences in competitive conditions between jurisdictions, the Commission has formed the view that a finding of a wider cross-border market would not be appropriate.

Overall conclusion on relevant product and geographic markets

3.64 Having regard to the evidence available to it, the Commission considers that there are four relevant potential markets to be considered when assessing the likely competitive effects of the Proposed Transaction. These are:

i. the provision of banking products and services (including current account services to personal, SME and corporate customers) in the State;
ii. the provision of P2P Mobile Instant Payments Services in the State;
iii. the provision of P2B mobile payments services in the State; and,
iv. the upstream inputs required to offer Mobile Instant Payments Services in the State.

4. RELEVANT COUNTERFACTUAL

4.1 The SLC test in section 22(3) of the Act requires an assessment of the effects of a merger or acquisition on the state of competition in a relevant market. In assessing the likely effects of a merger on competition, the Commission, as in the present case, typically compares the situation that may be expected to arise following the merger with that which would have prevailed without the merger. The market situation without the merger is often referred to as the "counterfactual".

4.2 The Commission's Merger Guidelines state that:

"The term 'counterfactual' refers to the state of competition without the merger or acquisition. In other words the "actual" situation is the merger being put into effect and the "counterfactual" is the situation in the absence of the merger being put into effect. The counterfactual provides the reference point, or the point of comparison, for assessing competitive effects arising from a merger".[193]

4.3 In other words, a counterfactual is a hypothesis as regards the facts by reference to which an alleged effect on competition is to be tested. It involves considering what would have happened if the proposed merger had not taken place.

4.4 Paragraph 1.15 of the Commission's Merger Guidelines states the following:

"the Commission will expect the merging parties to substantiate any counterfactual they propose with objective evidence supported, where necessary, by independent expert analysis. Such evidence and analysis should obviously be consistent with the parties' own internal pre-merger assessments of the likely counterfactual."

[193] See paragraph 1.12 of the Commission's Merger Guidelines.

4.5 Inevitably there is a degree of uncertainty as regards hypothetical future events, and the Commission will consider all the evidence adduced by the parties in the context of an assessment as to whether there is likely to be an SLC in the future. The Commission must ultimately ask itself whether it is satisfied on the balance of probabilities that there will be an SLC caused by the merger. The Commission is, however, not under an obligation to make findings of fact (whether on a balance of probabilities or otherwise) in respect of each item of evidence. Nor is it obliged to find that any particular potential event is more likely than not to occur before it can take it into account in its overall assessment of the probability of SLC.

4.6 Following its adoption of a relevant counterfactual, the Commission's competitive assessment then asks whether the putting into effect of the merger or acquisition, when compared against the relevant counterfactual will lead to a SLC.

Views of the Parties

4.7 During the course of the Commission's review of the Proposed Transaction, the Parties have expressed a number of views in relation to the relevant counterfactual. The Parties' views of the counterfactual evolved over the time of the review.

4.8 In the Merger Notification Form submitted to the Commission dated 8 April 2021, the Parties expressed the following view in relation to "*what would the market look like if the proposed transaction did not proceed*":

> *"Customers of financial institutions in Ireland would continue to fall behind relative to instant payment schemes and digital payment schemes that consumers in other EU member states can currently access with a related adverse impact on such consumers being able to benefit from any future EPI [European Payments Initiative] … Irish consumers would be denied an ubiquitous instant mobile payments experience … Ireland is one of the EU*

7 member [States] [sic] identified as falling behind in achieving instant payments; and Synch intends to include a deadline date for participants to support SEPA Instant Credit Transfer. This is in advance of the EU or the Central Bank of Ireland taking a regulatory position to push EU member states to SEPA Instant."[194]

4.9 In the Synch Phase 1 RFI Response dated 3 September 2021 to the Commission's RFI dated 19 May 2021 (the "Synch Phase 1 RFI Response of 3 September 2021"), Synch provided the following view on the relevant counterfactual to the Proposed Transaction in relation to P2P Mobile Instant Payments Services:

> *"The absence of Synch may mean that the status quo continues, and that instant payments capability is not available to Irish consumers in the short to medium term, thereby ensuring that Irish consumers [sic] continue to lag behind their European counterparts."*[195]

4.10 In the Synch Phase 1 RFI Response dated 3 September 2021, Synch also provided the following view on the relevant counterfactual to the Proposed Transaction in relation to P2B instant payments:

> *"In the absence of Synch, the restrictive market condition (whereby mobile initiated transactions are restricted to the phone operating system provider and the two card schemes) will remain and the consumer is denied additional choice and flexibility, whereas the Synch mobile payments solution can be utilised on any device and the customer only requires a current account."*[196]

[194] Merger Notification Form paragraph 5.2.3 [MD5 Hash: 01bf65b52e4db378a6e5b1c5dbd16ab1]
[195] See the Synch Phase 1 RFI Response at Question 17 [MD5 Hash: 4237b2e5c693fa36507aa913e2b21e0d] .
[196] Ibid.

4.11 By the time of the December Submission, the Parties considered that, rather than the counterfactual being that no mobile payments would be available in the State, there may be some adoption of some features of mobile payments by some providers. In the December Submission, the Parties provided the following view on the relevant counterfactual to the Proposed Transaction:

> *"The more likely counterfactual (absent the Proposed Transaction being put into effect), therefore, is one which includes: a) the larger financial institutions operating in Ireland, and who can afford to do so, likely adopting SEPA Instant over time at a slow / staggered pace (and subject to other priorities within the relevant financial institution from time to time); b) smaller financial institutions operating in Ireland likely finding the cost and technical infrastructure required for SEPA Instant to be prohibitive; c) smaller financial institutions operating in Ireland losing the indirect benefit of the capital invested in Synch so as to be able to provide a Mobile Payments Service that is available to all eligible financial institutions operating in Ireland at the same licence fee; and including technical support by Synch to facilitate such financial institutions becoming participants in Synch and availing of a SEPA Instant like service; and d) smaller financial institutions in Ireland not being able to offer an instant payment like service in medium term, disadvantaging their customers and potentially putting them at a competitive disadvantage."*[197]

4.12 In its Written Response to the Commission's Assessment, Synch did not put forward an alternative counterfactual, but expressed a number of points in relation to the Commission's view of the most likely counterfactual absent the Proposed Transaction. In Synch's view, the Commission should have provided more detail regarding the timelines associated with the Commission's

[197] See the December Submission dated 15 December 2021 [MD5 Hash: 7588a8588a1dfd48eaab909011cc5a6d]]

counterfactual. Synch also noted the existence of Mobile Instant Payments Services in other jurisdictions, and suggested that these systems could form the basis for a counterfactual.

Views of Third Parties

4.13 In its response to a questionnaire dated 22 October 2021 Starling Bank provided the following view to the Commission on the relevant counterfactual to the Proposed Transaction:

> "*Should the proposed transaction not be put into effect, it will allow for digital providers, such as Starling International, Revolut, N26 and other European PSPs, who are participating or intending to participate in SEPA Inst to promote their product and offer a SEPA wide instant payment solution and compete on an equal footing.*"[198]

4.14 In its response to a questionnaire dated 3 September 2021 An Post provided the following view to the Commission on the relevant counterfactual to the Proposed Transaction:

> "*In the absence of the ECB mandating SEPA INST for all European payment service providers, Irish consumers and businesses have limited options to make instant payments and as such are at a disadvantage to consumers in other European countries whose payment service providers have voluntarily adopted SEPA INST.*"[199]

Views of the Commission

4.15 Based on the submissions of the Parties, third parties, the Commission's market enquiries and the Commission's own analysis, the Commission has considered first

[198] See Starling Bank's 's response dated 22 October 2021, with the document name "2021.10.22 Starling response".
[199] See An Post's 's response dated 3 September 2021, with document name "CCPC Synch Merger An Post Un-redacted 003092021".

of all whether the prevailing conditions of competition should be adopted as the relevant counterfactual. Secondly, the Commission has considered whether an alternative counterfactual scenario could arise in the absence of the Proposed Transaction in the potential markets for the provision of:

(i) banking products and services (including current account services) in the State;

(ii) P2P Mobile Instant Payments Services in the State;

(iii) P2B mobile payments services in the State; and,

(iv) the upstream inputs required to offer Mobile Instant Payments Services in the State.

4.16 The first counterfactual scenario considered by the Commission is the status quo which would prevail in the absence of the Proposed Transaction, whereby no new Mobile Instant Payments Service is established in the State. This corresponds to the initial views of the counterfactual proposed by the Parties. The Commission's Merger Guidelines state that "*Usually the situation prior to the merger or acquisition will be the relevant counterfactual*." However, the Commission considers this counterfactual is highly unlikely to prevail for a number of reasons.

4.17 First, the Commission notes the increasing demand for mobile payments services in the State (see paragraph 2.582.56 in Section 2 above for a discussion of this point).

4.18 Second, the Commission considers that there is sufficient pressure on the JV Parents from challenger PSPs in the provision of mobile payments services in the State to ensure that one or more of the JV Parents would be incentivised to develop or participate in a mobile payments service. Indeed, internal documentation provided by the JV Parents indicates that a primary motivation for entering into the Proposed Transaction is to counter the growing competitive threat of challenger PSPs such as Revolut in the provision of mobile payments services in the State (see paragraphs 2.66 to 2.72 in Section 2 above).

4.19 As noted at paragraph 2.71, Revolut already offers its European Union customers the ability to transfer funds from their Revolut account through SEPA Instant, although only to PSPs which also participate in SEPA Instant. The Commission considers that this functionality may become more attractive to consumers in the State once one or more of the JV Parents adopt SEPA Instant and so has the potential to further enhance the competitive threat of Revolut. For example, an internal e-mail dated 9 September 2020 provided by BOI to the Commission contains the following statement regarding the financial case for the Proposed Transaction: […].[200]

4.20 The Commission considers that, for all of these reasons, there is no evidence to substantiate a counterfactual that, absent the Proposed Transaction, the status quo would prevail such that there would be no provision of a mobile instant payments service in the State. The Commission believes that the evolution of Synch's view of the counterfactual from the time of the notification supports this view.

4.21 The second counterfactual scenario considered by the Commission is the potential for an alternative Mobile Instant Payments Service to emerge in the State within a two year period.[201]

[200] See internal BOI email dated 9 September 2020 [MD5 Hash: a9e2c7b2a9880f02a3855db3a39f4210]

[201] The UK Competition Commission adopted a similar form of counterfactual in its report dated 4 February 2009 on the anticipated joint venture between BBC Worldwide Limited, Channel Four Television Corporation and ITV plc relating to the video on demand ("VOD") sector. In its decision blocking the anticipated transaction, the Competition Commission found that, in the absence of the transaction, each of BBCW, ITV and C4C would pursue its own commercial interests, either alone or in partnership with a third party, to exploit its archive VOD content rights. The Competition Commission did not find it necessary to come to a conclusion as to which route to market was the most likely to be pursued by each party. See https://webarchive.nationalarchives.gov.uk/ukgwa/20140402233800mp_/http://www.competition-commission.org.uk/assets/competitioncommission/docs/pdf/non-inquiry/rep_pub/reports/2009/fulltext/543.pdf

4.22 The Commission considers that such an alternative Mobile Instant Payments Service could be developed on by one or more of the JV Parents on a similar model to MobilePay (discussed at paragraphs 2.37 to 2.39) or through some form of collaboration between one or more of the JV Parents and/or third party. The Commission is aware that a proposal to develop a mobile payments service in the State has been in train since 2017 and the proposal has developed over time (see paragraph 1.17). Within this period, the Commission understands that since 2017 alternative services have been proposed to, or considered by, one or more of the JV Parents. Based on its merger review, the Commission considers that factors such as increased competitive pressure and consumer demand would drive one or more of the JV Parents to pursue their own commercial interests to address the current lack of Mobile Instant Payments Service in the State.

4.23 For the purposes of its consideration of the appropriate counterfactual, the Commission does not consider it necessary to reach a definitive view on whether or not the emergence of an alternative Mobile Instant Payments Service would involve a specific form of collaboration. For the purposes of establishing the counterfactual, any alternative collaboration between the Parties and/or any third parties would have to be compatible with applicable competition law, in order to avoid developing a Mobile Instant Payments Service that gave rise to a substantial lessening of competition. The Commission considers that the appropriate counterfactual is one which would not raise substantive competition law concerns or result in a substantial lessening of competition in the provision of mobile payments services in the State.

4.24 The Commission is therefore of the view that the relevant counterfactual for the purposes of assessing the competition effects of the Proposed Transaction is not the status quo, but the emergence of an alternative Mobile Instant Payments Service that is devoid of the prima facie competition concerns.

5. COMPETITIVE ASSESSMENT

5.1 In this section, the Commission sets out in detail its analysis of the likely competitive impact of the Proposed Transaction in each of the potential relevant markets identified in Section 3 above.

5.2 In considering the likelihood of the implementation of the Proposed Transaction resulting in an SLC in any market for goods or services in the State, the Commission assessed the arguments put forward by the Parties and the evidence collected from the Parties and third parties. The Commission set out its preliminary concerns in an Assessment, and the analysis below also takes into account the Parties' written and oral submissions following that Assessment.

5.3 During the merger review process, the Parties submitted proposals intended to ameliorate the Commissions' concerns. Two sets of proposals were submitted. One set was submitted by the Parties, consisting of commitments that would apply to all the parties to the Proposed Transaction. This set of proposals is referred to as the joint proposals. The other set of proposals consisted of commitments that would apply only to Synch. This set of proposals is referred to as the Synch proposals. The Commission engaged with the Parties on the content of the proposals throughout the time of the review, and the finally agreed proposals are included in Annex A.

5.4 In the course of its analysis, the Commission has identified the following four potential theories of harm:

- **Theory of harm 1: coordinated effects** – the potential for the implementation of the Proposed Transaction to lead to coordination between Synch and the JV Parents through the potential exchange between Synch and each of the JV Parents, and between the JV Parents through Synch, of competitively sensitive information ("CSI"), thereby resulting in an adverse effect on competition in a large number of related markets for financial products and services in the State where the JV Parents overlap horizontally in the State, including the potential market for the provision of banking products and services (including the provision of current account services) in the State.

- **Theory of harm 2: Foreclosure** – the potential for the implementation of the Proposed Transaction to provide Synch and the JV Parents with the ability and incentive to totally and/or partially foreclose third-party access to whole or part of the Synch Mobile Payments Service, thereby leading to consumers being harmed through less intense price and non-price competition in a number of potential downstream markets in the State, including the provision of: (i) P2P Mobile Instant Payments Service; and (ii) P2B mobile payments services; as well as in the related potential market for the provision of banking products and services (including the provision of current account services).

- **Theory of harm 3: stifling of innovation** – the potential for the implementation of the Proposed Transaction to stifle future innovation in: (i) the potential market for the provision of P2P Mobile Instant Payments Services in the State; and (ii) the potential market for the provision of P2B mobile payments services in the State.

- **Theory of harm 4: liquidity risk** – the potential for the implementation of the Proposed Transaction to lead to a liquidity risk for PSPs participating in the Synch Mobile Payments Service. A liquidity risk could arise where the money transfers are apparently instant but the settlement is not. In such a situation, entry or expansion may be deterred in a number of potential downstream markets in the State, including the provision of: (i) P2P Mobile Instant Payments Services; (ii) P2B mobile payments services;

as well as in the related potential market for the provision of banking products and services (including the provision of current account services).

Assessment of Theory of Harm 1: Coordinated Effects

5.5 The assessment of coordinated effects is structured as follows:

(a) **Views of the Parties** – summarises views put forward by the Parties;

(b) **Views of third parties** – summarises views of potential competitors;

(c) **Assessment of theory of harm 1: coordinated effects** – the likelihood of coordinated effects occurring following the implementation of the Proposed Transaction is considered on the basis of the evidence available to the Commission and by reference to factors set out in the Commission's Merger Guidelines;

(d) **Conclusion in respect of coordinated effects; and**

(e) **Proposals submitted by the Parties.**

(a) Views of the Parties

5.6 In the Merger Notification Form, the Parties provided the following view:

> *"the Parties are of the view that there can be no substantial lessening of competition in any market for goods or services in Ireland as a result of the Proposed Transaction because:*
>
> *(a) there is no meaningful horizontal or vertical overlaps between any of the products or services currently provided by AIB, BOI, PTSB or KBC and the product and service proposed to be provided by Synch; and*
>
> *(b) the Synch Mobile Payments Service, which will be a new, open eco-system service, will be available to all financial institutions (including consortia of smaller financial institutions) that issue Euro denominated IBANs to Irish customers with the intent of providing access to mobile instant and frictionless payment services to as many customers of such financial institutions as possible across Ireland. The Synch Mobile Payments Service will be an alternative to, and/or complement, existing international digital wallet solutions operating in the Irish marketplace (including Revolut, ApplePay and GooglePay wallets), thereby increasing the level of competition in the mobile payments market in Ireland generally, and increasing the options (e.g. instant P2P, P2m, P2eM and P2M payments) and associated benefits that customers of participating financial institutions in Ireland will be able to avail of. Synch believes that the Synch Mobile Payments Service will also help drive payment innovation in Ireland, meeting growing customer demand and expectations."*[202]

[202] See paragraph 5.31. and 5.32 of the Merger Notification Form [MD5 Hash: 01bf65b52e4db378a6e5b1c5dbd16ab1]

5.7 In its Written Response to the Commission's Assessment, Synch expressed a number of points in relation to the Commission's view on the likelihood of coordinated effects occurring following the implementation of the Proposed Transaction, including the following:

> *"The Synch arrangements have protocols in place that are designed to limit the leakage of CSI between the Parties. These protocols have only been strengthened by the proposals submitted by the Parties which are contained in Annex A of the Assessment."*[203]

(b) Views of third parties

5.8 In its third-party submission to the Commission dated 21 April 2021, Revolut provided the following view:

> *"The agreement between the dominant Irish banks has the potential to reduce competition, by coordinating behaviour and discouraging competition between them, and by creating barriers to new entrants. The proposed JV is likely to have a long-lasting structural impact on the market and it is important that the CCPC conduct a thorough investigation of the potential effects. … why are Ireland's biggest banks acting as one, rather than competing? Will this coordinated effort discourage aggressive competition and impact the availability of choice for Irish customers?"*[204]

5.9 In a follow-up submission to the Commission dated 25 June 2021, Revolut provided the following views in relation to the kind of information which may be exchanged between Synch and the JV Parents which may allow them to align their behaviour:

[203] See page 13 of Synch's Written Response to the Commission's Assessment, dated 18 May 2022.
[204] See page 1 of Revolut's submission of 21 April 2021, with document name "2021.06.25 Redacted_Revolut_CCPC Submission"

"Should the Proposed Transaction proceed as set out on the notification the dominant banks would be able to avail of direct information flows regarding take-up and use of the scheme - both by consumers and by business customers. Synch will have detailed data relating to the use of its service including, for example, information regarding app downloads, transfers being made on an ongoing basis, value of transfers between customers, which customers are most active using the service, and details of between which institutions most transfers are being made. This detailed payments information would give the JV participants powerful insights into customers: their payments preferences, their payments habits and their needs. This data can be utilised for numerous commercial purposes, including but not limited to: the development of additional payments related services; creation of products centred around customers payments usage, habits and needs; assessing customers' preference for payments, payments apps and features available within the Synch offering. If this or other commercially valuable information is passed through Synch to the Parties, it will present an opportunity and incentive to align their behaviour, in particular in relation to service levels and service offerings."[205]

5.10 In the same submission to the Commission, Revolut provided the following views in relation to the potential risk of coordinated behaviour resulting from the implementation of the Proposed Transaction:

"The merger also risks distorting the market for payments services within the state through co-ordinated effects, in particular tacit co-ordination. This likelihood is increased as there would be a small number of firms in

[205] See page 7 of Revolut's submission of 25 June 2021, with document name "2021.06.25 Revolut Responses_NON-CONFIDENTIAL VERSION.docx"

this new market making it easier to coordinate behaviour than if there were a larger number of competitors. The instant payments service being offered to consumers by each of the JV participants would be almost identical, creating a homogeneity of products or services with prices for close or perfect substitutes being easier to coordinate than prices for imperfect substitutes. The firms involved are themselves highly homogeneous in terms of market shares, cost structures, and levels of vertical integration and are therefore more likely to have similar, and hence sustainable, incentives to coordinate than dissimilar firms. Given the transparency required from regulators on pricing, and the availability of data flows through both PSD2 and any terms of the Synch project, there will also be transparent focal points for coordination – unambiguous information upon which to plan, monitor and detect deviations from the terms of coordination (e.g., prices, output, capacity, customers served, territories served, discounts, new product introductions, etc.)."[206]

(c) Assessment of Theory of Harm 1: Coordinated Effects

5.11 For the reasons outlined below, the Commission does not agree with the Parties that there are no prima facie competition concerns, and that, absent proposals, there is no risk of coordinated effects.

5.12 Paragraph 4.6 of the Commission's Merger Guidelines states the following in relation to coordinated effects:

"*Coordinated effects arise when a merger facilitates coordinated interaction by competitors to raise price. Coordination is profitable for each firm only as a result of accommodation by other firms. In essence,*

[206] See page 17 of Revolut's submission of 25 June 2021, with document name "2021.06.25 Revolut Responses_NON-CONFIDENTIAL VERSION.docx".

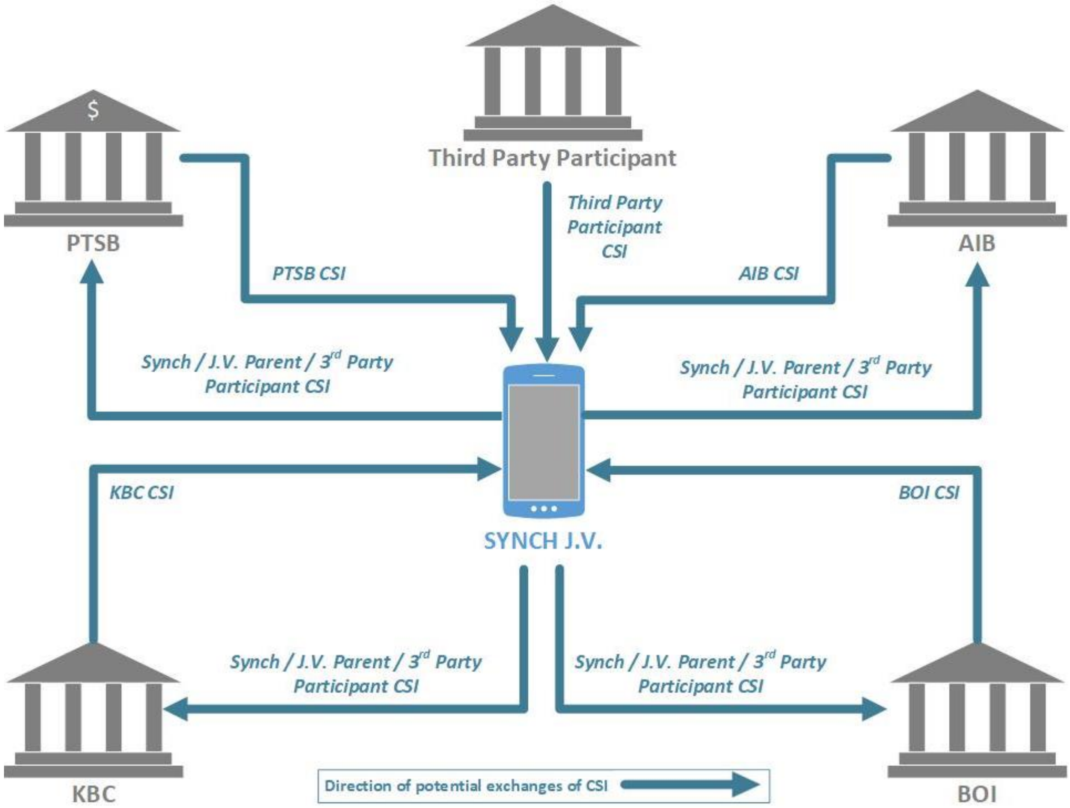
each firm decides not to compete aggressively (thereby foregoing presumably profitable sales) in the expectation that others will do likewise. This results in less vigorous competition with the net result that prices remain higher than they would in a normally functioning competitive market."

5.13 The Commission has identified concerns that the Proposed Transaction could potentially lead to coordination between Synch and the JV Parents through the potential exchange of CSI between Synch and each of the JV Parents and between the JV Parents through Synch.[207]

5.14 Figure 1 below illustrates the structural links between Synch and the JV Parents and the potential flows of CSI following implementation of the Proposed Transaction.

[207] As depicted in Figure 1 below, the Proposed Transaction could lead to the potential exchange between Synch and each of the JV Parents and between the JV Parents through Synch of: (i) Synch CSI; (ii) AIB CSI; (iii) BOI CSI; (iv) PTSB CSI; (v) KBC CSI; and (vi) third-party participant CSI.

Figure 1: Potential flows of CSI Following Implementation of the Proposed Transaction



Source: The Commission

5.15 The Commission's concerns regarding coordination arise as, following implementation of the Proposed Transaction, each of the JV Parents will individually continue to be active in the provision of mobile payment services in the State through their own banking apps as well as in the potential market for the provision of banking products and services, including the provision of current account services. In addition, the JV Parents, following implementation of the Proposed Transaction, will be active, through Synch, in: (i) the potential market for the provision of P2P Mobile Instant Payments Services in the State; and (ii) the potential market for the provision of P2B mobile payments services in the State.

5.16 Paragraph 4.26 of the Commission's Merger Guidelines states that the "*conditions generally conducive to coordinated behaviour*" include, but are not limited to, the following:

- "*the number of firms in a market – it is easier to coordinate behaviour when there is a smaller rather than a larger number of competitors*";
- "*homogeneity of products or services – prices for close or perfect substitutes will be easier to coordinate than prices for imperfect substitutes*"; and
- "*Transparent focal points for coordination – coordination will be easier if there is unambiguous information upon which to plan, monitor and detect deviations from the terms of coordination*".

5.17 The Commission is of the view that the conditions conducive to coordinated behaviour outlined in the preceding paragraph are likely to exist in the potential market for the provision of banking products and services, including the provision of current account services, in the State. There are a limited number of banks operating in the State, with the four JV Parents holding a very high combined share of approximately 81-83% in the provision of current account services.[208] The Commission further notes that both Ulster Bank and KBC are involved in processes that may see both of them withdrawing from the State, in which case the JV Parents' combined share in the provision of current account services in the State would rise to in excess of 90%.[209] The Commission is also of

[208] Figures estimated by BOI and AIB in response to their respective Phase 1 RFIs. Each of BOI, PTSB and AIB's market share in the provision of current accounts in the State is likely to rise with the anticipated exit of KBC and Ulster Bank from the market.

[209] On 30 July 2021, the Commission was notified of a proposed transaction between AIB and Ulster Bank pursuant to which it is proposed that AIB would acquire certain assets of Ulster Bank (*M/21/040 – AIB/Certain Assets of Ulster Bank*). A further proposed transaction regarding Ulster Bank's mortgage business in the State was made to the Commission on 22 December 2021 (*M/21/076 – PTSB/Certain Assets of Ulster Bank*). On 16 April 2021, the Commission was notified of a proposed transaction between BOI and KBC, pursuant to which it is proposed that BOI would acquire certain assets of KBC (*M/21/021 – Bank of Ireland/Certain Assets of KBC*).

the view that the JV Parents are each other's main competitors in the provision of banking products and services in the State.

5.18 The Commission is of the view that the banking products and services provided by the JV Parents in the State are largely homogenous. The Commission is also of the view that the JV Parents, following implementation of the Proposed Transaction, are more likely to be able to agree transparent focal points for coordinated behaviour such as, for example, fees for P2P Mobile Instant Payments Services or P2B mobile payments services or the introduction of new payment products or services.

5.19 The Commission is of the view that the Proposed Transaction may facilitate the potential exchange between Synch and each of the JV Parents of the following types of Synch CSI:

(i) information about requests from prospective Participating PSPs for access to the Synch Mobile Payments Service;

(ii) information about the payments (e.g., value, volume, type, etc.) made by customers of Participating PSPs in the Synch Mobile Payments Service;

(iii) information about payments to merchant participants in the Synch Mobile Payments Service.

(iv) potential exchange between the JV Parents through Synch of CSI about the fees charged by each of the JV Parents to merchants or their respective customers for making a payment through the Synch Mobile Payments Service.

5.20 The Commission is of the view that the exchange of CSI may have an adverse effect on competition in: (i) the potential market for the provision of P2P Mobile Instant Payments Services in the State; and (ii) the potential market for the provision of P2B mobile payments services in the State. In particular, the Commission is concerned that the potential exchange of CSI between Synch and each of the JV Parents may result in less vigorous competition in these two potential markets with the net result that prices remain higher than they would in a normally functioning competitive market.

5.21 The Commission is also of the view that the exchange of CSI between the JV Parents through Synch may have an adverse effect on competition in the potential market for the provision of banking products and services (including the potential market for the provision of current account services in the State). As noted in paragraph 5.17 above, there are a limited number of banks operating in the State with the four JV Parents holding a very high combined share of approximately 81-83% in the provision of current account services. Furthermore, as noted in paragraph 5.17 above, Ulster Bank and KBC are involved in processes that may see either or both of them withdrawing from the State. Thus, the combined share of the JV Parents in the provision of current account services in the State would likely increase if Ulster Bank and KBC were to withdraw from the State. The Commission is concerned that the potential exchange of CSI between the JV Parents through Synch may result in less vigorous competition across a large number of potential related markets for financial products and services in the State where the JV Parents overlap horizontally (including the potential market for the provision of current account services in the State) with the net result that prices remain higher than they would in a normally functioning competitive market.

(d) Conclusion in respect of coordinated effects.

5.22 Taking all the evidence into account, the Commission has concluded that the Proposed Transaction could potentially lead to coordination between Synch and the JV Parents through the potential exchange of CSI as illustrated in Figure 1 above and discussed in paragraphs 5.13 to 5.21 above, compared to the relevant counterfactual whereby the alternative Mobile Instant Payments Service ensures that its governance structure does not facilitate the potential exchange of CSI.

(e) Proposals submitted by the Parties

5.23 As noted above, in its Written Response to the Commission's Assessment Synch expressed a number of points in relation to the Commission's view on the likelihood of coordinated effects occurring following the implementation of the Proposed Transaction. The Commission has considered the points expressed by Synch and concluded that there is no reason to change its view that, absent robust proposals from the Parties (which are described in Section 6 below), there is a risk that the Proposed Transaction could potentially lead to coordination between Synch and the JV Parents through the potential exchange of CSI.

5.24 On 1 April 2022, the Parties submitted draft joint proposals to the Commission in accordance with section 20(3) of the Act intended to mitigate the coordinated effects concerns identified by the Commission.

5.25 Following receipt of the draft joint proposals, the Commission engaged with Synch and its legal advisors (on behalf of all the Parties) to formulate proposals which would mitigate the coordinated effects concerns identified by the Commission. The final Joint Proposals are described in Section 6 below.

Assessment of Theory of Harm 2: Foreclosure

5.26 The assessment of foreclosure is structured as follows:

(a) **Views of the Parties** – summarises views put forward by Synch and the JV Parents;

(b) **Views of third parties** – summarises views of potential competitors;

(c) **Assessment of theory of harm 2: foreclosure** – the potential for the implementation of the Proposed Transaction to provide Synch and the JV Parents with the ability and incentive to totally or partially foreclose third-party access by other PSPs to the whole or part of the Synch Mobile Payments Service, thereby leading to consumers being harmed through less intense price and non-price competition in a number of potential downstream markets in the State, including the provision of: (i) P2P Mobile Instant Payments Services; (ii) P2B mobile payments services; as well as in the related potential market for the provision of current account services;

(d) **Conclusion in respect of foreclosure;** and

(e) **Proposals submitted by Synch and jointly by the Parties.**

a) Views of the Parties

5.27 In their submission to the Commission dated 21 March 2022, the Parties provided the following view:

> "*Synch confirm*[s] *that all participants and prospective participants in the Synch Mobile Payments Service will be treated equally. This applies to all entities whether funding shareholders or not, and whether domestic or non-domestic. … Therefore, any concern that a prospective participant could be totally foreclosed (application refused) or partially foreclosed (e.g. by way of unfair terms, increased fees, delay in application etc.) cannot arise. It should also be noted that a key eligibility criteria is that a prospective participant in Synch must be authorised to provide payment services in Ireland before it can be approved for entry to the Synch Mobile Payments Service. Entry to the Irish market will be a precursor to becoming a participant in the Synch Mobile Payments Service. Therefore, any*

concern that a prospective participant could be foreclosed from the Irish market if it is not a participant in Synch cannot arise."[210]

5.28 In its Written Response to the Commission's Assessment, Synch expressed a number of points in relation to the Commission's view on the potential for the implementation of the Proposed Transaction to provide Synch and the JV Parents with the ability and incentive to totally or partially foreclose third-party access by other PSPs to the whole or part of the Synch Mobile Payments Service. In relation to the potential for the implementation of the Proposed Transaction to provide Synch and the JV Parents with the ability to totally or partially foreclose, Synch expressed the following view:

> *"At one level it is obvious that Synch could refuse access by third parties to its MIPS. Anybody who operates a platform such as MIPS can deny such access. However, this position completely overlooks the fact that the proposals submitted by the Parties set up procedures and processes that are designed to facilitate access to the Synch MIPS in an open and transparent way, with, for example, an appeal mechanism in place."*[211]

5.29 In relation to the potential for the implementation of the Proposed Transaction to provide Synch and the JV Parents with the incentive to totally or partially foreclose, Synch expressed the following view:

> *"within the Irish banking market there appears to be little customer switching between banks generally and so it is not clear that banks need to protect market shares by denying access to Synch. If there is likely to be little customer switching between banks generally then any forgone profits from late 2022/early 2023 due to denying access to Synch by third*

[210] See page 4 of the Parties' submission with supporting information to their draft proposals dated 21 March 2022.
[211] See page 9 of Synch's Written Response to the Commission's Assessment, dated 18 May 2022.

parties may well not outweigh any profits from protecting market share/attracting new customers yielded further down the road in 2023/4."[212]

(b) Views of third parties

5.30 In its third-party submission to the Commission dated 21 April 2021, Revolut expressed the following concerns about access to the Synch Mobile Payments Service following implementation of the Proposed Transaction:

> *"The banks which are seeking approval for this JV are collectively in a dominant position in the Irish market. Such a position has become even more entrenched following the announcement that Ulster Bank is to exit the Irish market, and the subsequent announcement that KBC bank may also exit the Irish market (on foot of a proposal from Bank of Ireland to purchase its performing loan assets and liabilities)."*

> *"The system will be subject to licensing conditions. Given the combined dominant position of the retail banks in question, the system will hold a powerful position in terms of offering or restricting access to markets and customers (both consumers and business customers). Unfair, discriminatory and/or onerous conditions of access to the scheme will operate as a significant barrier to entry (by new entrants) or expansion (by existing PSPs)."*

> *"Fees: Will the JV licensing terms include fees and, if so, who will determine the level and structure of those fees? Terms that may be reasonable for established banks could be prohibitive for PSPs with different business models and customer bases. For example, fintechs may have large*

[212] See page 10 of Synch's Written Response to the Commission's Assessment, dated 18 May 2022.

customer numbers ahead of becoming profitable and often do not charge their customers transaction fees. They may have to absorb the joining cost or change their business customer model. How will the terms take account of changes in market conditions, external costs, performance and profitability?"

"Technological conditions: Costly or unwieldy technical adaptations to existing systems (either now or in the future) will restrict the ability of a new entrant to join or remain in the scheme. Could technology be cited as a reason for refusal to allow scheme entry? If so, on what basis and under what conditions? Will the JV's systems become a restraint on innovation or cost reduction for consumers by scheme partners?"

"Contractual conditions: Could new joiners, either now or in the future, be required to adopt the JV's preferred third-party providers?"

"Timing: how long will it take for the dominant banks behind this JV to agree licensing terms with other would-be participants who are not part of the JV? Will the dominant banks behind this scheme be able to launch their version ahead of enabling any other PSPs to do so, thus gaining an unfair 'first mover' advantage?"

"Miscellaneous: Will the JV have the power to exclude or eject participants for other reasons: if so, what are they, and what mechanisms exist to ensure that they are and remain appropriate and fair, and are not used as a mechanism to stifle competition?"

"The participating banks can leverage their existing customer base of the overwhelming majority of Irish consumers/businesses to ensure success of the JV entity, with the significant chance of it becoming a "go"to" service. In these circumstances, strong governance is critical. The mere ability of

the JV parents to impose unfair access conditions on competitors could have a dampening effect on competition, even if it is not exercised. Likewise, competitors could find themselves having to accept weak governance structures as the price of access to a significant customer base."[213]

5.31 In its submission dated 23 December 2021, Payac Services CLG, a credit union owned third party payment services provider, provided the following view on the Proposed Transaction:

> "*our favourable disposition towards supporting Synch payments is based on our understanding that Credit Unions and their service providers, such as Payac can competitively and openly join the scheme. We would expect that there would be no commercial impediment, by way of high entrance fee or higher transaction charge that would inhibit Credit Unions, or other smaller market entrants from participating. We would also expect that Credit Unions views would be considered in the ongoing provision and enhancement of the service, by way of active* [participation] *in working groups.*"[214]

5.32 In a call with the Commission dated 26 January 2022, CUSOP (Payments) DAC expressed the following view about the Proposed Transaction:

> "[CUSOP] *noted that they did not have enough detail yet, such as those surrounding transaction fees.* [CUSOP] *noted these will be fundamental and key to the take up of the service. The assurances CUSOP has received*

[213] See Revolut's submission of 21 April 2021, with document name "2021.06.25 Redacted_Revolut_CCPC Submission"

[214] See Payac Services CLG's submission dated 23rd December 2021, with document name "2021.12.23 Submission from Payac"

to date indicate that this won't be a barrier and will help payment providers in the State."[215]

c) Assessment of Theory of Harm 2: Foreclosure

5.33 For the reasons outlined below, the Commission does not agree with the Parties that there are no prima facie competition concerns, and that, absent proposals, there is no risk of foreclosure.

5.34 There is a vertical relationship between Synch and the JV Parents in the potential market for the upstream inputs required to offer Mobile Instant Payments Services in the State. The Commission has assessed whether potential downstream providers of Mobile Instant Payments Services in the State may be totally or partially foreclosed access to the whole or part of the Synch Mobile Payments Service following implementation of the Proposed Transaction.

5.35 Paragraph 5.6 of the Commission's Merger Guidelines states the following:

> *"the Commission's analysis of non-horizontal mergers is conducted primarily in terms of unilateral and coordinated effects for both vertical and conglomerate mergers. Non-horizontal mergers may result in an SLC where*
>
> *(a) the merged entity having market power (i.e., the ability to unilaterally increase prices above what they would have been in a competitive market) is able to exercise this power to lessen competition by:*
>
> *(i) foreclosing competitors (after a vertical merger)*
>
> *(ii) [..]."*

[215] See call note with CUSOP dated 26 January 2022.

5.36 The Commission has assessed whether the vertical relationship that will arise following implementation of the Proposed Transaction will lead to unilateral effects in the potential market for the upstream inputs required to offer Mobile Instant Payments Services in the State. Paragraph 5.7 of the Commission's Merger Guidelines states the following:

> "*Unilateral effects in vertical mergers arise when a merged entity restricts the access of rival firms to upstream suppliers or to downstream customers. Restricting rivals' access is referred to as "foreclosure". There are two forms of foreclosure:*
>
> - *Input foreclosure – restricted upstream access.*
> - *Customer foreclosure – restricted downstream access.*"

5.37 The Commission's assessment of unilateral effects in this instance focuses on input foreclosure. Paragraph 5.10 of the Commission's Merger Guidelines states the following:

> "*Competition concerns may arise from input foreclosure only when the merged entity has market power in the upstream market. Input foreclosure can be complete or partial, i.e.: (a) Total input foreclosure, such as when a merged wholesaler-retailer entity refuses to supply a key product to a retail competitor. (b) Partial input foreclosure, such as when a merged wholesaler-retailer entity increases wholesale prices or offers less attractive terms to a retail competitor.*"

5.38 When considering the likelihood of the Proposed Transaction resulting in input foreclosure, the Commission assesses three factors: (i) the ability of Synch and the JV Parents to foreclose downstream competitors; (ii) the incentive for Synch and the JV Parents to foreclose downstream competitors; and, (iii) the likely effect on competition, in particular whether input foreclosure would, on the balance of probabilities, result in a substantial lessening of competition.

5.39 In relation to the ability of Synch and the JV Parents to foreclose downstream competitors, paragraph 5.11 of the Commission's Merger Guidelines states the following:

> "*The ability of a merged entity to harm a downstream competitor through input foreclosure depends on various factors. … foreclosure will be more likely to harm a downstream competitor if the input cannot be readily substituted with other inputs.*"

5.40 In relation to the incentive for Synch and the JV Parents to foreclose downstream competitors, paragraph 5.12 of the Commission's Merger Guidelines states the following:

> "*The incentive to foreclose downstream competitors depends, all things being equal, on the balance between (i) reduced profits from discontinued upstream sales of inputs to downstream competitors and (ii) increased downstream profits from the sale of the merged entity's products.*"

Unilateral Effects – Input Foreclosure

5.41 As noted in paragraph 5.10 of the Commission's Merger Guidelines, input foreclosure can be either total or partial.

5.42 As part of its assessment of the likelihood of the Proposed Transaction resulting in input foreclosure, the Commission assessed two potential theories of harm concerning access to the whole or part of the Synch Mobile Payments Service following implementation of the Proposed Transaction:

i. Total foreclosure of access to the whole or part of the Synch Mobile Payments Service for the purposes of providing P2P Mobile Instant Payments Services and P2B mobile payments services in the State; and

ii. Partial foreclosure of access to the whole or part of the Synch Mobile Payments Service for the purposes of providing P2P Mobile Instant Payments Services and P2B mobile payments services in the State, i.e., raising rivals' costs by increasing the cost of accessing the Synch Mobile Payments Service.

5.43 The Commission is of the view that "*total foreclosure*" would arise where Synch: (i) refuses to grant PSPs access to the whole or part of the Synch Mobile Payments Service for the purposes of providing P2P Mobile Instant Payments Services and P2B mobile payments services in the State; or (ii) unduly delays its assessment and processing of requests for access to the whole or part of the Synch Mobile Payments Service for the purposes of providing P2P Mobile Instant Payments Services and P2B mobile payments services in the State.

5.44 The Commission is of the view that "*partial foreclosure*" would arise where Synch increases the fees charged to Participating PSPs seeking access to the whole or part of the Synch Mobile Payments Service for the purposes of providing P2P Mobile Instant Payments Services and P2B mobile payments services in the State. Paragraphs 1.29 to 1.31 above outline the pricing for Participating PSPs in the Synch Mobile Payments Service.

5.45 In assessing the two potential theories of harm listed above, the Commission has assessed whether, following implementation of the Proposed Transaction, Synch and the JV Parents would have the ability and incentive to engage in a total and/or a partial foreclosure strategy concerning access to the whole or part of Synch Mobile Payments Service.

5.46 The Commission's analysis of these two potential theories of harm is set out below.

Total foreclosure of access to the whole or part of the Synch Mobile Payments Service for the purposes of providing P2P Mobile Instant Payments Services and P2B mobile payments services in the State

Ability

5.47 As noted in paragraph 5.10 of the Commission's Merger Guidelines, a necessary condition for the merged entity to be able to engage in a total input foreclosure strategy following implementation of the Proposed Transaction is to possess market power in the potential market for the upstream inputs required to offer Mobile Instant Payments Services in the State.

5.48 The Commission is of the view that the Synch Mobile Payments Service has two distinct characteristics that make it a key input for existing and potential providers of Mobile Instant Payments Services in the State.

5.49 **First**, following implementation of the Proposed Transaction, it will be the only provider of a Mobile Instant Payments Service which has the potential to operate on an industry-wide basis in the State. As noted in paragraph 5.11 of the Commission's Merger Guidelines, "*foreclosure will be more likely to harm a downstream competitor if the input cannot be readily substituted with other inputs.*" The Commission is of the view that PSPs intending to provide Mobile Instant Payments Services to their customers in the State will not have access to alternative upstream inputs required to offer Mobile Instant Payments Services.

5.50 The mobile payments services currently offered in the State by PSPs (such as, for example, Revolut, AIB, etc.) are intrabank mobile payments services[216] that are

[216] Also known as a closed loop service which refers to a payment service offered by a single central provider in which both the payer and the payee must maintain an account with that service provider to transact.

not accessible to third-party PSPs. There is currently no capability for interoperability between the intrabank mobile payments services available in the State.[217]

5.51 **Second**, as set out at paragraph above, the JV Parents have a very high combined share in the provision of current account services in the State (approximately 81-83%, which may rise in excess of 90% if Ulster Bank withdraws from the State). It is the Commission's view that, for the reasons set out below, the vast majority of current account holders in the State will most likely make mobile payments (both P2P intrabank and interbank and P2B) through the Synch Mobile Payments Service following implementation of the Proposed Transaction. First, there is a growing demand mobile payments services in the State. Second, the JV Parents will have a strong incentive to promote and market the Synch Mobile Payments Service to their customers. Third, it is the Commission's view that it is unlikely that, if the Proposed Transaction is implemented, a viable rival Mobile Instant Payments Service will emerge in the State because of the likely difficulty in getting some or all of the JV Parents to participate in such a service. The JV Parents will have little incentive to participate in a rival Mobile Instant Payments Service in the State. Fourth, in relation to intrabank mobile payments, it is the Commission's view that, following implementation of the Proposed Transaction, current account holders in the State may make intrabank mobile payments through the Synch Mobile Payments Service rather than through other intrabank mobile payments services. This is because in instances where a payer does not know the payee's bank, it may be more convenient and quicker for a payer to use the Synch Mobile Payments Service to make the payment rather than using the intrabank mobile payments service available from the payer's bank.

[217] See paragraph 3.43 above for a discussion of the Commission's view that an intrabank P2P mobile instant payment service is unlikely to be considered a substitute by a customer of a Mobile Instant Payments Service wishing to make an interbank P2P mobile instant payment.

5.52 It is the Commission's view that the reasons set out in the preceding paragraph have the potential to make the Synch Mobile Payments Service the "go-to" mobile payments service for P2P Mobile Instant Payments Services and P2B mobile payments services in the State following implementation of the Proposed Transaction.[218] As set out at paragraph 5.30 above, this is also the view of Revolut who expressed the following view in its submission to the Commission dated 21 April 2021: "*The participating banks can leverage their existing customer base of the overwhelming majority of Irish consumers/businesses to ensure success of the JV entity, with the significant chance of it becoming a "go to" service.*"[219]

5.53 The economic benefit to a PSP of being a Participating PSP in the Synch Mobile Payments Service can be described as a "network effect" where the value of a network connection for a user depends on the number of other users already connected. In the case of the Synch Mobile Payments Service, the Commission is of the view that there are likely to be significant network effects and resulting economic benefits to Participating PSPs because the vast majority of current account holders in the State will be reachable by a Participating PSP's customers through the Synch Mobile Payments Service due to the very high combined share of the JV Parents in the provision of current account services in the State.[220] Mobile Instant Payments Services have successfully emerged in a number of EU Member States (e.g., Sweden, Norway, Portugal, etc.) in the past decade and have benefited from the network effect of having a large number of participating banks

[218] There is evidence of this happening in other European countries. MobilePay has become the "go-to" mobile instant payments service for end users in Denmark. Both the Danish National Competition Authority and MobilePay informed the Commission that when MoblePay was initially established in 2013, there was an alternative mobile instant payments service active in Denmark, namely Swipp which was owned and operated by a number of banks. When MobilePay launched in 2013, it received more traction than Swipp, resulting in the latter subsequently exiting the market in Denmark. MobilePay also informed the Commission that it entered the Norwegian market in 2018 but subsequently exited […].
[219] See Revolut's submission of 21 April 2021, with document name "2021.06.25 Redacted_Revolut_CCPC Submission".
[220] Network effects have the potential to enhance the market position of the largest players in a market. This can sometimes raise barriers to entry / expansion or lead to a vicious circle where large firms become larger, and smaller firms find it difficult to compete effectively. This could result in a market reaching an equilibrium where everyone joins only one of the networks (sometimes referred to as market 'tipping') and only one firm, with monopoly profits, is left.

and PSPs (see paragraphs 2.31 to 2.55 above for a detailed discussion). Indeed, a number of these services have been able to leverage strong network effects in the provision of P2P Mobile Instant Payments Services to establish a position in the provision of P2B mobile payments services.

5.54 Since, as outlined above, the Synch Mobile Payments Service would be, following implementation of the Proposed Transaction, the only Mobile Instant Payments Service in the State,[221] the Commission's view is that existing PSPs, as well as potential new entrants in the banking sector, are highly likely to participate in the Synch Mobile Payments Service in order to be able to offer P2P Mobile Instant Payments Services and P2B mobile payments services to their customers in the State. As discussed in paragraph 2.56 above, the payments landscape in the State has evolved over the last number of years with an increasing demand for online transactions and contactless payments, a trend accelerated by the recent COVID-19 pandemic. As noted in paragraph 2.58 above, there is a growing demand for mobile payments services in the State as evidenced by the large number of end users that now use the mobile payments service provided by Revolut. Finally, as noted in the preceding paragraph, Mobile Instant Payments Services have successfully emerged in a number of EU Member States (e.g., Sweden, Norway, Portugal, etc.) in the past decade and have benefited from the network effect of having a large number of participating banks and PSPs on their service.

5.55 In these circumstances, customers of any existing or potential providers of current account services in the State that cannot access the Synch Mobile Payments Service would be unable to make mobile payments (whether P2P or P2B) through the Synch Mobile Payments Service.[222] This has the potential to put a non-

[221] As noted in paragraph 5.51 above, it is the Commission's view that it is unlikely that a viable rival mobile instant interbank payments service will emerge in the State because of the likely difficulty in getting some or all of the JV Parents to participate in such a service.
[222] The provision of mobile instant payments services and the provision of current account services are inextricably linked: in order to make an instant payment in the State, an end user must have a current account with a regulated PSP.

Participating PSP at a competitive disadvantage compared with a Participating PSP. This preliminary view is supported by an internal document provided to the Commission by KBC entitled "*Pegasus Programme Steering*" dated 22 July 2020. It contains the following statement which highlights the importance for a PSP to be a participant in the Synch Mobile Payments Service: […].[223]

5.56 For the reasons set out above, the Commission has reached the view that there is a risk that Synch and the JV Parents, following implementation of the Proposed Transaction, would have the ability to engage in a total foreclosure strategy in relation to the potential market for the upstream inputs required to offer Mobile Instant Payments Services in the State, including through: (i) not granting access to the whole or part of the Synch Mobile Payments Service; and/or (ii) unduly delaying its assessment and processing of requests for access to the whole or part of the Synch Mobile Payments Service.[224]

Incentive

5.57 The Commission is of the view that, following implementation of the Proposed Transaction, it is likely that Synch and the JV Parents would have the incentive to engage in a total foreclosure strategy in relation to the potential market for the upstream inputs required to offer Mobile Instant Payments Services in the State.

5.58 The test of whether or not Synch and the JV Parents would have an incentive to totally foreclose depends on whether or not it is profitable to do so.[225] This will depend on the balance between the loss in profits from denying prospective

[223] See *Pegasus Programme Steering*" dated 22 July 2020. [MD5 Hash: 09998cb802fd71c43fa4385656a010d4]
[224] In regard to the likelihood of Synch, following implementation of the Proposed Transaction, having the ability to unduly delay its assessment and processing of requests for access to the whole or part of the Synch Mobile Payments Service, the Commission notes the following view of Revolut, provided in its third party submission to the Commission dated 21 April 2021: "*Timing: how long will it take for the dominant banks behind this JV to agree licensing terms with other would-be participants who are not part of the JV?*" See document entitled "2021.06.25 Redacted_Revolut_CCPC Submission"
[225] See paragraph 5.12 of the Commission's Merger Guidelines which states: "*The incentive to foreclose downstream competitors depends, all things being equal, on the balance between (i) reduced profits from discontinued upstream sales of inputs to downstream competitors and (ii) increased downstream profits from the sale of the merged entity's products. There will be an incentive to input foreclose if customers switch to the merged entity downstream such that increased downstream sales and profits more than offset any loss in upstream sales and profits*."

Participating PSPs access to the Synch Mobile Payments Service compared to the increased downstream profits arising from an input foreclosure strategy resulting from increased demand for: (i) the provision of P2P Mobile Instant Payments Services in the State; (ii) the provision of P2B mobile payments services in the State; and, (iii) the provision of banking products and services (including current accounts) in the State, at the expense of downstream rival providers. As stated in paragraph 5.12 of the Commission's Merger Guidelines: "*There will be an incentive to input foreclose if customers switch to the merged entity downstream such that increased downstream sales and profits more than offset any loss in upstream sales and profits*."

5.59 The Commission is of the view that the profits likely to be foregone by Synch and the JV Parents from pursuing a total foreclosure strategy (such as, for example, denying prospective banks access to the Synch Mobile Payments Service) would be relatively small.

5.60 In the Merger Notification Form submitted to the Commission dated 8 April 2021, the Parties provided the following information in relation to pricing for the Synch Mobile Payments Service:

> "*Synch will charge its customers for use of the Synch Mobile Payments Service application as follows: (i) an annual licence fee based on number of product payment types; and (ii) a fee on a 'per completed transaction' basis. The transaction fee will differ depending on whether it is a P2P, internet, small merchant, or large merchant payment transaction by the customer.*"

5.61 Accordingly, the Commission understands that part of the revenue that will be generated by the Synch Mobile Payments Service will come from fees "*on a 'per completed transaction' basis*". In its submission to the Commission dated 15 December 2021, the Parties stated the following:

> "*Banks/financial institutions that Synch expects to be eligible to participate in the Synch Mobile Payments service, and that Synch hopes will apply to participate include: An Post, Revolut, N26, Starling, Credit Unions/consortia, EBS and any other financial institution that is authorised to provide payment services in Ireland now or in the future.*"

5.62 The Commission's view is that, due to the high combined share of the JV Parents in the provision of banking products and services (including current accounts) in the State, most (if not all) prospective Participating PSPs that are likely to require access to the Synch Mobile Payments Service following implementation of the Proposed Transaction will have relatively small shares in: (i) the provision of P2P Mobile Instant Payments Services in the State; (ii) the provision of P2B mobile services in the State; as well as in the related potential market for the provision of banking products and services (including current accounts) in the State.[226] Thus, the Commission is of the view that it is likely that the revenue generated by Synch from '*per completed transaction*' fees charged to third party PSPs such as those listed in the Parties' quote above will be relatively low.

5.63 The Commission also notes that internal documentation provided to the Commission by the Parties indicates that Synch and the JV Parents intend to adopt a profit minimisation model for the Synch Mobile Payments Service. An internal document provided to the Commission by KBC entitled "*Pegasus Programme Steering*" dated 22 July 2020 contains the following statement: […].[227]

5.64 The Commission is of the view that the downstream profits likely to be gained (or, at the very least, maintained) by the JV Parents from pursuing a total foreclosure strategy would likely exceed any upstream profits likely to be lost by the Synch Mobile Payments Service. While there is no quantitative data available to the

[226] As noted in paragraph 5.14 above, the JV Parents currently have a very high combined share (approximately 81-83%) in the provision of current account services in the State.

[227] See *Pegasus Programme Steering*" dated 22 July 2020. [MD5 Hash: 09998cb802fd71c43fa4385656a010d4]

Commission to enable it to calculate whether "*increased downstream sales and profits more than offset any loss in upstream sales and profits*" (paragraph 5.12 of the Commission's Merger Guidelines), the Commission is of the view that the JV Parents, by pursuing a total foreclosure strategy, can expect, at the very least, to protect and maintain their current high combined share in the potential market for the provision of banking products and services (including current accounts) in the State. The Commission is of the view that existing or future providers of banking products and services (including current accounts) in the State that are denied access to the Synch Mobile Payments Service are likely to find it very difficult to gain market share at the expense of the JV Parents in the provision of banking products and services (including current accounts) in the State.[228]

5.65 Furthermore, the Commission is of the view that potential entrants into the provision of banking products and services (including current accounts) in the State are likely to be deterred from entering if they are likely to be denied access to the Synch Mobile Payments Service. As stated in paragraphs 4.18 to 4.19 above, it is clear from the internal documentation provided to the Commission by the JV Parents that a primary motivation for the Proposed Transaction is to counter the growing competitive threat of challenger banks (such as, for example, […]) to the existing market positions of the JV Parents in the provision of banking products and services (including current accounts) in the State.

5.66 In addition, the Commission is of the view that Synch and the JV Parents, by pursuing a total foreclosure strategy and denying existing and potential providers of banking products and services (including current accounts) access to the whole

[228] As noted in paragraph 3.38 above, in order to make a payment through the Synch Mobile Payments Service, an end user must have a current account with a Participating PSP. The Commission is of the view that the provision of current account services can be a gateway for existing or future providers of banking products and services to grow their share in the provision of related banking products and services such as, for example, deposit accounts, mortgages, loans, etc. By increasing the number of current account customers that it services as a result of participating in the Synch Mobile Payments Service, a provider of banking products and services can expect to be more successful in increasing the number of customers to whom it provides other banking products and services such as deposit accounts, mortgages, loans, etc.

or part of the Synch Mobile Payments Service, will likely be able to increase downstream revenue and profits resulting from increased demand in: (i) the provision of P2P Mobile Instant Payments Services in the State; and (ii) the provision of P2B mobile payments services in the State.

5.67 In conclusion, the Commission's view is that Synch and the JV Parents will have an incentive to pursue a total foreclosure strategy since any loss in upstream revenue and profits experienced by Synch and the JV Parents from pursuing such a strategy will likely be more than offset by increased downstream revenue and profits in: (i) the provision of P2P Mobile Instant Payments Services in the State; (ii) the provision of P2B mobile payments services in the State; and, (iii) the provision of banking products and services (including current accounts) in the State.

Partial foreclosure of access to the whole or part of the Synch Mobile Payments Service for the purposes of providing Mobile Instant Payments Services in the State.

Ability

5.68 For the same reasons as those described in paragraphs 5.47 to 5.56 above, the Commission is of the view that it is likely that Synch and the JV Parents, following implementation of the Proposed Transaction, would have the ability to engage in a partial foreclosure strategy in relation to the potential market for the upstream inputs required to offer Mobile Instant Payments Services in the State.

Incentive

5.69 For the same reasons to those described in paragraphs 5.57 to 5.67 above, the Commission is of the view that it is likely that Synch and the JV Parents, following implementation of the Proposed Transaction, would have the incentive to engage in a partial foreclosure strategy in relation to the potential market for the upstream inputs required to offer Mobile Instant Payments Services in the State.

Conclusion on Vertical Foreclosure in the potential market for the upstream inputs required to offer Mobile Instant Payments Services in the State

5.70 The Commission's view is that it is likely that Synch and the JV Parents, following implementation of the Proposed Transaction, would have the ability and incentive to engage in a total or partial foreclosure strategy in relation to the potential market for the upstream inputs required to offer Mobile Instant Payments Services in the State. The Commission is of the view that the likely effect of this foreclosure will be to harm consumers in the following potential markets in the State: (i) the provision of P2P Mobile Instant Payments Services; (ii) the provision of P2B mobile payments services; and, (iii) the provision of banking products and services (including current accounts).

5.71 As stated in paragraph 5.13 of the Commission's Merger Guidelines in relation to input foreclosure, "*The Commission's principal concern when conducting such analysis is not with harm to a merged entity's downstream competitors. Rather the Commission's analysis focuses on the impact on consumers and, particularly in the context of input foreclosure, the effect on prices to consumers in the downstream market*."

5.72 The Commission's view is that as a result of foreclosing (totally or partially) potential providers of Mobile Instant Payments Services in the State, the JV Parents would be able to protect and maintain their current high combined share in the potential market for the provision of banking products and services (including current accounts) in the State. The Commission's view is that it is likely that it would be very difficult for potential providers of Mobile Instant Payments Services in the State and existing and potential providers of banking products and services (including current accounts) in the State to compete effectively if such providers were foreclosed access to the whole or part of the Synch Mobile Payments Service.

5.73 As noted above in paragraph 3.38, the provision of Mobile Instant Payments Services and the provision of banking products and services (including current accounts) are inextricably linked: in order to make a mobile instant payment in the State, an end user must have a current account with a regulated PSP. Furthermore, the Commission is of the view that end users are increasingly likely to demand new and improved mobile payments services as part of the competitive offering of their current account services provider. As noted in paragraph 2.56 above, the payments landscape in the State has evolved over the last number of years with an increasing demand for online transactions and contactless payments. The Commission is of the view that providers of banking products and services (including current accounts) that are foreclosed access to the whole or part of the Synch Mobile Payments Service are likely to find it difficult to compete effectively in the provision of Mobile Instant Payments Services in the State. This is because their customers would be unable to make P2P mobile instant payments to customers of Participating PSPs. As noted in paragraph 5.17 above, there are a limited number of banks operating in the State with the JV Parents holding a very high combined share of approximately 81-83% in the provision of current account services. As a result, providers of banking products and services (including current accounts) that are foreclosed access to the whole or part of the Synch Mobile Payments Service are also likely to find it difficult to compete effectively in the provision of banking products and services (including current accounts) in the State.

5.74 For the same reasons as those described in the previous paragraph, the Commission is of the view that potential new entrants into: (i) the provision of Mobile Instant Payments Services in the State, and (ii) the provision of banking products and services (including current accounts) in the State are likely to be deterred if they are foreclosed access to the whole or part of the Synch Mobile Payments Service.

5.75 The Commission is of the view that as a result of foreclosure in the upstream potential market for the upstream inputs required to offer Mobile Instant Payments Services in the State, consumers will be harmed through less intense price and non-price competition in the provision of: (i) Mobile Instant Payments Services in the State, and (ii) banking products and services (including current accounts) in the State.

5.76 In particular, as noted in paragraph 5.17 above, the Commission notes that the potential market for the provision of banking products and services (including current accounts) in the State is already highly concentrated (and would become even more concentrated if either or both of Ulster Bank and KBC withdraw from the State). The Commission is of the view that the Proposed Transaction is likely to entrench the current market positions of the JV Parents in the provision of banking products and services (including current accounts) in the State, make successful entry or expansion by rivals in this potential market very difficult, potentially lead to an even more concentrated market, and ultimately harm consumers through less intense price and non-price competition.

(d) Conclusion on Foreclosure

5.77 Taking all the evidence into account, and notwithstanding Synch's stated intention that it will seek "*to have as many [Participating PSPs] as possible participating in the Synch Mobile Payments Service*"[229], the Commission has reached the conclusion that, compared to the relevant counterfactual which provides for the emergence of an alternative Mobile Instant Payments Service, the implementation of the Proposed Transaction is likely to provide Synch and the JV

[229] See Synch's response to question 16 of its Phase 1 RFI [MD5 Hash: 07953fc9f8b57edcc07490b05cb58930]

Parents with the ability and incentive to totally or partially foreclose PSPs access to whole or part of the Synch Mobile Payments Service, thereby leading to consumers being harmed through less intense price and non-price competition in the State in the provision of: (i) Mobile Instant Payments Services; and (ii) the provision of banking products and services (including current accounts).

(e) Proposals submitted by Synch and the Parties

5.78 As noted above, in its Written Response to the Commission's Assessment Synch expressed a number of points in relation to the Commission's view on the potential for the implementation of the Proposed Transaction to provide Synch and the JV Parents with the ability and incentive to totally or partially foreclose third-party access by other PSPs to the whole or part of the Synch Mobile Payments Service. The Commission has considered the points expressed by Synch and concluded that there is no reason to change its view that, absent robust proposals from the Parties (which are described in Section 6 below), the Proposed Transaction is likely to provide Synch and the JV Parents with the ability and incentive to totally or partially foreclose PSPs access to whole or part of the Synch Mobile Payments Service.

5.79 On 23 March 2022, the Parties submitted draft joint proposals to the Commission in accordance with section 20(3) of the Act intended to ameliorate the foreclosure concerns identified by the Commission. On 26 May 2022, Synch submitted draft Synch proposals to the Commission in accordance with 20(3) of the Act intended to further ameliorate the foreclosure concerns identified by the Commission.

5.80 Following receipt of both the draft joint proposals and the draft Synch proposals, the Commission engaged with Synch and its legal advisors (on behalf of the Parties), to formulate proposals which would mitigate the foreclosure concerns identified by the Commission. The final Joint Proposals and Synch Proposals are described in Section 6 below.

Assessment of Theory of Harm 3: Stifling of Innovation

5.81 The assessment of the likelihood of the Proposed Transaction leading to the stifling of innovation is structured as follows:

(a) **Views of the Parties** – summarises views put forward by the Parties

(b) **Views of third parties** – summarises views of competitors;

(c) **Assessment of theory of harm 3: stifling of innovation** – the potential for the implementation of the Proposed Transaction to stifle future innovation in: the potential market for the provision of Mobile Instant Payments Services in the State;

(d) **Conclusion in respect of theory of harm 3: stifling of innovation; and**

(e) **Proposals submitted by Synch and jointly by the Parties.**

(a) Views of the Parties

5.82 In their submission to the Commission dated 15 December 2021, the Parties provided the following view in relation to whether the Synch Mobile Payments Service may stifle innovation:

> "*If any participant in the Synch Mobile Payments Service does not innovate and compete for new business they will simply lose customers and market share to the other providers thereby impacting upon their own business plans. The funding shareholders have demonstrated continued investment in innovation over a number of years, notwithstanding involvement in Synch, including investment in their own respective banking apps to*

increase the digital services offered and also the introduction of Apple Pay and Google Pay. The payments industry is evolving all the time and at an ever-increasing pace, and so it is essential for any payment provider to be aware of new developments / innovations and to adopt those where there is a customer demand (for example, PSP's adopting 'Apple Pay' / 'Google Pay' etc.). Any participant that does not innovate, compete and / or keep up to speed in this space will be at risk of dis-intermediation, losing customers and customer market share, especially in an increasingly digital world. … Furthermore, Synch promotes innovation and the potential for further innovation in that the Synch Mobile Payments Service will be available to participants that, because of their size and/or scale, may not otherwise be able to have access to, or provide their customers with, an 'App' facilitating instant payment transfers. The introduction of a new mobile payments service is itself an innovation that will increase competition in the payment services market in Ireland, and is only likely to encourage greater innovation from other platforms that may be competitors to the Synch Mobile Payments Service."[230]

5.83 In their submission to the Commission dated 21 March 2022, the Parties provided the following view in relation to whether the Synch Mobile Payments Service may prevent innovation by the JV Parents in their own individual banking apps in the area of instant payments:

"Banking Apps are a key competitive differentiator between providers and are keenly watched across the world for 'best in class' with respect to services and innovations with a view to meeting increasing customer demand and expectations. Banking Apps are strategic channels for all Financial Services providers and are essential for meeting customer

[230] See page 24 of the December Submission.

demand and expectation. Banking Apps are continually evolving – they are equivalent to the 'shop window' for the products and services on offer to bank customers and are increasingly a key determinant for customer choice of provider along with price and breadth of product offerings. … Banking App's are a strategic investment for all banks as they seek to manage their cost income ratio and meet increasing customer demand for total digital banking support. It is a highly unlikely scenario that innovation of the funding shareholders respective Banking Apps will be reduced following the availability of the Synch App and the impending regulatory requirement to introduce SEPA Instant, as there will always be a need for continuous evolution to keep pace with other providers in the market."[231]

5.84 In its Written Response to the Commission's Assessment, Synch expressed a number of points in relation to the Commission's view on the potential for the implementation of the Proposed Transaction to stifle future innovation, including the following:

> "*Synch participants have an incentive to differentiate their brand and consumer experience. While there is little switching, nevertheless there are new consumers entering the market for which there is competition (e.g. Starling has stated to the Commission that it has actually increased its ambitions for Ireland given the exit of Ulster Bank and KBC […], Dutch fintech Bunq has recently announced that it is now offering Irish IBANs; and NoFrixon has launched bringing instant account to account payments to merchants). As a result, it is reasonable to assume, and all evidence suggests, that Synch participants will continue to develop complementary apps to the Synch MIPS. In other words, the Synch MIPS has expanded the*

[231] See page 5 of the Parties' submission with supporting information to their draft proposals dated 21 March 2022.

scope for follow-on innovations. … Synch will promote innovation as banks/financial institutions will have to continue to innovate in order to differentiate their own apps and their own services from each other and indeed from the […] app…"[232]

(b) Views of third parties

5.85 In its third-party submission to the Commission dated 21 April 2021, Revolut stated the following in relation to the potential impact of the Proposed Transaction on innovation:

> *"Is the JV likely to discourage individual innovation by one of the participant banks in the future? Whatever the answer, it is clear that such a lack of innovation is detrimental to competition and to Irish customers."*[233]

5.86 In a submission to the Commission dated 25 June 2021, Revolut expressed the following view in relation to the potential impact of the Proposed Transaction on innovation:

> *"The Proposed Transaction would also potentially reduce not only consumer choice, but also innovation - the development of new products or enhancements to existing products. It is notable that during the period that the retail banks have been collaborating on an instant payments group, none of them has chosen to innovate by offering their customers access to the SCT Inst scheme. Similarly, none of them has to date innovated by attempting to offer access to any other European instant*

[232] See page 10 of Synch's Written Response to the Commission's Assessment, dated 18 May 2022.

[233] See Revolut's submission of 21 April 2021, with document name "2021.06.25 Redacted_Revolut_CCPC Submission.

payments scheme. So before it is even implemented the effect of the Proposed Transaction, it can be argued, has been to significantly stifle competition between the participant banks - thereby also stifling competitive innovation."[234]

(c) Assessment of theory of harm 3: stifling of innovation

5.87 For the reasons outlined below, the Commission does not agree with the Parties that there are no prima facie competition concerns, and that, absent proposals, there is no risk of stifling innovation.

5.88 The Commission is of the view that the Proposed Transaction may lead to the stifling of future innovation in the potential market for the provision of Mobile Instant Payments Services in the State. In particular, the Commission is concerned that, following implementation of the Proposed Transaction, innovation in Mobile Instant Payments Services in the State may only take place in a coordinated fashion with innovative features being developed collectively through the Synch Mobile Payments Service and available to all participants at the same time, rather than participant PSPs individually innovating by developing and improving their own proprietary mobile payments services in order to increase the attractiveness of their payments services and current account services.

5.89 This may occur through:

a. A potentially reduced incentive for JV Parents and Participating PSPs to innovate in their own proprietary apps and/or to sponsor entry of a competing Mobile Instant Payments Service; or

[234] See Revolut's submission of 25 June 2021, with document name "2021.06.25 Revolut Responses_NON-CONFIDENTIAL VERSION.docx"

b. A potential incentive for the JV Parents to influence decisions regarding future innovation within Synch which are not aligned with the commercial interests of the JV Parents.

5.90 As regards (a), the Commission is concerned that given that the JV Parents hold a substantial combined market share in the provision of current account services in the State, the Proposed Transaction will reduce the prospects for potential competition to emerge in the potential market for the provision of Mobile Instant Payments Services in the State, as well as in the related potential market for the provision of banking products and services (including current accounts) in the State.

5.91 The Commission considers that the network effects[235] that are highly likely to be created by the Synch Mobile Payments Service may deter the JV Parents (and third-party Participating PSPs) from further developing their own individual mobile payments services.[236] The Commission considers that, absent the Proposed Transaction, the JV Parents (and third-party Participating PSPs) may have a greater incentive to innovate through the introduction of new and/or improved individual mobile payments services and thereby increase their individual potential market shares in each of: (i) the potential market for the provision of Mobile Instant Payments Services in the State, and (ii) the potential

[235] As noted in footnote 186 above, the economic benefit to a PSP of being a participant in the Synch Mobile Payments Service can be thought of as a "network effect" where the value of a network connection for a user depends on the number of other users already connected. In the case of the Synch Mobile Payments Service, it is the Commission's preliminary view that there are likely to be significant network effects and resulting economic benefits to a participating PSP because the vast majority of current account holders in the State will be reachable by a participant's customers through the Synch Mobile Payments Service due to the very high combined share of the JV Parents in the provision of current account services in the State.

[236] The legitimacy of innovation concerns was initially confirmed by the EU General Court in 2015 in its judgement of *Deutsche Borse AG v Commission*. On appeal, the General Court agreed with the European Commission's analysis, in particular that pre-merger the close competition between the parties was an important driver of innovation, bringing new and improved offerings to customers.

market for the provision of banking products and services (including current accounts) in the State.

5.92 The Commission notes that AIB introduced its "Pay a Contact" mobile application on 9 February 2022.[237] This is an intrabank mobile payments service that allows AIB customers to make P2P payments to other AIB customers. In 2013, BOI introduced a similar service "Pay to Mobile". The Commission is concerned that, following implementation of the Proposed Transaction, the JV Parents may no longer invest in developing and improving their own individual mobile payments services in competition with others and instead focus solely on developing the Synch Mobile Payments Service. This has the potential to result in consumer harm through more limited choice and a poorer user experience.

5.93 As regards (b), the Commission also has a concern that in addition to having a reduced incentive to invest in developing and improving their own individual mobile payments services, the JV Parents may also be less likely to allow for innovation within Synch through their ability to influence decisions of the Synch Board. As set out at paragraph 1.27 above, the JV Agreement provides that any decisions regarding amendments to the business plan or adoption of any subsequent business plan of Synch will only be approved if there is a majority vote by the directors, and the directors voting in favour represent JV Parents with at least 50% of the shareholding. As set out at paragraph 1.40 above, the Commission is aware that some of the JV Parents have been slow to innovate in the introduction of SEPA Instant. The implementation of Synch itself has been slowed down as a result. The Commission is concerned that the future ability of Synch to innovate may be stifled if the innovation is not aligned with the commercial interests of the JV parents.

[237] See paragraph 2.63 in Section 2 above for a discussion of AIB's Pay a Contact mobile application.

5.94 As noted at paragraph 1.28 above, Synch proposes to operate an Advisory Forum which will include representatives of each Participating PSP and this will allow for updates to be provided to Participating PSPs, including the impact of any such plans on Participating PSPs (e.g., technological, operation or legal). However, there was no mechanism by which Participating PSPs could propose improvements to the Synch Mobile Payments Service which could be approved independently of the JV Parents.

5.95 The Commission is of the view that this potential for the Proposed Transaction to stifle innovation may result in less intense price and non-price competition between the JV Parents.

(d) Conclusion in respect of theory of harm 3: stifling of innovation

5.96 Taking all the evidence into account, the Commission has concluded that the Proposed Transaction may lead to the stifling of future innovation in the potential market for the provision of Mobile Instant Payments Services in the State, compared to the relevant counterfactual whereby an alternative Mobile Instant Payments Service emerges in the State.

(e) Proposals submitted by Synch and the Parties

5.97 As noted above, in its written response to the Commission's Assessment Synch expressed a number of points in relation to the Commission's view on the potential for the implementation of the Proposed Transaction to stifle innovation. The Commission has considered the points expressed by Synch and concluded that there is no reason to change its view that, absent robust proposals from the Parties (which are described in Section 6 below), there is a risk that the Proposed

Transaction may lead to the stifling of future innovation in the potential market for the provision of Mobile Instant Payments Services in the State.

5.98 On 23 March 2022, the Parties submitted draft joint proposals to the Commission in accordance with section 20(3) of the Act intended to ameliorate the stifling of innovation concerns identified by the Commission. On 26 May 2022, Synch submitted draft proposals to the Commission in accordance with 20(3) of the Act intended to further ameliorate the stifling of innovation concerns identified by the Commission.

5.99 Following receipt of both the draft joint proposals and the draft Synch proposals, the Commission engaged with Synch and its legal advisors (on behalf of the Parties), to formulate proposals which would mitigate the stifling of innovation concerns identified by the Commission. The final Joint Proposals and Synch Proposals are described in Section 6 below.

Assessment of Theory of Harm 4: Liquidity Risk

5.100 The assessment of the likely competitive impact of liquidity risk is structured as follows:

(a) **What is liquidity risk?**;

(b) **Views of the Parties** – summarises views put forward by the Parties;

(c) **Views of third parties** – summarises views of competitors;

(d) **Assessment of theory of harm 4: liquidity risk** – the potential for the implementation of the Proposed Transaction to lead to a liquidity risk from participation in the Synch Mobile Payments Service that may deter entry or expansion in a number of potential downstream markets in the State, including the provision of: (i) P2P Mobile Instant Payments Services;

(ii) P2B mobile payments services; as well as in (iii) the related market for the provision of banking products and services (including current account services to personal, SME and corporate customers);

(e) Conclusion in respect of liquidity risk; and

(f) Proposals submitted jointly by the Parties.

(a) What is liquidity risk?

5.101 As described in Section 1 above, the Synch Mobile Payments Service will offer a mobile payments service to customers of Participating PSPs using hybrid rails, and therefore will support settlement and clearance via both SEPA Standard and SEPA Instant. Since the JV Parents have not yet implemented SEPA Instant,[238] the vast majority of instant payments made through the Synch Mobile Payments Service following implementation of the Proposed Transaction will at least initially be settled and cleared through SEPA Standard.[239]

5.102 As described in Section 2 above, payments conducted on SEPA Standard typically take at least one business day to settle and clear. Thus, customers of Participating PSPs will experience instant payments when they make an interbank payment through the Synch Mobile Payments Service but the vast majority of instant

[238] Furthermore, each of the JV Parents confirmed to the Commission that they have made no efforts (financial or otherwise) over the period 1 January 2016 to 6 January 2022 to implement SEPA Instant in the State. This indicates that the implementation of SEPA Instant in the State by the JV Parents is not imminent. As noted in Section 2 above, however, SEPA Instant is likely to be mandated by the European Commission in the second half of 2022. In its response dated 16 February 2022 to the Phase 2 RFI [MD5 Hash: 7ba9f496514d424fb799e21970568fa8] , PTSB stated the following: […]. In its response dated 17 February 2022 to the Phase 2 Information Request [MD5 Hash: 87e62a03755d25eb8e16dc1ce031f354] , KBC stated the following: […]. In its response dated 24 February 2022 to the Phase 2 RFI [MD5 Hash: 73b56de98e5b1ebfd64da033bbdb3f09], BOI stated the following: […]. In its response dated 28 February 2022 to the Phase 2 RFI [MD5 Hash: 0749b3a5c220ed4d4874a4ae90fa8280], AIB stated the following: […].

[239] In a submission to the CCPC dated 15 December 2021, the Parties stated the following: "*The Synch Mobile Payments Service is designed such that every payment is settled based on the two parties to that specific payment, with SEPA Instant defaulted over SEPA Standard. Therefore, where two parties to a payment are SEPA Instant, that payment will be settled via SEPA Instant. Where one party to a payment is not yet SEPA Instant, that payment will be settled on SEPA Standard as is the case today across Ireland and Europe.*" [MD5 Hash: 7588a8588a1dfd48eaab909011cc5a6d]

interbank payments between Participating PSPs will at least initially not be cleared and settled instantaneously.[240] This may result in some Participating PSPs in the Synch Mobile Payments Service being exposed to a liquidity risk. If, at the end of a payment cycle, a Participating PSP in the Synch Mobile Payments Service is a net receiver of funds rather than payer, it may be exposed to a liquidity risk until it receives the next payment settlement file from a counterparty as its customers will already have been debited the value of the instant payments made in that payment cycle.

(b) Views of the Parties

5.103 In their submission to the Commission dated 21 March 2022, the Parties provided the following view in relation to the possibility of liquidity risk resulting from participation in the Synch Mobile Payments Service:

> "*Irish market participants use the STEP2 SEPA Credit Transfer (SCT) Service provided by EBA Clearing to send, receive and settle credit transfers. STEP2 is a highly resilient pan-European automated clearing house service that has been in operation since 2008. Since its inception STEP2 has provided a significant level of flexibility to participants by offering seven (7) settlement windows throughout the day and overnight. Ireland is one of only two countries across Europe that participates in the optional overnight cycles thus ensuring regular and frequent settlement flows throughout each 24-hour period. The use / participation in all available cycles significantly reduces the period of time between the funds being made available to a customer for a Synch transaction versus the finalisation of the interbank settlement. In acknowledgement of the increasing demand for instant payments, and the European Commission's*

[240] Since most instant interbank payments made through the Synch Mobile Payments Service following implementation of the Proposed Transaction will involve at least one of the JV Parents, it therefore follows that most instant interbank payments made through the Synch Mobile Payments Service will at least initially be settled and cleared via SEPA Standard.

and ECBs vision to make instant the 'new norm', the EBA are in the process of upgrading STEP2 to a Continuous Gross Settlement (CGS) model. This is a mandatory SEPA scheme upgrade to be completed by all EBA participants by November 2022 i.e. CGS will be in place for Synch launch. The move to CGS could further shorten the settlement windows potentially yielding benefit to Synch participants in terms of reducing the deferred settlement window. The ultimate solution to eliminate the concern of the Commission will be the migration of the market to SEPA Instant; the timing of which will be driven by the introduction of legislation by the European Commission which is expected to be announced in H2 2022."[241]

5.104 None of the JV Parents (i.e., AIB, BOI, PTSB, and KBC) expressed any concerns about the possibility of liquidity risk arising from participation in the Synch Mobile Payments Service.

5.105 In its response dated 28 February 2022 to the AIB Phase 2 RFI, AIB provided the following view in relation to the possibility of liquidity risk resulting from participation in the Synch Mobile Payments Service:

[…].[242]

5.106 In its response dated 24 February 2022 to the BOI Phase 2 RFI, BOI provided the following view in relation to the possibility of liquidity risk resulting from participation in the Synch Mobile Payments Service:

[…]. [243]

[241] See page 11 of Synch's submission dated 21 March 2022 [MD5 Hash: 3fa1771a925af2e2ae73f09dbc0c71bf]
[242] See response to question 15 of AIB's Phase 2 RFI response [MD5 Hash: 0749b3a5c220ed4d4874a4ae90fa8280]
[243] See response to question 13 of BOI's Phase 2 RFI response [MD5 Hash: 73b56de98e5b1ebfd64da033bbdb3f09]

5.107 In its response dated 16 February 2022 to the PTSB Phase 2 RFI, PTSB provided the following view in relation to the possibility of liquidity risk resulting from participation in the Synch Mobile Payments Service:

> […].[244]

5.108 In its written response to the Commission's Assessment, Synch expressed a number of points in relation to the Commission's view on the potential for the implementation of the Proposed Transaction to lead to a liquidity risk.

(c) Views of third parties

5.109 In its informal RFI response to the Commission dated 7 March 2022, Ulster Bank provided the following view in relation to the possibility of liquidity risk resulting from participation in the Synch Mobile Payments Service:

> *"Ulster Bank did not and has not undertaken the low-level impact assessment of the operation of the Synch Mobile Payments Service as constituted which would be necessary to provide a considered view on this issue. However, concerns were raised during discussions of the proposal that the SEPA classic solution would provide instant payments for customers, whereas settlement between banks would be reliant on existing intraday SEPA cycles, i.e. settlement between the banks only occurred at set times throughout the day rather than instantaneously. There are seven daily cycles. In a worst-case scenario, where the sending banks failed to settle multiple Synch instant payments which had already been paid out to customers by the receiving banks, there was the potential*

[244] See response to question 14 of PTSB's Phase 2 RFI response [MD5 Hash: 7ba9f496514d424fb799e21970568fa8]

to impact liquidity. Although concerns were raised, this risk was not validated."[245]

5.110 In a call with the Commission on 14 July 2021, Revolut provided the following response to the question "*How significant would the capital and liquidity risks be for PSPs such as Revolut to offer instant payments to customers but for the payments to be processed using the SCT rails?":*

> *"it [is] difficult to comment on this point, as Revolut is not entirely clear on what is being proposed by Synch. To provide an accurate estimate of the risk, a potential participant would need a sense of transaction volumes and forecasts from Synch. Based on the information available, it was noted that the model would be burdensome for smaller scheme participants, but that Revolut did not consider itself to be one of these. The reason for this is that with an instant payments solution based on SEPA Instant, there is no liquidity issue, whereas with a payment solution which gives the appearance of being instant but is in fact based on the SEPA standard scheme, a participant would have to front the money for 2-3 days while the transaction is cleared. … smaller players may not have a suitable liquidity pool/buffer to manage this (although Revolut could possibly manage), and that this could make it harder for smaller players to be realistically involved. In that sense, the scheme would again be limited to the larger players, such as the three founding banks."*[246]

(d) Assessment of Theory of Harm 4: Liquidity Risk

[245] See Ulster Bank's response to its informal information request, dated 7 March 2022.

[246] See call note with Revolut dated 14 July 2021, with document name "2021.07.14 Non-confidential version of note on meeting with Revolut"

5.111 For the reasons outlined below, the Commission does not agree with the Parties that there are no prima facie competition concerns, and that, absent proposals, there is no liquidity risk.

5.112 The Commission is of the view that the possibility of a liquidity risk arising from participation in the Synch Mobile Payments Service may deter entry or expansion into: (i) the potential market for the provision of P2P Mobile Instant Payments Services in the State; (ii) the potential market for the provision of P2B mobile payments services in the State; as well as in (iii) the related market for the provision of banking products and services (including current account services to personal, SME and corporate customers) in the State.

5.113 The Commission is of the view that liquidity risk from participation in the Synch Mobile Payments Service is more likely to affect smaller PSPs and new entrants. This is because larger banks participating in Synch are likely to have a greater proportion of intra-bank payments which are cleared and settled instantaneously. In contrast, smaller PSPs (including new market entrants) participating in the Synch Mobile Payments Service are likely to have a greater proportion of interbank payments which will not, at least initially, be cleared and settled instantaneously.

5.114 In addition, the Commission is of the view that larger PSPs participating in Synch are likely to be in a better position to absorb the impact of any time lag between settlement and clearance of interbank transactions. In this regard, the Commission notes the following view expressed to the Commission by Revolut: "*smaller players may not have a suitable liquidity pool/buffer to manage this (although Revolut could possibly manage), and that this could make it harder for* *smaller players to be realistically involved. In that sense, the scheme would again be limited to the larger players, such as the three founding banks."*[247]

5.115 The Commission is therefore of the view that smaller PSPs may be deterred from participating in the Synch Mobile Payments Service as they are more likely to be exposed to the possibility and impact of a liquidity risk. The Commission notes that the possibility of a liquidity risk arising from participation in the Synch Mobile Payments Service will not arise once all of the JV Parents have implemented SEPA Instant. As noted in paragraph 2.18 above, the Commission understands that the implementation of SEPA Instant is likely to be mandated by the European Commission by the second half of 2022, with the deadline for implementation likely to be within the next two years.

(e) Conclusion in respect of liquidity risk

5.116 Taking all the evidence into account, the Commission has concluded that the Proposed Transaction may lead to a liquidity risk for smaller participants in the Synch Mobile Payments Service that may deter entry or expansion into: (i) the potential market for the provision of P2P Mobile Instant Payments Services in the State; and (ii) the potential market for the provision of P2B mobile payments services in the State; as well as in (iii) the related market for the provision of banking products and services (including current account services to personal, SME and corporate customers) in the State. The Commission is of the view that the liquidity risk arising out of participation in the Synch Mobile Payments Service may lead to harm to consumers as it is likely to lead to less intense price and non-price competition in these potential markets compared to the relevant

[247] See call note with Revolut dated 14 July 2021, with document name "2021.07.14 Non-confidential version of note on meeting with Revolut"

counterfactual which provides for the emergence of an alternative Mobile Instant Payments Service.

(f) Proposals submitted by the Parties

5.117 As noted above, in its written response to the Commission's Assessment Synch expressed a number of points in relation to the Commission's view on the potential for the implementation of the Proposed Transaction to lead to a liquidity risk. The Commission has considered the points expressed by Synch and concluded that there is no reason to change its view that, absent robust proposals from the Parties (which are described in Section 6 below), the Proposed Transaction may lead to a liquidity risk for smaller participants in the Synch Mobile Payments Service.

5.118 On 23 March 2022, the Parties submitted draft joint proposals to the Commission in accordance with section 20(3) of the Act intended to ameliorate the liquidity risk concerns identified by the Commission.

5.119 Following receipt of the draft joint proposals, the Commission engaged with Synch and its legal advisors (on behalf of the Parties), to formulate proposals which would mitigate the stifling of innovation concerns identified by the Commission. The final Joint Proposals are described in Section 6 below.

6. PROPOSALS TO ADDRESS COMPETITION CONCERNS

6.1 The Commission has structured its analysis in this section as follows:

(i) Overview of the initial draft proposals submitted by the Parties;

(ii) Market testing the draft proposals;

(iii) Overview of the final Joint Proposals and final Synch Proposals;

(iv) Conclusion.

(i) Overview of the initial draft proposals submitted by the Parties

6.2 On 21 March and 1 April 2022, the Parties submitted draft joint proposals to the Commission. These draft joint proposals contained proposed remedies aimed at mitigating the Commission's competition concerns namely that the Proposed Transaction may lead to: (i) coordinated effects; (ii) foreclosure; (iii) the stifling of innovation; and (iv) liquidity risk.[248]

6.3 The Commission engaged with Synch and its legal representatives (on behalf of the Parties collectively) to formulate proposals which would mitigate the preliminary competition concerns identified by the Commission.

6.4 See below for an overview of the draft proposals submitted by the Parties.

Coordinated effects concerns

6.5 On 1 April 2022, the Parties submitted draft joint proposals to the Commission under section 20(3) of the Act intended to address the Commission's coordinated effects concerns.

[248] See section 5 above for a detailed discussion of the Commission's competition concerns.

6.6 In the draft joint proposals, the Parties provided the following commitments:

- Each JV Parent commits to ensure that any director appointed to the Synch board will not be a person within a JV Parent responsible for overseeing, and/or the management of that JV Parent's mobile payments services;
- Each JV Parent commits to ensure that effective arrangements are in place to prevent the exchange of CSI;
- Each JV Parent commits to ensure that a number of independent directors, independent of each JV Parent, are appointed to the board of directors.

Foreclosure concerns

6.7 On 23 March 2022, the Parties submitted draft joint proposals to the Commission under section 20(3) of the Act intended to address the Commission's foreclosure concerns.

6.8 In the draft joint proposals, Synch provided the following commitments:

- Synch undertakes to ensure that the eligibility criteria for participating in the Synch Mobile Payments Service are clearly set out in the Synch application form;
- Synch undertakes to ensure that a clear timeline for a decision on an application would be included in the Synch application form; and
- Synch undertakes to establish an Independent Appeals Committee to provide applicants who believe that they have been unfairly treated during the Synch application process with a mechanism to challenge the decision of Synch management.

Stifling of Innovation concerns

6.9 On 23 March 2022, the Parties submitted draft joint proposals to the Commission under section 20(3) of the Act intended to address the Commission's preliminary stifling of innovation concerns.

6.10 In the draft joint proposals, the Parties committed to:

- Each of JV Parent undertakes to implement SEPA Instant Credit Transfer in compliance with the regulatory mandate for SEPA Instant Credit Transfer (both in terms of functionality and timing) as set out by the European Commission.

Liquidity risk concerns

6.11 On 23 March 2022, the Parties submitted draft joint proposals to the Commission under section 20(3) of the Act intended to address the Commission's liquidity risk concerns.

6.12 In the draft joint proposals, Synch committed to:

- Include an obligation in the Information Guide that participants are to settle any Synch payments in line with the regulatory requirements of Continuous Gross Settlement (CGS) and / or SEPA Instant Credit Transfer.

(ii) Market testing the draft proposals

6.13 Over the period 4 April to 12 April 2022, the Commission market tested the draft proposals described above in order to establish whether they were likely to be appropriate, proportionate and effective in mitigating the identified competition concerns.

6.14 The Commission conducted phone interviews with six PSPs who may be potential participants in the Synch Mobile Payments Service. The PSPs were provided with a non-confidential version of the draft joint proposals and a presentation with a brief overview of the Synch Mobile Payments Service. The main findings of the Commission's market testing are set out below.

6.15 The Commission could not market test the proposals which aimed to mitigate the coordinated effects concerns identified by the Commission as these proposals were considered to be confidential to the Parties. However, PSPs did raise concerns as to the independence of Synch from the JV Parents. One PSP expressed a view that changes made by the JV Parents to the licence agreement in the future could effectively exclude them from participating in the Synch Mobile Payments Service.[249] Some PSPs expressed a concern that the JV Parents could, in the future, change the terms of the licence agreement in a way that might be detrimental to participants of the Synch Mobile Payments Service.[250] One PSP expressed a concern that the joining fees and the terms of the licence agreement may not be fair.[251] One PSP expressed a view that they were keen to have a representation at governance level in the Synch Mobile Payments Service. This PSP stated that this could be in the form of a user group rather than as a shareholder.[252]

6.16 Most PSPs contacted by the Commission expressed a view that they had not been provided with enough detail about the Synch Mobile Payments Service to allow them to comment.

6.17 With regard to the Commission's concerns regarding the stifling of innovation, some PSPs expressed a concern that the Proposed Transaction may harm innovation. Some PSPs expressed the view that it is important that participants in the Synch Mobile Payments Service have the option to integrate the Synch

[249] See call note with Starling dated 8 April 2022, with document name "2022.04.08 Call with Starling".
[250] See call note with Starling dated 8 April 2022, with document name "2022.04.08 Call with Starling".
[251] See call note with Revolut dated 7 April 2022, with document name "2022.04.07 Call with Revolut (NON-CONFIDENTIAL)".
[252] See call note with Payac dated 11 April 2022, with document name "2022.04.11 Call with Payac - with Payac's edits".

functionalities within their own app, either from launch or at a later stage. Two PSPs expressed the view that it would be their preference to integrate Synch into their own app once the brand has been established.[253] Two PSPs expressed the view that that it would be their preference to integrate Synch into their own app from the date that they join the Synch Mobile Payments Service.[254]

(ii) Overview of the Final Joint Proposals and Synch Proposals

6.18 Following the Commission's evaluation of the draft proposals and the issuing of the Commission's Assessment, the Commission engaged with Synch and its legal advisors (on behalf of the Parties) to formulate proposals that would ameliorate all of the competition concerns identified by the Commission. The Commission also took into account the results of the market testing it conducted as detailed above. During this engagement, the Commission provided the results of its evaluation of the proposals as detailed above to Synch and its legal advisors.

6.19 On 15 June 2022, the Parties submitted the binding Joint Proposals and Synch submitted the binding Synch Proposals, both of which are outlined and evaluated below.

Joint Proposals relating to the governance of Synch

6.20 The Joint Proposals contain commitments which relate to the governance of Synch and which aim to address a number of competition concerns. The Joint Proposals provide, *inter alia*, that:

[253] See call note with Payac dated 11 April 2022, with document name "2022.04.11 Call with Payac - with Payac's edits" and the call note with An Post dated 6 April 2022, with document name "2022.04.06 Call with An Post".
[254] See call note with Revolut dated 7 April 2022, with document name "2022.04.07 Call with Revolut (NON-CONFIDENTIAL)" and the call note with Starling dated 8 April 2022, with document name "2022.04.08 Call with Starling".

- Each of the Parties undertakes to ensure that a number of independent directors, independent of each JV Parent, are appointed to the board of directors.

- Each of the Parties undertakes to ensure that the day-to-day management of Synch will be the responsibility of the Synch management team;

- Synch undertakes to establish an independent appeals committee to provide any prospective participant or participant who believes it has been unfairly treated by Synch during its application or onboarding process with a mechanism to challenge the decision or treatment; and

- Synch undertakes to establish an Advisory Forum for all participants to contribute with suggestions for growing the Synch Mobile Payments Service and for the Synch management team to update participants on its plans for the development of the Synch Mobile Payments Service.

Joint Proposals to address coordinated effects concerns

6.21 The Joint Proposals provide, *inter alia*, that:

- Each JV Parent commits to ensure that any director appointed to the Synch board will not be a person within a JV Parent responsible for overseeing, and or the management of that JV Parent's mobile payments services;

- Each JV Parent commits to ensure that the effective arrangements are in place to prevent the exchange of CSI; and,

- Synch commits to ensure that any person appointed to serve as a director on behalf of a JV Parent is aware that he/she is not permitted to, and must not, discuss with or pass on, directly or indirectly, to their JV Parent any information which is competitively sensitive to: (i) Synch; (ii) another JV Parent; and/or (iii) any prospective participant.

6.22 The Commission is of the view that the Joint Proposals submitted by the Parties on 15 June 2022 are sufficient to address the coordinated effects concerns identified by the Commission during its investigation as they put in place appropriate measures to prevent the exchange of CSI between Synch, the JV Parents and any prospective participant. The Commission considers that proposals in relation to the governance of Synch would support the Parties' commitments which ensure that effective arrangements are in place to prevent the exchange of CSI, and together, they effectively mitigate the Commission's coordinated effects concerns.

Joint Proposals and Synch Proposals to address foreclosure concerns

6.23 The Joint Proposals provide, *inter alia*, that:

- Synch undertakes to ensure that eligibility criteria are applied by Synch in a uniform manner with a view to facilitating as many prospective participants as reasonably possible becoming participants;
- Synch undertakes that prospective participants are provided with the necessary documents and information relating to the eligibility criteria within 5 days of signing a non-disclosure agreement;
- Synch undertakes that each prospective participant will be informed of the decision in respect of its application to become a participant within four weeks from the date Synch receives the application;

- Synch undertakes to establish an independent appeals committee to provide any prospective participant or participant who believes it has been unfairly treated by Synch during its application or onboarding process with a mechanism to challenge the decision or treatment; and

- Synch undertakes to establish an Advisory Forum for all participants to contribute with suggestions for growing the Synch Mobile Payments Service and for the Synch management team to update participants on its plans for the development of the Synch Mobile Payments Service.

6.24 The Synch Proposals provide, that:

- Synch undertakes that the price of the Synch Mobile Payments Service will be set having regard to the following key principles: (i) the price and any price changes will be applied uniformly across all participants; (ii) the price will be transparent; and (iii) the price will not be set at a level that would constitute a breach of section 5 of the Act and/or Article 102 of the Treaty on the Functioning of the European Union.

6.25 The Commission is of the view that the Joint Proposals and Synch Proposals submitted by the Parties and Synch on 15 June 2022 are sufficient to address the foreclosure concerns identified by the Commission during its investigation as they allow fair access to the Synch Mobile Payments Service. The Commission considered that proposals in relation to the governance of Synch would strengthen the Parties' and Synch's proposals as they address the Commission's concerns that there may be a potential incentive for the JV Parents to influence decisions regarding future innovation within Synch which are not aligned with the commercial interests of the JV Parents.

Joint Proposals and Synch Proposals to address stifling of innovation concerns

6.26 The Joint Proposals provide that:

- Each of the JV Parents undertakes to implement SEPA Instant Credit Transfer in compliance with the regulatory mandate for SEPA Instant payments (both in terms of functionality and timing) as set out by the competent regulator.

6.27 The Synch Proposals provide, *inter alia*, that:

- Synch undertakes that it will make a person-to-person software development toolkit (a "P2P SDK") available for participants within a certain timeframe following a written reasoned request from a participant. A P2P SDK is a plug-in component that can be included in a participant's own banking app to execute and call Synch services to compete P2P transactions through the Synch Mobile Payments Service. The P2P SDK must be made available to license on licence terms which are: (i) fair; (ii) reasonable and (iii) non-discriminatory; and which will be applied uniformly across all participants.

6.28 The Commission is of the view that the Joint Proposals and Synch Proposals submitted by the Parties and Synch on 15 June 2022 are sufficient to address the stifling of innovation concerns identified by the Commission during its investigation. The Proposals allow the JV Parents and participating PSPs to innovate in their own proprietary apps. The Commission considered that proposals in relation to the governance of Synch would mitigate the Commission's concern that the JV Parents may influence decisions regarding future innovation within Synch which are not aligned with the commercial interests of the JV Parents.

Joint Proposals to address liquidity risk concerns

6.29 The Joint Proposals provide that:

- Synch undertakes to include an obligation in the Information Guide that participants are to settle any Synch payments in line with the regulatory requirements of Continuous Gross Settlement (CGS) and/or SEPA Instant Credit Transfer.

6.30 The Commission is of the view that the Joint Proposals submitted by the Parties and Synch on 15 June 2022 are sufficient to address the liquidity risk concern identified by the Commission during its investigation.

(iv) Conclusion

6.1. In the light of the Joint Proposals and the Synch Proposals (which form part of the basis of its determination), and in light of its analysis as set out in this determination, the Commission has formed the view that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

6.2. In accordance with section 20(3) of the Act, the proposals submitted by the Parties and Synch, respectively, have become commitments binding upon both the Parties and Synch, respectively. Both the Joint Proposals and the Synch Proposals are appended to this determination below.

7. CONCLUSION

7.1 In the light of the Proposals jointly submitted by the Parties and the Proposals submitted by Synch and its analysis as set out in this Determination, the Commission has formed the view that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

7.2 Before making a determination in this matter, the Commission, in accordance with section 22(8) of the Act, has had regard to any relevant international obligations of the State, and concluded that there were none.

8. ANCILLIARY RESTRAINTS

8.1 No ancillary restraints notified.

9. DETERMINATION

Pursuant to section 20(3) of the Competition Act 2002, as amended (the "Act"), Allied Irish Banks, P.L.C. ("AIB"); the Governor and Company of the Bank of Ireland ("BOI"); Permanent TSB P.L.C. ("PTSB"); KBC Bank Ireland P.L.C. ("KBC"); and Synch Payments D.A.C. ("Synch")(together, the "Parties"), have submitted to the Competition and Consumer Protection Commission (the "Commission") joint proposals set out below regarding measures to be taken to ameliorate any effects of the proposed joint venture on competition in markets for goods or services in the State, with a view to the said proposals becoming binding on the Parties.

Additionally, pursuant to section 20(3) of the Act, Synch has submitted to the Commission the proposals set out below regarding measures to be taken to ameliorate any effects of the proposed joint venture on competition in markets for goods or services in the State, with a view to the said proposals becoming binding on Synch.

The Commission has taken the proposals into account and, in light of the said proposals (which form part of the basis of its determination), has determined, in accordance with section 22(3)(a) of the Act that the result of the proposed creation of a joint venture, Synch Payments DAC, between AIB, BOI, PTSB and KBC, will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the merger may be put into effect. Before making a determination in this matter, the Commission, in accordance with section 22(8) of the Act, had regard to any relevant international obligations of the State, and concluded that there were none.

For the Competition and Consumer Protection Commission

Jeremy Godfrey

Chairperson

Competition and Consumer Protection Commission

10. APPENDIX A: THE PROPOSALS

M/21/004 – AIB/BOI/PTSB – SYNCH PAYMENTS DAC

PROPOSALS

Proposals by Allied Irish Banks, P.L.C.; The Governor and Company of the Bank of Ireland; Permanent TSB P.L.C.; KBC Bank Ireland P.L.C; and Synch Payments DAC to the Competition and Consumer Protection Commission

The Parties (as hereinafter defined) hereby submit to the Commission (as hereinafter defined) the following proposals under Section 20(3) of the Act (as hereinafter defined):

RECITALS

A. On 8 April 2021, the proposed creation of a joint venture, Synch Payments DAC, between Allied Irish Banks, P.L.C.; The Governor and Company of the Bank of Ireland; Permanent TSB P.L.C.; and KBC Bank Ireland P.L.C. was notified to the Commission in accordance with section 18(1)(a) of the Act.

B. On 8 December 2021, the Commission made a determination, in accordance with section 21(2)(b) of the Act, that it intended to carry out a full investigation under section 22 of the Act in relation to the Proposed Transaction (as hereinafter defined).

C. Pursuant to Section 20(3) of the Act, Allied Irish Banks, P.L.C.; The Governor and Company of the Bank of Ireland; Permanent TSB P.L.C.; KBC Bank Ireland P.L.C.; and Synch Payments DAC have submitted the Proposals (as hereinafter defined) to the Commission for the purpose of ameliorating any effects of the Proposed Transaction (as hereinafter defined) on competition in markets for goods or services in the State and with a view to the Proposals becoming binding on Allied Irish Banks, P.L.C.; The Governor and Company of the Bank of Ireland; Permanent TSB P.L.C.; KBC Bank Ireland P.L.C.; and Synch Payments DAC if the Commission takes the Proposals into account and states in writing that the Proposals form the basis or part of the basis of its Determination.

1 DEFINITIONS

1.1 For the purpose of the Proposals, the following terms shall have the following meanings:

Act means the Competition Act 2002, as amended;

Advisory Forum means as defined in clause 2.3 below;

AIB means Allied Irish Banks, P.L.C., a public limited company incorporated in Ireland (registered number 24173) whose registered office is at 10 Molesworth Street, Dublin 2;

Agreement means this agreement between the Parties and the Commission containing the Proposals;

AIB Group means AIB and any member of its Group (but for the avoidance of doubt shall not include Synch);

AIB JV Director means any person appointed by AIB to the board of directors of Synch, including any person for the time being acting as an alternate director within the meaning of section 165 of the Companies Act 2014 as respects any person appointed by AIB to the board of directors of Synch;

BOI means The Governor and Company of the Bank of Ireland, a chartered corporation with limited liability registered in the State with Registered Number C-1 having its registered office at 40 Mespil Road, Dublin 4, Ireland;

BOI Group means BOI and any member of its Group (but for the avoidance of doubt shall not include Synch);

BOI JV Director means any person appointed by BOI to the board of directors of Synch, including any person for the time being acting as an alternate director within the meaning of section 165 of the Companies Act 2014 as respects any person appointed by BOI to the board of directors of Synch;

Business Plan means the business plan in relation to Synch as same may be amended from time to time and adopted by the board of directors of Synch;

Commencement Date means the date of the Commission's Determination pursuant to section 22(3)(a) of the Act that the Proposed Transaction may be put into effect;

Commission means the Competition and Consumer Protection Commission and its successors;

Competent Authority means a national competent authority with powers of authorisation, regulation, supervision and investigation of a Regulated Payment Service Provider, including the Central Bank of Ireland, European Central Bank and any authority designated as competent by a Member State in accordance with Article 21 of the Payments Account Directive 2014/92/EU;

Competent Regulator means in respect of AIB and BOI, the Single Supervisory Mechanism, and in relation to PTSB, the Central Bank of Ireland;

Determination means a determination of the Commission under section 22(3)(a) of the Act that the Proposed Transaction may be put into effect taking into account the Proposals, which form the basis or part of the basis of the Commission's Determination;

CSI means:

(a) in respect of a Party, any information relating to its (including its Group's) business, products and/or services (including, but not limited to, past, current and future pricing information; past, current and future output and sales information (including volumes, turnovers and market shares); past, current and future commercial plans (including product development, marketing and promotional plans); information about costs; and customer lists) the disclosure of which to any other Party would constitute a breach of Section 4(1) of the Act.

(b) in respect of a Participant, any information that comes into the possession of Synch as a result of that Participant's use of the Synch Mobile Payments Service relating to that Participant's (including its Group's) business, products and/or services (including, but not limited to, past, current and future pricing information; past, current and future output and sales information (including volumes, turnovers and market shares); past, current and future commercial plans (including product development, marketing and promotional plans); information about costs; and customer lists) the disclosure of which by Synch to any other Party would constitute a breach of Section 4(1) of the Act.

(c) in respect of a Prospective Participant, any information that comes into the possession of Synch as a result of that Prospective Participant entering into discussions with Synch about using the Synch Mobile Payments Service relating to that Prospective Participant's (including its Group's) business, products and/or services (including, but not limited to, past, current and future pricing information; past, current and future output and sales information (including volumes, turnovers and market shares); past, current and future commercial plans (including product development, marketing and promotional plans); information about costs; and customer lists) the disclosure of which by Synch to any other Party would constitute a breach of Section 4(1) of the Act.

For the avoidance of doubt, information that is available in any form to the public by lawful means, other than as a result of a breach of these Proposals, shall not be considered to constitute CSI;

Eligibility Criteria means the eligibility criteria for participating in the Synch Mobile Payments Service as set out at Annex A of this Agreement and as may be updated by Synch from time to time provided that any material updates are notified to the Commission in writing within 10 Working Days in advance of any change;

Excluded AIB Person means the person(s) within AIB directly responsible for overseeing, and/or the management of, AIB's Mobile Payments Services;

Excluded BOI Person means the person(s) within BOI directly responsible for overseeing, and/or the management of, BOI's Mobile Payments Services;

Excluded KBC Person means the person(s) within KBC directly responsible for overseeing, and/or the management of, KBC's Mobile Payment Services;

Excluded PTSB Person means the person(s) within PTSB directly responsible for overseeing, and/or the management of, PTSB's Mobile Payments Services;

Group, in relation to a company, means that company together with any subsidiary of that company for the time being, and any holding company of that company for the time being;

Independent Appeals Committee means as defined in Clause 2.2 below;

Independent Chairperson means as defined in Clause 2.21 below;

JVA means the Joint Venture and Shareholders Agreement dated 21 December 2020 between AIB, BOI, PTSB, KBC, Synch, and the Banking & Payments Federation Ireland Company Limited by Guarantee, as amended by way of a variation agreement between the same parties dated 7 April 2021;

KBC means KBC Bank Ireland P.L.C., a public limited company incorporated in the State (registered number 40537) whose registered office is at Sandwith Street, Dublin 2;

KBC Group means KBC and any member of its Group (but for the avoidance of doubt shall not include Synch);

KBC JV Director means any person appointed by KBC to the board of directors of Synch, including any person for the time being acting as an alternate director within the meaning of section 165 of the Companies Act 2014 as respects any person appointed by KBC to the board of directors of Synch;

Managing Director means the managing director of Synch from time to time;

Management Team means any head of function within Synch who reports directly to the Managing Director (for the avoidance of doubt, Personnel from any Party or Participant are precluded from forming part of the Management Team);

Merger Notification Form means the merger notification form submitted to the Commission on 8 April 2021 in relation to the Proposed Transaction;

Mobile Payments Services means electronic payments services for which the payment data and instructions are captured, transmitted and/or confirmed via a mobile phone;

Operations Manual means the document setting out the information and obligations concerning the engagement and support provided to, and expected from, Participants relating to the operation of the Synch Mobile Payments Service (as may be amended from time to time);

Participant means a participant of the Synch Mobile Payments Service licensed by Synch to use the Synch Mobile Payments Service;

Parties means the parties to the JVA, being AIB, BOI, KBC, PTSB and Synch, and each a **Party**;

Payment Services means any business activity set out in Annex I of the Payment Services Directive (EU) 2015/2366;

Personnel means any officer, employee, representative or agent, or person holding equivalent function;

Proposals means the proposals as set out in this Agreement;

Proposed Transaction means the proposed creation of a joint venture, Synch, between AIB, BOI, PTSB and KBC, which was notified to the Commission on 8 April 2021 in accordance with section 18(1)(a) of the 2002 Act;

Prospective Participant means a prospective participant of the Synch Mobile Payments Service who has signed a non-disclosure agreement (or similar type agreement) with Synch to explore whether to apply to Synch to become a Participant;

Protocol means the 'Synch Payments Designated Activity Company Competition Law Policy and Protocol' dated 21 December 2021;

PTSB means Permanent TSB P.L.C., a public limited company incorporated in the State (registered number 222332) whose registered office is at 56-59 Saint Stephen's Green, Dublin 2;

PTSB Group means PTSB and any member of its Group (but for the avoidance of doubt shall not include Synch);

PTSB JV Director means any person appointed by PTSB to the board of directors of Synch, including any person for the time being acting as an alternate director within the meaning of section 165 of the Companies Act 2014 as respects any person appointed by PTSB to the board of directors of Synch;

Regulated Payment Service Provider means a body that is regulated to provide Payment Services by a Competent Authority, and that offers SEPA reachable IBANs (as defined under the SEPA schemes);

Shareholder Nominated Director means, in respect of a Shareholder Party, the person(s) appointed as director(s) of Synch by that Shareholder Party pursuant to the terms of the JVA;

Shareholder Party means each of AIB, BOI, PTSB or KBC (as the context requires);

State means the Republic of Ireland;

Synch means Synch Payments Designated Activity Company, a designated activity company incorporated in the State (registered number 679126) whose registered office is at Floor 3, One Molesworth Street, Dublin 2;

Synch Mobile Payments Service means the Mobile Payments Services provided by Synch;

Synch Solution means the Mobile Payments Service operated by Synch;

Technical Specifications defines the technical design and requirements that need to be undertaken by the supplier and Participants to ensure connectivity to the Synch Mobile Payments Service; and

Working Day means a day (other than a Saturday or a Sunday or a public holiday) on which banks are open for retail business in the State.

2 UNDERTAKINGS

Eligibility and Application Process

2.1 Synch undertakes to ensure that:

(i) the Eligibility Criteria are applied by Synch in a uniform manner and with a view to facilitating as many Prospective Participants as reasonably possible becoming Participants;

(ii) the Eligibility Criteria are clearly set out in the Synch application form and any other relevant material (e.g. the 'Information Guide') provided by Synch to Prospective Participants as part of the initial engagement between Synch and Prospective Participants;

(iii) each Prospective Participant is provided, within five (5) Working Days of entering into a non-disclosure agreement with Synch, unless otherwise agreed, with the necessary documentation and information relating to the Eligibility Criteria that may be reasonably required by that Prospective Participant to enable it: (i) to complete its feasibility analysis and business case; and (ii) to make a decision on whether to apply to Synch to become a Participant;

(iv) each Prospective Participant will be informed of the decision in respect of its application to become a Participant within four weeks from the date Synch receives that Prospective Participant's fully completed application form; and Synch further undertakes that this timeframe will be standard and uniformly applied to all Prospective Participants;

(v) details of the appeals process (i.e. the Independent Appeals Committee defined in Clause 2.2 below), providing each Prospective Participant who believes it has been unfairly treated by Synch during its application process or its onboarding process (for example through application refusal, application delay, or launch delay) with a mechanism to challenge the decision or treatment, will be included in the Synch application form provided to Prospective Participants; and

(vi) the communication from Synch to a Prospective Participant whose application to become a Participant is unsuccessful will include: (i) the reason(s) why the Prospective Participant's application was unsuccessful; (ii) what would be required of the Prospective Participant to remedy the reason(s) why the application was unsuccessful; and (iii) details on how the Prospective Participant may appeal the decision to the Independent Appeals Committee.

The Independent Appeals Committee

2.2

(i) Synch undertakes to establish an independent appeals committee (the **"Independent Appeals Committee"**) to provide any Prospective Participant or Participant who believes it has been unfairly treated by Synch during its application process or onboarding process (for example through application refusal, application delay or launch delay) with a mechanism to challenge the decision or treatment, and to put its case to the Independent Appeals Committee, setting out the reasons why it believes it has been unfairly treated by Synch (an "**IAC Referral**").

(ii) Synch undertakes to ensure that:

(i) the Independent Appeals Committee will consist of up to four, but not less than three members being: (a) the Independent Appeals Committee Chairperson (who will have no other involvement with Synch); (b) at the discretion of the Independent Appeals Committee Chairperson, a person appointed by the Independent Appeals Committee Chairperson (the "**IACC Appointee**"); and (c) up to two Independent Directors (as defined in Clause 2.16(i));

(ii) a specific set of criteria (the "**Selection Criteria**") will be developed by the Independent Chairperson and the Managing Director in order to identify the skills, competencies and objective independence criteria required of and applicable to: (1) the Independent Appeals Committee Chairperson; and (2) the IACC Appointee;

(iii) the Independent Chairperson will appoint the Independent Appeals Committee Chairperson and will be responsible for outlining how the selected candidate meets the Selection Criteria;

(iv) the Independent Appeals Committee Chairperson shall be entitled to appoint an IACC Appointee and will be responsible for outlining how the selected candidate meets the Selection Criteria;

(v) the role of the Independent Appeals Committee will be to determine, based on the merits of, and having reference to, the respective cases put forward by: (1) the relevant Prospective Participant or Participant; and (2) Synch, whether or not, in the view of the Independent Appeals Committee, the relevant Prospective Participant or Participant has been unfairly treated by Synch during its application process or onboarding process (for example through application refusal, application delay or launch delay), and if so what is required to remedy that unfair treatment;

(vi) terms of reference of the Independent Appeals Committee, including:

(a) the quorum for valid meetings;

(b) the frequency and conduct of meetings;

(c) the grounds upon which an IAC Referral can be made by a Prospective Participant or a Participant (as the case may be);

(d) the procedures for the conduct of IAC Referrals (including, in respect of any IAC Referral, the provision of a written acknowledgement (in a form approved by the Independent Appeals Committee) from: (1) the relevant Prospective Participant or Participant making the IAC Referral; and (2) Synch, acknowledging that the Independent Appeals Committee (and each of its members) will have full and complete authorisation and protection with respect to any decision made by the Independent Appeals

Committee in good faith, and no member of the Independent Appeals Committee will incur any liability whatsoever to: (1) the relevant Prospective Participant or Participant making the IAC Referral; and/or (2) Synch);

(e) procedures for determining the apportionment of the costs of an IAC Referral between: (1) the relevant Prospective Participant or Participant; and (2) Synch; and

(f) procedures to prevent and/or disqualify vexatious IAC Referrals (including the right of the Independent Appeals Committee, in its sole discretion, to reject, and/or refuse to entertain, any IAC Referral that the Independent Appeals Committee, in its sole discretion, deems to be vexatious),

will be set by the Independent Appeals Committee Chairperson in consultation with the Independent Chairperson and the Managing Director, and will govern the remit of the Independent Appeals Committee. Such terms of reference, and any material updates or changes to them, will be notified to the Commission within 10 Working Days in advance of any change;

(vii) the Independent Appeals Committee Chairperson will produce an annual report for the Independent Chairperson and the Commission, which will include details of all IAC Referrals (and their outcomes) since the date of the previous annual report, or more frequently as deemed appropriate by the Independent Appeals Committee Chairperson;

(viii) the Independent Appeals Committee shall have the right to seek such professional assistance and advice as it may require in fulfilling its role, shall be adequately resourced to seek all such advices, and shall be entitled to rely on all such advices and to act in accordance therewith;

(ix) decisions of the Independent Appeals Committee will be by majority vote and will be binding on: (1) Synch; and (2) the relevant Prospective Participant or Participant. In the event of an equality of votes, the Independent Appeals Committee Chairperson will have a casting vote.

The Advisory Forum

2.3 Synch undertakes to establish an Advisory Forum within six (6) months from the date on which the Synch Mobile Payments Service is provided to the first Participant for the purposes of supporting the overall objective of growing consumer and merchant usage via the Participants and which will convene at least twice in each year from when it is established.

2.4 The Advisory Forum will act as a forum for all Participants to contribute with suggestions for growing the Synch Mobile Payments Service as well as hearing the Synch Management Team's plans for the development of the Synch Mobile Payments Service. Specifically, the Advisory Forum will:

(i) update Participants on the development and evolution of the roadmap and plans for the Synch Mobile Payments Service as determined by the Synch Management Team (including the impact and rationale (if appropriate) of any such plans on Participants, e.g. in relation to technology, operations, and legal or regulatory issues);

(ii) hear from and discuss Participants' suggestions for the evolution of the Synch Mobile Payments Service's product and services; and

(iii) communicate with Participants on the industry key performance indicators for the Synch Mobile Payments Service, and feedback from any relevant consumer / business survey(s) conducted by / on behalf of Synch on the operation of the Synch Mobile Payments Service.

2.5 Each Participant will be entitled to appoint a representative from within that Participant to represent it on the Advisory Forum. The Terms of Reference of the Advisory Forum will include:

(i) purpose and objectives;

(ii) scope and standard agenda;

(iii) meeting frequency;

(iv) membership; and

(v) chairperson.

2.6 For the avoidance of doubt:

2.6.1 nothing in this Agreement shall oblige Synch to share any information with any Participants and/or any Prospective Participants (whether through the Advisory Forum or otherwise) which the Synch Management Team (in its absolute discretion) considers to be confidential and/or commercially sensitive to Synch; and

2.6.2 the Synch Management Team is solely responsible for making decisions on the direction and evolution of the Synch Mobile Payments Service, including the innovation and development roadmap. The Advisory Forum is not, and is not intended to be, a 'decision making body' for Synch and/or the Synch Mobile Payments Service. The Synch Management Team will not be bound by any suggestions or ideas that may emerge from an Advisory Forum meeting.

Innovation

2.7 Each of AIB, BOI, PTSB and KBC, as a regulated entity, undertakes to implement SEPA Instant Payments in compliance with the regulatory mandate for SEPA Instant Payments (both in terms of functionality and timing) as set out by the Competent Regulator.

Liquidity

2.8 Synch undertakes to include a requirement in the 'Information Guide' that Participants are to settle any Synch Mobile Payments Service payments in line with the regulatory requirements of SEPA CT Continuous Gross Settlement (CGS) and / or SEPA Instant.

CSI / Coordinated Effects

2.9 Undertakings specific to AIB:

(i) AIB shall, within one (1) month of the Commencement Date, provide to the Commission in writing the name and contact details of any person or persons appointed to serve as AIB JV Director.

(ii) AIB undertakes that:

(a) AIB shall ensure that any person appointed to serve as an AIB JV Director is not an Excluded AIB Person;

(b) AIB shall ensure that effective arrangements are in place within AIB (including, for example, information barriers / information protocols) to ensure that neither any person appointed to serve as an AIB JV Director nor any of AIB's Personnel shall discuss with or pass on, directly or indirectly, to any other Party any AIB Group CSI;

(c) AIB shall not permit any person appointed to serve as an AIB JV Director nor any of AIB's Personnel to discuss with or pass on, directly or indirectly, to any other Party any AIB Group CSI;

(d) AIB shall not permit any person appointed to serve as an AIB JV Director nor any of AIB's Personnel to discuss with or solicit from any other Shareholder Party, that Shareholder Party's CSI;

(e) AIB shall ensure that effective arrangements are in place within AIB (including, for example, information barriers / information protocols) to ensure that any person appointed to serve as an AIB JV Director shall not discuss with, or pass on, directly or indirectly, to AIB and/or to any AIB Group Personnel, any Synch CSI.

For the avoidance of doubt:

1. the obligations set out in Clause 2.9(ii)(a)-(e) above will not apply to: (i) any information which at the time of disclosure or thereafter is generally available to or known by the public (other than as a result of its disclosure by AIB or AIB Personnel in breach of these Proposals); (ii) any information which is required to be disclosed by judicial order or action or any applicable law, regulation or rule of any recognised investment exchange; and/or (iii) any information of the type referred to in clause 15 of the JVA; and

2. the obligation at Clause 2.9(ii)(e) above shall not in any way act to prevent the AIB JV Director from discussing with AIB Personnel any information and/or data relating to AIB that has been provided by AIB to Synch ("**AIB Provided**

Information”), including to the extent that any such AIB Provided Information might form part of Synch CSI.

2.10 Undertakings specific to BOI:

(i) BOI shall, within one (1) month of the Commencement Date, provide to the Commission in writing the name and contact details of any person or persons appointed to serve as BOI JV Director.

(ii) BOI undertakes that:

(a) BOI shall ensure that any person appointed to serve as a BOI JV Director is not an Excluded BOI Person;

(b) BOI shall ensure that effective arrangements are in place within BOI (including, for example, information barriers / information protocols) to ensure that neither any person appointed to serve as a BOI JV Director nor any of BOI’s Personnel shall discuss with or pass on, directly or indirectly, to any other Party any BOI Group CSI;

(c) BOI shall not permit any person appointed to serve as a BOI JV Director nor any of BOI’s Personnel to discuss with or pass on, directly or indirectly, to any other Party any BOI Group CSI;

(d) BOI shall not permit any person appointed to serve as a BOI JV Director nor any of BOI’s Personnel to discuss with or solicit from any other Shareholder Party, that Shareholder Party’s CSI;

(e) BOI shall ensure that effective arrangements are in place within BOI (including, for example, information barriers / information protocols) to ensure that any person appointed to serve as a BOI JV Director shall not discuss with, or pass on, directly or indirectly, to BOI and/or to any BOI Group Personnel, any Synch CSI.

For the avoidance of doubt:

1. the obligations set out in Clause 2.10(ii)(a)-(e) above will not apply to: (i) any information which at the time of disclosure or thereafter is generally available to or known by the public

(other than as a result of its disclosure by BOI or BOI Personnel in breach of these Proposals);(ii) any information which is required to be disclosed by judicial order or action or any applicable law, regulation or rule of any recognised investment exchange; and/or (iii) any information of the type referred to in clause 15 of the JVA; and

2. the obligation at Clause 2.10(ii)(e) above shall not in any way act to prevent the BOI JV Director from discussing with BOI Personnel any information and/or data relating to BOI that has been provided by BOI to Synch ("**BOI Provided Information**"), including to the extent that any such BOI Provided Information might form part of Synch CSI.

2.11 Undertakings specific to PTSB:

(i) PTSB shall, within one (1) month of the Commencement Date, provide to the Commission in writing the name and contact details of any person or persons appointed to serve as PTSB JV Director.

(ii) PTSB undertakes that:

(a) PTSB shall ensure that any person appointed to serve as a PTSB JV Director is not an Excluded PTSB Person;

(b) PTSB shall ensure that effective arrangements are in place within PTSB (including, for example, information barriers / information protocols) to ensure that neither any person appointed to serve as a PTSB JV Director nor any of PTSB's Personnel shall discuss with or pass on, directly or indirectly, to any other Party any PTSB Group CSI;

(c) PTSB shall not permit any person appointed to serve as a PTSB JV Director nor any of PTSB's Personnel to discuss with or pass on, directly or indirectly, to any other Party any PTSB Group CSI;

(d) PTSB shall not permit any person appointed to serve as a PTSB JV Director nor any of PTSB's Personnel to discuss with or solicit from any other Shareholder Party, that Shareholder Party's CSI;

(e) PTSB shall ensure that effective arrangements are in place within PTSB (including, for example, information barriers / information protocols) to ensure that any person appointed to serve as a PTSB JV Director shall not discuss with, or pass on, directly or indirectly, to PTSB and/or to any PTSB Group Personnel, any Synch CSI.

For the avoidance of doubt:

1. the obligations set out in Clause 2.11(ii)(a)-(e) above will not apply to: (i) any information which at the time of disclosure or thereafter is generally available to or known by the public (other than as a result of its disclosure by PTSB or PTSB Personnel in breach of these Proposals);(ii) any information which is required to be disclosed by judicial order or action or any applicable law, regulation or rule of any recognised investment exchange; and/or (iii) any information of the type referred to in clause 15 of the JVA; and

2. the obligation at Clause 2.11(ii)(e) above shall not in any way act to prevent the PTSB JV Director from discussing with PTSB Personnel any information and/or data relating to PTSB that has been provided by PTSB to Synch ("**PTSB Provided Information**"), including to the extent that any such PTSB Provided Information might form part of Synch CSI.

2.12 Undertakings specific to KBC:

(i) KBC shall, within one (1) month of the Commencement Date, provide to the Commission in writing the name and contact details of any person or persons appointed to serve as KBC JV Director.

(ii) KBC undertakes that:

(a) KBC shall ensure that any person appointed to serve as a KBC JV Director is not an Excluded KBC Person;

(b) KBC shall ensure that effective arrangements are in place within KBC (including, for example, information barriers / information protocols) to ensure that neither any person appointed to serve as a KBC JV Director nor any of KBC's Personnel shall discuss with or pass on, directly or indirectly, to any other Party any KBC Group CSI;

(c) KBC shall not permit any person appointed to serve as a KBC JV Director nor any of KBC's Personnel to discuss with or pass on, directly or indirectly, to any other Party any KBC Group CSI;

(d) KBC shall not permit any person appointed to serve as a KBC JV Director nor any of KBC's Personnel to discuss with or solicit from any other Shareholder Party, that Shareholder Party's CSI;

(e) KBC shall ensure that effective arrangements are in place within KBC (including, for example, information barriers / information protocols) to ensure that any person appointed to serve as a KBC JV Director shall not discuss with, or pass on, directly or indirectly, to KBC and/or to any KBC Group Personnel, any Synch CSI.

For the avoidance of doubt:

1. the obligations set out in Clause 2.12(ii)(a)-(e) above will not apply to: (i) any information which at the time of disclosure or thereafter is generally available to or known by the public (other than as a result of its disclosure by KBC or KBC Personnel in breach of these Proposals);(ii) any information which is required to be disclosed by judicial order or action or any applicable law, regulation or rule of any recognised investment exchange; and/or (iii) any information of the type referred to in clause 15 of the JVA; and

2. the obligation at Clause 2.12(ii)(e) above shall not in any way act to prevent the KBC JV Director from discussing with KBC Personnel any information and/or data relating to KBC that has been provided by KBC to Synch ("**KBC Provided Information**"), including to the extent that any such KBC Provided Information might form part of Synch CSI.

2.13 Undertakings specific to Synch:

(i) Synch shall ensure that effective arrangements (including, for example, information barriers / information protocols) are in place within Synch to ensure that any person appointed to serve as:

(a) an AIB JV Director is aware that he/she is not permitted to, and must not, discuss with or pass on, directly or indirectly, to AIB and/or to any AIB Group Personnel, any Synch CSI (subject to Clause 2.9(ii), 1 and 2 above), any Participant's CSI and/or any Prospective Participant's CSI;

(b) a BOI JV Director is aware that he/she is not permitted to, and must not, discuss with or pass on, directly or indirectly, to BOI and/or to any BOI Group Personnel, any Synch CSI (subject to Clause 2.10(ii), 1 and 2 above), any Participant's CSI and/or any Prospective Participant's CSI;

(c) a PTSB JV Director is aware that he/she is not permitted to, and must not, discuss with or pass on, directly or indirectly, to PTSB and/or to any PTSB Group Personnel, any Synch CSI (subject to Clause 2.11(ii), 1 and 2 above), any Participant's CSI and/or any Prospective Participant's CSI;

(d) a KBC JV Director is aware that he/she is not permitted to, and must not, discuss with or pass on, directly or indirectly, to KBC and/or to any KBC Group Personnel, any Synch CSI (subject to Clause 2.12(ii), 1 and 2 above), any Participant's CSI and/or any Prospective Participant's CSI,

and shall provide annual training to them in that regard;

(ii) Synch shall not permit any of its Personnel to discuss with or pass on, directly or indirectly, any Synch CSI to any other Party or any other Party's Personnel (for the avoidance of doubt, save as permitted: (a) in the case of AIB, pursuant to Clause 2.9(ii), 2 above; (b) in the case of BOI, pursuant to Clause 2.10(ii), 2 above; (c) in the case of PTSB, pursuant to Clause 2.11(ii), 2 above; and (d) in the case of KBC, pursuant to Clause 2.12(ii), 2 above);

(iii) Synch shall not permit any of its Personnel to discuss with or solicit, directly or indirectly, any other Party's CSI from any other Party or any other Party's Personnel (including any Shareholder Nominated Director);

(iv) Synch shall not permit any of its Personnel to discuss with or pass on, directly or indirectly, any Participant's CSI and/or any Prospective Participant's CSI to any other Party; and

(v) […]

Synch Governance

2.14 […]

2.15 […]

Synch Board Composition - Appointment of Independent Directors

2.16 The Parties undertake to ensure that:

(i) at all times a number of directors equal to X are appointed to the board of directors of Synch that are independent of each Shareholder Party (the "**Independent Directors**" and each an "**Independent Director**") (one of which will be the Independent Chairperson); and

(ii) the Synch managing director (the "**Managing Director**") will be appointed as a director of Synch (the Managing Director and the Independent Directors being hereinafter together referred to as the "**Non-Shareholder Directors**").

For the purposes of this Clause 2.16:

X = […]

[…]

As a result, if […], then the Synch board of directors will consist of […] directors, being […] (together the "**Shareholder Nominee Directors"**) and […] Non-Shareholder Directors ([…]).

2.17 The Parties undertake that the independence of the Independent Directors shall be assessed by reference to objective criteria such as those contained in Provision 10 of the UK Code of Corporate Governance 2018, including in particular whether any Independent Director:

(i) is or has been an employee or director of any Shareholder Party within the preceding five years;

(ii) has or has had within the preceding one year a material business relationship with any Shareholder Party either directly or as a partner, shareholder, director or senior employee of a body that has such a relationship with any Shareholder Party;

(iii) receives or over the past five years has received additional remuneration from any Shareholder Party apart from a director's fee, participates in any share option or performance-related pay scheme operated by any of the Parties, and/or is a member of any Shareholder Party's pension schemes;

(iv) has close family ties with any Shareholder Party's directors or senior Personnel;

(v) holds cross-directorships or has significant links with other members of the Synch board or any member of the board of any Shareholder Party; and/or

(vi) represents a significant shareholder of any Shareholder Party.

2.18 Synch shall, within one (1) month of the end of the relevant calendar year in which any Independent Director(s) is(are) appointed, provide written notice to the Commission of the date of the appointment, and the name and contact details of such Independent Director(s) appointed during that year. For the avoidance of doubt, the appointment of any Independent Directors will not be subject to prior approval by the Commission.

2.19 The Parties will procure that where requested by the Independent Chairperson the role of the Independent Directors will include:

(i) assisting the Independent Chairperson with the identification of Synch CSI;

(ii) assisting on the implementation (including activation) of appropriate mechanisms for preventing any Synch CSI, any Participant's CSI and/or any Prospective Participant's CSI being discussed with or passed on, directly or indirectly, to any Shareholder Party; and/or

(iii) assisting on the implementation (including activation) of appropriate mechanisms for preventing any Shareholder Party's CSI being discussed with or passed on, directly or indirectly, to any other Shareholder Party.

2.20 Synch will inform the Independent Directors in writing of the existence of the Proposals and the role of the Independent Directors in facilitating the Parties' compliance with the Parties' obligations, and the responsibilities of the Independent Directors, under the Proposals upon appointment.

Synch Board Composition - Appointment of an Independent Chairperson

2.21 The Parties undertake that the chairperson of the Synch board will be one of the Independent Directors (the "**Independent Chairperson**").

2.22 Synch will notify the Commission in writing of the appointment of the Independent Chairperson, and of any replacement Independent Chairperson, and will provide contact details for the Independent Chairperson and the reasons justifying the Parties' assessment that the Independent Chairperson is independent in accordance with Clause 2.17 of this Agreement. For the avoidance of doubt, where any of the circumstances in Clause 2.17(i)-(vi) of this Agreement are considered by the Parties to apply, and the Parties nonetheless consider that the Independent Chairperson is independent, the Parties will explain in writing to the Commission why they consider the Independent Chairperson to be a suitable and independent appointment.

2.23 The Parties will ensure, to the extent reasonably possible and allowing for any period of vacancy which occurs by reference to any hand-over between the outgoing Independent Chairperson and an in-coming Independent Chairperson, that the position of Independent Chairperson will not be vacant at any time.

2.24 The Parties will procure that the duties of the Independent Chairperson shall include:

(i) the identification of Synch CSI;

(ii) implementing appropriate mechanisms for preventing Synch CSI, or the CSI of any Participant or Prospective Participant, being discussed with or passed on, directly or indirectly, to any Shareholder Party; and

(iii) Implementing appropriate mechanisms for preventing any Shareholder Party's CSI, or the CSI of any Participant or Prospective Participant, being discussed with or passed on, directly or indirectly, to any other Shareholder Party.

2.25 Synch will inform the Independent Chairperson in writing of his/her role in facilitating the Parties' compliance with the obligations and responsibilities under the Proposals and Synch will ensure that the Independent Chairperson receives necessary training in this regard to assist in ensuring compliance with the Proposals as they apply to the Independent Chairperson.

2.26 Nothing in the Proposals shall prevent Synch, or any director of Synch, from taking steps necessary to comply with statutory or common law duties.

[…]

2.27 […]

2.28 […]

2.29 The Parties undertake that as soon as possible after the JVA has been amended in accordance with Clauses 2.27 and 2.28 of this Agreement, and in advance of the market launch of the Synch Mobile Payments Service, a copy of the revised JVA will be provided to the Commission.

Monitoring and Compliance Certificates

2.30 Each Party shall nominate a senior executive of that Party (a "**Compliance Executive**") who shall have responsibility for:

(i) monitoring compliance by that Party with this Agreement;

(ii) responding to any request(s) for information from the Commission pursuant to Clause 2.32 below; and

(iii) ensuring compliance with any written direction(s) received from the Commission pursuant to Clause 2.33 below in connection with this Agreement.

2.31 Each Party shall submit to the Commission:

(i) at intervals of six (6) months for the first period of twelve (12) months from the Commencement Date; and

(ii) at intervals of one (1) year thereafter,

for a total period of five (5) years from the Determination, a written certificate in the form set out in Annex B, signed by its Compliance Executive confirming that that Party has complied in all material respects with its obligations set out in this Agreement in the preceding period of 6 months or 1 year (as the case may be).

2.32 The Commission reserves the right to require a Party to provide to the Commission, at any time, such additional information as the Commission requires in order for the Commission to verify that Party's compliance with its obligations as set out in this Agreement. Each Party shall promptly provide to the Commission all such information in its possession or control, and shall procure that its Group likewise promptly provide to the Commission all such information in the Group's possession or control.

2.33 The Commission may provide such written directions to the Parties from time to time as needed to require compliance with this Agreement. Each Party shall comply promptly with any written directions issued by the Commission pursuant to this Agreement, and shall procure that its Group likewise comply promptly with any such written directions.

2.34 Each Party shall provide the name and contact details of its Compliance Executive to the Commission and shall provide written notice to the Commission in advance of any change to its Compliance Executive and shall promptly provide to the Commission the name and contact details of any new Compliance Executive nominated in accordance with Clause 2.30 of this Agreement.

Review Clauses

2.35 The Commission may at its sole discretion waive any provision in this Agreement, subject to prior consultation with the Parties.

2.36 The Commission may at its sole discretion waive or modify any provision of this Agreement in response to a reasoned written request from the Parties.

2.37 Nothing in this Agreement shall convey any rights upon any person or entity which is not a party to this Agreement.

2.38 The terms of this Agreement shall no longer apply to a Shareholder Party as and from the date on which that Shareholder Party ceases to hold shares in Synch save for in respect of the provisions in the relevant clause of the CSI/Coordinated Effects section of this Agreement.

3 CLARIFICATIONS AND FINAL PROVISIONS

3.1 For the avoidance of doubt, nothing in this Agreement shall prevent:

(i) disclosure by any Shareholder Party which is necessary to be provided to any of the other Shareholders in order to implement or operate the Proposed Transaction;

(ii) disclosure by any Shareholder Party to Synch and/or disclosure by Synch to any Shareholding Party of any information necessary to negotiate and/or operate the licence agreement between the Shareholding Party and Synch (e.g. the 'Participant Licence');

(iii) […];

(iv) […]; and/or

(v) disclosure by any Shareholder Party, or any member of Synch, of any information which is required to comply with any applicable law or regulation (including, without limitation, disclosure which may be made by any director and/or officer of a Shareholder Party or of Synch in order to fulfil any statutory and/or fiduciary duty) or judicial or arbitral process of any competent jurisdiction, or which is required to be disclosed by any competent authority or which is dealt with in accordance with Regulation (EU) No. 596/2014 on market abuse (Market Abuse Regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC or any applicable national implementing measures.

3.2 […]

3.3 This Agreement shall come into effect on the Commencement Date.

3.4 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts each of which when executed and delivered shall constitute an original, all such counterparts together constituting one and the same instrument. No counterpart shall be effective until each Party has executed and delivered at least one counterpart. Transmission and delivery of an executed counterpart of this Agreement by e-mail (whether in PDF, JPEG, signature by DocuSign or any equivalent electronic signature or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement and will be deemed to have the same legal effect as delivery of a manually executed counterpart to this Agreement.

ANNEX A

Eligibility Criteria

[...]

ANNEX B

[To be provided on the headed notepaper of the relevant Party]

Mr Ibrahim Bah
Director of Competition Enforcement and Mergers
Competition and Consumer Protection Commission
Bloom House
Railway Street
Dublin 1

[*Please insert date*]

Re: Merger Notification M/21/004 – AIB/BoI/PTSB – Synch Payments JV

Dear Mr Bah,

I refer to the Determination issued by the Competition and Consumer Protection Commission pursuant to section 22(3)(a) of the Competition Act 2002, as amended (the "Act") on [●] June 2022 in respect of the proposed creation of a joint venture, Synch Payments DAC, between Allied Irish Banks P.L.C.; the Governor and Company of the Bank of Ireland; Permanent TSB P.L.C.; and KBC Bank Ireland P.L.C.
This compliance certificate is submitted pursuant to Clause 2.31 of the agreement between the Competition and Consumer Protection Commission and Allied Irish Banks P.L.C., the Governor and Company of the Bank of Ireland, Permanent TSB P.L.C., KBC Bank Ireland P.L.C and Synch Payments DAC dated [●] June 2022 (the "Proposals"), in accordance with section 20(3) of the Act

I hereby confirm that [*Please insert name of Party*] to be best of my knowledge and belief [*Please insert name of Party*] has complied in all material respects with the terms of the Proposals during the period commencing on [the Commencement Date (as defined therein)]/[the date of the compliance certificate submitted on [*please insert date of most recent previous compliance certificate*]] and ending on the date hereof.

Yours sincerely,

[*Please insert name of Compliance Executive of relevant Party*]
Compliance Executive

M/21/004 – AIB/BOI/PTSB – SYNCH PAYMENTS DAC

FORMAL PROPOSALS

Proposals submitted by Synch Payments DAC to the Competition and Consumer Protection Commission

Synch (as hereinafter defined) hereby submits to the Commission (as hereinafter defined) the following proposals under Section 20(3) of the Act (as hereinafter defined):

RECITALS

1. On 8 April 2021, the proposed creation of a joint venture, Synch, between Allied Irish Banks, P.L.C.; The Governor and Company of the Bank of Ireland; Permanent TSB P.L.C.; and KBC Bank Ireland P.L.C (each hereinafter defined) was notified to the Commission in accordance with section 18(1)(a) of the Act.

2. On 8 December 2021, the Commission made a determination, in accordance with section 21(2)(b) of the Act, that it intended to carry out a full investigation under section 22 of the Act in relation to the Proposed Transaction (as hereinafter defined).

3. Pursuant to Section 20(3) of the Act, Synch has submitted the Synch Proposals (as hereinafter defined) to the Commission for the purpose of ameliorating any effects of the Proposed Transaction (as hereinafter defined) on competition in markets for goods or services in the State and with a view to the Synch Proposals becoming binding on Synch if the Commission takes the Synch Proposals into account and states in writing that the Synch Proposals form the basis or part of the basis of a Determination.

1 DEFINITIONS

1.1 In this Agreement, the following terms shall have the following meanings:

Act means the Competition Act 2002, as amended;

Agreement means this agreement between Synch and the Commission containing the Synch Proposals;

AIB means Allied Irish Banks, P.L.C., a public limited company incorporated in Ireland (registered number 24173) whose registered office is at 10 Molesworth Street, Dublin 2;

BOI means The Governor and Company of the Bank of Ireland, a chartered corporation with limited liability registered in the State with Registered Number C-1 having its registered office at 40 Mespil Road, Dublin 4, Ireland;

Commencement Date means the date of the Commission's Determination pursuant to section 22(3)(a) of the Act that the Proposed Transaction may be put into effect;

Commission means the Competition and Consumer Protection Commission and its successors;

Compliance Executive means as defined in Clause 2.5 below;

Determination means a determination of the Commission under section 22(3)(a) of the Act that the Proposed Transaction may be put into effect taking into account the Synch Proposals, which form the basis or part of the basis of the Commission's determination;

Initial Launch Date means the date from when there is at least one Participant using the Synch Mobile Payments Service with customers or merchants (as the case may be) loaded on the Synch Proxy Database;

KBC means KBC Bank Ireland P.L.C., a public limited company incorporated in the State (registered number 40537) whose registered office is at Sandwith Street, Dublin 2;

Mobile Payments Services means electronic payments services for which the payment data and instructions are captured, transmitted and/or confirmed via a mobile phone;

P2P SDK (which is an acronym for 'Person-to-Person' Software Development Toolkit') means in this context a licensable plug-in component or equivalent that can be included in a Participant's own banking app to execute and call Synch services to complete person-to-person transactions through the Synch Mobile Payments Service;

P2P SDK Licence means as defined in Clause 2.1;

Participant means a participant of the Synch Mobile Payments Service licensed by Synch to use the Synch Mobile Payments Service;

PTSB means Permanent TSB P.L.C., a public limited company incorporated in the State (registered number 222332) whose registered office is at 56-59 Saint Stephen's Green, Dublin 2;

Proposed Transaction means the proposed creation of a joint venture, Synch, between AIB, BOI, PTSB and KBC, which was notified to the Commission on 8 April 2021 in accordance with section 18(1)(a) of the 2002 Act;

Reasoned Written P2P SDK Request means a written request from a Participant requesting the provision of the P2P SDK, and which must include a reasoned business case for the provision of the P2P SDK consisting of the business rationale underpinning the request, expected transaction volume(s) resulting from the use of the P2P SDK and expected transaction growth resulting from the use of the P2P SDK;

SDK Extension Request means as defined in Clause 2.13;

Shareholder Party means each of AIB, BOI, PTSB or KBC (as the context requires);

State means the Republic of Ireland;

Synch means Synch Payments Designated Activity Company, a designated activity company incorporated in the State (registered number 679126) whose registered office is at Floor 3, One Molesworth Street, Dublin 2;

Synch Mobile Payments Service means the Mobile Payments Services provided by Synch;

Synch Proposals means the proposals as set out in this Agreement;

Synch Proxy Database means a database that is part of the Synch Mobile Payments Service and which includes cross-references for mobile phone numbers, IBANs and/or retailer quick response (QR) codes; and

Working Day means a day (other than a Saturday or a Sunday or a public holiday) on which banks are open for retail business in the State.

2 UNDERTAKINGS

SDK

2.1 Subject to Clause 2.3 below, Synch undertakes that it will make a P2P SDK available for Participants to licence on license terms (including in relation to pricing) which are: (i) fair; (ii) reasonable; (iii) non-discriminatory; and which will be applied uniformly across all Participants (the "**P2P SDK Licence**").

2.2 Subject to Clause 2.3 below, and subject to any extension granted pursuant to Clause 2.13 below, Synch will make the P2P SDK Licence available within the period of fifteen (15) months from the date of receipt by Synch of a Reasoned Written P2P SDK Request.

2.3 Nothing in this Agreement shall require, or act to require, Synch to make the P2P SDK Licence available before […] from the Initial Launch Date.

Price

2.4 Synch undertakes that the price of the Synch Mobile Payments Service will be set having regard to the following key principles:

(i) the price will be applied uniformly across all Participants, and all changes to the price (e.g. any increase or decrease) will be applied uniformly across all Participants;

(ii) the price will be transparent; and

(iii) the price will not be set at a level that would constitute a breach of section 5 of the Act and/or Article 102 of the Treaty on the Functioning of the European Union.

Monitoring and Compliance Certificates

2.5 Synch shall nominate a senior executive of Synch (the "**Compliance Executive**") who shall have responsibility for:

(i) monitoring compliance by Synch with this Agreement;

(ii) responding to any request(s) for information from the Commission pursuant to Clause 2.7 below; and

(iii) ensuring compliance with any written direction(s) received from the Commission pursuant to Clause 2.8 below in connection with this Agreement.

2.6 Synch shall submit to the Commission at intervals of one (1) year from the Commencement Date, for a total period of five (5) years from the Commencement Date, a written certificate in the form set out in Annex A, signed by its Compliance Executive confirming that Synch has complied in all material respects with its obligations set out in this Agreement in the preceding period of one (1) year.

2.7 The Commission reserves the right to require Synch to provide to the Commission, at any time, such additional information as the Commission requires in order for the Commission to verify Synch's compliance with its obligations as set out in this Agreement. Synch shall promptly provide to the Commission all such information in its possession or control.

2.8 The Commission may provide such written directions to Synch from time to time as needed to require compliance with this Agreement. Synch shall comply promptly with any written directions issued by the Commission pursuant to this Agreement.

2.9 Synch shall provide the name and contact details of its Compliance Executive to the Commission, shall provide written notice to the Commission in advance of any change to its Compliance Executive, and shall provide promptly to the Commission the name and contact details of any new Compliance Executive nominated in accordance with Clause 2.5 of this Agreement.

Review Clauses

2.10 The Commission may at its sole discretion waive any provision in this Agreement, subject to prior consultation with Synch.

2.11 The Commission may at its sole discretion waive or modify any provision of this Agreement in response to a reasoned written request from Synch.

2.12 Nothing in this Agreement shall convey any rights upon any person or entity which is not a party to this Agreement.

2.13 If, at any time after a Reasoned Written P2P SDK Request is received by Synch, […], Synch shall be entitled to make a written request to the Commission […] (the "**SDK Extension Request**").

The Commission shall grant an SDK Extension Request unless the Commission (acting reasonably) determines that, having regard to the information in the SDK Extension Request, […].

The Commission shall determine whether to grant an SDK Extension Request within fifteen (15) Working Days of receiving the SDK Extension Request. Where Synch makes an SDK Extension Request less than fifteen (15) Working Days prior to […] shall stand suspended until the Commission determines whether to grant the SDK Extension Request.

3 CLARIFICATIONS AND FINAL PROVISIONS

3.1 For the avoidance of doubt, nothing in this Agreement shall prevent disclosure by Synch to any Shareholder Party of any information necessary to negotiate and/or operate the licence agreement between the Shareholder Party and Synch (e.g. the ‘Participant Licence’).

3.2 This Agreement shall come into effect on the Commencement Date.

ANNEX A

[To be provided on the headed notepaper of Synch Payments DAC]

Mr Ibrahim Bah
Director of Competition Enforcement and Mergers
Competition and Consumer Protection Commission
Bloom House
Railway Street
Dublin 1

[*Please insert date*]

Re: Merger Notification M/21/004 – AIB/BoI/PTSB – Synch Payments JV

Dear Mr Bah,

I refer to the Determination issued by the Competition and Consumer Protection Commission pursuant to section 22(3)(a) of the Competition Act 2002, as amended (the "Act") on [●] June 2022 in respect of the proposed creation of a joint venture, Synch Payments DAC, between Allied Irish Banks P.L.C.; the Governor and Company of the Bank of Ireland; Permanent TSB P.L.C.; and KBC Bank Ireland P.L.C.

This compliance certificate is submitted pursuant to Clause 2.6 of the agreement between the Competition and Consumer Protection Commission and Synch Payments DAC dated [●] June 2022 (the "Proposals"), in accordance with section 20(3) of the Act.

I hereby confirm to the best of my knowledge and belief that Synch Payments DAC has complied in all material respects with the terms of the Proposals during the period commencing on [the Commencement Date (as defined therein)]/[the date of the compliance certificate submitted on [*please insert date of most recent previous compliance certificate*]] and ending on the date hereof.

Yours sincerely,

[*Please insert name of Compliance Executive*]
Compliance Executive,
Synch Payments DAC

CCPC

Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

Competition and
Consumer Protection
Commission