

Non-confidential version

Competition Act 1998: Decision of the Payment Systems Regulator

Anti-competitive conduct in the
prepaid card services sector

18 January 2022

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1 Introduction

1.1 This decision (the '**Decision**') is addressed to the following undertakings:

- a. Advanced Payment Solutions Limited ('**APS**')
 - b. allpay Limited ('**allpay**')
 - c. Mastercard UK Management Services Limited, Mastercard Europe SA (formerly Mastercard Europe SPRL), Mastercard Europe Services Limited, and their ultimate parent Mastercard Incorporated (together '**Mastercard**')
 - d. Prepaid Financial Services Limited and its parent Prepaid Financial Services (Ireland) Limited (together '**PFS**')
 - e. Sulion Limited ('**Sulion**')
 - f. ...

1.2 By this Decision, the Payment Systems Regulator (the '**PSR**') has concluded that:

- a. APS, allpay, Mastercard, PFS and Sulion (each a '**Party**', together the '**Parties**') have infringed the prohibition imposed by section 2(1) (the '**Chapter I prohibition**') of the Competition Act 1998 (the '**Act**'). More specifically, the PSR has found that the Parties infringed the Chapter I prohibition by participating in an agreement and/or concerted practice, constituting a single and continuous infringement which lasted between at least 2 May 2012 and at least 6 February 2018 (the '**Relevant Period 1**')¹ and had as its object the prevention, restriction or distortion of competition in relation to the supply of prepaid card services for welfare disbursements to public sector organisations in Great Britain ('**GB**'), and may have affected trade within the UK. Mastercard, PFS and Sulion participated in this infringement between at least 2 May 2012 and at least 6 February 2018; APS between at least 2 May 2012 and 12 October 2016; and allpay between at least 2 May 2012 to 1 November 2013 and between at least 1 March 2016 to 6 February 2018.
- b. This infringement took the form of a market sharing/customer allocation agreement and/or concerted practice within the National Prepaid Cards Network (the '**Network**')² between all of the Parties, which involved the following conduct:
 - the non-targeting of each other's existing public sector customers during the life of a prepaid card services contract (including pilot programmes) until the contract went out for tender; the Parties also exchanged customer information in support of this behaviour (the '**Network non-targeting arrangement**')
 - the exclusive allocation of potential new public sector prepaid card services customers (leads) arising from Network regional promotional events (the '**Exclusive allocation of leads arrangement**')
 - ...

¹ See Section I of Chapter 7, 'Duration of the Infringements'.

² The Network is discussed in more detail in Chapter 4 of this Decision.

(together referred to as the '**Network market sharing agreement**').

- 1.3** By this Decision, the PSR has concluded that APS and PFS have infringed the prohibition imposed by section 2(1) of the Act. More specifically, the PSR has found that, between at least 19 August 2014 and at least 18 July 2016 (the '**Relevant Period 2**'), APS and PFS infringed the Chapter I prohibition by participating in an agreement and/or concerted practice, constituting a single and continuous infringement, which had as its object the prevention, restriction or distortion of competition in relation to the supply of prepaid card services for welfare disbursements to public sector organisations in GB, and may have affected trade within the UK. This infringement took the form of a market sharing/customer allocation arrangement between PFS and APS not to compete for each other's existing public sector customers when a contract went out to tender at the end of a contract or pilot programme (the '**End of contract agreement**').
- 1.4** The Network market sharing agreement and End of contract agreement are together referred to as the '**Infringements**'.
- 1.5** The PSR has imposed financial penalties on the Parties under section 36 of the Act in relation to the Network market sharing agreement, and on APS and PFS in relation to the End of contract agreement.
- 1.6** For ease of reference, Annex A includes a list of defined terms used in this Decision. Terms may also be defined in the text of the Decision where this may be helpful for the reader.

2 The PSR's investigation

A Stages of the investigation

- 2.1** The Competition and Markets Authority ('CMA') allocated the case to the PSR in October 2017 following a complaint made by allpay to the CMA in August 2017.³
- 2.2** In October 2017, the PSR opened a formal investigation under section 25 of the Act into suspected anti-competitive agreements and/or concerted practices in relation to the supply of prepaid cards in the UK, having determined that it had reasonable grounds for suspecting that APS, [Programme Manager 1] ('**Programme Manager 1**')⁴ and PFS had infringed the Chapter I prohibition.⁵
- 2.3** On 6 February 2018, the PSR executed warrants to carry out unannounced searches at the premises of two out of the current five Parties to the investigation – PFS and APS – and [Programme Manager 1], using its powers under section 28 of the Act.
- 2.4** During these searches, the PSR used its powers under the Criminal Justice and Police Act 2001 to seize and subsequently sift images of electronic devices (desktop and laptop hard drives, server folders and mobile phones) at or accessible from those premises.⁶
- 2.5** Case initiation letters were also provided by the PSR to APS, [Programme Manager 1] and PFS during the searches.
- 2.6** In February 2018, after the PSR initiated unannounced searches under section 28 of the Act, PFS applied for leniency.
- 2.7** During the course of the investigation, the PSR sent APS, [Programme Manager 1] and allpay notices requiring the production of documents and information relevant to the investigation under section 26 of the Act ('**Section 26 Notice**'). The PSR also sent letters to PFS requesting documents and information without recourse to the PSR's formal powers (that is, a request for information ('RFI')) as part of PFS's duty to cooperate as a leniency applicant.⁷

3 The complaint was submitted on the basis of an email sent from [PFS director 1] of PFS to [allpay employee 1] of allpay: UUID PSR0001-95290-005449.

4 [X]

5 The PSR took an administrative prioritisation decision not to investigate [Programme Manager 2]. [Programme Manager 2] exited the market in May 2012.

6 Section 50 of the Criminal Justice and Police Act 2001 empowers the PSR to seize electronic material from premises and to sift through such material at a later date, in circumstances where it believes that the electronic material contains data relevant to an investigation, and either it is not reasonably practicable to determine on the premises the extent to which that is the case and/or it is not reasonably practicable to separate out the relevant data on the premises without compromising its evidential value.

7 See Annex B for a list of Section 26 Notices and RFIs issued by the PSR (excluding those that are no longer within the scope of this investigation).

In addition, the PSR issued Section 26 Notices to [Sulion director 1] ([Sulion director 1]) and to [Sulion director 1]'s company Sulion⁸, as well as to Mastercard and several third parties.⁹

- 2.8** In June 2018, the PSR extended the investigation to include allpay. In March 2019, the PSR extended the investigation to include Mastercard and Sulion.
- 2.9** On 25 March 2019, Mastercard provided to the PSR several emails dated 25 March 2019, which were exchanged within the Network and related to the passing on of costs in relation to the contactless requirement mandated by Mastercard for all new cards issued to public sector customers.¹⁰
- 2.10** In November 2018, the PSR interviewed two of PFS's directors ([PFS director 1] (referred to as '[PFS director 1]') and [PFS director 2] (referred to as '[PFS director 2]')) on a voluntary basis. The PSR also conducted voluntary witness interviews with individuals, including employees and ex-employees of the Parties, between July and December 2019, and subsequently these individuals approved their transcripts and provided statements of truth.¹¹ The PSR also conducted a compelled interview under section 26A of the Act, on the request of an allpay employee, in October 2019.¹²
- 2.11** In April 2019, the PSR wrote to [Programme Manager 1] informing it that the PSR had taken a decision on the grounds of administrative priority to scope [Programme Manager 1] out of the investigation.
- 2.12** The PSR held two State of Play meetings with each of PFS, APS, allpay, Sulion and Mastercard – the first in April and May 2019, and the second in February 2020 – in addition to providing various case updates. At the first State of Play meeting in 2019, the PSR stated it was investigating: (i) a market sharing agreement/concerted practice between a number of undertakings who are or were members of, or participated in, the Network, not to compete for or poach each of the Network programme managers' public sector customers in the UK, either at the end of a contract or pilot programme, or during the lifetime of an existing contract: and (ii) instances of sharing of commercially sensitive information in relation to pricing /costs within the Network. At the second State of Play meeting in 2020, the PSR clarified that it was investigating three potential infringements. Two involved market sharing agreements/concerted practices and the third involved an information sharing agreement/concerted practice.
- 2.13** In June 2020, the PSR took an administrative prioritisation decision not to continue investigating the potential information sharing infringement, and wrote to the Parties informing them of the decision.

8 In addition to narrative responses and accompanying documents, [Sulion director 1] (Sulion) provided [Sulion director 1]'s computer hard drive to the PSR in response to the PSR's Section 26 Notice of 24 April 2018.

9 See Annex B.

10 See UUID 179540001: email from Mastercard to the PSR informing it of various emails that had been exchanged within the Network.

11 Three of the voluntary witness interviews conducted by the PSR are no longer within the scope of this investigation as per paragraph 2.13.

12 This individual did not provide a statement of truth, but did approve the transcript.

- 2.14** In February 2021, prior to the issuance of the Statement of Objections ('SO'), the PSR entered into settlement agreements with allpay, Mastercard and PFS on the basis of a draft SO and a draft penalty calculation which had been provided to them on 1 February 2021.
- 2.15** On 31 March 2021, the PSR issued the SO to the Parties.
- 2.16** In September 2021, the PSR entered into settlement agreements with APS and Sulion on the basis of the SO and a draft penalty calculation which had been provided to them on 29 June 2021.
- 2.17** In the settlement agreements, each of the Parties:
- a. admitted that they had infringed the Chapter I prohibition by participating in an agreement/concerted practice, described in this Decision as the Network market sharing agreement, in the terms set out in the draft SO, or SO (as applicable¹³); in addition, APS and PFS admitted that they had infringed the Chapter I prohibition by participating in an agreement/concerted practice, described in this Decision as the End of contract agreement, in the terms set out in the draft SO, or SO (as applicable¹⁴);
 - b. accepted liability for the infringement(s) set out above and to pay a maximum penalty which reflects the application of a settlement discount; and
 - c. accepted a streamlined administrative procedure and agreed to cooperate fully throughout the remainder of the investigation and until the conclusion of any action involving the PSR arising as a result of the investigation (this includes any action or proceedings involving the PSR before the CAT or any other Court or Tribunal as a result of or otherwise arising from this investigation)

B Leniency

- 2.18** On 15 February 2018, PFS approached the CMA with an application for leniency under the CMA's leniency policy (which the PSR applies when pursuing enforcement under the Act).¹⁵ The marker was confirmed on 21 March 2019 and extended on 1 October 2020.
- 2.19** The PSR signed a leniency agreement with PFS on 7 December 2020.

13 As reflected in paragraphs 2.14 and 2.16, for allpay, Mastercard and PFS this was in the terms set out in the draft SO of 1 February 2021, and for APS and Sulion this was in the terms set out in the SO.

14 As reflected in paragraphs 2.14 and 2.16, for PFS this was in the terms set out in the draft SO of 1 February 2021, and for Sulion this was in the terms set out in the SO.

15 See paragraphs 6.2 to 6.9 of the CA98 Guidance:
https://www.psr.org.uk/sites/default/files/media/PDF/PSR_PS15_2.1_Competition_Act_CA98_Guidance_0.pdf

3 Factual Background

A The Parties

allpay

- 3.1** allpay is a private limited company registered in England and Wales, with company number 02933191. It was incorporated on 26 May 1994.¹⁶ allpay's registered office address is Fortis Et Fides, Whitestone Business Park, Whitestone, Hereford, Herefordshire, HR1 3SE. allpay had a turnover of £42,962,000 for the year ended 30 June 2019.¹⁷
- 3.2** As described in paragraphs 3.70 onwards, allpay is an electronic money institution ('**EMI**')¹⁸ as well as a programme manager ('**PM**')¹⁹ and card issuer²⁰ providing, among other things, prepaid card services²¹ to the public sector. allpay is a licensed issuer of Mastercard.
- 3.3** Between 2012 and 2018, allpay's issued share capital was held by [Individual] and [Individual].²² On 15 April 2019, [Individual] and [Individual] transferred all their ordinary shares to allpay Holdings Limited.²³
- 3.4** The directors of allpay between 2012 and 2018 are listed in Annex C.

¹⁶ Annual Report and Financial Statements for the year ended 30 June 2019 available, for example, at <https://find-and-update.company-information.service.gov.uk/company/02933191/filing-history> [as visited on 15/12/2021].

See also Annual Return dated 22 May 2016 available at <https://find-and-update.company-information.service.gov.uk/company/02933191/filing-history?page=2> [as visited on 15/12/2021].

¹⁷ Annual Report and Financial Statements for the year ended 30 June 2019 available, for example, at <https://beta.companieshouse.gov.uk/company/02933191/filing-history> [as visited on 15/12/2021].

¹⁸ Electronic money institutions ('**EMIs**') are authorised or registered by the FCA to issue e-money and undertake payment services under the Electronic Money Regulations 2011, including to provide card accounts, store the monetary value of the e-money on their system or other electronic carrier and use that monetary value to make onward payments. EMIs can therefore issue money through prepaid cards. Card accounts (and therefore prepaid cards) provided by EMIs cannot go into overdraft.

¹⁹ See paragraphs 3.44 to 3.45 below, which describe what a programme manager is.

²⁰ See paragraph 3.41c) below.

²¹ The provision of prepaid card services (for welfare disbursements) includes arranging for the provision of prepaid cards for distribution to end users and may also include other ancillary services such as the provision of contact centres, management information, transaction processing, banking-lite services and supply of card account information to clients and end users.

²² Annual Return dated 22 May 2016. See <https://find-and-update.company-information.service.gov.uk/company/02933191/filing-history?page=2> [as visited on 15/12/2021].

²³ See Confirmation Statement dated 22 May 2019 available at <https://find-and-update.company-information.service.gov.uk/company/02933191/filing-history?page=2> [as visited on 15/12/2021]. Allpay Holdings Limited was incorporated on 28 February 2019 and its sole shareholder as at that date was [Individual] who held 1 ordinary share. The Directors were [Individual] and [Individual]. As at 30 April 2019, the existing share capital was divided into A ordinary shares, B ordinary shares and C ordinary shares and registered in the names of [Individual] and [Individual]. See: <https://beta.companieshouse.gov.uk/company/11853091/filing-history> [as visited on 15/12/2021].

- 3.5** As at 22 June 2018, allpay had three wholly owned subsidiaries: Rude Wines Ltd, Digital Globe SRL and allpay Poland.²⁴ In its response to the PSR's Section 26 Notice dated 25 March 2020, allpay explained that in April 2019 "a *demerger*" of Rude Wines Limited (which has subsequently been liquidated) and Digital Globe SRL had taken place and that all operating activities now take place within allpay Limited.²⁵ allpay stated that allpay Holdings was created purely to facilitate the demerger of Rude Wines and Digital Globe.²⁶ Therefore, since April 2019, allpay Limited has no subsidiaries.

APS

- 3.6** APS is a private limited company registered in England and Wales, with company number 04947027. It was incorporated on 29 October 2003.²⁷ APS's registered office address is 6th Floor, One London Wall, London, EC2Y 5EB. APS had a turnover of £45,644,966 for the year ended 31 March 2019.²⁸
- 3.7** As described in paragraphs 3.78 onwards, APS is an EMI as well as a PM and card issuer having provided, among other things, prepaid card services to the public sector until 2016 as a licensed issuer of Mastercard.²⁹
- 3.8** Up until 2016, APS's issued share capital was held by a mix of management, founders, employee share option holders and institutional investors.³⁰ The largest shareholder, Trident Capital Fund VI LP, held 64.3% of the issued share capital.³¹
- 3.9** The directors of APS between 2012 and 2016 are listed in Annex C.

²⁴ See allpay's response to the PSR's Section 26 Notice dated 22 June 2018: UUID 101210023.

²⁵ See allpay's response to the PSR's Section 26 Notice dated 25 March 2020: UUID 229300001.

²⁶ See response to the PSR's Section 26 Notice dated 25 March 2020, question 4: UUID 229300001.

²⁷ APS Annual Return dated 29 October 2015: <https://beta.companieshouse.gov.uk/company/04947027/filing-history> [as visited on 15/12/2021].

²⁸ See financial statements FYE 31 March 2019, available, for example, at <https://beta.companieshouse.gov.uk/company/04947027/filing-history> [as visited on 15/12/2021].

²⁹ See APS response of 4 May 2018 to the PSR's Section 26 Notice dated 11 April 2018: UUID 85040022 (paragraph 3.1). APS stated in paragraph 4.2 of its response that "*The final contract in place with a Local Authority will cease as of December 2018*".

³⁰ APS response of 4 May 2018 to the PSR's Section 26 Notice dated 11 April 2018, Annex 1.1 APS Shareholding for the Relevant Period: UUID 85040001 and APS response of 3 April 2020 to the PSR's Section 26 Notice dated 25 March 2020 UUID 224730003; see also APS' Annual Return made up to 29 October 2015: <https://beta.companieshouse.gov.uk/company/04947027/filing-history> [as visited on 15/12/2021].

³¹ APS response of 4 May 2018 to the PSR's Section 26 Notice dated 11 April 2018, Annex 1.1 APS Shareholding for the Relevant Period: UUID 85040001. Trident Capital Fund VI LP is incorporated in the United States. Trident Capital Fund VI LP does not have management control over APS: see corporate structure, which does not list Trident Capital Fund VI LP as having 'management control' of APS: UUID 224730018.

- 3.10** APS has two wholly owned subsidiaries:³² APS Financial Limited³³ and APS Bonds plc.³⁴ Together with APS, the subsidiaries are included in the consolidated financial statements of APS.³⁵
- 3.11** APS sold its public sector prepaid cards contracts (books of business) to PFS on 12 October 2016. With the exception of a few customers that it continued to serve pursuant to pre-existing contracts, APS exited the prepaid cards public sector market after the sale of its books.³⁶

Mastercard

- 3.12** Mastercard is a payment system operator active worldwide, including in the UK. It operates a four-party card scheme “*whereby a card payment by a consumer to a merchant is facilitated by a number of intermediary parties, including an issuer and an acquirer*”.³⁷ It describes its activity as connecting “*consumers, financial institutions, merchants, governments and businesses by enabling them to use electronic forms of payment, including prepaid cards*” as well as credit and debit cards.³⁸ Mastercard licenses its brand to issuers and acquirers who meet the requirements of scheme membership.³⁹ APS, PFS and allpay are all licensed issuers of Mastercard.⁴⁰
- 3.13** Mastercard operates through an extensive group of companies worldwide, a number of which are relevant to the PSR’s investigation. These are described further below.
- 3.14** Mastercard Europe SPRL was a Belgian entity incorporated in September 1992. Its UK branch was responsible for carrying on the marketing of Mastercard products and services (including prepaid cards in the public sector) within the UK between 2012 and 2014.⁴¹ In 2015, Mastercard Europe SPRL changed legal form into a public limited company thus becoming Mastercard Europe SA.⁴² Mastercard Europe SA’s company number is 0448.038.446. Its registered seat is Chaussée de Tervuren 198A, 1410 Waterloo, Belgium.⁴³ It forms part of the wider Mastercard group of companies and is a wholly owned indirect subsidiary of

32 APS response of 4 May 2018 to the PSR’s Section 26 Notice dated 11 April 2018: UUID 85040022 and APS response of 3 April 2020 to the PSR’s Section 26 Notice dated 25 March 2020: UUID 224730018.

33 Company number 06029941

34 Company number 10366819.

35 See APS’s Group of companies’ accounts made up to, for example, March 2017, 2016 and 2015, available at: <https://find-and-update.company-information.service.gov.uk/company/04947027/filing-history?page=1> [as visited on 15/12/2021].

36 APS response of 4 May 2018 to the PSR’s Section 26 Notice dated 11 April 2018, section A: UUID 85040022. Also see paragraph 3.82 below.

37 Mastercard’s response of 23 April 2018 (Questions 1 to 3) to the PSR’s Section 26 Notice dated 29 March 2018: UUID 93230007.

38 As above.

39 As above.

40 As above. A more detailed account of the supply of Mastercard prepaid cards to the public sector in the UK is set out in Section B of Chapter 3 and in Chapter 6 of this Decision.

41 See Mastercard’s response to the PSR’s further questions of 20 August 2020, paragraph 1.6: UUID 244250004. See also Mastercard’s response to the PSR’s further question of 7 October 2020: UUID 246610001.

42 See Mastercard’s response to the PSR’s further questions of 20 August 2020, paragraphs 1.4 to 1.7: UUID 244250004.

43 See Mastercard’s response to the PSR’s further questions of 20 August 2020, paragraphs 1.8 to 1.9: UUID 244250004.

Mastercard International Incorporated, which is itself a wholly owned direct subsidiary of the ultimate parent company, Mastercard Incorporated.⁴⁴

- 3.15** On 9 September 2014, Mastercard Europe Services Limited was incorporated in the UK. The assets and activities of Mastercard Europe SPRL's UK branch were transferred to it.⁴⁵ It has, since then, been carrying on the business of the marketing of Mastercard products and services in the UK (and within Europe) on behalf of Mastercard Europe SA (which was formerly Mastercard Europe SPRL).⁴⁶
- 3.16** Mastercard Europe Services Limited is a private limited company registered in England and Wales, with company number 09210818. Its registered office address is 10 Upper Bank Street, Canary Wharf, London, England, E14 5NP. Mastercard Europe Services Limited had a turnover of £1,532,510,000 for the year ended 31 December 2019.⁴⁷
- 3.17** Mastercard Europe Services Limited forms part of the wider Mastercard group of companies and is the wholly-owned subsidiary of Mastercard Holdings LP (a limited partnership with company number LP016341)⁴⁸ and, together with Mastercard Europe SA, is an indirect wholly-owned subsidiary of Global Mastercard Holdings LP which is itself a wholly-owned indirect subsidiary of Mastercard International Incorporated and ultimately of Mastercard

44 See Mastercard structure chart, dated February 2020: UUID 230000002 and Mastercard's response to the PSR's further questions of 20 August 2020, paragraph 1.7: UUID 244250004.

45 Mastercard Annual Return dated 05/10/2015 and full accounts made up to 31 December 2018, available at <https://beta.companieshouse.gov.uk/company/09210818/filing-history> [as visited on 15/12/2021]. See generally Mastercard's response to the PSR's further questions of 20 August 2020: UUID 244250004. Mastercard Europe Services Limited, therefore, "*effectively took over, inter alia, part of the UK and Ireland-facing activities of Mastercard Europe SPRL*". See Mastercard's response to the PSR's further questions of 20 August 2020: UUID 244250004, paragraph 1.2 and 1.12. On 1 November 2014, Mastercard Europe SA and Mastercard Europe Services Limited entered into an intercompany services agreement under which Mastercard Europe SA outsourced the development and maintenance of its products to Mastercard Europe Services Limited. These, and other services, are provided in "*consideration for arm's length compensations from Mastercard Europe SA in the form of a share of profits*": See Mastercard's response to the PSR's further questions of 20 August 2020, paragraphs 1.13 to 1.14: UUID 244250004.

46 See Mastercard's response to the PSR's further questions of 20 August 2020, paragraph 1.13: UUID 244250004.

47 See Annual Report and Audited Financial Statements FYE 31 December 2019, available at <https://beta.companieshouse.gov.uk/company/09210818/filing-history> [as visited on 15/12/2021]: "*The Company's revenue represents share of profits from Mastercard's European business*".

48 See <https://beta.companieshouse.gov.uk/company/LP016341/filing-history> [as visited on 15/12/21]. As at 5 October 2015, all Mastercard Europe Services Limited's issued share capital (ordinary shares) was held by Mastercard Europe SA: Annual Return made up to 5 October 2015: available at: <https://find-and-update.company-information.service.gov.uk/company/09210818/filing-history?page=1> [as visited on 15/12/2021]. See Certificate of Incorporation dated 9 September 2014: (<https://beta.companieshouse.gov.uk/company/09210818/filing-history>)

Incorporated.⁴⁹ Mastercard Europe Services Limited is included in the consolidated financial statements of Mastercard Incorporated.⁵⁰

3.18 The staff that Mastercard employs for its UK operations are not employees of its operating companies, but instead are provided by a UK management services company of the Mastercard group of companies: Mastercard UK Management Services Limited. This entity holds all leases and employee contracts primarily for, and provides management services including finance, payroll and other general administration to support, the UK operations.⁵¹ This included, during the Relevant Period 1, providing staff to the operating companies Mastercard Europe SPRL and Mastercard Europe Services Limited.⁵² It is, therefore, Mastercard UK Management Services Limited that holds – or held – the employment contracts of those individuals who were involved in public sector prepaid cards business (and the Network) during the Relevant Period 1.⁵³

3.19 Mastercard UK Management Services Limited is a private limited company registered in England and Wales, with company number 04617367. It was incorporated on 13 December 2002. Mastercard UK Management Services Limited's registered office address is 10 Upper Bank Street, Canary Wharf, London, England, E14 5NP. Mastercard Europe Services Limited had a turnover of £155,235,000 for the year ended 31 December 2019, which represents recharges of expenses incurred/derived from providing services to Mastercard's operation in the UK.⁵⁴ It forms part of the wider Mastercard group of companies and is a wholly owned direct subsidiary of Mastercard International Incorporated and is ultimately a wholly owned

49 See Mastercard's response to the PSR's further questions of 20 August 2020, paragraphs 1.3 and 1.7: UUID 244250004. According to Mastercard's structure chart, dated February 2020, Mastercard Europe Services Limited falls within Tier 3, which includes "any subsidiary that generates revenue from its operations and sales of goods and services": UUID 230000002.

50 Mastercard Incorporated is the ultimate parent undertaking and controlling party of Mastercard Europe Services Limited according to the Annual Report and Audited Financial Statements for the year ended 31 December 2018: Annual Report and Audited Financial Statements FYE 31 December 2018 (filed at Companies House on 23 September 2019), available, for example, at <https://beta.companieshouse.gov.uk/company/09210818/filing-history> [as visited on 15/12/2021]. See also Mastercard structure chart, dated February 2020: UUID 230000002. See also the Annual Report and Audited Financial Statements for the year ended 31 December 2019. Mastercard Holdings LP is treated as a Corporation for US tax purposes. See also Mastercard's response to the PSR's further questions of 20 August 2020: UUID 244250004. Companies House lists Mastercard Incorporated (of PO Box 10577, 2000 Purchase Street, Purchase, New York, United States) as being the person with significant control as set out in the Confirmation Statement made on 5 October 2016 and notified to Companies House: see <https://beta.companieshouse.gov.uk/company/09210818/persons-with-significant-control> [as visited on 15/12/2021].

51 See, for example, Companies House 'Filing History' Full accounts made up to 31 December 2019, 2018, 2017, 2016, 2015: <https://beta.companieshouse.gov.uk/company/04617367/filing-history> [as visited on 15/12/2021].

52 In respect of individuals operating within Mastercard Europe SPRL, [Mastercard employee 2]'s (of Mastercard) email footer was 'Mastercard Europe SPRL': see UUID PSR0001-95290-004412. Additionally, [Sulion director 1]'s (Sulion) invoices for work undertaken on behalf of the Network were for the attention of 'Mastercard Europe SPRL': see UUID 94581217.

53 See Mastercard's response to the PSR's further questions of 20 August 2020, paragraph 1.15: UUID 244250004. See also Mastercard's response to the PSR's further question of 7 October 2020: UUID 246610001.

54 See Companies House 'Filing History' Full accounts made up to 31 December 2019: <https://beta.companieshouse.gov.uk/company/04617367/filing-history> [as visited on 15/12/2021].

indirect subsidiary of Mastercard Incorporated.⁵⁵ It is included in the consolidated financial statements of Mastercard Incorporated.⁵⁶

3.20 The directors of Mastercard Europe Services Limited, Mastercard Europe SA and Mastercard UK Management Services Limited between 2012 and 2018 are set out in Annex C.

3.21 As at February 2020, Mastercard Europe Services Limited had one subsidiary, Mastercard Europe SA had several subsidiaries throughout the world and Mastercard UK Management Services Limited had no subsidiaries.⁵⁷

PFS

3.22 Prepaid Financial Services Limited is a private limited company registered in England and Wales, with company number 06337638. It was incorporated on 8 August 2007.⁵⁸ Prepaid Financial Services Limited's registered office address is Fifth Floor, Langham House, 302-308 Regent Street, London, W1B 3AT. It had a turnover of £83,621,989 for the year ended 31 December 2019.⁵⁹

3.23 As described in paragraphs 3.84 onwards, Prepaid Financial Services Limited is an EMI as well as a PM and card issuer providing, among other things, prepaid card services to the public sector.⁶⁰ Prepaid Financial Services Limited is a licensed issuer of Mastercard.

3.24 Between 2012 to 2018, Prepaid Financial Services Limited was wholly owned by Prepaid Financial Services (Ireland) Limited, which had a number of shareholders including [PFS director 1] (a director of Prepaid Financial Services Limited) who held the majority shareholding in the company.⁶¹

3.25 The directors of Prepaid Financial Services Limited between 2012 and 2018 are listed in Annex C.

55 See Mastercard structure chart, dated February 2020: UUID 230000002 and see Full accounts made up to 31 December 2019: <https://beta.companieshouse.gov.uk/company/04617367/filing-history> [as visited on 15/12/2021]. In its Directors' report and financial statements for the year ended 31 December 2012, its ultimate parent undertaking and controlling entity is named as Mastercard Incorporated and it is included in the consolidated financial statements of Mastercard Incorporated: <https://beta.companieshouse.gov.uk/company/04617367/filing-history> [as visited on 15/12/2021]. See also Annual Return made up to 13/12/03 which lists Mastercard International Incorporated as its sole shareholder: <https://beta.companieshouse.gov.uk/company/04617367/filing-history?page=4> [as visited on 15/12/2021].

56 See above.

57 See Mastercard structure chart, dated February 2020: UUID 230000002.

58 Annual Return dated 20 May 2016. See Companies House 'Filing History' page: <https://beta.companieshouse.gov.uk/company/06337638/filing-history> [as visited on 15/12/2021].

59 PFS Full accounts made up to 31 December 2019, available at, for example: <https://beta.companieshouse.gov.uk/company/06337638/filing-history> [as visited on 15/12/2021].

60 See <https://prepaidfinancialservices.com/en/> [as visited on 15/12/2021].

61 Annual Return dated 20 May 2016: See Companies House 'Filing History' page: <https://beta.companieshouse.gov.uk/company/06337638/filing-history> [as visited on 15/12/2021]; see also PFS's response of 24 April/1 May 2018 to the PSR's RFI dated 3 April 2018, Annex 1: UUID 85070128. See also PFS's response of 24 April/1 May 2018 to the PSR's RFI dated 3 April 2018: UUID 85070129 updated following PFS's response to the PSR's RFI of 25 March 2020: UUID 225160012.

3.26 Prepaid Financial Services Limited has no subsidiaries.⁶²

3.27 On 31 March 2020, EML Payments European Holdings Limited (EML Payments Limited being the ultimate parent company, a listed company on the Australian Stock Exchange),⁶³ purchased 100% of the share capital in Prepaid Financial Services (Ireland) Limited (and thereby acquired Prepaid Financial Services Limited) *“for an upfront enterprise value of £226 million excluding cash on hand plus an earn-out component of up to £55 million”*.⁶⁴

Sulion

3.28 Sulion Limited is a private limited company registered in England and Wales, with company number 05437252. It was incorporated on 27 April 2005.⁶⁵ Sulion’s registered office address is 26 Farm Close, Etching Hill, Rugeley, Staffordshire, WS15 2XT. Sulion’s capital and reserves were £102,792 for the year ended 30 April 2019.⁶⁶

3.29 Sulion has no subsidiaries.

3.30 [Sulion director 1] was (and continues to be) [§<] shareholder, director and employee of Sulion throughout the Relevant Period 1. As set out in Chapter 4 (see in particular paragraphs 4.14 to 4.38) below, Sulion’s key function was to provide services to Mastercard as detailed within various Framework Agreements and Statements of Work for which Sulion was remunerated.⁶⁷ As part of those services, [Sulion director 1] ran and was the Chair of the Network of which allpay, APS and PFS were all members.⁶⁸

62 PFS’s response of 24 April/1 May 2018 to the PSR’s RFI dated 3 April 2018: UUIDs 85070128 & 85070129 and PFS’s response to the PSR’s RFI of 25 March 2020: UUID 225160012.

63 ASX 200 – stock symbol EML.

64 <https://www.bloomberg.com/press-releases/2019-11-11/pfs-announces-sale-of-company-to-eml-payments-ltd> [as visited on 15/12/2021]. See also PFS’s response to the PSR’s RFI of 25 March 2020: UUID 225160012.

65 See Companies House ‘Filing History’: Micro Company accounts made up to 30 April 2019: <https://beta.companieshouse.gov.uk/company/05437252/filing-history> [as visited on 15/12/2021]. [Sulion director 1] was appointed as a director of Sulion on 27 April 2005.

66 See [Sulion director 1]’s response of 25 May 2018 to the PSR’s Section 26 Notice dated 24 April 2018: UUIDs 93510039, 93510040 & 93510041. See Companies House ‘Filing History’: Micro Company accounts made up to 30 April 2019: <https://beta.companieshouse.gov.uk/company/05437252/filing-history> [as visited on 15/12/2021]. The accounts were prepared in accordance with FRS 105, ‘The Financial Reporting Standard applicable to the Micro-entities Regime’, and in accordance with the micro-entity provisions of the Companies Act 2006 and delivered in accordance with the provisions applicable to companies subject to the small companies regime.

67 See also [Sulion director 1]’s response of 25 May 2018 to the PSR’s Section 26 Notice dated 24 April 2018, in particular, responses to question 3, b.i and c: UUIDs 93510039, 93510040 & 93510041. According to [Sulion director 1], *“all payments made in relation to the network are paid through the company”*.

68 See [Sulion director 1]’s response of 25 May 2018 to the PSR’s Section 26 Notice dated 24 April 2018: UUIDs 93510039, 93510040 & 93510041. See also Companies House ‘Filing History’: Micro Company accounts made up to 30 April 2019: <https://beta.companieshouse.gov.uk/company/05437252/filing-history> [as visited on 15/12/2021]. According to [Sulion director 1], *“all payments made in relation to the network are paid through the company”*. For further details of the membership of the Network see Chapter 4 below. In Sulion’s response to the PSR’s Section 26 Notice of 25 March 2020, Sulion informed the PSR that the Network was still in existence and operating: UUID 224740016.

B Industry overview and the Parties' activities

3.31 The Infringements related to the supply of prepaid card services for welfare disbursements to UK public sector organisations, such as local authorities and clinical commissioning groups ('**CCGs**') (referred to throughout this Decision as '**Public bodies**'), by PMs who were members of the Network (the '**Network PMs**').

3.32 This section is structured as follows:

- a. prepaid cards: an explanation of the product
- b. the key roles of various participants in the supply of prepaid card services, including PMs
- c. public and private sectors in the UK
- d. how the supply of prepaid card services to the UK public sector has evolved (main suppliers and the Network PMs activities)
- e. demand side: Public bodies and prepaid card users
- f. the upstream market: card schemes in the UK and Mastercard's interest in welfare payments within the UK public sector and Universal Credit.

Prepaid cards

3.33 A prepaid card is a payment instrument. Prepaid cards share some attributes with debit cards but are different in use. Debit cards are normally linked with a current account held at a bank. Cardholders may or may not have an authorised overdraft associated with that account, but in either case, card issuers may authorise spending with debit cards even after the linked account does not have an available balance.

3.34 By contrast, prepaid cards are preloaded with funds that can be used to purchase goods and services from a retailer. The funds are loaded onto the card using cash, or by drawing funds from a debit or credit card or a bank account. Unlike debit cards, prepaid card issuers will not authorise any transaction that the funds linked with the card will not cover.

3.35 The use of prepaid cards typically requires the use of a card network. Cards that do not use an openly available card network are referred to as 'closed-loop' cards, while cards that do are referred to as 'open-loop' cards.

3.36 Closed-loop cards are cards that can only be used at certain locations or specific retailers (such as gift cards) or on a single transportation system (such as transit cards). Usually such cards can only have funds loaded onto them once, their operation does not require the use of card networks, and they do not have an openly available card network logo.

3.37 Open-loop prepaid cards function like traditional debit cards at point-of-sale (for example, online or in-store) via a card network (such as Mastercard or [Card scheme 1]). They can be used to purchase goods or services at any retailer that accepts the card network displayed on the prepaid card and can also have access to free nationwide ATM networks (operated by

LINK), allowing a user to withdraw cash up to the value of funds held on the card. There is no credit facility attached to a prepaid card but they may be configured to enable functions only usually attached to a bank account, for example, having a sort code and account number, or the setting up of Direct Debits (settled via the BACS system) and the use of the Faster Payments System to pay bills from the funds held on the card. Prepaid cards with these functionalities are known in the prepaid market as incorporating ‘banking-lite’ solutions, and can provide people who do not have access to a traditional bank account with access to banking services.

- 3.38** Providers of prepaid cards can place certain restrictions on their use – for example, how much the user can withdraw, reload or spend during a certain period, and the type of retailers that the card can be used with (and therefore, indirectly, the type of goods or services the card can be used to purchase).

Key roles in the supply of prepaid cards

- 3.39** Prepaid cards can be provided by a variety of suppliers: card issuers (banks and non-bank institutions), card schemes and specialised providers. Specialised providers (such as PMs) are not card issuers but enter into an agreement with a licensed issuer, which enables the specialised providers to obtain access to the card scheme and the ability to issue cards using the brand of the card scheme without having to become a direct member of the scheme.⁶⁹ Under this arrangement, the licensed issuer provides the specialised provider with a Bank Identification Number (‘BIN’) which they require to issue the cards.⁷⁰
- 3.40** The supply of prepaid cards typically involves five main roles (outlined below – paragraphs 3.41 to 3.45). Not all roles described below need to be held by separate participants. It is common for participants to hold more than one of these roles and, in particular, to be both an issuer and a PM, as this allows an undertaking to provide an ‘end-to-end’ service for the supply of prepaid cards.⁷¹
- 3.41** The five main roles in the supply of prepaid cards are:
- a. Payment system operator:** The entity that operates and administers the system which clears and arranges for settlement of the payments. Card payment systems may also be referred to as ‘card schemes’.
 - b. Payment processor:** A firm which owns and operates the card processing system, holds the virtual balance and stores cardholder transaction data.
 - c. Card issuer:** Banks and non-bank institutions which are members of card networks such as Mastercard and [Card scheme 1] and which issue the cards.

⁶⁹ Mastercard’s response to Question 1 of the PSR’s Section 26 Notice dated 29 March 2018: UUID 93230007.

⁷⁰ A Bank Identification Number is a six-digit series appearing on the front of a card and identifies the issuer, the payment network and the type of card, and is required to process payments made using the card.

⁷¹ For example, since May 2017 allpay has been both a PM and a card issuer. Like a number of prepaid card suppliers, allpay was accepted as a principal member of Mastercard after being granted an Electronic Money (“e-money”) Licence by the FCA in May 2016. E-money is electronically (including magnetically) stored monetary value, represented by a claim on the issuer, which is issued on receipt of funds for the purpose of making payment transactions.

- d. **PM:** This role is explained further below (paragraph 3.64 onwards).
- e. **A corporate sponsor:** The customer of the PM (for example, Public bodies, corporations, etc). Some corporate sponsors will arrange for the PM to personalise the cards provided with their own logo.

3.42 The role of the payment system operator (for example, [Card scheme 1] or Mastercard) is to maintain the rules and standards of the network and to carry out the processing required at the centre: routing of authorisation and clearing messages, and the reckoning of settlement liabilities between participants and other functions.

3.43 As stated above (paragraph 3.40), it is common for a PM to be an issuer (that is, they are members of a card scheme – for example, [Card scheme 1]/Mastercard – and issue the cards themselves). Alternatively, PMs may outsource the relationship with the scheme and the issuance of cards to a third party.⁷²

3.44 A PM holds the responsibility for coordinating all the functions required for the operation of a prepaid card product, either by providing those functions itself or by outsourcing those functions (to a payment processor and an issuer).

3.45 The PM provides a package of services which allows customers to access payment systems, including the Mastercard and/or [Card scheme 1] card networks, and may also include access to BACS and Faster Payments if the prepaid card offers a 'banking-lite' solution. The PM's main activities include:

- a. facilitating the provision of a BIN, either directly as an issuer, or indirectly by entering into an agreement with an issuer (see paragraph 3.39 above)
- b. delivering an IT platform to allow both the organisations purchasing the cards and the individual users (where different) to apply for and manage the prepaid cards supplied
- c. enabling the loading and redemption of funds
- d. enabling the setting up of regular payees and recurring payments (this forms part of the banking-lite solution – see paragraph 3.37 above)
- e. recording and monitoring card transactions
- f. maintaining a customer service centre to manage cardholder queries
- g. performing other 'back office' functions

3.46 The activities of the Network PMs are discussed in greater detail below (paragraphs 3.63 onwards).

⁷² For example, [Programme Manager 1] was a PM – not an issuer – and provided prepaid cards issued by [Issuer 1] (on the [Card scheme 1] platform) (see paragraph 3.65): see also arrangements allpay had in place with [Company E] before it became an issuer; allpay's response to question 6 of the PSR's Section 26 Notice dated 22 June 2018: UUID 101210023.

The use of prepaid cards in the private and public sectors

- 3.47** The market for prepaid cards spans both the private and public sectors. In either sector, the entity that purchases a prepaid card, the card buyer, may or may not be the same person who uses the card (the cardholder).
- a. In the public sector, the card buyer is, without exception, a Public body. The end user can either be the Public body itself and its employees or an individual receiving funds from that Public body.
 - b. In the private sector, prepaid cards can either be purchased by private companies/organisations, which use them themselves or re-sell/distribute them to individual consumers, or they can be purchased directly by such individuals.
- 3.48** Where the buyer and the end user of a prepaid card are the same, typically a cardholder, what is being purchased is an individual prepaid card.
- 3.49** Where the buyer is a business or other organisation (for example, a Public body), and the user a different person, what is being purchased is a package of prepaid card services from a PM, which includes a suite of associated services tailored to support the use of a prepaid card of the type involved (for example, those listed in paragraph 3.45).
- 3.50** The Infringements concern the supply of prepaid card services to businesses and other organisations, not the supply of prepaid cards directly to individual consumers. These types of prepaid card products can be supplied across the public and private sectors, but Public bodies often have additional requirements in terms of the support services provided (see paragraphs 3.56 onwards below) and the method of procuring prepaid card services for their use (see Section C of this chapter on the purchasing of prepaid card services by Public bodies).

The public sector

- 3.51** Public bodies can use prepaid cards as a way of managing their own expenditure, such as the payment of organisational disbursements and expenses.
- 3.52** They can also distribute prepaid cards to their service users (for example, individuals in need of welfare payments in their area/remit) to use for prescribed purposes. For example, some housing associations provide social housing tenants with prepaid cards to enable them to pay their rent via card, rather than using cash. This has a number of advantages for the association, which no longer needs to handle and process cash or cheque payments (the benefits of prepaid cards to Public bodies are further discussed below from paragraph 3.92 onwards).
- 3.53** Public bodies can also use prepaid cards to disburse a wide variety of welfare payments to individuals. For example, social care benefits (allowances for young people in local authority care, Carer's Allowance, housing and disability benefit etc), and emergency assistance payments (for asylum seekers, prisoners released on licence etc). If these are regular payments, they will be uploaded to the card accounts each payment cycle. In each case the prepaid card can be issued either to the individual beneficiary of the monies or to a person authorised to hold those monies on their behalf – for example a parent, guardian or carer.

- 3.54** According to a publication released in 2020 by the North East Procurement Organisation (this entity is discussed in detail in Section C of this chapter), “*every year local authorities load approximately £1bn to prepaid cards in order to pay suppliers, support school lunch provision, and help to distribute emergency payments whilst avoiding physical contact and cash handling.*”⁷³
- 3.55** Depending on the purpose of the payments being provided and any restrictions placed on the usage of the cards, card users can then use the card to, for example, pay for authorised equipment or activities, pay bills, withdraw cash at ATMs, and make online or in-store purchases at retailers that accept the card network displayed on the card. A user may also be able to reload the card with additional funds themselves.
- 3.56** Public bodies often have specific requirements in terms of the programme management service that supports the use of the prepaid cards provided. For example, Public bodies will often require the ability to monitor all transactions on a particular account and to reclaim unused funds from the cards in the event of the death of a benefit recipient or some other change in circumstances that means that they are no longer entitled to the monies paid.
- 3.57** As a result, being able to offer an IT platform that supports all the functionality requirements of a public sector customer is an important element of competition among PMs in the public sector. The IT platform provides two interfaces, one each for the:
- a. Public body (the immediate customer of the PM):** The ‘organisational portal’ is utilised by local authorities and other Public bodies to manage the prepaid card programme (for example, to order and manage cards, load or redeem funds, set up and manage payees).
 - b. Cardholder (such as the recipient of welfare payments from the Public body):** The ‘cardholder portal’ is utilised by cardholders for online banking (for example, to set up recurring payments and view direct debits).
- 3.58** There are also several associated ‘back office’ functions, such as the provision of multi-lingual call centres to support cardholders, which are considered essential elements of the service package being provided by a PM to a public sector customer.
- 3.59** Providers of prepaid card services to the public sector will be chosen through the relevant procurement process. Public sector procurement is subject to a legal framework, which encourages free and open competition and value for money. Section C of this chapter discusses the various frameworks and public purchasing procedures in more detail.

73 <http://www.nepo.org/download.ashx?ref=e6d71413617dfba7a5ff5b9a7180c007>: NEPO, *Best Practice Guide, Prepaid Cards: Financial Control in Challenging Times, A guide to help public sector organisations understand how prepaid cards can support their service users, suppliers and staff during challenging times*. See also [Sulion director 1]’s response to Question 1 of the PSR’s Section 26 Notice dated 24 April 2018, which states that there are “over 200 public sector organisations using prepaid cards and the expected amount uploaded to [prepaid] cards in 2018 is estimated to be close to £1bn.”: UUID 93510039.

The private sector

- 3.60** As explained in paragraph 3.47 above, there are two types of prepaid card customers within the private sector:
- a. Individual consumers, who can purchase prepaid cards as gifts or may use such cards when they want to have more control over their budget. Multi-currency prepaid cards are also often marketed to individual consumers as a way of avoiding taking cash ‘travel money’ abroad.
 - b. Private firms can also use prepaid cards for a number of purposes. For example, to pay for staff expenses or as a method of disbursing employee rewards such as staff bonuses. Some firms which regularly employ temporary migrant workers, or workers who for some other reason do not hold a bank account, use prepaid cards to pay employee wages.
- 3.61** The private sector in prepaid cards is extensive and involves a potentially large number of diverse competitors. As at early 2018, there were over 80 prepaid PMs and issuers in the UK operating in the private sector.⁷⁴ As explained further below, PFS and APS also supply prepaid cards and programme management services to the private sector.⁷⁵
- 3.62** As in the public sector, suppliers of prepaid cards or prepaid card services to the private sector can provide bespoke PM services, allowing for a high degree of customisation when setting up a card product. However, within the private sector there is no requirement to follow UK and EU procurement rules when contracting for goods and/or services. Providers of prepaid cards to private firms and organisations will be selected using the individual firm’s selection process, and the requirements of individual businesses will vary greatly.

Prepaid cards in the UK public sector: evolution

- 3.63** Prior to 2011, the use of prepaid cards by Public bodies was not widespread.⁷⁶ One of the reasons was that prepaid card products available at the time did not address the needs of the Public bodies and adequately facilitate their function of disbursing welfare payments.⁷⁷ The following paragraphs set out how the supply of prepaid cards to the UK public sector has evolved during the Relevant Periods. In summary, the adoption of prepaid cards by Public bodies has increased while the number of suppliers (PMs) has decreased.

74 PFS’s response to Question 10 of PSR RFI dated 3 April 2018: UUID 85070024.

75 Mastercard also offers programme management services for prepaid cards in the private sector for consumer and commercial prepaid card products; Mastercard’s response to question 13 of the PSR’s Section 26 Notice dated 25 March 2020: UUID 234540002.

76 Mastercard’s response to Question 4 (see paragraph 4.2) of the Section 26 Notice dated 29 March 2018: UUID 93230025.

77 See Appendix D, [Sulion director 1]’s Notes of the first Steering Group meeting on 26 May 2011 (a meeting between Mastercard, [Sulion director 1] and several UK local authorities), during which local authority members expressed a “difficulty of finding a [programme manager] partner who is willing to provide complete, tailored solutions rather than a ‘take it or leave it’ product”: UUID 94580502.

PMs in the UK public sector

- 3.64** The number and type of PMs that have serviced UK Public bodies with prepaid card products for the distribution of welfare payments has changed over time.
- 3.65** During the early stages of prepaid card adoption (between 2011 and 2013), the main firms who competed for prepaid public sector contracts included APS, [Programme Manager 2], PFS, allpay⁷⁸ (cards of these firms were issued on the Mastercard brand), [Programme Manager 4], and [Programme Manager 3] (cards of these programmes were issued on the [Card scheme 1] brand).⁷⁹ Another firm, [Programme Manager 1], began offering prepaid card programmes on the [Card scheme 1] brand in 2014.⁸⁰
- 3.66** [Programme Manager 2] exited the market around May 2012.⁸¹ While [Programme Manager 4] and [Programme Manager 3] withdrew their prepaid card programme offering to the public sector in 2015,⁸² the PSR has not seen evidence of these suppliers winning any Public body contracts for the supply of prepaid cards since early 2013.
- 3.67** Accordingly, by 2015 the number of PMs supplying the public sector was reduced to four: allpay, APS, [Programme Manager 1] and PFS (with three of the four PMs supplying Mastercard-branded cards).
- 3.68** In October 2016, PFS entered into an agreement with APS to purchase the latter's prepaid cards public sector books. The transfer of the contracts was subject to obtaining the consent of the Public body, authorising APS's prepaid contracts to be assigned to PFS.⁸³ PFS subsequently purchased [Programme Manager 1]'s prepaid public contracts in January 2017 on similar terms.⁸⁴ As a result, by the beginning of 2017, APS and [Programme Manager 1]

78 allpay's product offering to the public sector at this time was for travel and expenses (rather than for welfare disbursements) and was supplied on the Mastercard scheme. In 2013, allpay commenced supplying prepaid cards to Public bodies for welfare disbursements on the [Card scheme 1] scheme. In 2015, allpay migrated all of its public sector customers to a new platform it acquired, which operated on the Mastercard scheme: allpay's response to Question 6 of the PSR's Section 26 Notice dated 22 June 2018: UUID 101210023.

79 Some other suppliers, such as [Company B], [Company C] and [Company D] were unsuccessful in bidding for public sector contracts for the supply of prepaid cards.

80 [Programme Manager 1] differed to the Network PMs as it "did not have its own pre-paid card but instead relied on a third party supplier for this – [Issuer 1]. [Issuer 1] set the price of the card it provided to [Programme Manager 1] to enable [Programme Manager 1] to offer a competing package to those offered by APS, Allpay and PFS. [Also], [Programme Manager 1] only operated in one specific sector of the pre-paid card [public sector] market [X]": [Programme Manager 1]'s response to Question 9 of the PSR's Section 26 Notice dated 11 April 2018: UUID 85050054.

81 [Company I] (later known as [X]) announced in May 2012 that it had acquired [Programme Manager 2] [X] after which it concentrated on the provision of virtual cards to the travel industry: see PFS's response to Question 10 of the PSR's RFI dated 3 April 2018: UUID 85070024.

82 allpay's response to Question 10 of the PSR's Section 26 Notice dated 22 June 2018: UUID 101210023.

83 In particular, the agreement between PFS and APS states that APS "wishes to sell to PFS, subject to the agreement of the relevant local authorities, the opportunity to enter contractual agreements with such authorities together with all revenues attributed to these contractual rights and obligations." UUID PSR0001-93180-001117. As a result of the sale, 31 public sector organisations transferred their business from APS to PFS: see Annex 007 of PFS's response to the PSR's RFI dated 3 April 2018: UUID 85070009.

84 See the Sale Agreement executed between PFS and [Programme Manager 1] on 3 January 2017: UUID PSR0001-93985-000976. As a result of the sale, 18 public sector organisations transferred their business from [Programme Manager 1] to PFS; see Annex 007 of PFS's response to the PSR's RFI dated 3 April 2018: UUID 85070009.

had exited the public sector market and the only operators that remained and are still active are allpay and PFS – both on the Mastercard brand.

The Network PMs' prepaid activities

3.69 As stated in paragraph 3.31 above, the Infringements pertain to the supply of Mastercard-branded prepaid cards for welfare disbursements to Public bodies by the following PMs: allpay, APS and PFS (that is, the Network PMs). An overview of their prepaid business activities as relevant to this case is set out below.

allpay

3.70 allpay has operated as a PM offering prepaid card services to Public bodies since 2009.

3.71 In 2011, allpay supplied prepaid card services to four Public bodies. This increased to 35 Public bodies in 2016 and had grown to 44 Public bodies by the end of March 2019.⁸⁵

3.72 Initially, allpay's offering to Public bodies was limited to prepaid cards for travel and expenses purposes which had basic functionality and did not offer any banking facilities. Prepay Solutions Ltd, a subsidiary of Prepay Technologies Ltd, acted as the issuer and processor and Mastercard was the scheme provider.

3.73 As the supply of prepaid cards to Public bodies grew, so did the demand for this product as a method of payment to service users (that is, to welfare recipients). allpay entered into an arrangement in 2013 with [Issuer 2], who acted as the issuer and processor and issued cards under the [Card scheme 1] scheme.⁸⁶

3.74 Public bodies that adopted prepaid cards for the purposes of welfare disbursements continued to demand increased payment functionality, which included the banking-lite solution.⁸⁷

3.75 In 2015, "*allpay entered into an arrangement with [Company E] to provide a user interface, platform capability and processing services, which would have standard functionality to offer banking transactions (i.e. Faster Payments Direct Debit etc).*"⁸⁸ Under this arrangement, [Issuer 3] was the issuer of prepaid cards, [Bank A] provided the bank account and access to the UK's interbank payment systems to support banking-lite functionality, and Mastercard was the scheme brand.

⁸⁵ allpay's response to question 8 of the PSR's Section 26 Notice dated 25 March 2020: UUID 229300001.

⁸⁶ allpay's response to Question 6 of the PSR's Section 26 Notice dated 22 June 2018: UUID 101210023.

⁸⁷ See, for example, the NEPO1 Framework, which had a defined set of minimum functionality requirements that evolved in the subsequent version of the NEPO Framework Agreement (NEPO2).

⁸⁸ allpay's response to question 6 of the PSR's Section 26 Notice dated 22 June 2018: UUID 101210023.

- 3.76** allpay became an issuer of prepaid cards in its own right in 2018, when it became authorised as an EMI⁸⁹ by the Financial Conduct Authority ('FCA')⁹⁰ and was licensed as an issuer with Mastercard.
- 3.77** allpay's business focus has been on public sector clients. Other than a loyalty payment card under allpay's travel and expenses product with [Bank B], *"allpay has had little or no activity in the private sector"*.⁹¹
- APS
- 3.78** APS has been authorised by the FCA as an EMI and licensed by Mastercard as an issuer since 2007.
- 3.79** APS commenced supplying its prepaid card services to the public sector in late 2010⁹² and offered banking-lite functionality as part of its prepaid card programmes at that time.
- 3.80** APS developed its prepaid card offering to Public bodies between joining the Network in 2011 and its exit from the market in October 2016. In 2011, the product functionalities APS offered to Public bodies were modelled on its standard consumer product.⁹³ For example, its prepaid card product offering included point-of-sale transactions, ATM withdrawals and bill payments.⁹⁴ Over time, APS developed bespoke and enhanced features which included specialised call centre services, and telephone banking and payment processing (payment over the phone via customer services).⁹⁵
- 3.81** Between 2011 and 2016, APS grew its public sector customer base from four in 2011 to 36 in 2016.⁹⁶
- 3.82** When APS sold its public sector books to PFS in October 2016, the majority of its customers provided their consent to being migrated to PFS (31 of 34 Public bodies migrated from APS to PFS). APS carried on providing its services under the contracts to those customers that did not agree to the migration. APS completely ceased providing prepaid card programme management services to Public bodies in December 2018.

89 As previously described, EMIs are authorised or registered by the FCA to issue e-money and undertake payment services under the *Electronic Money Regulations 2011*, including providing card accounts, storing the monetary value of the e-money on their system or other electronic carrier, and using that monetary value to make onward payments. Card accounts provided by EMIs cannot go into overdraft; EMIs therefore issue e-money through prepaid cards, which cannot go into overdraft.

90 https://register.fca.org.uk/ShPo_FirmDetailsPage?id=001b000002C2q0WAAR

91 allpay's response to Question 10 of the PSR's Section 26 Notice dated 22 June 2018: UUID 101210023.

92 APS's response to Question 7.a.iii. of the PSR's Section 26 Notice dated 10 July 2019: UUID 179520001.

93 APS's response of 3 April 2018 to Question 7a of the PSR's Section 26 Notice dated 25 March 2020: UUID 224730003.

94 APS's response to Question 1 of the PSR's Section 26 Notice dated 10 July 2019: UUID 179520001.

95 APS's response to Questions 1 and 9 of the PSR's Section 26 Notice dated 10 July 2019: UUID 179520001.

96 34 of its customers were local authorities (out of a total of 152 in England) and 2 were NHS authorities APS's response to Question 3 (see paragraph 3.12) of the PSR's Section 26 Notice dated 11 April 2018: UUID 85040022.

3.83 APS's current main line of business is prepaid cards issued directly to consumers under its 'Cashplus' brand. For this product, APS does not act as a PM but rather as a direct provider of financial services. It also offers prepaid card programmes to corporate organisations⁹⁷ in the private sector.

PFS

3.84 PFS is an EMI, authorised by the FCA in 2012. It gained a licence to issue Mastercard-branded cards in the same year⁹⁸ and is active in the prepaid private and public sectors. Prior to becoming an issuer, PFS acted purely in the role of a PM and relied on other providers ([Issuer 4], [Issuer 5]) for both the issuing of cards and the processing of card transactions.

3.85 PFS began offering prepaid card services to Public bodies in 2010.⁹⁹ At that time, PFS's prepaid card programmes did not offer banking services such as Direct Debits and Faster Payments to customers (that is, a banking-lite solution) although some other players in the market already did.¹⁰⁰ PFS started offering the banking-lite functionality in 2014.¹⁰¹ PFS identified that the main innovation it has offered in terms of functionality since 2011, other than the banking-lite solution, is the ability to block certain merchant categories.¹⁰²

3.86 Since 2011, PFS has increased the number of Public bodies it supplies to and the types of disbursement it covers for these bodies.¹⁰³ In 2011, PFS offered prepaid cards to two local authorities.¹⁰⁴ In 2017, PFS had 103 clients in the public sector and that number reached 121 by 31 March 2019.¹⁰⁵

Table of indicative ranges of shares of revenue for the main PMs

3.87 Table I below shows indicative ranges of shares of revenue for the main PMs in the supply of prepaid card services for welfare disbursements over the years 2016–2018.

97 As at May 2018, APS provided Expense Cards and Current Account services to the SME market, including contractors, service companies, sole traders and small limited companies: see APS's response to Question 3 of the PSR's Section 26 Notice dated 3 April 2018: UUID85040022.

98 PFS's response to Question 7 of the PSR's request for information dated 10 July 2019: UUID 199960003.

99 PFS's response to Question 7 of the PSR's request for information dated 10 July 2019: UUID 199960003.

100 PFS's response to Question 3 of the PSR's Section 26 Notice dated 3 April 2018: UUID 85070024.

101 PFS's response to Question 3 of the PSR's Section 26 Notice dated 3 April 2018: UUID 85070024.

102 That is, the "ability to block certain merchant category codes such as internet betting (which [Bank A] and other banks like [Bank C] could only do in 2019), escort services, internet dating, ATM access, adult services, quasi cash and international transactions.": PFS's response to Question 9 of the PSR's Section 26 Notice dated 25 March 2020: UUID 225160012.

103 That is, expanding its prepaid card programme offering to cover social grants, asylum seekers, one-off payments, no-recourse to public fund, other grants, appointees, deputyships, petty cash replacement, travel expenses and salaries/payroll: PFS's response to question 9 of the PSR's Section 26 Notice dated 25 March 2020: UUID 225160012.

104 At that time, PFS also supplied these local authorities with a youth card, called '[X]', which was a rewards card aimed at school years 11-13 that could only be used for limited purposes (for example, leisure centres, bowling alleys and cinemas): PFS's response to Question 9 of the PSR's Section 26 Notice dated 25 March 2020: UUID 225160012.

105 PFS's response to Question 8 of the PSR's RFI dated 25 March 2020: UUID 225160012.

Table I: Indicative ranges of the main PMs' shares of revenues from supply of prepaid card services to Public bodies 2016–2018¹⁰⁶

	allpay	APS ¹⁰⁷	[Programme Manager 1]	PFS
2016	5 – 10%	44 – 49%	12 – 17%	31 – 36%
2017	4 – 9%	39 – 44%	0%	51 – 56%
2018	10 – 15%	14 – 19%	0%	70 – 75%

Demand side: Public bodies

3.88 The majority of Public bodies purchasing prepaid card services in the UK are local authorities.¹⁰⁸ As adoption of prepaid cards in the public sector grew,¹⁰⁹ users of these programmes expanded to include other UK public organisations that had a need for making disbursements (for example, NHS CCGs and housing associations).¹¹⁰ The Infringements relate to Public bodies that distribute welfare payments.

3.89 Public bodies are responsible for paying different types of welfare benefits to their service users – for example:

- a. social care for the elderly
- b. support arrangements for disabled residents
- c. support arrangements for carers
- d. care arrangements for children
- e. support arrangements for asylum seekers

¹⁰⁶ Based on a number of revenue figures supplied by allpay, APS, PFS and [Programme Manager 1] which may not be exactly comparable. See allpay's response of June 2018: UUID 101210023; APS response of 3 April 2018: UUID: 224730003; [Programme Manager 1]'s response of 11 April 2018: UUID 85050054; and PFS's response of 31 July 2019: UUID 199960003. These share of revenue figures may or may not include interchange fee revenues and therefore are indicative only: including interchange fee revenues are unlikely to materially affect the overall revenue figures for the purposes of this Table I.

¹⁰⁷ As set out at paragraphs 3.82 and 3.11 above, APS sold its books of business to PFS in October 2016, however, it continued servicing some contracts.

¹⁰⁸ allpay, APS, [Programme Manager 1] and PFS have each provided in response to Section 26 Notices/RFIs issued by the PSR a list of tenders they have submitted in the public sector between 2011 and 2017 (see UUID 101210066 (allpay), UUID 85040022 (APS), UUID 85070009 (PFS)). The majority of Public bodies identified in these lists are local authorities.

¹⁰⁹ See paragraphs 3.71, 3.81 and 3.86 and also a publication released by NEPO earlier this year, which includes the following quote by [Sulion director 1], Chair of the National Prepaid Cards Network: "At the beginning of 2020 prepaid cards were being used on a regular daily basis by around 75% of the UK local authorities delivering social care." [36] NEPO, *Best Practice Guide, Prepaid Cards: Financial Control in Challenging Times, A guide to help public sector organisations understand how prepaid cards can support their service users, suppliers and staff during challenging times*.

¹¹⁰ Primarily for welfare disbursements, but also for non-welfare disbursements, such as travel expenses. See, for example, paragraph 3.72.

- f. emergency grants to residents in hardship from the social fund

3.90 Traditionally, Public bodies provided social care and/or financial support services directly to their service users. However, the *Care Act 2014* introduced the ability for someone else (such as a carer) to receive and manage the direct payment on behalf of the person.¹¹¹ The commencement of *The Welfare Act 2012*, and associated introduction of the Universal Credit scheme, has also resulted in a number of changes to the way in which welfare payments are distributed in the UK by Public bodies. These are briefly discussed below from paragraph 3.96 onwards.

3.91 Public bodies have a responsibility to:

- a. safeguard the welfare of their vulnerable society members, including by distributing welfare payments (see examples in paragraph 3.52 above), and
- b. ensure that the funds they distribute are appropriately spent

Prepaid card programmes have been used by Public bodies to address both responsibilities, which is discussed below.

Advantages for Public bodies of using prepaid cards

3.92 Prepaid card programmes offer Public bodies several benefits when compared with other payment methods (for example, payments by cheque/cash) in terms of ensuring appropriate spending by their service users. These include:

- a. The ability of Public bodies to configure prepaid cards at a programme level to ensure that welfare payments are properly administered to, and used by, their service users. For example, they can:
 - configure the types of transactions their service users can carry out using the funding provided – for example, whether to make ATM withdrawals, online purchases or bricks-and-mortar purchases available to all cardholders within the programme. They may also need to be able to configure individual cards in this way.
 - configure cards to meet the requirements of their service users – for example, block or enable usage of the cards at some categories of merchant (for example, enable the use of the card at pharmacies and not gambling agencies).
- b. The ability to have direct oversight of spending against each card. This assists Public bodies from an auditing perspective and helps them ensure their vulnerable service users are cared for:
 - Auditing: In the past, local authorities carried out checks by asking service users to provide receipts for all their spending against their personal budget. Public bodies can avoid this laborious task by viewing all transactions – both paid to and spent on the card – and compare the spending to the relevant care plans.

¹¹¹ See Care Act 2014, Chapter 12, Supporting implementation: <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>

- Caring for vulnerable users: Through the prepaid card programmes, Public bodies can generate reports on card use that allow them to flag any patterns of use that would suggest a cause for concern (for example, if a card is not used at all for a week this might suggest that a service user is unwell or not being cared for).

- c. The ability to reclaim unspent funds if their service users die or move out of the area and leave funds unspent.

3.93 The above features (and certain banking-lite functionalities, including, for example, the ability to process direct debits using the funds on the prepaid cards¹¹²) typically form the basis of tender requirements¹¹³ issued by Public bodies to suppliers of prepaid card programmes.¹¹⁴

Recipients of welfare payments (users of prepaid cards)

3.94 Users of prepaid cards (recipients of welfare payments) are a diverse group of people who have a range of payment types and needs. For example:

- a. Some users are unbanked or in debt to their bank, which can make it challenging for recipients to receive their welfare payments. These service users need a safe store of funds that are not subsumed by bank charges. Service users who have no access to a bank have previously relied upon cashing cheques at a cost or receiving all their payments as cash, which may result in their need to carry large amounts of unsecured cash around. Prepaid cards can ease these challenges as their 'banking-lite' features (for example, account number and sort code) enable Public bodies to make direct contributions to the service user without the need for a traditional bank account.
- b. Some users need to pay some of their outgoings by Direct Debit or standing order (for example, rent and utility payments). Prepaid card programmes can support these types of payments; PMs can handle the associated functionality requirements, including setting up payees, and recording and setting up recurring payments.
- c. Some users may need another person to be appointed to manage their funds on their behalf. PMs can facilitate this by supplying preloaded prepaid cards to appointees.
- d. Some users share the cost of a care plan with their local authority. Prepaid cards can assist these service users because the cards have a bank account and sort code attached, thus enabling the service user to use the funds on the card to pay their contributions (this in turn enables the local authority to check that the service user has paid their contribution).

¹¹² See, for example, the NEPO2 tender requirements at Section 2.5 titled '*Prepaid Card Accounts*' and in particular clauses 2.5.1-2.5.2 which refer to the prepaid cards functionality to perform "*much in the same way as a standard UK Bank Account and Debit Card... The cards will be personalised to the Cardholder including, as a minimum, name/account number and sort code.*" NEPO505 Prepaid Card Accounts Invitation to tender: UUID 81040005.

¹¹³ For example, clauses 5.1 to 5.6 of the NEPO1 tender requirement provide that the prepaid card service must include automated renewal of cards, the possibility of the council cancelling, reissuing, freezing, or removing cards from users: the NEPO 1 framework agreement: UUID PSR0001-93050-005619.

¹¹⁴ Other requirements include being able to configure the charging settings in the prepaid account to determine whether transaction charges are deducted from the prepaid card account or from the council's account; access to a specialised call centre; and an easy-to-use IT portal for service users to use if they have questions about how they can use their card.

Upstream market

Card schemes in the UK

3.95 There are currently six card payment systems that operate in the UK: [Card scheme 1], Mastercard, [Card scheme 2], [Card scheme 3], [Card scheme 4] and [Card scheme 5]. [Card scheme 1] and Mastercard together represented [X]% of all UK card transactions in 2018. Historically, only [Card scheme 1] and Mastercard have been involved in the supply of prepaid cards to Public bodies. [X] Mastercard's activities as relevant to the case are set out in greater detail in Chapters 4 (*National Prepaid Cards Network*) and Chapter 6 (*The relevant market*) of this Decision.

Mastercard's interest in welfare payments within the UK public sector and Universal Credit

3.96 As discussed further in Chapter 4, Mastercard identified an opportunity to expand its presence within the public sector and sought to become the “*brand of choice*”¹¹⁵ for the distribution of welfare disbursements by Public bodies across the country.

3.97 *The Welfare Reform Act 2012* introduced a new method of administering central government benefit payments: Universal Credit. Universal Credit is intended to consolidate six benefit payments into one monthly payment to recipients.¹¹⁶ Implementation of the new benefit type began in 2013 and was rolled out to all Jobcentres in GB by the end of 2018.¹¹⁷ It is expected that all households claiming the old types of benefit will be migrated to Universal Credit by September 2024.¹¹⁸ At present, there are approximately 8.5 million claimants in GB receiving either Universal Credit or legacy benefits.¹¹⁹

3.98 A proof of concept test¹²⁰ carried out by [Public body 42] in 2015 demonstrated that prepaid cards were a feasible method of delivering Universal Credit payments.¹²¹

3.99 The expansion of prepaid card programmes to Universal Credit payments presented a significant opportunity for the PMs, and for Mastercard as the card scheme. PMs – as issuers – receive interchange fees for all transactions made on cards that they have issued, as well as any programme fees payable to them by the Public bodies that have procured the

115 Mastercard Document titled 'UK and Ireland Public Sector Strategy 2015' dated 20 January 2015, Version 10: UUID 93230171.

116 These are: Child Tax Credit, Housing Benefit, Income Support, income-based Job Seeker's Allowance, income-related Employment and Support Allowance and Working Tax Credit: <https://www.gov.uk/universal-credit>

117 <https://www.gov.uk/government/publications/universal-credit-transition-to-full-service>

118 <https://commonslibrary.parliament.uk/social-policy/welfare-pensions/benefits/constituency-data-universal-credit-roll-out/>

119 <https://www.gov.uk/government/publications/dwp-benefits-statistics-february-2020/dwp-benefits-statistical-summary-february-2020>

120 <https://www.gov.uk/government/publications/evaluation-of-the-prepaid-card-live-test>

121 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/535235/rr926-summary-evaluation-of-the-prepaid-card-live-test.pdf

programme.¹²² Card schemes have fees payable to them by both issuers and acquirers that are chargeable per transaction processed by their network or carried out under their branding.

C The purchasing of prepaid card services by Public bodies

Introduction

3.100 This section covers:

- a. the way in which Public bodies procured prepaid card services from PMs during the Relevant Periods including:
 - the main purchasing procedures and processes typically used by Public bodies to award prepaid card services contracts
 - whether Public bodies appointed more than one prepaid card services provider at a time
 - the use of pilot programmes for prepaid card services
 - prepaid cards and Framework Agreements
 - statements of compliance with competition law
- b. switching of prepaid card services provider
- c. opportunities for PMs to compete for prepaid card services contracts

The way that Public bodies purchased prepaid card services

The main procedures used by Public bodies to purchase prepaid card services during the Relevant Periods

3.101 Public bodies, such as local authorities, are usually required to follow various procedures to purchase prepaid card services.¹²³ If the value of the contract was above a certain

¹²² See interview of [PFS director 2]: “Why did we get into it? We got into it because we thought there was a massive opportunity in government, with procurement cards, and which some of them are on prepaid... And ...we felt universal credit provided an opportunity for a significantly under-served population who had transactional bank accounts that weren’t really fit for purpose to be able to service maybe a million odd customers, which was transformational ... and actually, that’s why we got the bank accounts, that’s why we had direct debits, that’s why we’re pursuing forward faster payments, that’s why we’ve done all the vanity projects with universal credit.” Interview of [PFS director 2] on 9 November 2018, disc 1 of 3, at lines 1335 to 1346: UUID 238180001.

¹²³ During the Relevant Periods, the award of prepaid card contracts had to follow the rules set out in the Public Contract Regulations 2015, local government or NHS regulation, contract law, and the Public body’s own internal purchasing process and procedures, as applicable.

threshold¹²⁴, the tender was regulated by EU and UK public procurement rules¹²⁵ which encourage free and open competition and value for money and involve mandatory advertising requirements. If the value was lower than the relevant procurement thresholds, Public bodies would usually follow their own internal rules and procedures for selecting a contractor in order to obtain value for money for customers.¹²⁶ As detailed below, sometimes this meant that no public tender process took place at the time of the contract – for example, where the value of the contract was small (generally under £5,000) or where a Framework Agreement¹²⁷ was used. Local authorities also had to comply with local government regulation¹²⁸ and contract law.

3.102 The main ways in which a Public body, such as a local authority or CCG, purchased prepaid card services are summarised below:

3.103 Where the relevant thresholds under the procurement rules were met, Public bodies had to either undertake a tender exercise and advertise the tender¹²⁹ either EU wide¹³⁰ or nationally¹³¹, or utilise an applicable Framework Agreement. During the period 2012–2018, while many Public bodies chose to procure under one of the applicable Framework Agreements (see paragraph (a) below), others, such as [Public body 42], [Public body 41] and the [Public body 7], ran their own open tender procedures.

- a. Public bodies that were party to a prepaid cards Framework Agreement, could use that Framework Agreement to either (i) “run a ‘mini-competition’” between the approved framework suppliers, or (ii) “call-off”¹³² directly a supplier to supply the service. Suppliers to a Framework Agreement are selected following competition in an open tendering process. The main Framework Agreements for local government¹³³ covering prepaid cards are:

124 For example, for services contracts for local authorities, the 2014/15 threshold was £172,514. For 2018/19 it was £164,176.

125 Under the Public Contract Regulations 2015, subject to limited exemptions.

126 [Mastercard employee 3] of Mastercard stated that depending on the level of business, “If it was above a certain threshold it would have to go to European tender. If not then they would most likely have a commercial discussion” – that is, the PM and the Public body in question. Interview of [Mastercard employee 3] (Mastercard) on 24 October 2019, disc 3 of 4 at lines 641 to 642: UUID 242590003.

127 An umbrella contract that usually covers a number of suppliers.

128 For example, under the [Local Government Transparency Code 2015](#), local authorities must publish details of every invitation to tender for contracts to provide goods and/or services with a value that exceeds £5,000.

129 When a Public body is undertaking a formal procurement exercise, it will typically issue a ‘Contract Notice’ or invitation to tender on the appropriate website or portal (for example, the Tenders Electronic Daily website for EU-wide tenders <https://ted.europa.eu/TED/browse/browseByMap.do>) to alert the market and invite bids. Bidders are then invited to submit tenders through public calls for bids, usually called a ‘Request for Proposals’ (‘RFP’) or ‘Request for Tenders’ (‘RFT’). Public bodies then typically issue more detailed ‘tender documents’ that include technical specifications, the descriptive document and proposed conditions of contract.

130 In the Official Journal of the European Community (OJEC).

131 Public Contract Regulations 2015.

132 Also referred to as a “draw down” from a Framework Agreement.

133 There were a number of other public sector frameworks for prepaid cards that applied during the Relevant Periods, including: the Crown Commercial Services; G-Cloud framework; and Eastern Shires Procurement Organisation

(i) The Surrey CC Framework¹³⁴; (ii) NEPO1;¹³⁵ and (iii) NEPO2¹³⁶. An overview of the key terms is set out from paragraph 3.111 onwards below.

3.104 Under a ‘mini-competition’,¹³⁷ the procuring Public body could select the best supplier from those suppliers who competed in the framework. An authority could adopt a mini-competition where, for example, the Framework Agreement only sets out broad specifications for a particular type of good or service and a competition was required to determine which supplier could deliver the service in a way most closely fitted to the authority’s specific needs and/or budget.¹³⁸

- a. Where a Public body considered that a Framework Agreement provided sufficient detail and that no further competition was necessary, they could directly award a contract to any approved supplier under one of the relevant Framework Agreements. This would be awarded under a call-off contract under the framework. By making a direct award, Public bodies avoided entering into a separate procurement exercise at the time of call-off¹³⁹ and were able to engage one of the pre-approved suppliers more quickly.
- b. Where the value of a project fell below the relevant EU and UK procurement thresholds, a Public body could contract for prepaid card services (including pilot programmes) without necessarily running a formal procurement competition. For example, local authorities had their own internal purchasing procedures, often involving advertising through their own portal or website. If the value of the contract was relatively low (generally under £5,000), the local authorities could invite one or more prospective PMs and ask them to present and/or quote for the contract and then negotiate directly with the preferred PM to agree a contract. A Public body could also grant a waiver from certain of its own procurement requirements in certain situations to allow for a direct award to be made.¹⁴⁰

3.105 Public bodies used a combination of formal and informal routes to purchase prepaid cards, reflecting the different size and value of the proposed contracts. Based on the responses from a sample of local authorities, the most common way to award contracts was either a direct

134 The Surrey Framework applied from February 2015 to February 2019. The Surrey Framework was open to other public sector bodies to use, including all local authorities, and NHS bodies England. Surrey CC Framework Guidance, paragraph 1. The OJEU notice can be found at [Service contract – 298104-2014 – TED Tenders Electronic Daily](#). The other public sector bodies that can use the framework are set out at VI.3.

135 The first North East Procurement Organisation Framework applied from 20 February 2012 – 19 February 2016. NEPO1 was available for use by all UK contracting authorities including Government Departments and their Agencies, Non-Departmental Public Bodies, NHS Authorities and Trusts, Local Authorities and Registered Charities who have a need to purchase prepaid cards: UUID PSR0001-93050-005619.

136 The second North East Procurement Organisation Framework is still in force in 2020 and applies from 9 January 2017 – 8 January 2021. The NEPO2 Framework is open to public sector bodies in the UK to use including Government Departments and their Agencies, Non Departmental Public Bodies, Central Government, NHS Bodies and Local Authorities: UUID 94570303.

137 Also referred to as a mini tender.

138 There is evidence from [APS employee 1] of APS at interview that mini-competitions/mini tenders were nearly as detailed and time consuming to complete as a full tender. Interview of [APS employee 1] (APS) on 27 September 2019, disc 1 of 5, at lines 1873 – 1876: UUID 238510001, and disc 2 of 5, at lines 190- 191: UUID 238510002.

139 A public authority could join a relevant Framework Agreement as long as its participation was advertised when the Framework Agreement was let.

140 See for example, procurements carried out by [Public body 36] and [Public body 5], as referenced in the Table in Annex F.

award under one of the Framework Agreements or other alternative purchasing arrangements that did not involve a formal tender.¹⁴¹

- 3.106** Irrespective of the way Public bodies purchase prepaid cards services, PMs can always approach Public bodies directly. These direct contacts could lead to prepaid card contracts (or pilot programmes¹⁴²) being concluded without any additional (or limited) public advertisement or selection process taking place. PFS¹⁴³ and APS¹⁴⁴ did in fact approach Public bodies directly to provide services (or were approached directly by the Public body).
- 3.107** The duration of the contracts for the provision of prepaid card services is typically between one and five years, and these can be further extended. On the basis of the responses from the sample of local authorities, the vast majority of their contracts lasted between three and five years,¹⁴⁵ and most contracts were either rolled forward or extended for a further fixed term (usually of between one and two years)¹⁴⁶ or indefinitely.^{147,148,149}

¹⁴¹ The PSR contacted 13 different local authorities which had participated in the Network from across different regions of England and asked for information from the local authorities about how they purchased prepaid card services during the period 2011–2019. The PSR selected a range of councils of different sizes from across England (4 London Boroughs, 3 from the South East, 2 from the North East, 1 from the North West, 1 from the South West, 1 from the East Midlands and 1 from the West Midlands). A summary of the local authorities' responses is set out in the Table at Annex F – Summary Table of local authority responses (2011-2019).

¹⁴² See paragraph 3.109 onwards.

¹⁴³ For example, PFS has provided evidence that it proactively approached certain councils directly and was awarded contracts where no tender took place, for example, [Public body 3] in September 2010, [Public body 60] in November 2013, [Public body 59] in December 2014, and [Public body 34] in November 2016, – see the spreadsheet at Annex 3 to PFS's response of 6 December 2018: UUID 182270543. Also, in PFS's Response of 24 April 2018 to the PSR's Request for information dated 3 April 2018 and updated on 1 May 2018, at paragraph 3.17: UUID 85070007, PFS states that "*PFS would pro-actively approach Local Authorities and CCGs who were not yet at tender stage, or who had attended the MasterCard sponsored Prepaid Network but had not engaged with suppliers. PFS would invite these potential customers to launch a 'pilot' for a defined period with defined costs, often 'cost free'. At the end of the pilot period, PFS would then be able to switch the customer to a contract model, if under the competitive tender threshold limits, and thereby eliminate the requirement for the Local Authority to go out to tender at all*".

¹⁴⁴ APS also approached, or was approached by, Public bodies directly, as detailed in table 6 of APS's section 26 response dated 4 May 2018. The response shows that 29 of the contracts that APS won in the period 2011 – 2019 were through a direct approach by the public body to APS, or APS to the public body. APS stated in its response at paragraph 18.2 that "*APS involvement in a tender process or direct negotiations is entirely dependent on the choice of the Council. In some instances, Councils would provide a full established tender process, however others would make a direct approach to request a bid without formal tender requirements*": UUID 85040022.

¹⁴⁵ 14 out of 17 prepaid card contracts lasted between 3 – 5 years.

¹⁴⁶ See for example, 2 of the 3 the contracts of the [Public body 3] summarised at Annex F.

¹⁴⁷ For example, [Public body 36]'s contract with APS in March 2015 and [Public body 27]'s contract with allpay in 2011; see table at Annex F.

¹⁴⁸ See the summary of contracts set out in the table at Annex F, which shows that many of the contracts extended beyond their initial period.

¹⁴⁹ [Public body 3]'s contract with [Programme Manager 1] (call-off contract), [Public body 3]'s contract with PFS (call-off contract), [Public body 12]'s contract with PFS (call-off contract), [Public body 3]'s contract with allpay (mini-competition), [Public body 36]'s contract with APS (direct contract), [Public body 27]'s contract with allpay (direct contract), [Public body 27]'s contract with APS (direct contract), [Public body 27]'s contract with PFS (call-off contract), [Public body 42]'s contract with PFS (open tender), [Public body 42]'s second contract with PFS (open tender), allpay's contract with [Public body 41] (open tender), [Public body 34]'s contract with PFS (call-off contract), and [Public body 44]'s contract with [Programme Manager 1] (call-off contract); see table at Annex F.

More than one prepaid card service provider

- 3.108** Although Public bodies typically purchased prepaid card services from one PM at a time, the same Public body could contract with more than one PM for prepaid card services, usually in relation to different service areas. For example, different departments within a local authority (such as adult social care, children's social care or asylum seeker services) could have different prepaid card requirements and run separate procurement exercises. [APS employee 1] of APS stated at interview that it was "*absolutely*" possible for different PMs to provide prepaid card services to the same council at the same time,¹⁵⁰ but added that this "*was quite rare*".¹⁵¹ By way of example, [APS employee 1] referred to occasions where APS and allpay both provided services to certain councils.¹⁵² [Public body 42] also told the PSR that it used both [Programme Manager 3] and [Programme Manager 4] from 2008 to 2014 for different departments and the payment of different allowances within the Council.¹⁵³

Pilot programmes

- 3.109** Some Public bodies that purchased prepaid card services ran pilot programmes to test prepaid card programmes, before deciding whether to enter into a full contract. The contracts for such pilot programmes would typically not go through a formal tendering process, and:
- a. continued for between a few months to 1 – 2 years¹⁵⁴, although they could continue longer than this¹⁵⁵
 - b. would be for a relatively small number of cards (starting at around 50–100 estimated cards^{156,157}) and

150 [APS employee 1] (APS) stated at [APS employee 1]'s interview on 27 September 2019, disc 2 of 5, at lines 1015 and 1028 – 1025, that it would "*absolutely*" be possible for a council to have two separate programme managers: UUID 238510002.

151 [APS employee 1] (APS) stated at [APS employee 1]'s interview on 27 September 2019, disc 2 at lines 1032 – 34 – "*It didn't happen very often at all, but certainly it did happen*": UUID 238510002.

152 [APS employee 1] (APS) at [APS employee 1]'s interview on 27 September 2019, disc 2 at lines 1022 – 1024, gave the example where "*there was a few councils early doors where we would be providing the main card for the DP, and someone like allpay would be doing like an instant issue card*": UUID 238510002.

153 [Public body 42]'s response of 11/08/2019 (Q.1b) to the PSR's Section 26 notice of 13 June 2019: UUID 179600015.

154 Table at Annex F and spreadsheet at Annex 3 to PFS's response to the PSR of 6 December 2018: UUID 182270543.

155 Based on the sample of Public bodies contacted by the PSR, three local authorities conducted a pilot programme ranging between eight months and five years in duration ([Public body 2], [Public body 3], [Public body 37] – see the table at Annex F).

156 Email dated 6 December 2012 from [PFS director 2] to [Individual at Public body 39] and [Individual at Public body 39] cc [PFS director 1] (PFS) with subject 'MasterCard prepaid cards for Local Authorities': UUID PSR0001-95290-004261.

157 Excel workbook dated 12 July 2011, titled "*Anonymised Prepaid Details Table*". One pilot was initially for 300 cards: UUID PSR0001-93050-006202.

- c. given the low number of cards involved, were either free of charge¹⁵⁸ or of relatively low value; for example, PFS offered Public bodies free pilot programmes ranging from between 90 days to 60 months^{159,160}

3.110 Public bodies could convert pilot programmes to a full contract without necessarily going out to tender where the value of the contract was under the competitive tender threshold¹⁶¹ limits.¹⁶² For example, PFS stated that it conducted 15 pilot programmes during the period 2011 – 2018 and that it believes that all 15 pilot programmes were converted to a full contract without the Public body going out to tender.¹⁶³ [PFS director 1] of PFS explained at interview that¹⁶⁴ if the pilot programme was successful many extended the pilot and that is why there were not many “tenders back in ‘09/’10/’11/’12, even ‘13, very, very few with the exception of [Public body 6]” in 2011.

Prepaid card contracts and Framework Agreements:– an overview of the NEPO and Surrey Frameworks

3.111 As explained above, there are three main Framework Agreements that applied to local government covering prepaid card services during the Relevant Periods:

- a. NEPO1 applied from 20 February 2012 to 19 February 2016.¹⁶⁵ allpay was the sole approved supplier.¹⁶⁶ The NEPO1 award criteria for a place on the framework were weighted: cost 70% and service delivery 30%,¹⁶⁷ with individual cost and service components given a further weighting.¹⁶⁸ The NEPO1 Framework Agreement could be terminated early if the supplier failed to provide acceptable service levels.¹⁶⁹
- b. NEPO2 applied from 9 January 2017 – 8 January 2021.¹⁷⁰ There were three approved suppliers (PFS, allpay and [Programme Manager 1]), but only one had ‘preferred’ supplier

158 PFS’s response of 24 April 2018, updated 1 May 2018, to the PSR’s RFI dated 3 April 2018, at 3.17: PFS told the PSR it would pro-actively approach local authorities and CCGs who were not yet at tender stage, or who had attended the Mastercard sponsored Prepaid Network but had not engaged with suppliers. PFS would invite these potential customers to launch a ‘pilot’ for a defined period with defined costs, often ‘cost free’: UUID 85070007.

159 PFS state to [Public body 8] on 19 June 2012, “We would expect to run a pilot for 90 odd days, and use that time for us to better understand the requirements and then we build a more specific solution and pricing package to suit you”: UUID PSR0001-95290-004247.

160 Further supplement to the PFS Leniency application dated 6 December 2018, paragraph 2.2, “Of the 15 pilots, 10 were conducted free of any charge for a 6 month initial period”: UUID 182270288.

161 For example, for services contracts for local authorities, the threshold for 2014/15 was £172,514. For 2018/19 it was £164,176.

162 PFS’s response of 24 April 2018, updated 1 May 2018, to the PSR’s request for information dated 3 April 2018, at paragraph 3.17: UUID 85070007. PFS told the PSR that at the end of a pilot period, PFS would be able to switch the customer to a contract model, if under the competitive tender threshold limits, and thereby eliminate the requirement for the local authority to go out to tender at all.

163 Further supplement to the PFS Leniency application submitted to the PSR on 13 April 2018 for the purpose of responding to the questions raised by the PSR during the voluntary interviews of [PFS director 1] and [PFS director 2] (PFS) dated 6 December 2018, paragraph 2.3: UUID 182270288.

164 Interview of [PFS director 1] on 7 November 2018 disc 1 of 3, at lines 1482-149: UUID 223980001.

165 UUID PSR0001-93050-005619.

166 Because allpay was the sole approved supplier, a mini-competition was not an option under NEPO1.

167 NEPO1 Framework Agreement, clause 2.4: UUID PSR0001-93050-005619.

168 See paragraph 2.4 (award criteria) NEPO1 User Guide: UUID PSR0001-93050-005619.

169 Clause 14.4: UUID PSR0001-93050-005619.

170 UUID 94570303.

status (PFS).¹⁷¹ The NEPO2 award criteria for selecting suppliers under the framework, were cost 40% and quality 60%¹⁷² with individual cost and service components given a further weighting.¹⁷³ Call-off contracts under NEPO2 could be terminated by the Public body without cause upon giving as much notice as possible in the circumstances.¹⁷⁴

- c. PFS, APS, allpay and [Programme Manager 1] were each approved suppliers under the Surrey Framework¹⁷⁵ which applied from February 2015 – February 2019.¹⁷⁶ As none of the approved suppliers had 'preferred' status, a Public body could call-off directly any of the four framework suppliers.¹⁷⁷ The award criteria for direct awards and mini-competitions were weighted 70% (+/- 10%) quality¹⁷⁸ and 30% commercial (+/- 10%) that is, commercial rates. The final weighting was determined by the contracting Public body. Call-off contracts could be terminated by the Public body without cause by giving 30 days' notice (Clause 31.5).¹⁷⁹

Statements of compliance with competition law

- 3.112 It is common practice for Public body tender or quotation documents (including Framework Agreements) to include the requirements that bidders comply with competition law and such requirements were included in relation to the purchasing of prepaid card services.
- 3.113 For example, suppliers tendering under NEPO2 were asked to complete a 'Statement of Non-Collusion'¹⁸⁰ certifying, among other things, that during the tender process and whilst the Framework Agreement is in place, the supplier has not:
 - a. agreed with any person to the effect that they will refrain from tendering to the Council or sought to fix the amount of any offer

171 A Public body could call off directly PFS (the 'preferred' supplier'). However, if it wished to consider using either of the other two framework suppliers (allpay or [Programme Manager 1]) then the Public body had to invite all three suppliers to participate in a mini-competition under the NEPO2 Framework: UUID 94570303.

172 NEPO2 Invitation to Tender, part E 7, Tender Evaluation. The Council does not undertake to accept the lowest or any Tender: UUID 81040005.

173 NEPO2 Invitation to Tender, part E 7, Tender Evaluation: UUID 81040005.

174 NEPO2, Schedule 6, Framework Terms and Conditions for Services, Part D – Termination, D1.3: UUID 81040015. *"The Contracting Authority reserves the right to terminate the Call-Off Contract at will, in whole or in part, at any time with or without notice except that it will give as much notice as possible in the circumstances"*.

175 The Surrey Framework is open to other public sector bodies to use, including all local authorities and NHS bodies in England. Surrey CC Framework Guidance, paragraph 1. The OJEU notice can be found at [Service contract – 298104-2014 – TED Tenders Electronic Daily](#). The other public sector bodies that can use the framework are set out at VI.3.

176 Contracts awarded under the framework can continue for a further 2 years, that is, up to February 2021: UUIDs 179660004, PSR0001-95290-002417, 179530012.

177 Call-offs under the Surrey Framework can be made via a direct award to a single provider or via a mini-competition

178 Quality under the Surrey Framework included criteria such as the Online Programme Management Tool, Implementation, Functionality and Customer Support capability, Framework Schedule 6 – Award Criteria, paragraphs 13 and 14: UUID PSR0001-93985-001093.

179 Surrey CC Framework Guidance Schedule 4, Call-Off Agreement, paragraph 31.5 – Termination without cause: *"The Customer shall have the right to terminate this Call-Off Contract at any time by giving at least thirty (30) Working Days written notice to the Supplier or such other notice as the Customer may stipulate in the Order Form."*: UUID PSR0001-93985-001093. For example, the call-off contract that [Public body 34] entered into with PFS in 2017 allows for termination by the council without cause on 30 days' notice only. [Public body 34] Section 26 Response at responses to Qs 1 and 10: UUID 179670005.

180 NEPO2, ITT Schedule 4, allpay tender submission: UUID 81040014.

- b. informed any person other than the Council of any details of the supplier's submitted tender
- c. caused or induced any other person to enter into an agreement described at (a) above
- d. committed any offence under the Competition Act 1998 or Enterprise Act 2002

3.114 Any tender not complying with these requirements would be rejected.

3.115 Similar provisions are included in the Surrey Framework agreement¹⁸¹ and the 2016 [Public body 42] tender documents.¹⁸²

The opportunities to compete for prepaid card services contracts

3.116 In a competitive market, in order to compete for the opportunity to win public sector prepaid card business, it would have been important that each of the PMs was able to engage with, and build relationships with, individual Public bodies, including while a Public body had a contract in place with another PM (see paragraphs 5.83, 5.84, 5.92 and 5.93 below – where the importance of these contacts is illustrated).

3.117 In order to compete, PMs need to be free to engage with Public bodies at all times to raise awareness of their existence and of their service¹⁸³. For example, following contact with a competing PM, a Public body has several choices – it can, for example:

181 See Paragraph 6.6 of the Framework Agreement on 'Warranties, Representations and Undertakings', which requires the tenderers to each warrant that:

- *"it has not entered and will not enter into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made in respect of this Framework;*
- *it has not caused or induced and will not cause or induce any person to enter such agreement referred to in Clause 6.1.5;*
- *It has not offered or agreed (and will not offer or agree) to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission in relation to any other tender or proposed tender for Services under this Framework":* UUID PSR0001-93985-001093.

182 See the 'Collusive Behaviour' provision in the 2016 [Public body 42] tender, which stated that any tenderer that did the following would be disqualified:

- *"fixes or adjusts the amount of its tender by or in accordance with any agreement or arrangement with any other party; or*
- *communicates to any party other than the Council any amount or approximate amount of its proposed tender or information which would enable the amount or approximate amount to be calculated (except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of the tender or insurance or any necessary security); or*
- *enters into any agreement or arrangement with any other party that such other party shall refrain from submitting a tender; or*
- *enters into any agreement or arrangement with any other party as to the amount of any tender submitted; or*
- *offers or agrees to pay or give or does pay or give any sum or sums of money, inducement or valuable consideration directly or indirectly to any party for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender, any act or omission"*

Businesses submitting a tender were required to complete an Anti-Collusion Certificate to this effect: UUID 199930023.

183 For example, to engage in confidential bilateral discussions, such as on price and platform functionality, that would not be appropriate to take place in open fora, such as Network meetings, where competitors could be present.

- a. choose to run an open selection process inviting new bids or quotes rather than extending the duration of an existing prepaid cards contract or converting a pilot programme to a full contract with the same supplier
- b. choose to run a separate procurement exercise to cover additional areas of business (for example, by including children's services on top of adult services) which could, in principle, result in a separate contract with a different PM¹⁸⁴
- c. make a more informed choice when considering which of the preferred suppliers to award a call-off contract to under a Framework Agreement or choose to run an open selection process inviting new bids or quotes, rather than making a direct award under a Framework Agreement
- d. trigger an early termination provision to end an existing contract and invite new bids or quotes from a PM that may be able to offer a better suited service in terms of price and/or functionality rather than continuing with an existing prepaid card contract

3.118 In a competitive market, engaging with a Public body during the life of an existing contract may also have placed a competing PM in a better position to be ready to tender or quote for any subsequent contract in a manner which would meet that Public body's requirements (or offer a pilot programme in a manner which satisfies that Public body's priorities). Engagement with a wide range of Public bodies may also have helped the PM develop and/or improve its services.

Switching prepaid card providers by Public bodies

Statements against switching

- 3.119** The PSR refers below to the statements received in the course of the investigation that Public bodies do not switch suppliers and it would not make sense for PMs to approach Public bodies if these were already being supplied by another PM. However, as demonstrated below, there is evidence to the contrary.
- 3.120** Two of the Network PMs, PFS and allpay, and some of the witnesses interviewed by the PSR, told the PSR that there were impediments to switching contracts either during a contract (such as contractual and procurement issues) and/or at the end of a contract (such as the practicalities of switching and cost implications).
- 3.121** For example, in relation to switching during a contract, at interview [APS employee 1] of APS stated¹⁸⁵ *"it would not make sense, due to the requirements of public procurement rules which limit authorities' abilities to switch mid-contract, to approach an existing customer of another company"*.
- 3.122** For example, in relation to switching at the end of a contract, [PFS director 2] of PFS stated that if a local authority is *"live"* with a supplier, PFS's experience is that the local authorities *"do*

184 For example, [Public body 3]'s contract with allpay in February 2018 was extended on several occasions to cover additional service areas such as young people, emergency payments etc – see the Table at Annex F.

185 Interview of [APS employee 1] (APS) on 27 September 2019, disc 2 of 5, at line 1892, clarification 2 to the transcript: UUID 238510002.

not switch.”¹⁸⁶ There are very few retenders.¹⁸⁷ PFS made similar comments in one of its responses to a PSR RFI.¹⁸⁸

- 3.123** Mastercard also stated in a response to the PSR that two of its former employees¹⁸⁹ had said that “as far as they are aware”, as at September 2016, no council had ever changed from one PM to another either during or at the end of a contract.¹⁹⁰
- 3.124** However, during the Relevant Periods, Public bodies such as local authorities could and have switched their prepaid card provider.
- 3.125** As detailed in paragraph 3.111 above, the call-off contracts under the Surrey Framework and NEPO2¹⁹¹ Framework Agreements contain provisions which allow the Public bodies to terminate the contracts early upon giving notice. The sample evidence the PSR obtained from the local authorities, also shows that several of the contracts entered into could be terminated early by the local authority (including call-off contracts, contracts that were the subject of open tenders and small contracts that fell under the EU and UK procurement thresholds),¹⁹² thus providing for the potential for switching to take place during a contract. In a competitive market, it would therefore have been worthwhile for competing PMs to build a relationship with a local authority during a contract and target them in case they wanted to change provider.
- 3.126** As can be seen from paragraph 3.128 below and the Table at Annex F, switching prepaid card provider occurred in various scenarios. For example: (i) following a formal tender exercise, (ii) when a local authority used a draw down procedure under one of the Framework

186 [PFS director 2] (PFS) added, at paragraph 105 of the Record of meeting between the PSR and PFS on 2 August 2018, that if the local authority has invested a lot of money in many cards, the disruption factor of getting a new supplier “will make it difficult” to switch. What happens is that the local authority will ‘tweak’ the tender if they want to stay with the incumbent – for example, “they’ll change criteria” to make sure only the incumbent can win. [PFS director 2] further explained, at paragraph 106, that switching involves a Public body having to reissue cards, change the bank details on every bank statement and that the councils are dealing “with vulnerable service users”: UUID 245740001.

187 As above.

188 PFS stated in its response to PSR’s RFI dated 3 April 2018 PFS (Response of 24 April 2018 to the PSR’s Request for information dated 3 April 2018: UUID 85070024), that “where an LA or CCG was already live with another provider either in a pilot phase or under a full procurement award...[it] is statistically unlikely that the customer would switch from that other provider to PFS or vice versa once a reasonable number of prepaid cards had become embedded into the customer’s systems due to the costs involved of re-carding and the disruption to the Service User (Cardholder) and the customer (LA or CCG). If only a handful of cards and accounts had been issued then PFS would take a view on this and would be more inclined to issue a full tender response, as the disruption would be minimized and the work to issue new accounts would not be cost-prohibitive to the customer”.

189 [Mastercard employee 1] and [Mastercard employee 4] of Mastercard.

190 Mastercard supplementary response of 30 March 2018 to Questions 6, 9, 11 in relation to PSR’s Section 26 Notice dated 29 March 2018: UUID 93270026.

191 NEPO2, Schedule 6, Part D, Framework Terms and Conditions for Services, Termination, D1.3: UUID 81040015. “The Contracting Authority reserves the right to terminate the Call-Off Contract at will, in whole or in part, at any time with or without notice except that it will give as much notice as possible in the circumstances”.

192 [Public body 3]’s contract with [Programme Manager 1] (call-off contract), [Public body 3]’s contract with PFS (call-off contract), [Public body 12]’s contract with PFS (call-off contract), [Public body 3]’s contract with allpay (mini-competition), [Public body 36]’s contract with APS (direct contract), [Public body 27]’s contract with allpay (direct contract), [Public body 27]’s contract with APS (direct contract), [Public body 27]’s contract with PFS (call-off contract), [Public body 42]’s contract with PFS (open tender), [Public body 42]’s second contract with PFS (open tender), allpay’s contract with [Public body 41] (open tender), [Public body 34]’s contract with PFS (call-off contract) and [Public body 44]’s contract with [Programme Manager 1] (call-off contract), see Table at Annex F.

Agreements for prepaid card services, or (iii) when a less formal process was used, for example, where a PM approached a Public body directly in relation to a small value contract.

3.127 Public bodies would switch provider even if that body had issued a significant number of cards to its users under a particular prepaid card contract. For example, [Public body 41]¹⁹³ switched from PFS to allpay following an open tender exercise¹⁹⁴ in February 2017.¹⁹⁵ [Public body 41] had originally contracted with PFS for around 2 to 3 years, before it switched to allpay in February 2017.¹⁹⁶

3.128 Further examples are provided below:

- a. [Public body 27] switched from using allpay for a pilot to APS in March 2013.¹⁹⁷ [Public body 27] conducted an informal tender process and negotiated a contract with APS.¹⁹⁸
- b. [Public body 12] switched from allpay to APS in March 2014.¹⁹⁹ The Council used a quotation procedure to appoint APS. [Public body 12] subsequently moved in 2017 from APS to PFS, when APS withdrew from the market.
- c. [Public body 42] switched from [Programme Manager 3] to PFS²⁰⁰ in 2014 (following an open tender involving APS, PFS and [Programme Manager 3]).²⁰¹
- d. [Public body 7] switched from allpay to PFS in 2015 after [Public body 7] terminated the contract with allpay.²⁰²

193 PFS further supplement to the leniency application dated 6 December 2018, at paragraphs 8.1 to 8.2: UUID 182270288.

194 <http://www.new-tenders.eu/5383-pre-paid-cards-2017-east-midlands-england>

195 Interview of [PFS director 1] (PFS) on 7 November 2018, disc 3 of 3 at lines 27 – 31: UUID 223980003.

196 PFS stated that “PFS won the [Public body 41] tender in 2014 but the first card was not issued until April 2016. The maximum number of cards in issuance at any time was 798”. See the PFS further supplement to the leniency application dated 6 December 2018, at paragraph 8.1.1: UUID 182270288.

197 PFS told the PSR that it understands that the [Public body 27] never went live with the allpay pilot as allpay was unable to deliver the contracted services. PFS representations on manifest errors of fact dated 14 December 2020: UUID PSR0001.000256.

198 [Public body 27] stated that it had discussions with both APS and PFS (after the pilot contract with allpay had been terminated) and compared costs before deciding to go with APS in April 2013. The contract value was small and it did not fall within the scope of the procurement rules. [Public body 27] response to PSR of 11 July 2019 at Q11: UUID 234730001.

199 [Public body 12] stated that it switched to APS to secure additional functionality that could not be provided by allpay, although some elements of the old NEPO contract with allpay contract did continue. [Public body 12] stated that allpay had failed to develop the system as expected and in March 2014, [Public body 12] awarded their own contract following a quotation process. [Public body 12] response of 4 July 2019 to the PSR’s Section 26 Notice dated 13 June 2019: UUID 190190002.

200 [Public body 42] section 26 response of 11 August 2019, answer 1.a: UUID 179600015.

201 PFS, APS and [Programme Manager 3] bid for the 2014 [Public body 42] tender – Interview of [PFS employee 1] (PFS) on 6 August 2019, disc 1 of 4 at lines 268 – 273: UUID 238550001. NB: A further open tender was conducted by [Public body 42] in 2017. [Public body 42] decided to stick with PFS. [Public body 42] section 26 response of 11 August 2019, answer 11: UUID 179600015.

202 [Public body 7] originally awarded a prepaid contract to allpay in 2011, however, it had started to explore its options with other PMs by 2014: UUID PSR0001-95087-000114 and PSR0001-95290-003411, when allpay failed to deliver the required functionality (UUID PSR0001-93051-002246) and switched to PFS in 2015: (UUID 85070009). [Public body 7] ran a mini tender under the Surrey Framework in 2015: UUID PSR0001-95290-002781.

- e. [Public body 3] switched from allpay to [Programme Manager 1] in 2016 (the Council used the 'call-off' procedure under the Surrey Framework to appoint [Programme Manager 1]).²⁰³
- f. [Public body 61] switched from PFS to allpay in November 2016, following a tender exercise.²⁰⁴
- g. [Public body 3] switched from PFS to allpay in 2018 following a mini-competition under the Surrey framework. [Public body 3] had been with PFS for 7 years.²⁰⁵

3.129 Further, when PFS acquired the books²⁰⁶ of each of APS and [Programme Manager 1] in 2016 and 2017 respectively (see paragraph 3.68 above), although most of their respective public sector customers transferred to PFS,²⁰⁷ not all did. Some opted to move to allpay, such as [Public body 52]²⁰⁸ and [Public body 62].²⁰⁹

203 UUID 179590009.

204 UUID PSR0001-95502-000663. PFS told the PSR that at the time of switching, the PFS pilot hadn't actually gone live: PFS representations on manifest errors of fact dated 14 December 2020: UUID PSR0001.000256.

205 See Table at Annex F.

206 The APS deal closed in or around October 2016; the [Programme Manager 1] deal closed around January 2017 (see paragraph 3.68).

207 Regarding APS, PFS stated that out of 37 APS clients, around 34 transitioned to PFS. Regarding [Programme Manager 1], of a total of 24 [Programme Manager 1] clients, PFS managed to migrate 17. A few of [Programme Manager 1]'s clients went to allpay: UUID PSR0001-95290-006318. APS response to Question 19 of the PSR's Section 26 Notice dated 11 April 2018: UUID 85040022.

208 UUID PSR0001-93985-005505: see the email of 26 April from [PFS employee 2] (PFS) to [PFS director 1] (PFS).

209 UUID PSR0001-95290-006318.

4 National Prepaid Cards Network

A Introduction

4.1 This chapter covers the formation, operation and termination of the National Prepaid Cards Network (the '**Network**'). As explained in more detail below, the Network (initially set up as a Steering Group²¹⁰) is central to the Network market sharing agreement (see Chapters 5 and 7).

4.2 This chapter covers:

- a. the formation of the Network, including:
 - the potential for Mastercard to expand its prepaid cards public sector business
 - the appointment and role of the Chair of the Network
 - formalising the objectives of the Network
 - funding the Network
 - implementation of the aims of the Network
- b. the operation of the Network, including the type and content of Network meetings and events
- c. the termination of the Network

²¹⁰ Unless specified otherwise, this chapter uses 'Network' and 'Steering Group' interchangeably. "The term *Steering Group* was initially used when the concept was being established and introduced, once it had become established that original title was not representative of the group as it had started to operate more as a network. [Sulion director 1] was also in the process of setting up a network site at this time and www.prepaidnetwork.org.uk was a more suitable domain name than a name which incorporated 'steering group'. There were no differences, it was simply a change of name.": Response of Sulion Limited to Section 26 Notice of 25 March 2020: UUID 224740016.

B Formation of the Network

Background: the potential for Mastercard to expand its prepaid cards public sector business

- 4.3** Prior to the establishment of the Network in early 2011²¹¹, the use of prepaid cards in the public sector was not widespread.²¹² Mastercard identified an opportunity to expand its presence within the public sector²¹³ and sought to become the “*brand of choice for the government and public sector in both the UK and Ireland for procurement, travel and subsistence and welfare disbursements, and leading financial inclusion in both markets; whilst being the most admired MasterCard Public Sector team in the world*”.²¹⁴
- 4.4** Mastercard saw potential for the development of a significant commercial opportunity in the prepaid card market. A Mastercard document dated August 2012 contains an estimate that the UK prepaid market public sector opportunity would be worth £19.44 billion by 2017.²¹⁵ At the time, there were 152 Local Councils or Boroughs in England, with an estimated £3 billion in benefit payments paid out in cheque in 2009/11.²¹⁶ In a PSR interview with [Mastercard employee 3], a former Mastercard employee ([§<]) (referred to as ‘[Mastercard employee 3]’), [Mastercard employee 3] explained the £19.44 billion figure as the “*end game*”: “*potentially the amount of money that would otherwise be deployed by cash-based solutions*.”²¹⁷ [Mastercard employee 3] was directly involved in Mastercard’s work with the Network between at least October 2011 and 2013. Other Mastercard staff involved with the Network during this period included [Mastercard employee 2] (referred to as ‘[Mastercard employee 2]’) and [Mastercard employee 5] (referred to as ‘[Mastercard employee 5]’).
- 4.5** As detailed in this chapter, Mastercard’s commercial objective was to create and grow a market for its cards within the public sector.²¹⁸ As an initial step, its strategy was to embed its prepaid card products among local authorities and other Public bodies for their distribution of welfare payments. [Mastercard employee 1] (referred to as ‘[Mastercard employee 1]’), [§<], explained in interview that Mastercard identified an opportunity to grow its brand in welfare disbursements and sought to maximise the opportunity that was available by, among other ways, aligning its business plan with government policy²¹⁹ (for example, the government’s Universal Credit programme, whereby welfare payments were to be facilitated via local

211 [Sulion director 1] response to Question 1 of Section 26 Notice dated 24 April 2018, in which [Sulion director 1] stated that during February and March 2011 [Sulion director 1] met with [Mastercard employee 2] of Mastercard and discussed setting up the Network – at this point they “*agreed to progress on a trial basis*”: UUID 93510039.

212 Mastercard response to Question 4 (paragraph 4.2) of Section 26 Notice dated 29 March 2018: UUID 93230025.

213 See, for example: Mastercard Document titled ‘UK and Ireland Public Sector Strategy 2015’ dated 20 January 2015, Version 10, page 10, which projected a “*cardable potential*” of £28 billion in the UK public sector as a result of the Universal Credit programme: UUID 93230171; [Mastercard employee 2] email exchange with APS in November 2011, which shows Mastercard was eager to engage with the Department for Work and Pensions as the Department developed its plans for Universal Credit: UUID PSR0001-95087-000605.

214 ‘UK and Ireland Public Sector Strategy 2015’ dated 20 January 2015, under ‘UKI Public Sector Mission Statement’: UUID 93230171.

215 Statement of Work Appendix 1, Project Brief, signed August 2012: UUID PSR0001-93050-005586.

216 Statement of Work Appendix 1, Project Brief, signed August 2012: UUID PSR0001-93050-005586.

217 Interview of [Mastercard employee 3] on 24 October 2019, disc 1 of 4, at lines 1157-1163: UUID 242590001.

218 See in particular paragraphs 4.6, 4.11 to 4.13 and 4.21 onwards.

219 Interview of [Mastercard employee 1] on 9 September 2019; disc 1 of 4, at lines 572-577: UUID 242580001.

authorities). [Mastercard employee 1] was involved in Mastercard's work in relation to the public prepaid card sector between [§<].²²⁰ Other Mastercard staff involved with the Network during this period included [Mastercard employee 4] (referred to as '[Mastercard employee 4]'), and [Mastercard employee 8] (referred to as '[Mastercard employee 8]').

- 4.6** Capturing the distribution of welfare disbursements at the local authority level was key to growing Mastercard's brand into opportunities at the UK central government level. In interview, [Mastercard employee 3] (Mastercard) explained that it was essential to build credibility at the local government level for future opportunities with central government; the prevalence of Mastercard cards across the various local authority programmes (for example, adult social care, disbursements to the homeless etc) *"served Mastercard better to win [central government] opportunities"*.²²¹
- 4.7** Mastercard understood that the opportunity to expand its presence in the public sector grew with the anticipated launch of Universal Credit.²²² As explained by [Mastercard employee 3] (Mastercard) in interview, Mastercard engaged with the Minister of State for Welfare Reform and other government ministers as relevant from the early days, to understand the available opportunities in this sector.²²³
- 4.8** [Mastercard employee 3]'s explanation is consistent with other evidence reviewed by the PSR. For example, in an email exchange dated 9 November 2011 between [Mastercard employee 2], who worked within Mastercard's [§<], and [APS employee 1] of APS (referred to as '[APS employee 1]') (copying [Mastercard employee 3] of Mastercard), [Mastercard employee 2] (Mastercard) informed [APS employee 1] (APS) that Mastercard was *"going to keep close to [the Department of Work and Pensions] over the next months as they work through their plans for Universal Credit [and so asks [APS employee 1] to] keep me up to date with any progress and I will do the same."*²²⁴
- 4.9** Sometime between 2012 and 2013, Mastercard Network PMs began to gain traction with supplying their prepaid card services to Public bodies. It was around this time that Mastercard established a dedicated Public Sector business development team of about two to four members of staff, who were tasked with creating a market for Mastercard's products in the public sector and growing Mastercard's brand within that market.²²⁵
- 4.10** By 2015, based on figures provided to Mastercard by the Department for Welfare and Pensions, the public sector opportunity was expected to be worth £28 billion by 2021, with *"20% of the Universal Credit cohort [without] access to a bank account. [Lord Freud, who was the Minister for Welfare Reform at the time] wanted to run down the post office card account,*

220 Interview of [Mastercard employee 1] on 9 September 2019; disc 1 of 4, at lines 518-522 and 807-808: UUID 242580001.

221 Interview of [Mastercard employee 3] on 24 October 2019; disc 1 of 4, at lines 1128-1130: UUID 242590001.

222 In an internal Mastercard email on 27 May 2016, [Mastercard employee 1] states that *"the Network has been pivotal in convincing the Welfare Reform Minister, Lord Freud, to use Prepaid Cards for the Universal Credit unbanked and underserved cohort – a market estimated at £18bn turnover"*: UUID 107390062.

223 Interview of [Mastercard employee 3] on 24 October 2019; disc 1 of 4, at lines 401-407: UUID 242590001.

224 UUID PSR0001-95087-000605.

225 Interview of [Mastercard employee 1] on 9 September 2019: disc 1 of 4, at lines 298-301, 331-336: UUID 242580001.

which was costing a lot of money, and he was looking at prepaid cards as being that replacement vehicle."²²⁶

- 4.11** One way Mastercard sought to develop and grow its prepaid cards public sector business was through the creation of the Network. Mastercard needed the Network as a mechanism for building relationships with Public bodies and promoting the adoption of prepaid cards. In interview, [Mastercard employee 1] (Mastercard) explained that the Network was necessary because, prior to the Network, Mastercard was not successful in marketing its product to the public sector for welfare disbursement purposes. [Mastercard employee 1] (Mastercard) explained that Mastercard had a limited knowledge of how adult social care and children's services worked (the predominant areas Mastercard were targeting) and wasn't *"using the right language"* to capture potential customers in this sector (for example, Mastercard was basing its offer on efficiencies and rebates when other factors were more relevant when needing to promote prepaid cards for the welfare of citizens).²²⁷
- 4.12** In response to an interview question of what led to the creation of the Steering Group, [Mastercard employee 3] (Mastercard) said: *"Anywhere that there is cash there's an opportunity for a prepaid card to provide a better product, a better service and cost savings. So, the steering group was created as essentially a way to inform Mastercard's approach into the market with a – independently chaired with someone who was credible, had a network, had expertise with advocates, advocates and sponsor local authorities and also with the providers who would be delivering the solutions."*²²⁸
- 4.13** Mastercard understood from its own experience that the most successful method of influencing public sector bodies to adopt new products was to *"allow the opportunity for them to buy from each other, because that was far stronger than our customers' sales teams, or us doing ... a conference speech. ... they're far more likely to buy a prepaid programme if they'd heard from one of their neighbouring councils what it had done for them."*²²⁹

Appointment and role of the Chair of the Network

- 4.14** In early 2011, [Mastercard employee 2] approached [Sulion director 1] (Sulion) to obtain [Sulion director 1]'s assistance to promote the use of prepaid cards in the public sector. At that time, [Sulion director 1] had approximately 14 years' experience in local government, having been a former senior government advisor at [S<] and having worked for [S<].²³⁰ [Sulion director 31] was experienced in liaising with government departments – *"he spoke the right language in terms of councils and the NHS"*.^{231,232}

226 Interview of [Mastercard employee 1] on 9 September 2019: disc 1 of 4, at lines 1374-1377: UUID 242580001.

227 Interview of [Mastercard employee 1] on 9 September 2019: disc 2 of 4, at lines 34-40: UUID 242580002.

228 Interview of [Mastercard employee 3] on 24 October 2019; disc 1 of 4, at lines 690-699 UUID 242590001.

229 Interview of [Mastercard employee 1] on 9 September 2019; disc 1 of 4, at lines 1658-1662: UUID 242580001.

230 [Sulion director 1] response to Question 3 c of Section 26 Notice dated 24 April 2018; UUID 93510039; see also slide 4 of presentation by [Sulion director 1] called *"Designing a new engagement strategy – the work of the National Prepaid Cards Steering Group"* [undated]: PSR0001-93050-005028.

231 Interview of [Mastercard employee 1] on 9 September 2019; disc 1 of 4, at lines 1644-1645: UUID 242580001.

232 [Sulion director 1] also had a network of contacts within the public sector and the necessary credibility and trust of local authorities to promote the use of prepaid cards. Interview of [Mastercard employee 3] on 24 October 2019; disc 1 of 4, at lines 1618-1624: UUID 242590001.

- 4.15** [Sulion director 1] (Sulion) said that Mastercard was struggling to engage with local authorities²³³ and [Sulion director 1] had explained to Mastercard that local authorities responded best to a “*network environment, best practice type of network...where they could openly and freely exchange information and build best practice on early pathfinders for others to follow. [Mastercard] asked if I could do that for them.*”²³⁴
- 4.16** Mastercard initially invited [Sulion director 1] to chair a number of informal meetings that Mastercard had organised with local authorities to discuss industry best practice and promote the use of prepaid cards to the public sector.²³⁵
- 4.17** As local authority interest and attendance at these informal meetings grew, Mastercard engaged [Sulion director 1] (Sulion) to chair and facilitate these meetings on a more structured basis. Initially this was in the form of a ‘Steering Group’ and/or the ‘Best Practice Group’, later known as the ‘National Prepaid Cards Network’.²³⁶ As explained by [Mastercard employee 3] (Mastercard) in interview: “*[first name of Sulion director 1]’s role was to drive the market, to get local authorities to issue RFPs [Request for Proposal], essentially.*”²³⁷
- 4.18** [Sulion director 1] shared Mastercard’s view that the best way to encourage local authorities to adopt prepaid cards for their distribution of welfare disbursements was to hear from other local authorities who were successful in doing so themselves.^{238,239}
- 4.19** As Chair of the Network, [Sulion director 1] (Sulion) was responsible for organising and running the meetings²⁴⁰, including:
- a. organising venues and sending out invitations for Network meetings
 - b. seeking input from Network members and participants on topics to cover during the meetings, and circulating agendas

233 For example, Mastercard sent out surveys but did not receive responses; holding events but struggled to attract much attendance. [Sulion director 1] (Sulion) stated that “*they asked me ... why did I think that was the case. To which I replied, ‘Well you’re MasterCard and they think you are big and scary.’ This was not long after the financial crisis and there was a certain amount of distrust around that.*” Interview of [Sulion director 1] on 8 July 2019; disc 1, 1 of 2, at lines 252-261; UUID 245370001 this is also consistent with (slide 2) presentation by [Sulion director 1] called “*Prepaid Cards – Improve Services: Reduce Cost; The work of the National Prepaid Cards Steering Group*” [undated]; PSR0001-93050-005032.

234 Interview of [Sulion director 1] on 8 July 2019; disc 1, 1 of 2, at lines 265-270: UUID 245370001.

235 Mastercard response to Question 7 of Section 26 Notice dated 29 March 2018; UUID 93230025. In its response to Question 36 of the PSR’s Section 26 Notice dated 25 March 2020, Mastercard stated “*Mastercard began holding ad hoc informal meetings with a few local authorities in 2010. Mastercard is unable to specify exactly when these meetings took place as there are no documentary records in Mastercard’s possession. Mastercard believes that the informal meetings with local authorities [chaired by [Sulion director 1]] commenced in late 2010/early 2011 and that there were less than five informal meetings.*”: UUID 226800003.

236 Mastercard response to Question 4 of Section 26 Notice dated 10 May 2019: UUID 182690016.

237 Interview of [Mastercard employee 3] on 24 October 2019; disc 1 of 4, at lines 1020 -1021: UUID 242590001.

238 [Sulion director 1] (Sulion) stated that “*Councils are highly risk averse [and] very reluctant to engage directly with private sector, very guarded and highly suspicious of being ‘ripped off.’*” Slide 3, Presentation by [Sulion director 1] titled “*Designing a new engagement strategy – the work of the National Prepaid Cards Steering Group*” [date unknown] – provided by Mastercard in response to s.26 Notice of 29 March 2018: UUID 93230169.

239 Presentation by [Sulion director 1] titled “*Designing a new engagement strategy – the work of the National Prepaid Cards Steering Group*” [date unknown]: UUID 93230169

240 [Sulion director 1] response to Question 3 c of the PSR’s Section 26 Notice dated 24 April 2018: UUID 93510039.

- c. acting “as a focal point for queries ensuring that the [N]etwork is the de facto resource for local authorities seeking advice on using prepaid cards”.^{241,242}

4.20 [Sulion director 1] (Sulion) also carried out other tasks as Chair of the Network in [Sulion director 1]’s role of growing Public body membership and interest in prepaid cards. These included:

- a. maintaining lists of Public body representative contact details²⁴³, including a so called ‘no contact list’²⁴⁴ which [Sulion director 1] (Sulion) explained was a list of local authorities and other Public bodies who had not engaged with the Network or a Network PM “so it would be natural for me to try and target them to engage”.²⁴⁵
- b. visiting various Public bodies who had expressed an interest in prepaid cards. As explained by [Mastercard employee 3] (Mastercard) in interview, [Sulion director 1] (Sulion) fed back on potential opportunities, which was “very important during the time that we were expecting Universal Credit tenders to drop, as well as reporting on local authorities that had deployed Mastercard prepaid programmes, which was a good way to advertise with Government that we were supporting Universal Credit at a national level and the [DWP]”.²⁴⁶ Upon visiting the various Public bodies, [Sulion director 1] also fed back any positive or negative feedback from the authorities to the Network PMs.²⁴⁷

Formalising the objectives and activities of the Network

4.21 The Network does not have a formal constitution or articles of association.²⁴⁸ However, the Network’s purpose and objectives were reflected in a number of agreements between MasterCard Europe SPRL and Sulion.²⁴⁹ It was through Sulion that [Sulion director 1]/Sulion provided services to Mastercard.

4.22 These agreements were:

- a. A Service Agreement, which commenced in March 2011
- b. A Framework Services Agreement, which commenced in April 2012 (referred to as the ‘FSA’), and

241 [Sulion director 1] response to Question 3 c of the PSR’s Section 26 Notice dated 24 April 2018: UUID 93510039.

242 In interview, [Sulion director 1] informed the PSR that [Sulion director 1] would gather and anonymise the answers, and then share the anonymised information with the entire Network. [Sulion director 1] also facilitated discussion at Network meetings of issues that local authorities had previously raised with [Sulion director 1] but did not feel comfortable raising themselves in open forum. Interview of [Sulion director 1] on 8 July 2019; disc 1, 1 of 2, at lines 912-915: UUID 245370001.

243 See paragraph 5.65 onwards in Chapter 5.

244 UUID PSR0001-93050-002229 – email dated 7 May 2014 from [Sulion director 1] to the Network PMs copying Mastercard in which [Sulion director 1] refers to the ‘no contact list’.

245 [Sulion director 1] stated at interview that “it would be natural for me to try and target them to engage”. Interview of [Sulion director 1] on 8 July 2019; disc 1, 1 of 2, at lines 499-500: UUID 245370001.

246 Interview of [Mastercard employee 3] on 24 October 2019; disc 1 of 4, at lines 1506-1512: UUID 242590001.

247 Interview of [Mastercard employee 3] on 24 October 2019; disc 1 of 4, at lines 1528-1532: UUID 242590001.

248 [Sulion director 1]’s response to Question 1 Section 26 Notice dated 24 April 2018: UUID 93510039. The Network also did not have any rules of conduct regarding compliance with competition law, or have a person in attendance at the meetings who was charged with ensuring compliance with competition law.

249 [Sulion director 1] is [redacted] director of Sulion, see paragraph 3.30.

- c. A series of Statements of Work, setting out the objectives and deliverables Sulion had to achieve through the Network for Mastercard during the relevant period covered by the agreement.

4.23 The obligations imposed on Sulion/[Sulion director 1] through the FSA, Service Agreement and accompanying Statements of Work (as detailed below from paragraph 4.31 onwards), effectively meant that the Network was operated by Sulion in a manner designed to promote Mastercard's commercial objectives, which were to grow the prepaid card public sector market and expand Mastercard's share of that market.

Service Agreement

4.24 Mastercard entered into a Service Agreement with [Sulion director 1] (Sulion) on 12 April 2011.²⁵⁰ This Service Agreement outlined the terms and conditions under which [Sulion director 1], would *"plan and run the UK Local Council Prepaid Steering Group Project"*.

4.25 The Service Agreement applied from March 2011 to 1 July 2011²⁵¹, and set out the objectives and activities to be carried out by the parties against particular timings. The objectives included to:

- a. *"establish a steering group with representatives from the supply side and councils"*
- b. *establish the key issues councils face when implementing prepaid solutions and ensure that programme managers are feeding this into their product development activity*
- c. *have a number of pilot councils willing to contribute to the guidance document*²⁵²

4.26 In order to facilitate these objectives, the Service Agreement included the following activities which were to be carried out by the end of June 2011:

- a. *"Meet with three programme managers to explain the concepts of the strategy and seek their involvement"*
- b. *Contact existing pilot councils and others who have expressed interest and invite them to an initial steering group [to take place week commencing 23 May 2011]*
- c. *Develop an issues paper to be used as straw man in the initial steering group meeting*
- d. *Throughout, act as a sector based critical friend of proposed business development activity*.²⁵³

250 The Service Agreement took effect from March 2011. Service Agreement dated 21 April 2011 between Mastercard Europe SPRL and Sulion Limited: UUID 94580610.

251 See clause 12.1 of the Service Agreement: UUID 94580610.

252 Schedule 1 of the Service Agreement: UUID 94580610.

253 Schedule 1 of the Service Agreement: UUID 94580610.

FSA

- 4.27** Mastercard and Sulion entered into the FSA on 21 March 2012.²⁵⁴ The FSA is an overarching framework document which created an ongoing agreement between Sulion and Mastercard whereby Sulion “*will provide Support and advice on engagement with the public sector services to MasterCard in relation to various projects as stated in Statements of Work ...*”.²⁵⁵
- 4.28** The FSA (and accompanying Statements of Work) enabled Mastercard to exercise substantial influence and control over Sulion.
- 4.29** For example, under Clause 15 of the FSA, headed “*Non-competition*”, Sulion was prevented from working directly or indirectly with any bank card association with regards to products and services which Mastercard reasonably estimated were in competition with those under any of Mastercard’s brands. Additionally, Mastercard retained the right to vet anyone employed by Sulion to carry out work on Sulion’s behalf (and have them replaced if they were not to the satisfaction of Mastercard),²⁵⁶ and to cancel, reschedule or amend the provision of services specified in the agreed Statement of Work.²⁵⁷
- 4.30** Pursuant to Clause 2.1 of the FSA, the “*Project Deliverables*” to be carried out by Sulion were set out in a series of “*Statements of Work*” discussed below.^{258,259}

Statements of Work

- 4.31** Statements of Work²⁶⁰ were agreed between Mastercard and Sulion under the FSA. These set out:
- a. the tasks which Sulion was required to perform
 - b. the targets which Sulion had to meet (for example, to “*add more Councils to the growing numbers already using Mastercard Prepaid programmes*”²⁶¹ and generate new turnover²⁶² (as further discussed below from paragraph 4.35 onwards) and
 - c. the budget, which was, in effect, the sum Sulion was to be paid for performing these tasks.

²⁵⁴ Unlike the Service Agreement, the FSA did not have a termination date and appeared to establish a longer-term relationship between Mastercard and Sulion.

²⁵⁵ Framework Services Agreement dated 21 March 2012 between Mastercard Europe SPRL and Sulion Limited page 1, Recital (C): UUID 93260005.

²⁵⁶ Clause 4 of the FSA: UUID 93260005.

²⁵⁷ Clause 6 of the FSA: UUID 93260005.

²⁵⁸ Although Clause 2.1 states that the FSA “*in and of itself does not create an obligation for MasterCard (or any of its Affiliates to sign a Statement of Work*”.

²⁵⁹ Under Clause 7 of the FSA, the fees payable by Mastercard to Sulion for performance of “*specific Services and Project Deliverables*” were set out in each Statement of Work: UUID 93260005.

²⁶⁰ A Statement of Work is defined by the FSA as “*any implementation agreement entered into under [the] Framework Services Agreement, which will be established in accordance with the model attached hereto*” that is, a template agreement constructed by Mastercard). See Definitions section of the FSA under ‘Statement of Work’, page 2: UUID 93260005.

²⁶¹ Phase 4 specification: PSR0001-93050-005605.

²⁶² Statement of Work 1 January 2017-31 December 2017: UUID PSR0001-93050-004046.

- d. As explained by [Mastercard employee 3] (Mastercard) in interview, a “*statement of work is deliverables versus objectives.*”²⁶³

4.32 The provision of Sulion’s services under the Statements of Work were “*intended to increase the adoption of prepaid cards in the public sector. The services include[d] holding Network meetings, promotional events and developing conference speaking opportunities to deliver key messages to target audiences.*”²⁶⁴

4.33 Mastercard drafted the Statement of Work and negotiated its terms with [Sulion director 1] on behalf of Sulion.^{265,266} Mastercard issued Sulion a Statement of Work – typically every 6 to 12 months – outlining the objectives and deliverables for the Network for the relevant period (further discussed below). As outlined in Annex H, Mastercard issued 13 Statements of Work to Sulion between April 2012 and January 2019.

4.34 The various Statements of Work, when read together, set out that the Network and its objectives were implemented in five distinct phases. These phases are briefly explained below (paragraphs 4.72 to 4.82) and in detail in Annex G of this Decision.

4.35 Further, the Statements of Work illustrate the evolution of the Network from set-up phase to a mature forum with a performance measure in 2018 of generating £200m in new turnover for Mastercard prepaid programmes. For example:

- a. the second Statement of Work (‘August 2012 SoW’)²⁶⁷ outlines the following objective of the Network: “*To become recognised as the major scheme for public sector prepaid in the UK by working with partners and local council representatives to understand the needs of the market, the barriers to entry and solutions to these, and providing benchmarking, validation and support to the prepaid business case in local councils to deliver programmes more effectively via a MasterCard prepaid card.*”
- b. The ‘Project Brief’ set out in an Appendix to the August 2012 SoW also detailed a number of steps to be achieved in the set-up phase of the Network.²⁶⁸

263 Interview of [Mastercard employee 3] on 24 October 2019; disc 1 of 4, at line 869: UUID 242590001.

264 Mastercard’s response to question 10 (paragraph 10.3) of the PSR’s Section 26 Notice dated 29 March 2018: UUID 93230025.

265 Interview of [Sulion director 1] on 8 July 2019; disc 1, 1 of 2, at lines 445-447: UUID 245370001. In interview, [Sulion director 1] (Sulion) stated that “*the statements of work that we came up with were agreed through discussions with MasterCard, with the PMs and with the other network members of the public sector organisations.*” Interview of [Sulion director 1] on 8 July 2019, disc 1, 1 of 2, at lines 435-438: UUID 245370001.

266 See for example, negotiation of terms for Statement of Work for the period of January-June 2015: UUID PSR0001-93050-002005.

267 UUID PSR0001-93050-005586.

268 These included:

- “*Engage directly with a small number of authorities which have implemented, are involved in pilots or keen to engage*
- *Ensure that offers are being developed that satisfy councils’ true requirements, in conjunction with programme managers*
- *Capture councils’ business metrics and experiences of implementation*
- *Synthesise this into peer-to-peer guidance that other councils can use and find highly relevant and use this via a number of marketing channels such as mailing and regional showcase events to develop business opportunities*”

- c. The Statement of Work executed in January 2015²⁶⁹ ('January 2015 SoW') listed three deliverables for [Sulion director 1]/Sulion to achieve:
- conduct market education activity²⁷⁰ in order to *"generate £100M new turnover from an additional 50 UK public sector organisations"* in 2015
 - hold six Network meetings across the country
 - continue 'support activities'²⁷¹
- d. The Statement of Work executed in March 2018²⁷² largely reflected the deliverables outlined in the January 2015 SoW, and included the following additional deliverables:
- *"Position the Network as a useful resource for Department of Work and Pensions"*
 - *generate £200m new turnover in 2018*
 - *add 50 new public sector organisations to Mastercard prepaid programmes."*

4.36 Mastercard has explained that 'new turnover' (referred to in paragraphs 4.35c) and 4.35d) above) refers to the *"target value of additional welfare disbursements loaded onto Mastercard prepaid cards by local authorities and then spent by cardholders."*²⁷³ Such turnover could be generated from:

- a. public sector organisations purchasing a prepaid card programme from a Mastercard PM
- b. public sector organisations that already have a prepaid card programme expanding their use to other types of disbursements using Mastercard prepaid programmes
- c. public sector organisations increasing the roll-out of existing Mastercard prepaid programmes
- d. a combination of all of the three above
- e. Mastercard earns revenue from the fees it charges its customers (issuers and acquirers) each time a Mastercard-branded card is used to make a transaction.²⁷⁴

269 UUID PSR0001-93050-002011, UUID 93230161.

270 This involved [Sulion director 1] acting as a *"referral agency to put organisations directly in touch with early adopters for advice and guidance, informing the network of news, emerging issues and market developments, [identifying] new market opportunities, both organisations and topics, attendance at meetings of regional and national organisations to promote the use of prepaid cards and membership of the network."*: UUID PSR0001-93050-002011.

271 This involved *"supporting Mastercard, attending launch events and discussions, attending meetings with prospective new partners...attend external conferences and seminars as Chair of the Network, [use] Sulion's wider network to promote prepaid cards and the work of the network with regional and national bodies."*: UUID PSR0001-93050-002011.

272 UUID PSR0001-93050-004044.

273 Mastercard response to Question 42.a of the PSR's Section 26 Notice dated 25 March 2020: UUID 226800003.

274 Mastercard response to Question 37.4 of the PSR's Section 26 Notice dated 25 March 2020: *"If viewed on a per transaction basis, those fees would only amount to a fractional percentage of the value of any actual card transaction spend."*: UUID 226800003.

- 4.37** In interview, [Mastercard employee 3] (Mastercard) explained that [Sulion director 1] (Sulion) was expected to achieve the turnover deliverable by “*continuing to educate and inform to get local authorities to issue tenders that hopefully Mastercard issuers and PMs would win.*”²⁷⁵ The Network contributed to the generation of revenue for Mastercard and Mastercard PMs by encouraging local authorities to procure, pilot, roll out and extend their prepaid programmes,²⁷⁶ and only being told about Mastercard prepaid programmes (see discussion of the Network’s independence from paragraph 4.47 onwards below).
- 4.38** Mastercard did not have “*any formal mechanism/procedure put in place to monitor [Sulion director 1]’s performance. [...] Mastercard would follow-up on progress on [deliverables within the Statements of Work] with ad hoc telephone and face-to-face meetings with [Sulion director 1].*”²⁷⁷ [Sulion director 1] (Sulion) provided regular updates to Mastercard via email on [Sulion director 1]’s progress and the various local authorities [Sulion director 1] met with, and updated the Network PMs on any tenders the local authorities were releasing to “*make sure they didn’t miss it and get as many tender responses in as possible.*”²⁷⁸ In addition, Mastercard received monthly reports outlining the ‘spend volume’ for government programmes from the Network PMs, which enabled Mastercard to assess and track ‘new turnover’.²⁷⁹

Funding the Network

- 4.39** Mastercard wholly funded²⁸⁰ the Network between its inception in 2011 and June 2019, except for a short period in 2016, where the Network obtained some funding from two of the Network PMs.²⁸¹

²⁷⁵ Interview of [Mastercard employee 3] on 24 October 2019, disc 1 of 4, at lines 2101-2103: UUID 242590001.

²⁷⁶ Mastercard response to Question 42.d of the PSR’s Section 26 Notice dated 25 March 2020: UUID 226800003.

²⁷⁷ Mastercard response to Question 40 of the PSR’s Section 26 Notice dated 25 March 2020: UUID 226800003.

²⁷⁸ Interview of [Mastercard employee 3] on 24 October 2019; disc 1 of 4, at lines 978-980: UUID 242590001.

²⁷⁹ Mastercard response to Question 42.e of the PSR’s Section 26 Notice dated 25 March 2020: UUID 226800003.

²⁸⁰ Mastercard funded the Network because it aligned with its commercial objectives of establishing the prepaid card public sector market and growing Mastercard’s share in that market. Interview of [Mastercard employee 1] on 9 September 2019; disc 1 of 4 at lines – 1618-1620: UUID 242580001 and disc 2 of 4 at lines 247-248: UUID 242580002.

²⁸¹ An internal Mastercard’s document entitled “*MasterCard UK & Ireland – Marketing/ Professional Fees Request Form*”²⁸¹, outlines the reasons for Mastercard’s approval of spend on professional fees to “[Sulion director 1], Sulion consulting” as follows: “*The investment would be the sole funding towards the UK Prepaid Steering Group. The Steering Group organises and runs awareness and sales meetings for local government councils and public sector groups and provides sales follow up. The Steering Group in 2012 ran 3 such Steering meetings and was primarily responsible for the launch of MasterCard prepaid payment solutions to 15 UK Councils, delivering £48M in incremental turnover, groups and would support the ongoing sales effort to implement at least 15 new councils and deliver £50M in incremental MasterCard Prepaid transactional volume by end 2013. MasterCard provided significant funding to the Steering Committee in 2012 and this resulted in over 15 councils designing and implementing prepaid programmes on MasterCard delivering £47M in incremental volume. If we do not invest, the UK Prepaid Steering Group would cease all activity and there would be an immediate impact on the ability to grow the local council pipeline in 2013 as well as an impact on Mastercard’s growing reputation as the go-to scheme for local council payments. The activity of the Steering Group cannot be replicated by internal MasterCard staff due to local council connections and the clear advantage of an independent consultant who has significant public sector experience and success.*”: UUID 93230164.

4.40 In the context of obtaining internal funding for the Network in 2015, [Mastercard employee 1] of Mastercard wrote about the importance of the Network to Mastercard. In an email dated 17 June 2015 to [Mastercard employee 11] of Mastercard, copying [Mastercard employee 12] of Mastercard, [Mastercard employee 1] wrote²⁸²:

“The (UK Public Sector) National Prepaid Card Network has evolved over the last 4 years as an independent organisation boasting more than 360 members from UK councils and Clinical Commissioning Groups.

With Mastercard’s support, the Network has driven the use of Prepaid Cards with more than 100 public sector bodies operating more than 450 programmes for such purposes as Direct Payments to citizens, social care, children’s services, emergency payments, petty cash replacement, ex-offender rehabilitation, asylum seekers and children coming out of care.

Load values for the UK public sector have increased from £73m (2013) to £140m (2014) and forecast £340m this year.

Since the loss of [Mastercard employee 5] to the European team last year and the subsequent loss of the headcount, the major source of new business and growth in existing programmes has come from Network activity. Operating [12] meetings per year – mainly in the North West/North East, Birmingham and London – ~200 organisations attend and share case studies and best practice. [Mastercard employee 1] attends all of the meetings and Programme Managers (currently [APS] & PFS, but allpay to join from September) regularly update the audience. MasterCard’s role is primarily to answer technical questions and to share the government strategy and guidance coming from our meetings with Ministers and senior civil servants.

The Network has been instrumental in driving increased functionality requirements from the issuers and programme managers, which now includes jam jars/electronic wallets, DD and SO capability, contactless and inControl. From a meeting in September last year, the Network decided that they had waited long enough for a national framework for Prepaid Cards to be issued by Crown Commercial Service and asked the membership for a local authority to issue a national tender. [Public body 47] was about to tender and expanded their tender to include a second Lot for the national framework. This was awarded in January 2015 to 4 Programme Managers: APS, PFS, allpay and [Issuer 1] [Programme Manager 1] – the first 3 lead with a MasterCard branded solution. UK Public Sector team expect an additional 50 councils and CCGs to select a MasterCard programme because of the national framework.

*Allpay’s recent decision to flip its [Card scheme 1] Public Sector book to MasterCard was partly based on its desire to have functionality to be invited to attend the Network meetings.*²⁸³

As the Network has developed, it has obtained national recognition and DWP, HMRC and NHS England regularly attend the meetings and provide updates.

282 UUID 93230151.

283 allpay submitted that they do not accept the suggestion that allpay would ‘flip their book’ and change their whole functionality just to re-join the Network. allpay representations dated 14 December 2020: UUID PSR0001.000258.

The success in Government Purchasing Cards with [Programme Manager 3] and [Bank B] last year and the continued expansion of our prepaid activities, largely through the Network, has established MasterCard as the brand of choice for the UK Public Sector.”

4.41 In 2016, Mastercard funded the first six calendar months, which covered a majority of the Network’s expenses for the year.²⁸⁴ [Sulion director 1] (Sulion) required additional funding for the last round of meetings in 2016, which was partly funded by Mastercard (£20,000) and partly funded by two Network PMs (£20,000). In October 2016, each of PFS and allpay paid Sulion £10,000 as funding for the Network²⁸⁵ (APS refused to contribute²⁸⁶ due to its impending exit from the Network²⁸⁷).

4.42 The amount of funding Mastercard provided to Sulion in support of the Network between 2011 and 2018 is set out in Table II below.

Table II: Funding paid annually by Mastercard to Sulion in £ (ex VAT)

2011	40,450
2012	53,749.98
2013	60,000
2014	83,500
2015	106,000
2016	70,000
2017	110,000
2018	60,000 +

284 Interview of [Mastercard employee 1] on 9 September 2019, disc 1, at lines 1530 – 1531: UUID: 242580001.

285 UUID 93230118; UUID PSR0001-93051-001330 (for PFS).

286 Email dated 28 October 2016 from [APS employee 1] (APS) to [Mastercard employee 1] (Mastercard), copying [APS employee 2] (APS), [Mastercard employee 6] (Mastercard) and [APS director 1] (APS) with subject “RE: Invoices”: UUID 93230118.

287 Email dated 20 October 2016 from [APS employee 1] (APS) to [Mastercard employee 1] (Mastercard) copying [Mastercard employee 4] (Mastercard), [APS employee 2] (APS), [Mastercard employee 6] (Mastercard) with subject “RE: Invoices”, in which [APS employee 1] says: “Following on from our conversation earlier this week and my subsequent call with [first name of Sulion director 1], [Sulion director 1] is now chasing for payment of the attached invoice. As you know, [first name of APS director 1] had already flagged up our reluctance with [first name of Mastercard employee 6] to commit to this previously. In light of the recent developments, and that we will have no involvement in any of the Prepaid Card Network meetings in the 2nd half of 2016, is this something to can speak to [first name of Sulion director 1] about directly and arrange payment amongst the network members and Mastercard?”. UUID PSR0001-95087-000672.

Implementation of the aims of the Network

Membership of the Network

4.43 Besides Mastercard, Network participation included two categories of members: Network PMs (allpay, APS, PFS and [Programme Manager 2] (for 10 months)) and Public bodies (either existing or potential customers of prepaid card programmes).

4.44 As outlined in Table III below, the four Network PMs maintained their Network membership for different lengths of time. Based on the Network PMs' responses to the PSR's Section 26 Notices/RFIs, they became members of the Network in time for their first attendance at the Steering Group meeting in July 2011. By April 2019, Mastercard had ceased participating in the Network and ceased sponsoring it as a forum for its prepaid cards.²⁸⁸ At this point, PM membership in the Network had reduced to two (PFS and allpay), as the others had exited the public sector market.

Table III: Network PM membership in the Network

PM	Date PM commenced attendance at Network meetings	Network membership end date
allpay	July 2011 ²⁸⁹	November 2013 ²⁹⁰
	March 2016 ²⁹¹	April 2019 ²⁹²
APS	July 2011 ²⁹³	November 2016 ²⁹⁴
[Programme Manager 2]	July 2011	May 2012 ²⁹⁵
PFS	July 2011 ²⁹⁶	April 2019 ²⁹⁷

4.45 Public body Network membership started with 11 local authorities in 2011. [Sulion director 1] explained that [Sulion director 1] focused on engaging the 150 or so local authorities in England who were providers of social care and made direct payments.²⁹⁸ As the Network evolved, its membership expanded from local authorities to include NHS CCGs and Housing

288 NB: The Network continued to operate beyond this date – see paragraph 4.106 below.

289 allpay response to Questions 12 and 13.1a of the PSR's s.26 Notice dated 22 June 2018: UUID 101210023.

290 allpay response to Question 13.1a of the PSR's s.26 Notice dated 22 June 2018: UUID 101210023.

291 allpay response to Questions 12 of the PSR's s.26 Notice dated 22 June 2018: UUID 101210023.

292 Email dated 8 April 2019 from [allpay employee 2] of allpay to [Sulion director 1]: UUID 224740007.

293 APS response to Question 16 of the PSR's s.26 Notice dated 11 April 2018: UUID 85040022.

294 APS response to Question 16 of the PSR's s.26 Notice dated 11 April 2018: UUID 85040022.

295 [Sulion director 1] response to the PSR's Section 26 Notice dated 24 April 2018 ('Some background and context'); UUID 93510041; see also paragraph 3.66 of the industry background section – [Programme Manager 2] exited the market around May 2012.

296 PFS response to Question 17 of the PSR's request for information dated 3 April 2018: UUID 85070024.

297 PFS email to [Sulion director 1], Chair of the Network, on 4 April 2019: UUID 182270519.

298 Interview of [Sulion director 1] on 8 July 2019; disc 1, at lines 559 – 561: UUID 245370001.

Authorities.²⁹⁹ In 2018 “over 500 people registered to use the website, over 200 public sector organisations using prepaid cards and the expected amount uploaded to the cards in 2018 is estimated to be close to £1 billion.”³⁰⁰

Relationship of the Network with Mastercard

- 4.46** As detailed from paragraph 4.3 onwards, the Network operated in a manner designed to promote Mastercard’s commercial objectives: to grow the prepaid card public sector market and expand Mastercard’s share of that market through the increased adoption of Mastercard-branded prepaid cards by Public bodies.
- 4.47** The Network held itself out as independent of Mastercard – “an independent forum for the discussion and dissemination of industry best practice among local authorities in the use of prepaid cards in the public sector.”³⁰¹
- 4.48** The first Network meeting, held on 26 May 2011 at Mastercard’s London office, commenced with a presentation by [Mastercard employee 2] of Mastercard³⁰² and did not include the Network PMs.³⁰³ Rather, representatives from 11 UK Public bodies (all local authorities³⁰⁴) attended and took part in a discussion facilitated by [Sulion director 1] (Sulion) regarding the main issues the local authorities had faced in using prepaid cards and how the prepaid offer could be improved.
- 4.49** Among a number of issues outlined, the Public bodies raised the need for “[much] more competition in the market than has been the case to date, many members have had negative early experiences with the current major players regarding costs, flexibility and delivery”.³⁰⁵
- 4.50** During this meeting, [Mastercard employee 2] (Mastercard) and [Sulion director 1] (Sulion) presented the objectives to the local authorities which they sought to achieve through the Network, including:
- a. “Establishing a forum to enable productive exchanges of ideas between Councils, Programme Managers and Mastercard
 - b. Enabling Programme Managers to shape products and solutions based on greater first-hand knowledge of requirements

299 Mastercard response to Questions 4 and 5 of Section 26 Notice dated 29 March 2018: UUID 93230025.

300 [Sulion director 1] answer to Question 1 of the PSR’s Notice under s.26 of the CA98 dated 24 April 2018: UUID 93510039.

301 Mastercard response to Question 5 of the PSR’s Section 26 Notice dated 29 March 2018: UUID 93230025.

302 Notes of the first Steering Group meeting held on 26 May 2011 written by [Sulion director 1]: UUID PSR0001-95087-000369.

303 Agenda of Prepaid Cards in Local Government – Working Group Meeting, Thursday 26th May 2011, 11.00 – 13.30, Mastercard UK, 10 Upper Bank St., Canary Wharf, London E14 5NP: UUID PSR0001-93050-006315.

304 [Public body 6], [Public body 56], [Public body 3], [Public body 53], [Public body 54], [Public body 57], [Public body 4], [Public body 55], [Public body 9], [Public body 44], [Public body 27].

305 Notes of the first Steering Group meeting held on 26 May 2011 written by [Sulion director 1]: UUID PSR0001-95087-000369.

- c. *Assessing the main areas where guidance is required to enable Councils to more easily implement solutions and move beyond pilot phases*
- d. *Enabling early adopters to share experiences and ideas and, as a result, accelerate their progress.*³⁰⁶

4.51 The second Network meeting, held on 6 July 2011 at Mastercard's London office, was the first time Network PMs (representatives from allpay, APS, [Programme Manager 2] and PFS) were brought together with local authorities.³⁰⁷ All four Network PMs offered prepaid cards on the Mastercard brand.

4.52 Network meetings typically commenced with [Sulion director 1] welcoming participants and, while *"tend[ing] to thank Mastercard for its funding, [Sulion director 1] stressed the independence of the group [from Mastercard] at the start of each meeting"*.³⁰⁸ Mastercard has submitted that [Sulion director 1] was *"responsible for all aspects of [the Network's] functioning and day-to-day activities"*³⁰⁹, and was *"not accountable to Mastercard for [Sulion director 1] activities within the Network"*.³¹⁰ Rather, Mastercard's role in the Network was mainly one of funding and its employees dealing with public sector prepaid cards attended Network meetings *"primarily as observers"*.³¹¹

4.53 [Sulion director 1] (Sulion) considered that a key to the Network's success was its independence of Mastercard.³¹² In interview, [Sulion director 1] (Sulion) explained that *"my career had been spent building a reputation as an independent and fair-minded player and adviser and I wasn't going to compromise on that by saying that I worked for MasterCard ... so this network had to be independent. ... I refused to have anything to do with the sales of prepaid cards or receive any direct commission from ... the sales [of] prepaid cards."*³¹³

4.54 Although the above noted responses of Mastercard and [Sulion director 1]'s refer to the Network as being independent of Mastercard, as explained above from paragraph 4.3 onwards, the Network pursued the commercial objectives set out by Mastercard. Mastercard exercised a substantial degree of influence over the operation and running of the Network in the achievement of its goals. Mastercard was regularly consulted on important decisions throughout the Network's existence and its view often prevailed. This was so in relation to matters including:

- a. the admission and exclusion of Network PMs (see paragraph 4.62 below)

306 Notes of the first Steering Group meeting held on 26 May 2011 written by [Sulion director 1]: UUID PSR0001-95087-000369.

307 Agenda for the 'Prepaid Cards in Local Government – Steering Group Meeting' on 6 July 2011: UUID PSR0001-93050-004017.

308 Interview of [Mastercard employee 1] on 9 September 2019, disc 1 of 4, at lines 1781-1783: UUID 242580001.

309 Mastercard response to Question 7 and 10 of the PSR's Section 26 Notice dated 29 March 2018: UUID 93230025.

310 Mastercard response to Question 10 of the PSR's Section 26 Notice dated 29 March 2018: UUID 93230025.

311 Mastercard response to Question 4 of the PSR's Section 26 Notice dated 29 March 2018: UUID 93230025.

312 Response of [Sulion director 1] (Sulion) dated 25 May 2018 to the PSR's Section 26 Notice dated 24 April 2018, question 3: UUIDs 93510039.

313 Interview of [Sulion director 1] on 8 July 2019, disc 1 of 2, at lines 270-285: UUID 245370001.

- b. [Sulion director 1]'s and the Network's engagement strategy with Public bodies³¹⁴
- c. operational decisions regarding the approach and content of meetings³¹⁵
- d. various Network activities [Sulion director 1] had to carry out under the Statements of Work in pursuit of a deliverable to drive turnover for Mastercard prepaid card programmes

4.55 The “*image of the Network's independence*” was discussed between some of the Parties in May 2016. At this time, a local authority chose [Programme Manager 1] (a [Card scheme 1] PM) as the winner of their tender. The parties engaged in discussion on whether “[Card scheme 1] councils” should be allowed to participate in the Network. In this context, [Sulion director 1] (Sulion) wrote to PFS and Mastercard.³¹⁶

“I could argue that I can't expect Mastercard to fund the development of their rival's customers but if that compromises the image of the Network's independence then it could do more harm than good in the long run.”

[PFS director 1] (PFS), replied:

“I have to disagree [first name of Sulion director 1]. I don't think anyone believes the network is independent and there is no reason it should be

- *The events are held in MasterCard offices*
- *The speakers are from MasterCard (with the exception of yourself)*
- *The providers only offer a MasterCard solution*
- *We only speak about MasterCard solutions at the events and I don't recall ever hearing [Card scheme 1] mentioned*

In fact it is hard to argue how it is independent at all lol”

4.56 [Sulion director 1] (Sulion) replied that [Sulion director 1] accepted [PFS director 1]'s (PFS) points “*except that they [the public bodies attending] believe its independent. It's something I'm going to discuss with [first name of Mastercard employee 1] [[Mastercard employee 1] of Mastercard] shortly, I'm more amenable to your view than I have been before.*”

314 Email dated 23 July 2013 from [Mastercard employee 5] to [Sulion director 1] with the subject 'Strategy': UUID PSR0001-93050-002713.

315 Email dated 28 November 2013 from [Sulion director 1] to APS and PFS, copying Mastercard, in which [Sulion director 1] says “*the overall plan of activity for the network for 2014 is currently with [first name of Mastercard employee 5] [[Mastercard employee 5] of Mastercard] and we have yet to discuss it*”: UUID PSR0001-93050-004743; see also email dated 22 May 2013 from [Mastercard employee 5] (Mastercard) to [Sulion director 1] (Sulion), sent after a Network meeting, listing action points for [Sulion director 1] and Mastercard to progress including: constructing a “*template email for [public authority participants] to send onto their respective 'heads'*” to bring “*the right people into the room to discuss*” Universal Credit; “*a session [including PFS and APS] to confirm approach of the UK Steering Gp*”: PSR0001-93050-002836.

316 UUID PSR0001-95502-000816; see also email of 31 March 2015 from [employee 2 at Programme Manager 1] ([Programme Manager 1]) to [employee 1 at Programme Manager 1] ([Programme Manager 1]) stating “*We are happy for you to pass Schedule A to National Prepaid Cards Network, but we can't agree to pass our pricing schedules to them. National Prepaid Cards Network supposed to be an independent body but due to a fact it is sponsored by MasterCard, it's not. Two main participants of this organisation are our main competitors and we are not happy to share our pricing with them.*”: UUID PSR0001-93985-004933.

Non-members of the Network: [Card scheme 1] PMs

4.57 As stated in [PFS director 1]'s (PFS) email above (paragraph 4.55), PMs that did not supply Mastercard prepaid cards were not allowed to take part in the Network. This is further supported by evidence presented below regarding allpay, in relation to the period it was supplying [Card scheme 1] prepaid cards, and two other [Card scheme 1]-linked PMs who were denied the ability to attend Network meetings or become Network members: [Programme Manager 1] (the main [Card scheme 1] PM in the market from 2011 until 2017) and [Programme Manager 5].

allpay

4.58 As detailed in paragraph 4.44 above, allpay's involvement in the Network covered two periods of membership:

a. July 2011³¹⁷ to November 2013³¹⁸

b. March 2016³¹⁹ to April 2019³²⁰

4.59 allpay explained that its "[c]hange in Scheme provider [from Mastercard to [Card scheme 1]] resulted in allpay being excluded from the forum" in 2013.³²¹ At that time, allpay used [Issuer 3] as its prepaid cards issuer. [Issuer 3] was issuing [Card scheme 1] cards.

4.60 In February 2012, allpay was appointed as the single supplier under NEPO1 (see Chapter 3, Section C for an explanation of the NEPO1 Framework Agreement).

4.61 One of the local authorities the PSR contacted told the PSR that allpay was absent from the Network meetings "*due to major weaknesses in their product functionality at that time*".³²² Mastercard used "*the current dissatisfaction [of local authorities] towards Allpay to our [Mastercard's] advantage and [first name of Sulion director 1] is confidentially advising other councils who are considering taking up the NEPO framework to avoid Allpay. [Sulion director 1] can clearly do that as [Sulion director 1] is independent.*"³²³

317 allpay response to Questions 12 and 13.1a of the PSR's s.26 Notice dated 22 June 2018: UUID 101210023.

318 allpay response to Question 13.1a of the PSR's s.26 Notice dated 22 June 2018: UUID 101210023. Prior to this date (since around February 2013), allpay's participation in the Network had been tailing off – see paragraphs 4.62 and 5.39, 5.39e).

319 allpay response to Questions 12 of the PSR's s.26 Notice dated 22 June 2018: UUID 101210023.

320 Email dated 8 April 2019 from [allpay employee 2] (allpay) to [Sulion director 1] (Sulion): UUID 224740007.

321 allpay response to question 12 of the PSR's s.26 Notice dated 22 June 2018; UUID 101210023. In interview, [allpay employee 1], former Prepaid & Compliance Director at allpay, stated that "*I knew that we had been removed from the forum, because we'd gone with [Card scheme 1].*" Interview with [allpay employee 1] on 2 October 2019; disc 1 of 2, at lines 1101-1102: UUID 247190001.

322 [Public body 12] response of 4 July 2019 to Question 8 the PSR's Section 26 Notice dated 13 June 2019: 190190002.

323 Email dated 16 May 2013 from [Mastercard employee 5] (Mastercard) to other Mastercard staff ([Mastercard employee 6], [Mastercard employee 7], [Mastercard employee 3] and [Mastercard employee 1]): UUID PSR0001-93050-002860.

- 4.62** allpay's reasoning for being excluded from the Network in 2013 is consistent with other evidence gathered by the PSR, including the following email dated 6 February 2013 from [Mastercard employee 5] of Mastercard to [Sulion director 1]:

*"Just FYI; we met with AllPay senior mgmt. this morning – including [allpay director 2], [allpay director 1] and [allpay employee 4]. After a reasonably honest conversation we made it clear that they will have to be dropped from all council comms, steering groups and other opportunities from you/us till they have a committed and budgeted date to launch a bank account lite proposition with MasterCard (either through PPS or [Issuer 3]). They seemed to understand why that was."*³²⁴

- 4.63** In interview, [Sulion director 1] (Sulion) corroborated that it was because of allpay's abandonment of Mastercard brand issued cards that its Network membership was terminated in 2013:

"... allpay originally were on the MasterCard platform and they'd been part of the network for a couple of years. [NEPO issued] a tender for a framework contract ... [and] decided that they were going to appoint a single supplier and they appointed allpay. allpay had put forward their submission on the [Card scheme 1] platform.

*Okay, I decided that was quite unethical and that it wasn't ... fair [for allpay] to have picked up all of this market information on an independent network but ultimately that was financially supported by MasterCard to then successfully win a tender on the [Card scheme 1] contract and I was somewhat annoyed about that. ... I said that I didn't feel they could continue to be members of the network whilst it was still supported, financially supported by MasterCard."*³²⁵

[Programme Manager 1]

- 4.64** As detailed in the following email chain, [Programme Manager 1] sought to join the Network in 2014 but was refused because its product was integrated with a [Card scheme 1] card (issued by [Issuer 1]).

- 4.65** In an email chain dated 18 June 2014 between [Sulion director 1] (Sulion), [Mastercard employee 3] (Mastercard), [APS employee 2] (APS) (referred to as '[APS employee 2]'), [APS employee 1] (APS), [PFS director 1] (PFS) and [PFS director 2] (PFS), copying [Mastercard employee 1] (Mastercard), Mastercard makes it clear that membership of the Network is reserved for Mastercard issuers and affiliated PMs.³²⁶

- a. [Sulion director 1] (Sulion) stated that *"PS I was contacted by [Programme Manager 1] a couple of weeks ago and they're very keen to join the network. I told them it's not possible at the moment but it's a little awkward given my trumpeting of the independence of the*

324 UUID PSR0001-93050-005309; see also email dated 16 May 2013 from [Mastercard employee 5] to other Mastercard staff in which [Mastercard employee 5] writes: *"In summary: I believe [allpay] have moved closer to [Card scheme 1] over the last year, they have offering the [Card scheme 1] solution in public sector more than MasterCard and until that situation is resolved, we will work with APS and PFS and onboard PCT."* UUID PSR0001-93050-002860.

325 Interview of [Sulion director 1] on 8 July 2019; disc 1, 1 of 2, at lines 1048-1050: UUID 245370001. See also 'Background and context' in response to the PSR's Section 26 Notice of 24 April 2018: UUID 93510039.

326 UUID PSR0001-93051-002271.

network. I'm trying to avoid them going out and harming our credibility with the councils they speak to. Any views?"

- b. [Mastercard employee 3] (Mastercard) in reply stated that *"Hi [first name of Sulion director 1], [Programme Manager 1] use [Issuer 1] who are a [Card scheme 1] only issuer and do not have a licence with Mastercard. The message is straightforward – the network is sponsored by Mastercard and is for Mastercard issuers and affiliated program managers only. Options open to [Programme Manager 1] to facilitate joining the network are either encouraging [Issuer 1] to become a Mastercard issuer, or opening up a new issuing relationship with a Mastercard BIN sponsor."*

4.66 [Programme Manager 1] explained that it decided to exit the market in January 2017 for a number of reasons. One of the reasons [Programme Manager 1] provided was its inability to take part in the Network and hence effectively compete against the Network PMs.³²⁷

4.67 [Sulion director 1] (Sulion) stated at interview that *"versed in the same way that I'd spoken to allpay when they'd gone on the [Card scheme 1] platform, is that I was quite happy to have their customers in the room, but I didn't feel it was morally correct to have a network that was financially supported by MasterCard picking up market information and product information in that environment."*³²⁸

[Programme Manager 5]

4.68 [Programme Manager 5], another PM integrated with a [Card scheme 1] card, tried to join the Network but was denied because it was not linked with a Mastercard issuer.³²⁹ [Programme Manager 5] was a new player in the prepaid market.

4.69 In February 2014, [Individual] of [Programme Manager 5], wrote to [Sulion director 1] and asked for information about the Network.³³⁰ [Sulion director 1] (Sulion) updated [Mastercard employee 5] (Mastercard), who advised [Sulion director 1] *"to keep them at arm's length. They are a PM and work with [Issuer 1] as an issuer. [Issuer 1] are 100% [Card scheme 1] and have asked three times for a Mastercard application but have yet to fill one page in. [...] Unless*

327 [Programme Manager 1] response to the PSR s.26 Notice dated 11 April 2018, Question 12: UUID 93250057 *"As [[Programme Manager 1] was integrated with the [Card scheme 1] and not the MasterCard platform, it] was unable to take advantage of any networking and/or business development opportunities or know-how offered by the National Prepaid Card Network ("NPCN"), to which only suppliers using the MasterCard platform were granted membership. [Programme Manager 1] considered that the NPCN had significant expertise and relationships in the public sector (particularly with Local Authorities, Clinical Commissioning Groups and Commissioning Support Units), and the NPCN would have been a valuable forum for business development opportunities and to help [Programme Manager 1] to improve and grow its business."*

328 Interview of [Sulion director 1] on 6 August 2019; disc 2 – 2 of 2, at lines 473-479: UUID 238520004.

329 The PSR asked the Network PMs to identify their competitors in relation to the supply of prepaid cards in the UK. In their respective responses, none of the PMs identified [Programme Manager 5] as a competitor. See APS response to Question 9 of the PSR's Notice under s.26 of the CA98 dated 11 April 2018: UUID 85040022; allpay response to question 10 of the PSR's s.26 Notice dated 22 June 2018: UUID 101210023; PFS response to Question 10 of the PSR's Request for Information dated 3 April 2018: UUID 85070024.

330 [Individual] stated that a *"couple of people have mentioned the [Network] to me as a useful source of information and contacts"*. UUID PSR0001-93050-004663.

[Programme Manager 5] are thinking of changing to a Mastercard issuer or pushing [Issuer 1] to gain a Mastercard licence, they will be a competitive threat to our group."^{331,332}

Mastercard's public sector engagement strategy

4.70 As explained above (see, for example, paragraph 4.13), one of the success factors identified early on by Mastercard was getting the 'buy-in' of local authorities, and better understanding their payment needs. The right engagement with Public bodies on prepaid cards was key to the development of Mastercard's public sector business opportunity.

4.71 The public sector engagement strategy delivered via the Network, and as agreed between [Sulion director 1] (Sulion) and Mastercard, consisted of five distinct phases referred to in a myriad of documents, including in an Appendix to the August 2012 SoW called the 'Project Brief'³³³, subsequent Statements of Work, and presentations delivered by [Sulion director 1] (Sulion).³³⁴ These five phases are discussed briefly below in paragraphs 4.72 to 4.82 and in Annex G.

Phase 1: Establish a Steering Group with representatives of the supply side (Network PMs) and councils

4.72 Phase 1, which lasted approximately from March 2011 to July 2011,³³⁵ focused on establishing a 'Steering Group'.

4.73 Mastercard identified four PMs, who were active in the market with Mastercard-branded cards, as being able to contribute to the Steering Group and its objectives: allpay, APS, [Programme Manager 2] and PFS.³³⁶ During April and May 2011, [Mastercard employee 2] (Mastercard) and [Sulion director 1] (Sulion) visited the four PMs to discuss the objectives of the network and they all agreed to become members.³³⁷

331 Email dated 25 February 2014 from [Mastercard employee 5] of Mastercard to [Sulion director 1]: UUID PSR0001-93050-006406.

332 [Sulion director 1] (Sulion) introduced [Individual] to [Mastercard employee 3] of Mastercard: UUID PSR0001-93050-001965. The PSR is not aware of further communications between [Programme Manager 5] and each of [Sulion director 1] or Mastercard, however [Programme Manager 5] did not become a member of the Network. The PSR is also not aware if [Programme Manager 5] won any PM contracts with any Public body.

333 See paragraph 4.35 above.

334 See slides 6 and 7 of Presentation by [Sulion director 1] titled "*Designing a new engagement strategy – the work of the National Prepaid Cards Steering Group*" [date unknown] – provided by Mastercard in response to Section 26 Notice of 29 March 2018: UUID 93230169. Presentation by [Sulion director 1] titled "*Prepaid cards – Improve Services: Reduce costs, The Work of the National Prepaid Cards Steering Group*": PSR0001-93050-005032.

335 As per the Service Agreement, see above at paragraph 4.24 onwards.

336 Page 2 of Report titled "*Prepaid Cards in Local Government – report on Phase 1 activity*" – UUID 94580502. In interview of [APS employee 1] on 27 September 2019; disc 1, at lines 760-764: UUID 238510001 – [APS employee 1] said: "*I was first introduced to [first name of Sulion director 1] by Mastercard in March/April of 2011*"; In interview, [Sulion director 1] explained that [Mastercard employee 2] of Mastercard "*set up meetings with the four Programme Managers that were active in this area as an introduction thing, but also to talk through the concepts and philosophies of what we were doing and whether they were on board with this and wanted to take part.*" Interview of [Sulion director 1] on 8 July 2019; disc 1, at lines 455 – 460: UUID 245370001.

337 [Sulion director 1] response to Q1. Section 26 Notice dated 24 April 2018: UUID 93510039.

- 4.74 Phase 1 was completed in July 2011, culminating with a Steering Group being formed with 15 councils and four Network PMs.³³⁸

Phase 2: Generate a Guidance document

- 4.75 The objective of Phase 2³³⁹ was to produce a “sector-led” Guidance document that would use the experiences of local authorities that were successful in adopting prepaid cards to promote the adoption of prepaid cards within the wider public sector.³⁴⁰ The Guidance document – *A Guide to the Use of Prepaid Cards in Local Government* – incorporated Mastercard’s trademark and identified Mastercard as one of the contributors.

- 4.76 The Guidance was first published in 2012³⁴¹ and again in 2013.^{342,343}

Phase 3: Marketing Activity

- 4.77 The purpose of Phase 3 was to utilise the successes the Network achieved with the few local authorities in Phases 1 and 2 and promote prepaid cards to local authorities across England, thereby “*establish[ing] MasterCard and PMs as credible leaders in the field and hence increase[ing] market share.*”³⁴⁴
- 4.78 As part of Phase 3, the Network held a series of marketing events to boost awareness of the Steering Group, as it was then known, to local authorities across England. The target areas identified for this Phase included the North East, North West, West Midlands and London/South East of England.³⁴⁵
- 4.79 Sulion explained that “[o]n average, 50% of councils surveyed who attended the marketing events stated they would like further 1-2-1 engagement with one of the Steering Group Programme Managers.”³⁴⁶

338 Appendix 1, Project Brief, Statement of Work dated 29 August 2012: PSR0001-93050-005586.

339 On 5 September 2011, [Sulion director 1] emailed numerous local authorities to explain that during the summer of 2011, [Sulion director 1] and [Mastercard employee 2] of Mastercard, had discussed the development of the Guidance and that Mastercard had agreed to support its development: UUID PSR0001-93051-002650.

340 “*The National Prepaid Cards Steering Group – A Guide to the Use of Prepaid Cards in Local Government*”: UUID 94581539.

341 The first version of the Guidance was published on Mastercard’s website in the summer of 2012 and provided in hard copy, free of charge, at the Network meetings in summer 2012.

342 <https://prepaidnetwork.org.uk/web-content/1001/uploads/Guide-to-the-use-of-Prepaid-Cards-2nd-edition.pdf>

343 No further versions of the Guidance were published. Appendix 1, Project Brief, Statement of Work dated 29 August 2012: UUID PSR0001-93050-005586. The Network subsequently provided other types of guidance documents to its members, including for example, a guidance document titled “*A Guide to the Implementation of Prepaid Cards*” dated February 2016: UUID 93270070. The second edition of the Guidance was published on the Network’s own website in 2013³⁴³ and continues to be available on the Network’s website. Mastercard response to question 4 of the PSR’s Section 26 Notice dated 10 May 201: UUID 182690016. <https://prepaidnetwork.org.uk/guidance-resource/> See page 3 under heading of ‘Phase 3 Elements’ of “*Prepaid Cards in Local Government initiative – progress to date and proposed next stage*”: UUID PSR0001-93050-005956; see also August 2012 Statement of Work: UUID PSR0001-93050-005586.

345 See Page 2 of the Statement of Work: UUID PSR0001-93050-003940.

346 Appendix 1, Project Brief, Statement of Work dated 29 August 2012: UUID PSR0001-93050-005586.

Phase 4: Further marketing activities to build on those held during Phase 3

4.80 The main aims of Phase 4 were to extend the reach of the Network by holding further events and meetings in other parts of England and increase the number of councils using Mastercard prepaid programmes.³⁴⁷

4.81 During Phase 4, the Network grew and expanded its reach as follows:

- a. A Northern Steering Group was created.³⁴⁸
- b. DCLG (the Department for Communities and Local Government) and LGA (the Local Government Association) took an interest in the work of the group, enhancing both the group and Mastercard's reputation and standing.
- c. PMs consistently reported an upward curve of opportunities and contracts and cite the work of the Steering Group as a major influencer.³⁴⁹

Phase 5: Develop awareness of prepaid cards across the public sector (that is, beyond local authorities)

4.82 The deliverables for Phase 5 were set out in a document drafted by [Sulion director 1] and titled "*Prepaid Cards in Local Government initiative – Phase 5 specification*".³⁵⁰ The main objectives of Phase 5 were to extend the group's membership to the wider public sector and "*further position the Network as a useful resource for DWP*"³⁵¹ (the Department for Work and Pensions).

C Operation of the Network

4.83 Under the auspices of [Sulion director 1] (Sulion) as Chair and Mastercard as sponsor, the Network ran different types of meetings and events to further its objective of promoting the uptake of prepaid cards in the public sector.

4.84 [Sulion director 1] (Sulion) coordinated and facilitated all the meetings and events, but attendance by other Network members (Mastercard, Network PMs, Public bodies) varied depending on the purpose of the meeting.

347 Page 7 of the Statement of Work executed by Mastercard and Sulion Limited on 29 August 2012: UUID PSR0001-93050-005586.

348 Meetings were held in York in addition to London to cater for the growing interest in the Network by local authorities in other regions.

349 "*Prepaid Cards in Local Government initiative – Phase 5 Specification*": UUID PSR0001-93050-002957.

350 UUID PSR0001-93050-002957: UUID 94580942.

351 Statement of Work for period of September-December 2014: UUID 94581190.

Type and content of Network meetings and events

Steering Group/Network meetings

- 4.85** Steering Group meetings (later called Network meetings from July 2013³⁵²) took the form of a series of meetings usually held two or three times a year in or around March, July and November between 10am and 1pm.³⁵³ Attendance at these meetings was free of charge.³⁵⁴
- 4.86** The meetings were initially only held in London. By December 2012, as interest in the Network grew, the meetings were held further afield in other cities across GB.³⁵⁵
- 4.87** As per paragraph 4.51 above, the first Steering Group meeting, attended by Mastercard, PMs and local authorities, was on 6 July 2011. Based on available evidence, between May 2011 and May 2018 there were 57 such Network meetings.³⁵⁶
- 4.88** Network meetings were usually arranged by [Sulion director 1] and/or Mastercard.³⁵⁷ The meetings were typically attended by [Sulion director 1] as Chair, one or two Mastercard representatives, one or two representatives of each of the Network PMs, and various representatives of the local authorities, CCGs and occasionally charities and/or other guests such as software developers, NHS Trust, DWP, housing associations etc. At various meetings (from around October 2013), representatives of the DWP attended to present to local authorities about Universal Credit and other benefit changes (see Annex D for Network Meeting Agendas and attendees present).
- 4.89** A Mastercard representative was allocated approximately ten minutes at the beginning of the meeting to present their item of the agenda. These agenda items typically related to presentations about:
- a. *"a topic of general relevance to public sector prepaid cards, such as potential legislative changes, government initiatives or industry developments."*³⁵⁸

352 Sulion response to Question 5a of the PSR's Section 26 Notice dated 25 March 2020: UUID 224740016 *"There was no formal date for the change of name, it was first used in an email in July 2013 and the first meetings called Network meetings were held in October 2013"*.

353 The meetings included a break halfway through and were followed by a working buffet lunch. [Sulion director 1] response to question 10 of the PSR's Section 26 Notice dated 24 April 2018; UUID 93510040 and Annex D.

354 Registration to, or membership of, the Network as a public authority was generally not a requirement of attending the meetings, [Public body 34] response to question 8 of the PSR's Section 26 Notice dated 13 June 2019: UUID 179670005.

355 Each series of meetings was typically held in three or four different UK locations (such as London, Leeds, York, Taunton, Birmingham, Manchester, Edinburgh). The London meetings always took place at Mastercard's London offices. The dates, times and locations of these meetings are set out at Annex D.

356 See Annex D.

357 See for example email sent on 12 January 2016 by [Sulion director 1] to APS and PFS, copying Mastercard with the subject line *"Quick update"*: *"[first name of Mastercard employee 1]'s arranged the next two London network meetings for 18th March and 23rd June and I'll be arranging the others around those dates, we're going to try holding a meeting in Bristol in the spring series to see how it goes."*: UUID PSR0001-95290-004525.

358 Mastercard response to PSR Section 26 Notice of 29 March 2018, paragraph 4.8: UUID 93230025.

- b. technical issues and “*mandates that were going to affect all of the members of the network*”³⁵⁹

- 4.90** The Network PMs then typically had a slot each to discuss their own agenda item, which typically related to their own platform’s capabilities and any updates made to their products.³⁶⁰ PMs also gave “*as many examples as possible of where [their products] benefited people, because people wanted to hear [that]*.”³⁶¹
- 4.91** Local authorities and CCGs at times presented case studies outlining their experience in rolling out prepaid cards in their area (including implementation plans, impact and whether it was effective, and the savings made through the adoption of the programmes).³⁶²

Special Interest Group meetings

- 4.92** Special Interest Groups were meetings used to explore certain issues in greater depth than time allowed during regular Network meetings. Topics for discussion were often proposed by local authority members during the regular Network meetings³⁶³, such as matters that related to welfare disbursements, financial inclusion and the provision of cards in that context.³⁶⁴
- 4.93** Mastercard usually attended these meetings and Network PMs attended on an ad-hoc basis if there were discussion topics of interest to them.³⁶⁵ Examples of these Special Interest Groups are set out in Annex E.

User Group meetings

- 4.94** User Group meetings were often held in London at Mastercard’s offices.³⁶⁶ These meetings were initially only open to Public bodies already using prepaid cards, but later became open to all Network members. Mastercard representatives and Network PMs were excluded to enable Public bodies present to discuss issues freely and “*without potential embarrassment on either*

359 Interview of [Mastercard employee 1] on 9 September 2019, disc 3 of 4, at lines 1249 – 1250: UUID 242580003.

360 Interview of [PFS employee 1] on 6 August 2019; disc 1, at lines 1697-1704: UUID 238550001.

361 Interview of [Sulion director 1] on 8 July 2019; disc 1 –2 of 2, at lines 127-128: UUID 238520002.

362 For example, [Public body 12] “*delivered a presentation to the Scottish user group in Edinburgh about the [Public body 12] experience in rolling out the use of prepaid cards.*” [Public body 12] response of 4 July 2019 to question 5 of the PSR’s Section 26 Notice dated 13 June 2019: UUID 190190002.

363 [Sulion director 1]’s response to Question 10 of the PSR’s Section 26 Notice dated 24 April 2018: UUID 93510040.

364 Examples of topics discussed during these meetings included:

Updates on Universal Credit 364 (attended by representatives from the Department for Work and Pensions) Sulion Limited response to Question 7 of the PSR’s Section 26 Notice dated 25 March 2020: UUID 224740016; see agenda for Special Interest Group meeting of 23 July 2013: PSR0001-93050-002677. See also Annex D.

Personal Health Budgets (attended by representatives from NHS England) [Sulion director 1] response to Question 10 of the PSR’s Section 26 Notice dated 24 April 2018: UUID 93510040; Sulion response to Question 7 of the PSR’s Section 26 Notice dated 25 March 2020: UUID 224740016. See also Annex D.

365 [Sulion director 1] response to Question 10 of the PSR’s Section 26 Notice dated 24 April 2018: UUID 93510040.

366 [Sulion director 1] response to Question 10 of the PSR’s Section 26 Notice dated 24 April 2018: UUID 93510040.

side.”³⁶⁷ Feedback was mainly provided by [Sulion director 1] (Sulion) to the PMs via email and, at times, in person.³⁶⁸

Promotional events

- 4.95** [Sulion director 1] (Sulion) also facilitated promotional events from time to time “to introduce prepaid cards to a wide range of audiences.”³⁶⁹ According to [Sulion director 1] (Sulion), the purpose of these promotional events was to “promote the use and benefits of prepaid cards, demonstrate they they’re widely used and to increase awareness of the Network and what it ha[d] to offer.”³⁷⁰ Examples of these promotional events are set out in Table IV (Chapter 5, Section B, paragraph 5.41) and additional examples are set out in Annex E.

D Mastercard and Network PMs’ withdrawal from the Network

- 4.96** The Network ceased its activities as a forum sponsored by Mastercard for its prepaid cards and issuers/affiliated Mastercard PMs in April 2019, after Mastercard, PFS and allpay withdrew from the Network.³⁷¹
- 4.97** The events which led to the termination of the Network as originally set up are explained below.

Mastercard's withdrawal from the Network

- 4.98** On 1 April 2019, Mastercard contacted the PSR to inform it of Mastercard's decision to terminate funding and cease its participation in the Network.³⁷² Mastercard informed the PSR it intended to communicate its decision to [Sulion director 1] (Sulion), PFS and allpay on 3 April 2019 and shared its proposed communications with the PSR.
- 4.99** On 3 April 2019, Mastercard communicated its decision to terminate its funding and participation in the Network to [Sulion director 1]³⁷³ and each of PFS and allpay.³⁷⁴ Mastercard provided a statement regarding its exit from the Network for [Sulion director 1] and the Network PMs to share with the relevant public sector bodies as they saw appropriate.

367 [Sulion director 1] added that “there is no agenda, members attend on an ad hoc basis and are free to discuss whatever they wish. [[Sulion director 1]’s] role is to simply manage the discussions and provide momentum.”. See [Sulion director 1] response to Question 10 of the PSR’s Section 26 Notice dated 24 April 2018: UUID 93510040.

368 [Sulion director 1] response to Question 10 of the PSR’s Section 26 Notice dated 24 April 2018: UUID 93510040.

369 [Sulion director 1] response to Question 10 of the PSR’s Section 26 Notice dated 24 April 2018: UUID 93510040.

370 [Sulion director 1] response to Question 10 of the PSR’s Section 26 Notice dated 24 April 2018: UUID 93510040.

371 NB: The Network continued to operate beyond this date – see paragraph 4.106 below.

372 Email from [Mastercard employee 10], on 1 April 2019 at 16:38: UUID 182250137.

373 Email from [Mastercard employee 1] on 3 April 2019 at 08:42; UUID PSR0001-103189-000300.

374 Email from [Mastercard employee 1] to [PFS director 1] (PFS) on 3 April 2019 at 7.43am UUID PSR0001-103189-000291; Email from [Mastercard employee 1] to [allpay employee 2] (allpay) on 3 April 2019 at 7.44am: UUID PSR0001-103189-000005.

- 4.100** Mastercard informed the PSR that, “over time” it “*decided that a more rigorous assessment of the value derived by Mastercard from its sponsorship of the Network was required if funding was to continue. It became evident that the Network’s contribution towards new business growth was increasingly limited as the vast majority of public sector attendees at Network meetings had already adopted*” prepaid card solutions.³⁷⁵

PFS’s and allpay’s withdrawal from the Network

- 4.101** On 3 April 2019, [Sulion director 1] sent an email to the Public body members of the Network to inform them of Mastercard’s withdrawal (the email included the draft statement supplied by Mastercard – see paragraph 4.99 above).³⁷⁶
- 4.102** On 5 April 2019, PFS sent an email to local authority Network members to inform them that “[f]ollowing Mastercard’s decision to cease funding for the Prepaid Network Meetings”, it had decided to cease its participation in the Network.³⁷⁷
- 4.103** In relation to allpay’s withdrawal from the Network, allpay has submitted to the PSR that it “*informed the Network and Mastercard of its decision to leave the Network on 3 April 2017.*” In particular, “*allpay withdrew as a result of [allpay employee 1] [allpay] bringing to the Board’s attention, for the first time, in February 2017, [allpay employee 1] concerns about the way in which the Network appeared to be sharing information.*”³⁷⁸
- 4.104** However, based on the following evidence, allpay participated in the Network until at least 8 April 2019:
- a. allpay attended at least 12 Network meetings between 29 June 2017 and 8 April 2019 (see Annex D which lists the Network meetings between May 2011 and May 2018 and the parties who attended those meetings)
 - b. allpay provided the PSR with the names of allpay employees who attended Network events between 2016 and 2018³⁷⁹
 - c. [Sulion director 1] (Sulion), Chair of the Network, informed the PSR in April 2018 that allpay “*are still members of the network and have been very successful in attracting local authorities*”³⁸⁰

375 Mastercard response to Question 40 of the PSR Section 26 Notice dated 25 March 2020: UUID 226800003.

376 UUID PSR0001-103189-000296; “*At a meeting on 09.04.19 attendees were informed that the network meetings would cease. An online Network is still available and local authority continues to be an on-line member to obtain information for further roll out of cards to other services.*” [Public body 34] response to question 3 of the PSR’s s.26 Notice dated 13 June 2019: UUID 179670005.

377 [Public body 42] response to question 3 of the PSR’s s.26 Notice dated 13 June 2019: UUID 179600015; UUID 179600006.

378 allpay response to question 10 of the PSR’s Section 26 Notice dated 25 March 2020: UUID 229300001.

379 allpay response to question 12 of the PSR’s Section 26 Notice dated 22 June 2018: UUID 101210023. allpay’s response to this question also listed the forums/associations that had been a part of including the Network, and states March 2016 as the beginning of its membership without stating an end date.

380 [Sulion director 1] response to the PSR’s Section 26 Notice dated 24 April 2018: UUID 93510041.

- d. [allpay employee 2], an allpay employee (referred to as '[allpay employee 2]'), informed [Sulion director 1] by email dated 8 April 2019 that, after speaking with allpay's legal director, allpay had decided to withdraw from the Network³⁸¹

- 4.105** Mastercard, PFS and allpay have not taken part in the Network since their respective withdrawals.³⁸² For some time after their withdrawal these parties continued to receive general Network emails, but their email addresses have since been removed from the mailing list.³⁸³
- 4.106** [Sulion director 1] continued to facilitate Network meetings with members (predominantly local authorities and other Public bodies) beyond April 2019.³⁸⁴

381 Email dated 8 April 2019 from [allpay employee 2] of allpay to [Sulion director 1]: *"I have just been speaking with our legal director regarding this. Unfortunately if PFS do not attend the forum, we feel that there could potentially be an issue over independence and competition. On this basis, allpay will also need to withdraw from the Prepaid Network Forum events."*: UUID 224740007. See also Sulion response to question 9a of the PSR's Section 26 Notice dated 25 March 2020, which states that allpay withdrew from the Network on 8 April 2019: UUID 224740016.

382 *"Engagement has since been limited to [Sulion director 1] forwarding requests for contact and specific questions sent to [Sulion director 1] by Network members. [...] Contact with MasterCard continued but was restricted only to late payment of outstanding invoices."* – Sulion response to Question 9b of the PSR's Section 26 Notice dated 25 March 2020: UUID 224740016.

383 Sulion response to Question 9b of the PSR's Section 26 Notice dated 25 March 2020: UUID 224740016.

384 Sulion informed the PSR during the course of the investigation that it was looking to exit the relevant market in September 2021.

5 Conduct of the Parties: market sharing

A Introduction

- 5.1** This chapter explains the conduct relevant to the Infringements and how the Parties interacted with each other, in particular the facts and contacts relevant to the assessment of the Network market sharing agreement and the End of contract agreement. By way of context, the PSR's investigation uncovered evidence of numerous and repeated contacts between the Parties that took place over a long period of time. These included direct and indirect contacts between competitors.
- 5.2** As explained in Chapter 7, the PSR has found two infringements, namely:
- a.** A Network market sharing agreement between all of the Parties, between at least 2 May 2012 and at least 6 February 2018.³⁸⁵ This infringement had a number of elements, namely conduct related to the exclusive allocation of potential new customers (leads), conduct related to the non-targeting of existing customers, and exchange of information that supported the non-targeting behaviour. These are described below in Section B of this chapter. These elements each contributed to a common anti-competitive objective. Therefore, as set out in Chapter 7, the PSR concludes that these elements form part of a single and continuous infringement.
 - b.** An End of contract agreement between PFS and APS between at least 19 August 2014 and at least 18 July 2016, described below in Section C of this chapter.
- 5.3** This chapter is structured as follows:
- a. Section B** (paragraphs 5.4 to 5.100) sets out the relevant facts relating to the Network market sharing agreement:
 - Overview of the conduct relating to non-targeting of existing clients within the Network (paragraphs 5.4 to 5.22)
 - 2011–2012: The non-targeting of existing customers linked to the formation of the Network (paragraphs 5.23 to 5.27)
 - 2012–2013: The exclusive allocation of potential new customers (leads) (paragraphs 5.28 to 5.64)

385 See paragraph 1.2 and Section I of Chapter 7 on Duration of the Infringements regarding the involvement of the individual Parties.

- 2012–2017: The non-targeting of existing customers: how Network PMs identified which customers to target/not target (paragraphs 5.65 to 5.79):
 - Contacts to check whether Public bodies were already contracted to a Network PM
 - Contacts relating to the sharing and use of lists detailing which PMs were in contract with which Public bodies
 - 2015–2016: The readmission of allpay to the Network (paragraphs 5.80 to 5.87)
 - The scope of the non-targeting of existing customers conduct (paragraphs 5.88 to 5.90)
 - Alternative explanations for the non-targeting of existing customers (paragraphs 5.91 to 5.94)
 - The monitoring and enforcing of the non-targeting of existing customers (paragraphs 5.95 to 5.100)
- b. **Section C** (paragraphs 5.101 to 5.117): Relevant facts relating to the End of contract agreement.

B Relevant facts relating to the Network market sharing agreement

5.4 As detailed in Chapter 7, the PSR has concluded that there is evidence of a market sharing arrangement within the Network involving all Parties (Sulion, Mastercard, APS, PFS and allpay) that took place over a number of years, lasting from at least 2 May 2012 until at least 6 February 2018.³⁸⁶ The conduct evolved over the years and the PSR concludes that it included the following types of conduct:

- a. the non-targeting of existing customers during the life of a prepaid card services contract (including pilot programmes) until the contract went out for tender; the Parties also exchanged information in support of this behaviour (the '**Network non-targeting arrangement**'))
- b. the exclusive allocation of potential new customers (leads) arising from Network promotional events (the '**Exclusive allocation of leads arrangement**'))

Overview of the conduct relating to non-targeting of existing customers within the Network

5.5 [Sulion director 1] (Sulion) stated in a response to a PSR Section 26 Notice that there was a 'basic rule' of the Network that Network PMs should not attempt to poach existing public sector prepaid card services customers who were under contract to other Network PMs until they

³⁸⁶ See paragraph 1.2 and section I of Chapter 7 on Duration of the Infringements regarding the involvement of the individual Parties.

went to tender.³⁸⁷ [Sulion director 1] (Sulion) explained, in the context of setting up the Network in 2011, that:³⁸⁸

“...the Programme Managers agreed to some basic rules;

- That they would be open, courteous and friendly to each other at the meetings
- That they should seek to secure business by stressing their own benefits rather than disrespecting their competitors and their products
- That *they should not attempt to poach customers who were under contract to other Programme Managers in the network until they went to tender*”^{389,390}

5.6 [Sulion director 1] (Sulion) also stated in [Sulion director 1]’s Section 26 response³⁹¹ that these ‘basic rules’ (referred to in paragraph 5.5 above) were imposed *“to foster an open, friendly and engaging atmosphere within the network to enable participants to openly share with one another.”*³⁹²

5.7 At interview, [Sulion director 1] (Sulion) stated that:

- a. the Network non-targeting arrangement was [Sulion director 1]’s idea and that it was adopted with the awareness of Mastercard. Further, that Mastercard had been involved in the discussions with the Network PMs (APS, PFS and allpay) regarding the introduction of the Network ‘basic rules’ (including the Network non-targeting arrangement) and that Mastercard did not raise any concerns.³⁹³

387 This statement was made by [Sulion director 1] (Sulion) in [Sulion director 1]’s response of 25 May 2018 to the PSR’s first formal request for information under Section 26 of the CA98. See response of [Sulion director 1] (Sulion) of 25 May 2018 to Question 1 of Section 26 Notice issued to [Sulion director 1] on 24 April 2018: UUID 93510039.

388 [Sulion director 1]’s (Sulion) response of 25 May 2018 “Section A Q1” to the PSR’s Section 26 Notice dated 24 April 2018: UUID 93510039.

389 UUID 93510039, [Sulion director 1] (Sulion) response “Section A Q1”.

390 In the same Section 26 Notice, [Sulion director 1] (Sulion) was also asked (under Section 26 of the CA98 Q 12, UUID 94570001) to provide any ‘Documents’ relating to any training provided to organisers, members or participants of the Network in respect of how they should conduct themselves at Network meetings and outside Network meetings, for example in relation to competition law compliance. In response to this question, [Sulion director 1] stated that: *“No specific documents were produced in this regard nor training given. Informal agreements were established which outlined ‘proper’ behaviour at network meetings and were largely adhered to. These agreements included items such as;*

No direct sales pitches at meetings

Treating other suppliers with respect and in a courteous way and not establishing an advantageous position by doing down competitors’ products and services

Being open and transparent in meetings while protecting commercial interests

Not attempt to poach or market to customers under contract to another supplier until they re-tender”.

391 At the time that [Sulion director 1] (Sulion) submitted [Sulion director 1] Section 26 response on 25 May 2018, Sulion was not a party to the PSR’s investigation. The PSR opened its case against Sulion in March 2019 (see paragraph 2.8 above).

392 Response of [Sulion director 1] (Sulion) of 25 May 2018 to Question 1 of Section 26 Notice issued to [Sulion director 1] on 24 April 2018: UUID 93510039.

393 “PSR: was Mastercard aware of these rules? [Sulion director 1]: Yes”.

“PSR: did they express any issue with the rules? [Sulion director 1]: No.”

- b. the Network non-targeting arrangement applied to “*whoever was in the Network at the time*” out of “*allpay, PFS and APS*”.³⁹⁴
- c. when the Network non-targeting arrangement was discussed with APS, PFS and allpay³⁹⁵, “*there were no great kickback or desire not to ... do it because we were looking longer term rather than short term*”.³⁹⁶
- d. the Network non-targeting arrangement was not communicated to any Public bodies.³⁹⁷

5.8 [Sulion director 1] (Sulion) expanded at interview on the rationale of the Network non-targeting arrangement:

*“I’m trying to create a positive spirit within the Network and there is no point, to my way of thinking, of them trying to poach each other’s customers. ... Also in those early days if you remember we’d only got a handful of people using prepaid cards out of the 153 or so authorities, it seemed a bit counterproductive to go after someone else’s customers when you had so many people who weren’t using the card.”*³⁹⁸

5.9 [Sulion director 1] (Sulion) explained that conduct outside of Network meetings could impact on conduct at Network meetings: “*... in the room everything was friendly, no problem at all. Now I don’t believe that would have been the case had they been actively trying to go after the limited number of customers they had at the time.*”^{399,400}

“PSR: so, when you said earlier that you discussed it, so as I understand you and the Programme Managers, being APS, PFS and allpay ... was Mastercard also a part of that discussion? [Sulion director 1]: Yes.”. Interview of [Sulion director 1] on 8 July 2019; disc 2 – 1 of 2, at lines 246-276: UUID 238520003.

394 Interview of [Sulion director 1] on 8 July 2019, disc 2 – 1 of 2, at lines 216 – 220/217-221: UUID 238520003.

395 [Sulion director 1] (Sulion) explained at interview that the ‘basic rules’ of the Network were not discussed with all Parties at one single meeting. Interview of [Sulion director 1] on 8 July 2019; disc 2 – 1 of 2, at lines 514: UUID 238520003. Rather, [Sulion director 1] (Sulion) stated that the issue would have arisen in “*general discussion*” with the original members about the Network. “*I would have been talking to [Mastercard employee 2] [of Mastercard], ‘certainly [APS employee 1] from APS, [PFS director 2] and [PFS director 1] from PFS, and the name of the APS Programme Manager at that point was [allpay employee 3] and one of the Directors at allpay that I dealt with was called [allpay director 1]. So we didn’t all sit down in a big meeting, but those were the people that would have been involved in this’.*” Interview of [Sulion director 1] on 8 July 2019; disc 2 – 1 of 2 at lines 518 – 528: UUID 238520003.

396 Interview of [Sulion director 1] on 8 July 2019 disc 2 – 1-2, at lines 240: UUID 238520003.

397 Interview of [Sulion director 1] on 8 July 2019 disc 2 – 1-2, at lines 308-310: UUID 238520003.

398 Interview of [Sulion director 1] on 8 July 2019; disc 2 – 1 of 2, at lines 183-192: UUID 238520003.

399 Interview of [Sulion director 1] on 8 July 2019; disc 2 – 1 – 2, at lines 198-213: UUID 238520003.

400 [Sulion director 1] (Sulion) added at interview that [Sulion director 1] did not want PMs to be “*seen to be cutthroat, I wanted cooperation. I wanted the Programme Managers to work together where possible, whilst leaving aside their obviously, the competitive side. But I wanted open conversations about what was right in terms of product development, what was wrong, they’d all have their own stakes on that. But this wouldn’t have succeeded if it wasn’t that sort of... a supportive environment and I have to say it worked extremely well.*” Interview of [Sulion director 1] on 8 July 2019; disc 2, 1-2, at lines 197-212: UUID 238520003.

5.10 Consistent with [Sulion director 1]'s account, at interview PFS and APS each referred to the fact that there was an informal⁴⁰¹, unwritten agreement⁴⁰², arrangement⁴⁰³, loose understanding⁴⁰⁴ or professional courtesy rule that Network PMs were not to target⁴⁰⁵, pitch to⁴⁰⁶ and/or poach⁴⁰⁷ each other's existing Public body customers. This included the situation where a Network PM was providing a pilot programme to a Public body.⁴⁰⁸ [APS employee 1] (APS) explained that the arrangement was based around which Public bodies were "*already in contract*" and which were not.⁴⁰⁹ The arrangement also covered the roll-out of prepaid cards by a Public body that was already in contract with a Network PM in new areas of business.⁴¹⁰ The statements of PFS and APS representatives are set out below.

5.11 At interview⁴¹¹, [PFS director 2] of PFS said that:

- a. there was "*an agreement between network members around not poaching existing council partners*" and that PFS "*wouldn't go and pitch to an existing client*" of another Network PM.
- b. "*There isn't any ... correspondence, there's no conversation, it just becomes like a matter of course where you are not targeting a customer. You are trying to grow the whole sector*".⁴¹²
- c. "*it comes to this as a consequence of almost how cosy the network is*".⁴¹³

401 Interview of [PFS employee 1] (PFS) on 6 August 2019, disc 1 of 4, at 2271: UUID 238550001. Also, [APS employee 1] of APS confirmed at interview on 27 September 2019 disc 2 of 5 at 1838, that "*I don't recall any particular meeting about it*": UUID 238510002.

402 Interview of [PFS director 2] (PFS) on 9 November 2018, disc 3 of 3 at 63-64: UUID 238180003 "*this was never written down*", and interview of [APS employee 1] (APS) on 27 September 2019, disc 2 of 5, at line 974: UUID 238510002.

403 Interview of [APS employee 1] (APS) on 27 September 2019, disc 2 of 5 at line 973: UUID 238510002

404 Interview of [PFS director 1] (PFS) on 7 November 2018; disc 3 of 3 at lines 512: UUID 223980003. [APS employee 1] (APS) also referred to it as an 'understanding' – interview of [APS employee 1] on 27 September 2019, disc 2 of 5, at lines 1228, UUID 238510002.

405 Interview of [PFS employee 1] (PFS) on 6 August 2019, disc 3, at lines 433-43 "*my understanding was always, you do not actively target anyone who is already being supported by the PM on the network*": UUID 238550003, at lines: 433-43; Interview of [PFS director 1] on 7 November 2018; disc 3 of 3 at lines 1147-1148: UUID 223980003 – "*There was this loose understanding that the members within the network wouldn't target those live customers*". Interview of [APS employee 1] (APS) on 27 September 2019, disc 2 of 5, at lines 1748, "*that organic arrangement whereby we don't target each other's customers*": UUID 238510002.

406 Interview of [PFS director 2] (PFS) 9 November 2018, disc 3 of 3, at lines 88-89, we are not "*going to pitch to an existing live client of another provider*": UUID 238180003.

407 Interview of [PFS director 2] (PFS) on 9 November 2018, disc 3 of 3, at line 57, 238180003 "*It's poach and pitching*", Interview of [PFS employee 1] (PFS) on 6 August 2019, disc 1 of 4, at line 1664: UUID 238550001. Also, [APS employee 1] (APS) in email titled 'FW: [Public body 36] – request a quote for prepaid cards': UUID PSR0001-95087-000753.

408 For example: (i) in an email dated 21 August 2014 PFS seeks contact details from [Sulion director 1] (Sulion) for those Public bodies that were not already running live pilot programmes with another Network prepaid card provider so that PFS could contact them. (Email from [PFS director 1] (PFS) to [Sulion director 1] (Sulion) titled 'RE: Prepaid Network London meeting – agenda/attendees': UUID PSR0001-93051-001500), and (ii) there is an email chain dated between 31 March 2016 and 4 April 2016, titled '[Public body 44] New Wallet – IPC Pilot' where PFS checks with [Sulion director 1] (Sulion) which of the Public bodies were with other Network PMs and therefore which were available for PFS to approach: UUID PSR0001-93051-000315.

409 [APS employee 1] interview on 27 September 2019 at lines 1892, disc 2 of 5: UUID 238510002.

410 See paragraph 5.79 below.

411 Interview of [PFS director 2] (PFS) on 9 November 2018, 1 of 3: UUID 238180001.

412 Interview of [PFS director 2] on 9 November 2018, disc 2 of 3, at lines 842: UUID 238180002.

413 Interview of [PFS director 2] on 9 November 2018, disc 3 of 3 at lines 66: UUID 238180003.

- d. "... we behaved like it's a club, and we have created and abided, I think, by a set of rules that may even go back to the stuff in 2007."⁴¹⁴ [PFS director 2]'s reference to the 'stuff in 2007' refers to contact between [APS director 1], [X] of APS, and [PFS director 2], [X] of [Company A] before [PFS director 2] became [X] director at PFS, where [PFS director 2] ([Company A]) states to APS that [PFS director 2] will not steal a customer that is already under contract to APS, discussed in more detail in paragraphs 5.108 to 5.109 below.
- e. there was an exception to the arrangement where a Public body approached the PM by way of a tender, or under a Framework Agreement.⁴¹⁵

5.12 [PFS director 1] (PFS) stated at interview that [PFS director 1] agreed that there was an arrangement that existed from the start of the Network that if you're a part of the Network, you do not poach existing council partners.⁴¹⁶ [PFS director 1] also stated that [PFS director 1] regarded a council requiring prepaid card services in a new area of council business where a Network PM was 'live' with that council as being "*kind of the same*" as where a Network PM was live with a contract for prepaid card services.⁴¹⁷

5.13 [PFS employee 1] of PFS (referred to as '[PFS employee 1]') stated at interview that there was a Network '*professional courtesy*' rule that "*if [a local authority was to] go out for procurement, great, but otherwise let's not do that thing where we're all just going after the same person to talk about one thing. Let's make this a nice joined up network approach rather than anything else*".⁴¹⁸

5.14 At interview [APS employee 1] of APS:

- a. referred to the Network non-targeting arrangement as "*almost an unwritten, like an arrangement right the way back from the beginning where, sort of, grown organically that being part of the group, the best practice group, ... it wouldn't be that, ... you approach ... any other companies, existing council partner outside of any tenders or request to tender, or anything like that. And as I say, ... I don't think there was any specific meeting about it or discussion about it, but it sort of grew out of a couple of things, ... you know, pragmatism, really*".⁴¹⁹
- b. stated that where a council was "*in contract*" with a Network PM, other Network PMs approaching that "*existing client*" in relation to new areas of business would be considered "*poaching*" and against the non-targeting arrangement⁴²⁰

⁴¹⁴ Interview of [PFS director 2] on 9 November 2018, disc 3 of 3 at lines 158: UUID 238180003.

⁴¹⁵ Interview of [PFS director 2] on 9 November 2018, disc 3 of 3, at lines 57 – 59: UUID 238180003. [PFS director 2] added at interview that PFS may also be "*inclined*" to pitch to a Network PM's existing customer if "*we were directly approached*" by the council to do so outside of a tender or framework agreement. However, none of the other Parties said this and the PSR does not think that this is part of the arrangement: Interview of [PFS director 2] on 9 November 2018, disc 3 of 3 at lines 89: UUID 238180003.

⁴¹⁶ Interview of [PFS director 1] on 7 November 2018, disc 3 of 3 at lines 1170 – 1176: UUID 223980003.

⁴¹⁷ Interview of [PFS director 1] on 7 November 2018, disc 1 of 3, at 2068: UUID 223980001.

⁴¹⁸ Interview of [PFS employee 1] on 6 August 2019 disc 2 of 4, at lines 211-214: UUID 238550002.

⁴¹⁹ Interview of [APS employee 1] on 27 September 2019, 2 of 5 at lines 896 onwards: UUID 238510002.

⁴²⁰ Interview of [APS employee 1] on 27 September 2019, 2 of 5 at lines 1001 – 1035: UUID 238510002, where [APS employee 1] discusses [APS employee 1]'s complaint against allpay regarding allpay's contact with an existing APS customer ([Public body 36]) regarding the council extending the use of prepaid cards to a new area of council business.

- c. clarified that [APS employee 1] would be the person that worked on tenders at APS and that [APS employee 1] “*wouldn’t be approaching anyone cold That wasn’t our sales tactic*”⁴²¹

5.15 allpay adopted the same approach regarding not targeting customers that were under contract until they went out for tender.⁴²² At interview, [allpay employee 1] of allpay (referred to as ‘[allpay employee 1]’) described allpay’s approach to competing for public sector prepaid card business. [allpay employee 1] stated⁴²³ that “*all our business opportunities would be based on if there was a [Request for Proposal] or a tender. If that company was already contracted, we wouldn’t do anything about that*”. “*...the only clients you could potentially approach or do anything was ... through [a Request for Proposal]*”. “*... so, there wasn’t ... clients that you could target ... it was literally you had to wait for these opportunities to come up*”.⁴²⁴

5.16 [allpay employee 2] of allpay stated at interview that “*I can’t think of a single allpay client hasn’t gone out to tender*”.⁴²⁵

5.17 There is a chain of emails which clearly articulates the arrangement between the Parties, whereby Network PMs, while members of the Network, could not target each other’s customers. These are email exchanges of 6–7 July 2016, shortly after allpay had re-joined the Network, titled ‘*Re: Allpay*’ between [APS employee 1] (APS), [Sulion director 1] (Sulion) and [Mastercard employee 1] (Mastercard) regarding a complaint against allpay approaching Public bodies that were already under contract to another Network PM (APS)⁴²⁶:

- a. [APS employee 1] (APS) complained⁴²⁷ in July 2016 to [Sulion director 1] (Sulion) that allpay was approaching certain of its existing clients.⁴²⁸ [APS employee 1] (APS) stated that “*When AllPay re-joined the network, I thought there was an understanding that AllPay would not proactively go after either PFS or APS’ clients?*”. [Sulion director 1] responded to [APS employee 1] (APS) (copying [Mastercard employee 1] at Mastercard) stating that “*Absolutely it was on those terms, it was stated on more than one occasion and I take this very seriously.*” And that by doing this, they were “*putting their network membership in jeopardy again*”.⁴²⁹

421 Interview of [APS employee 1] on 27 September 2019, 2 of 5 at lines 1533 – 1535: UUID 238510002.

422 Notwithstanding this, there is evidence that when allpay was outside the Network, it did approach Public bodies that were in contract with Network PMs. See for example paragraph 5.83 below, where APS complained that allpay had been in contact with one of APS’ existing customers, [Public body 36].

423 Interview of [allpay employee 1] on 2 October 2019, disc 2 of 2 at line 128: UUID 247190002.

424 Interview of [allpay employee 1] on 2 October 2019, disc 2 of 2 at lines 126 – 129: UUID 247190002.

425 Interview of [allpay employee 2] on 15 October 2019, disc 2 of 3, at line 289: UUID 238600002.

426 UUID PSR0001-93050-006418.

427 [APS employee 1] (APS) stated “*I don’t really appreciate being told that [first name of allpay employee 5] [allpay] is visiting Councils to talk initially about their ‘payments’ systems and then introducing their prepaid card solutions – 2 London Borough partners today have spoken to me about this. Can you confirm what was agreed with AllPay?*”: UUID PSR0001-93050-000534.

428 Two APS London Borough partners.

429 In the same email chain [Sulion director 1] (Sulion) stated to [Mastercard employee 1] (Mastercard) that “*My view is that they agreed that they wouldn’t do it as a condition of their re-admittance and that if there’s any repetition then they’ll have shown again that they can’t be trusted to act properly as a member of the network. Sort of a final warning.*”: UUID PSR0001-93050-006418.

- b. [Mastercard employee 1] (Mastercard) subsequently spoke⁴³⁰ to [allpay employee 1] at allpay⁴³¹ and reported back to [Sulion director 1] (Sulion). [Mastercard employee 1] (Mastercard) then asked [Sulion director 1] (Sulion) to report back to [APS employee 1] (APS).⁴³²
- c. [Sulion director 1] (Sulion) then reported back to [APS employee 1] (APS) (copying [Mastercard employee 1] (Mastercard)) stating that [allpay employee 1] “*has taken the feedback on board and will counsel [allpay employee 1]’s sales team to go after the many other opportunities out there*”⁴³³ (that is, “*all those councils that didn’t have a programme already*”).⁴³⁴ [Sulion director 1] added that “*My view is clear. Allpay were only re-admitted upon condition that they didn’t try to steal existing customers. It’s something I won’t accept and I’ll have no qualms whatsoever about again removing them from the network if they can’t be trusted to act as a responsible member. I’m willing this time to accept it as a mistake but I’ll be telling [first name of allpay employee 1] that this constitutes a yellow card and final warning*”.⁴³⁵

5.18 The ‘Re: Allpay’ email chain referred to above in paragraph 5.17 states that [Mastercard employee 1] of Mastercard “*completely*” agreed that Network PMs should not be seeking to poach existing prepaid card customers of other Network PMs while they were in contract. Upon receiving the complaint from APS, [Sulion director 1] (Sulion) forwarded the email chain⁴³⁶ to [Mastercard employee 1] (Mastercard) stating: “*Bugger! Just what we need at the moment. I’m sure you’ll agree we can’t have this.*”⁴³⁷ [Mastercard employee 1] (Mastercard) responded⁴³⁸ to [Sulion director 1] (Sulion) stating: “*Completely agree, [first name of Sulion director 1].*” [Mastercard employee 1] (Mastercard) clarified at interview what [Mastercard employee 1] meant by this statement, that is that “*I agree that we can’t have, you know, the programme managers falling out with each other when we’re trying to expand the size of the market*”.⁴³⁹

5.19 At interview, [Sulion director 1] (Sulion) stated that the two other Network PMs at the time (APS and PFS) were not pleased that allpay was being allowed to re-join the Network and wanted to ensure that [Sulion director 1] was “*maintaining a level playing field*”.^{440,441}

430 At interview, [Mastercard employee 1] (Mastercard) confirmed that [Mastercard employee 1] had spoken to [allpay employee 1] (allpay) by telephone. Interview of [Mastercard employee 1] on 9 September 2019, disc 2 of 4 at line 1411: UUID 242580002. At interview [allpay employee 1] (allpay) stated that [allpay employee 1] could not remember this call with [Mastercard employee 1]. Interview of [allpay employee 1] on 2 October 2019, disc 2 of 2, at line 196: UUID 247190002.

431 The following day, on 7 July 2016 at 9:59, [Mastercard employee 1] (Mastercard) emailed [Sulion director 1] (Sulion) stating that [Mastercard employee 1] had spoken to [allpay employee 1] at allpay and that [first name of allpay employee 1] “*has taken the feedback on board and will counsel [allpay employee 1] sales team to go after the many other opportunities out there*”: PSR0001-93050-006418.

432 “*Please can you share with [first name of APS employee 1]?*”: UUID PSR0001-93050-006418.

433 UUID PSR0001-93050-006418.

434 Interview of [Mastercard employee 1] on 9 September 2019, disc 2 of 4 at line 1395: UUID 242580002.

435 UUID PSR0001-93050-000534.

436 On 6 July 2016 at 17:52.

437 UUID PSR0001-93050-006418.

438 On 6 July 2016 at 17:54.

439 Interview of [Mastercard employee 1] on 9 September 2019, disc 2 of 4 at lines 1246-1248: UUID 242580002.

440 Interview of [Sulion director 1] on 8 July 2019, disc 2 – 1 of 2, at lines 1122: UUID 238520003.

441 “*As you might expect the two existing Programme Managers were not delighted that I’d chosen to allow allpay back in, so it was a touchy subject at the time and they just wanted to make sure that I was maintaining a level playing field*”: Interview of [Sulion director 1] on 8 July 2019, disc 2 – 1 of 2, at lines 1119 – 1122: UUID 238520003.

- 5.20** In the same email exchange⁴⁴², Mastercard and Sulion also discuss the scope of the arrangement not to poach existing customers. [Mastercard employee 1] (Mastercard) added that [Mastercard employee 1] could see “*other situations coming with [Public body 42] and [Public body 3] coming out to [market] again.*”⁴⁴³ [Sulion director 1] (Sulion) responded to [Mastercard employee 1] (Mastercard) stating: “*Yes, but if they decide to come to market then it's fair game. We can't have poaching.*”⁴⁴⁴
- 5.21** The existence and nature of the Network market sharing conduct is clearly summarised in an email chain of 14 July 2016 involving all Parties titled ‘*Update & State of the Nation*’.⁴⁴⁵ This email chain refers to a non-targeting arrangement within the Network regarding existing public sector prepaid card services customers. The email is between [Sulion director 1] (Sulion), [Mastercard employee 1] (Mastercard), [Mastercard employee 4] (Mastercard), [APS employee 1] (APS), [allpay employee 2] (allpay), [PFS director 1] (PFS), [PFS director 2] (PFS) and [PFS employee 1] (PFS).
- a. On 14 July 2016 [Sulion director 1] (Sulion) emailed Mastercard and the Network PMs (APS, PFS and allpay), stating: “We’ve always agreed not to target each other’s customers but clearly any who choose to go out to open tender again must be considered fair game once they’ve taken the decision to come to market.” In the same email, [Sulion director 1] (Sulion) also asked the Network PMs for their “up-to-date lists of councils and CCG’s”, explaining that, having chatted to [first name of allpay employee 2] [[allpay employee 2] of allpay] after yesterday’s meeting, “we agreed that it would be a good idea to have an updated master list of who has who as prepaid customers so we know who is and isn’t fair game for sales. I’d like to pull this together soon ...”.
 - b. [allpay employee 1] of allpay replied to all of the email recipients on 18 July 2016 stating, “[first name of Sulion director 1], *Many thanks for your email. [...] We will come back to you on the client’s lists*”.
- 5.22** In the paragraphs above, the PSR has outlined some of the key aspects of the conduct relevant to the Network non-targeting arrangement. In the remainder of this chapter, the PSR starts by setting out how this arrangement started and how it was linked to the formation of the Network in 2011–2012, then explains how the conduct relevant to the Exclusive allocation of leads arrangement developed between 2012 and 2013, and finally how the Network non-targeting arrangement evolved or manifested itself after the formation of the Network and throughout the Relevant Period 1.

442 Email exchange of 6 – 7 July 2016, ‘Re: Allpay’: UUID PSR0001-93050-006418.

443 [Mastercard employee 1] stated at interview disc 2 of 4, at line 1348, that “*I think it was an autocorrect and it should be ‘to market again’, ‘cause it’s something that happens quite often. At this point, you know, some of them, the original programmes that were first set up would have been coming back out to market at the end of their contract or framework.*”: Interview of [Mastercard employee 1] on 9 September 2019, disc 2 of 4, at lines 1263-1267: UUID 242580002

444 On 6 July 2016 at 17:58, UUID PSR0001-93050-006418.

445 Email chain dated 14 -18 July 2016: UUID PSR0001-93051-000446.

2011–2012: Non-targeting of existing customers linked to the formation of the Network

- 5.23** There is evidence that conduct in the form of non-targeting of existing customers started sometime in the early days of the Network.
- 5.24** At interview, [Sulion director 1] (Sulion) stated that the Network non-targeting arrangement (along with other basic rules of the Network) was established “*When we were putting the network together, so this would have been during the course of 2011*”.⁴⁴⁶ In [Sulion director 1] response to the PSR’s first Section 26 Notice, [Sulion director 1] stated that after having initial discussions with Mastercard about “*creating a peer to peer best practice network*” the approach was “*refined*” “*over February and March*” 2011.⁴⁴⁷
- 5.25** [Sulion director 1] (Sulion) stated in [Sulion director 1] first Section 26 response⁴⁴⁸ that [Sulion director 1] and [Mastercard employee 2] of Mastercard visited each of allpay, APS, PFS and [Programme Manager 2] in April/May 2011 to explain the ‘philosophy’ of the Network.⁴⁴⁹ There is contemporaneous email evidence showing that individual meetings took place in April 2011 between Mastercard, Sulion and each of the Network PMs (PFS⁴⁵⁰, allpay⁴⁵¹ and APS⁴⁵²) to discuss the PMs joining the Network as PM members; the subsequent correspondence

446 Interview of [Sulion director 1] on 8 July 2019; disc 2 – 1 of 2 at lines 142-143: UUID 238520003.

447 [Sulion director 1]’s first response of 25 May 2018 to the PSR Section 26 Notice of 24 April 2018, ‘Section A Q1’: UUID 93510039.

448 Provided on 25 May 2018 (Sulion was not a party to the PSR’s investigation at this point): UUID 93510039.

449 [Sulion director 1] (Sulion) stated that [Sulion director 1] and [Mastercard employee 2] of Mastercard visited each of allpay, APS, PFS and [Programme Manager 2] in April/May 2011 to discuss the Network and explain the ‘philosophy’ of the Network and that “*they all agreed to become members*”. Response of [Sulion director 1] (Sulion) of 25 May 2018 to Question 1 of Section 26 Notice issued on 24 April 2018: UUID 93510039.

450 The initial meeting with PFS was held on 14 April 2011 (UUID PSR0001-93050-003605). On 22 May 2011 [PFS director 1] (PFS) emailed [Sulion director 1] (Sulion) and [Mastercard employee 2] (Mastercard) discussing [PFS director 1]’s intention to participate in the Network Steering Group meeting scheduled for 26 May 2011. (Email chain between [PFS director 1] (PFS), [Sulion director 1] (Sulion), [Mastercard employee 2] (Mastercard): UUID PSR0001-93051-001856). [PFS director 1]’s intention to participate in the Steering Group Meeting indicates that PFS had agreed to become a Network member by this date (otherwise PFS would not have been allowed by Sulion or Mastercard to be involved in the meetings).

451 The initial meeting with allpay was held at 4pm on 19 April 2011 (email between [Sulion director 1] (Sulion), [allpay employee 3] (allpay), [allpay director 1] (allpay) and [Mastercard employee 2] (Mastercard), dated 31 March 2011, titled RE: Public Sector Steering Groups: UUID 101211410). It is clear that allpay agreed to become a Network member either at the meeting or shortly thereafter as shown by [Sulion director 1]’s (Sulion) email dated 27 April 2011 (email from [Sulion director 1] to [allpay employee 3] at allpay, [allpay director 1] at allpay, [Mastercard employee 2] at Mastercard, titled: ‘Mastercard Prepaid meeting’: UUID PSR0001-93050-006386) in which [Sulion director 1] (Sulion) stated to [allpay employee 3] (allpay) (copied to [allpay director 1] at allpay and [Mastercard employee 2] at Mastercard)) “*Hi [first name of allpay employee 3], It was good to meet [first name of allpay director 1] and yourself last week, and I’m pleased that you want to participate in the working group initiative, I think we can make some real headway with Allpay onboard*”. This is consistent with allpay’s recollection that it had contact with the Network and became a member of the Network shortly before the Network meeting in July 2011, but it could not recall the exact date. allpay stated in its Section 26 response of 3 April 2020, that “*We can confirm that the first meeting attended by [allpay director 1] and [allpay employee 3] was July 2011 (the only meeting attended in 2011), so presumably first contact was shortly before that date*”. paragraph 7: UUID 229300001.

452 The initial meeting with APS was held at 2pm on Wednesday 20th April 2011 (APS response of 3 April 2020 to Section 26 Notice: UUID 224730003). It is clear that APS agreed to become a Network member either at the meeting or shortly thereafter as shown by [Sulion director 1]’s (Sulion) email to [APS employee 1] of APS on 27 April 2011 (copied to [Mastercard employee 2] of Mastercard) in which [Sulion director 1] states “*Hi [first name of APS employee 1], It was really good to meet you last week, and I’m pleased that you want to participate in the working group initiative, I think we can make some real headway with APS’ experience onboard*”: UUID PSR0001-95087-000355.

shows that each of PFS, allpay and APS agreed to participate in the Network shortly thereafter. These dates are consistent with a contemporaneous report drafted by [Sulion director 1] (Sulion) dated 30 June 2011, which states that by 30 June 2011 there were four PM Network members in place.⁴⁵³

- 5.26** There is corroborating witness evidence from two of the Network PMs (APS and PFS) about the timing of the establishment of the Network non-targeting arrangement:
- a. [APS employee 1] (APS) stated at interview that there was “*an unwritten, like an arrangement right the way back from the beginning*”.⁴⁵⁴ And that agreeing to the unwritten arrangement was part of being a member of the group.⁴⁵⁵ [APS employee 1] (APS) further stated that “*I don’t think there was any specific meeting about it*”.⁴⁵⁶
 - b. [PFS director 1] (PFS) stated at interview that [PFS director 1] agreed that there was a rule that existed from the start of the Network that if you’re a part of the Network, you do not poach existing council partners.⁴⁵⁷
- 5.27** As explained in Chapter 7 below, notwithstanding the evidence set out in paragraphs 5.5 to 5.26 above, the PSR has concluded, on a conservative basis, that the start date of the Network market sharing agreement was, at the latest, 2 May 2012, which is when there is specific documentary evidence of the exclusive allocation of leads as part of the market sharing conduct, as discussed in the next section (paragraphs 5.28 to 5.64).

2012–2013: The Exclusive allocation of leads arrangement

- 5.28** This section is structured as follows:
- a. The exclusive allocation of leads
 - b. The genesis and rationale of the conduct
 - c. The value to the Network PMs of the exclusive allocation of leads
 - d. Exclusive access to Public body contact details and feedback forms
 - e. The format of the Network regional events
 - f. Conclusions on the exclusive allocation of leads
 - g. The exclusive allocation of leads and the Network non-targeting arrangement

⁴⁵³ A contemporaneous document created by [Sulion director 1] (Sulion) in July 2011 titled “*Prepaid Cards in Local Government – report on phase 1 activity*” states that “*The group consists of 14 Councils and 4 Programme Managers*”. The four programme managers were allpay, APS, PFS and [Programme Manager 2]: UUID 94580502.

⁴⁵⁴ Interview of [APS employee 1] of APS on 27 September 2019, disc 2 of 5 at lines 891: UUID 238510002.

⁴⁵⁵ Interview of [APS employee 1] on 27 September 2019, disc 2 of 5 at lines 892: UUID 238510002.

⁴⁵⁶ Interview of [APS employee 1] on 27 September 2019, disc 2 of 5 at line 981: UUID 238510002.

⁴⁵⁷ Interview of [PFS director 1] on 7 November 2018, disc 3 of 3 at lines 1170 – 1176: UUID 223980003.

The exclusive allocation of leads

5.29 The PSR concludes that the investigation revealed another form of market sharing conduct that took place during the period from at least 2 May 2012⁴⁵⁸ to at least 4 February 2013.⁴⁵⁹ The PSR concludes that this involved exclusively allocating leads to each of the Network PMs. As detailed in this section, this meant that the Network PMs would each focus their commercial efforts on targeting the Public bodies that attended their own allocated event (to which they had exclusive access to the leads) with a view to winning new business from those Public bodies (and, conversely, would not target the Public bodies that attended an event allocated to one of the other Network PMs).

5.30 In an email dated 3 May 2012, titled ‘RE:’⁴⁶⁰ [Mastercard employee 3] (Mastercard) and [Sulion director 1] (Sulion) discussed a Network promotional event that took place on 2 May 2012 in Manchester for councils in the North West of England at which APS was the only PM in attendance. The PSR concludes that this email shows how both [Sulion director 1] and Mastercard decided which Network PMs should present at each of the Network regional events and that the presenting Network PM should have exclusive access to the attending Public bodies to conclude prepaid card services contracts.

- a. At 17:55, [Mastercard employee 3] (Mastercard) raised concerns about ‘diluting’ the positive feedback about Network promotional events if more than one Network PM was to attend future events. [Mastercard employee 3] added that “*Certainly the North East event is Allpays*”.
- b. At 17:59 [Sulion director 1] (Sulion) stated to [Mastercard employee 3], “*Sorry, I didn’t mean that we’d have more than one PM per event...*” and asks [Mastercard employee 3] about the leads from the North West event: “*I think they should go to APS. After all, any coming from Y&H⁴⁶¹ and NE will go to Allpay. PFS and [Programme Manager 2] will get their chance at other events*”.

5.31 On 17 May 2012 at 13:55 in an email titled ‘RE: Prepaid Cards Steering Group’, [APS employee 1] of APS emailed [Sulion director 1] (Sulion) (copying [Mastercard employee 3] of Mastercard) regarding an upcoming promotional event for London and the South East:

- a. [APS employee 1] asked: “*Which Programme Manager have you got to present at the London/SE Launch on the 11th June? I know when we previously spoke, you were looking to invite the PM with the most programmes / traction within the particular region – as you know, we now have 4 London Boroughs signed up, with a further 4 at contract stage, therefore 25% of all London Boroughs. If this opportunity is not free, please do not hesitate to contact me if you require a PM at any of the other meetings you are scheduling.*”⁴⁶²

458 This is the date that the Network promotional event took place in Manchester, see paragraph 5.30 and Table IV at 5.41 below. The PSR has not seen any evidence that the conduct started before this date.

459 This is the date on which [Sulion director 1] (Sulion) sent the feedback forms to one of the Network PMs following the West Midlands Network promotional event, see paragraph 5.40 below. The PSR has not seen any evidence that the conduct continued beyond this date.

460 UUID PSR0001-93050-005851.

461 Confirmed as Yorkshire and Humberside by [Mastercard employee 3] in [Mastercard employee 3]’s interview on 24 October 2019, disc 3 of 4 at lines 274-280: UUID 242590003.

462 UUID PSR0001-95087-000422.

- b. [Sulion director 1] (Sulion) responded to [APS employee 1] of APS (copying [Mastercard employee 3] of Mastercard) at 14:10 on 17 May 2012, stating: *"I do need to make sure all of the PM's have an opportunity to present at one of the launch events to avoid accusations of bias so I've asked PFS to present in London on the basis of their [Public body 3] and [Public body 6] work. The way the events are going I'm hoping we'll be able to do more of them in the future. They certainly seem to be popular enough and are generating some good enquiries, talking of which I'll have the Manchester response forms to you next week"*.⁴⁶³
- c. The email exchange referred to directly above, between [Sulion director 1] (Sulion) and [APS employee 1] (APS) (copying Mastercard), shows APS explaining why they would qualify to present at the event, given their understanding of the criteria. It also clarifies that the decision to allocate a particular Network PM to a particular Network event was based on which supplier had the greatest existing presence in a region⁴⁶⁴ and/or ensuring that each Network PM had an opportunity to present at the events.⁴⁶⁵ The PSR does not consider that either of these objectives explains why leads arising from these events were exclusively allocated to one Network PM.
- d. This email of 17 May 2012 shows that APS attached commercial value to attending the Network events (and, as is clear from the email referred to below in paragraph 5.32, the exclusive access to the leads that this gave it). It also shows APS's interest in marketing to new customers. As APS did not get to attend the London and South-East event, it was prevented from marketing its services to potential new customers at this event and that it had a commercial interest in pursuing.

5.32 The email of 7 June 2012⁴⁶⁶ relates to an upcoming promotional event for London and the South East, titled *'RE: Presentation for 11th June'*. The email is between [Mastercard employee 3] of Mastercard and [PFS director 2] of PFS (copying [PFS director 1] (PFS) and [Sulion director 1] (Sulion)).⁴⁶⁷ The email states that the attending Network PM (PFS in this case) would have *"exclusivity on the attendees as leads"* and that the other Network PMs would have exclusivity on leads at other Network events. The email also shows that PFS knew which of the PMs was attending which regional events and therefore which Network PM would have exclusive access to which Public bodies as leads. Paragraphs b), 5.31c) and 5.37d) show that the other Network PMs were similarly aware of which of the PMs was attending which regional event.⁴⁶⁸

- a. [Mastercard employee 3] of Mastercard stated to PFS, *"You will have the opportunity to do a sales pitch with each of the councils as PFS have exclusivity on the attendees as leads. APS had the crack on the NW councils and AllPay will have the crack on the NE councils."*

463 UUID PSR0001-95087-000422.

464 [APS employee 1] asks *"Which Programme Manager have you got to present at the London/SE Launch on the 11th June? I know when we previously spoke, you were looking to invite the PM with the most programmes / traction within the particular region"*: UUID PSR0001-95087-000422.

465 [Sulion director 1] states *"I do need to make sure all of the PM's have an opportunity to present at one of the launch events to avoid accusations of bias"*: UUID PSR0001-95087-000422.

466 UUID PSR0001-93050-005731.

467 UUID PSR0001-93050-005731.

468 See paragraph 5.31 below regarding APS' awareness of which of the PMs was attending which regional events and paragraph 5.37 regarding allpay's awareness.

b. Regarding this email:

- [PFS director 2] of PFS explained at interview that *“they carve this up, APS gets a chance to go and demo ... in the Northwest, that’s probably why it gets [Public body 39] in Lancashire and the other ones, so it really actually had a lot of value. Allpay gets the northeast one”. “... it meant ... we had an opportunity to be the only prepaid entity in the room.”*⁴⁶⁹ *So it’s great for us, this issue of leads”*.⁴⁷⁰
 - [Mastercard employee 3] (Mastercard) stated at interview that *“as a result of the regional road show, that if any local authorities requested one-to-ones to further understand what prepaid product was, that PFS would be provided those leads”*⁴⁷¹, and further that *“APS would be provided any leads from the North West council meetings and allpay would be provided any leads from the North East Councils regional road show”*.⁴⁷²
- c. At 17:52 on 11 June 2012, after the London and South-East event had taken place, [Mastercard employee 3] of Mastercard emailed [PFS director 1] (PFS) and [PFS director 2] (PFS) stating *“Thanks again for your support on the London event to promote the guidance. As agreed, [first name of Sulion director 1] will pass on the contact details and feedback forms from delegates for PFS to follow up on for leads”*.⁴⁷³
- d. At 18:14 on 11 June 2012, [PFS director 1] of PFS responded to [Mastercard employee 3] (Mastercard), copying [PFS director 2] (PFS), indicating that PFS would be offering the Public bodies a free pilot: *“Thanks for the opportunity [first name of Mastercard employee 3]. Yes if we could get the contact details that would be great as we would like to send them the presentation and offer them a free pilot option if they wish. We would like to get one or two on board if possible.”*⁴⁷⁴
- e. On 14 June 2012 at 16:03, in an email titled ‘Monday’s Event’, [Sulion director 1] (Sulion) sent 11 feedback forms and the final delegates list from the event to [PFS director 1] and [PFS director 2] of PFS (copying [Mastercard employee 3] of Mastercard), stating: *“I’d be grateful if you would only make direct contact with those who have asked for further discussions in their response to the final question, I’ll pick up those who have expressed interest in the work of the Steering Group. I’ll also pass on any further emails I receive asking for further help”*.⁴⁷⁵ These details were not passed on to any of the other Network PMs.
- f. On 14 June 2012, [Sulion director 1] also emailed the Public bodies that attended the London and South East event (titled ‘Prepaid Card Event’), stating that it would be PFS that would be contacting them regarding any follow up: *“PFS will directly contact those who asked for a further discussion but please don’t hesitate to email me if you need any additional help or have any questions”*.⁴⁷⁶ [Sulion director 1] did not make reference in

469 Interview of [PFS director 2] on 9 November 2018, disc 2 of 3, at lines 2029-2036: UUID 238180002.

470 Interview of [PFS director 2] on 9 November 2018, disc 2 of 3, at lines 2041-2042: UUID 238180002.

471 Interview of [Mastercard employee 3] on 24 October 2019, disc 3 of 4 at lines 528-530: UUID 242590003.

472 Interview of [Mastercard employee 3] on 24 October 2019, disc 3 of 4 at lines 542-544: UUID 242590003.

473 Email titled ‘London Event’: UUID PSR0001-93051-001824.

474 UUID PSR0001-93051-001821.

475 UUID PSR0001-95290-004067.

476 UUID PSR0001-93051-002567

[Sulion director 1]'s emails to the availability of any of the other Network PMs who may be able to provide a competing service.

- g. Out of the attending Public bodies, there were 11 Feedback forms.⁴⁷⁷ Six councils asked to be contacted by the PM (PFS) to discuss further the use of prepaid cards – [Public body 3], [Public body 8], [Public body 7], [Public body 4], [Public body 10] and [Public body 5]. After directly approaching the councils, PFS secured contracts with [Public body 8] and [Public body 10]. PFS also won the [Public body 8] retender.⁴⁷⁸

5.33 In a further email dated 7 June 2012 at 15:26, titled '*RE: Presentation for 11th June (market sizing help needed)*'⁴⁷⁹, [Mastercard employee 3] (Mastercard) asks [PFS director 1] and [PFS director 2] of PFS for a favour in return for the leads being lined up at the London and South East event. [Mastercard employee 3] (Mastercard) states:

"Hi [first name of PFS director 1]/[first name of PFS director 2], ... Need a favour please in return for the council leads being lined up next week if I may. ... I am working to secure more funding to keep the steering groups and road shows going for the rest of this year and into 2013+. I need some ballpark numbers from each of the PM's on the steering group as to the number of Mastercard cards in the field for public sector and annual load value".

5.34 Further Network promotional events were held: (i) in Wakefield on 21 June 2012 for Yorkshire and Humberside Public bodies to attend, and (ii) in Newcastle on 12 July 2012 for North East councils to attend. allpay ([allpay employee 3], referred to as '[allpay employee 3]') was the sole Network PM at each event and allpay had exclusive access to the leads from these events. A similar process to that followed with PFS's allocated event of 7 June 2012 was adopted with allpay for the Manchester and South East events: the feedback forms with the contacts of leads were passed on by [Sulion director 1] to the presenting PM (allpay) and Mastercard. These feedback forms (or the attendee lists) were not passed on to any other Network PM.

- a. On 22 June 2012, [Sulion director 1] (Sulion) sent the 14 feedback forms from the Yorkshire and Humberside/Wakefield event to [allpay employee 3] at allpay, [Mastercard employee 3] of Mastercard, and other third parties that had attended the event.⁴⁸⁰ These were sent in an email titled '*Feedback from yesterday's workshop*' stating "*As you'll see there are plenty of people asking in the final box for further contact to discuss their requirements. I'll leave those to you and just pick up those asking for more information about the Steering Group*".⁴⁸¹

477 UUIDs PSR0001-95290-004069, PSR0001-95290-004070, PSR0001-95290-004071, PSR0001-95290-004072, PSR0001-95290-004073, PSR0001-95290-004074, PSR0001-95290-004075, PSR0001-95290-004076, PSR0001-95290-004077, PSR0001-95290-004078, PSR0001-95290-004079

478 Annex 007 to PFS response to PSR request for information of 3 April 2018: UUID 85070009.

479 UUID PSR0001-93051-001834.

480 The other recipients were [Individual]; [Individual] of NEPO; [Individual].

481 UUIDs PSR0001-93050-005658 and the 14 attached feedback forms – PSR0001-93050-005659, PSR0001-93050-005660, PSR0001-93050-005661, PSR0001-93050-005662, PSR0001-93050-005663, PSR0001-93050-005664, PSR0001-93050-005665, PSR0001-93050-005666, PSR0001-93050-005667, PSR0001-93050-005668, PSR0001-93050-005669, PSR0001-93050-005670, PSR0001-93050-005671, PSR0001-93050-005672.

- b. Regarding the Yorkshire and Humberside/Wakefield event, five Public bodies indicated in the feedback form that they would like to be contacted by the Network PM (allpay) to discuss prepaid cards: [Public body 29], [Public body 30], [Public body 31], [Public body 32] and [Public body 33].
- c. On 16 July 2012 at 11:06, [Sulion director 1] sent the 15 feedback forms from the North East/Newcastle event to [allpay employee 3] at allpay and [Individual] at NEPO (copying [Mastercard employee 3] at Mastercard) in an email titled '*Feedback forms from North East Prepaid event*'⁴⁸², stating "*Here are the feedback forms as promised, they look very promising*".
- d. Regarding the North East event in [Public body 12], five Councils said in the feedback form that they would like to be contacted by the PM (allpay) – [Public body 12], [Public body 13], [Public body 17], [Public body 24] and [Public body 16]. Two councils were already in discussions with allpay at the time of the event and three were new leads.⁴⁸³

5.35 The exclusive disclosure to the Network PM presenting at the promotional events of the list of attendees (and potential new customers) was discussed in an email between Sulion and APS. In an email of 2 July 2012 [Sulion director 1] (Sulion) confirmed to APS that the delegate list for the Network promotional events had only ever been made available "*to the PM who came along on the day*".⁴⁸⁴ When one of the Network PMs, [APS employee 1] of APS, asked for a copy of the delegate list for events that another Network PM had attended, [Sulion director 1] (Sulion) (copy [Mastercard employee 3] at Mastercard) stated "*I'm afraid you'll have to take up the availability of the attendees lists with [first name of Mastercard employee 3] [Mastercard employee 3] of Mastercard, you're not the first PM to ask*".⁴⁸⁵ The reason stated by [APS employee 1] (APS) for asking for the delegate list was to avoid duplicating effort with other prepaid cards events promoted outside the Network.⁴⁸⁶ The clarification in the email about who gets the list of attendees shows that APS understood the nature of the arrangement within the Network – that is, that only the attending PM would get the list of attendees so they could follow up leads.

- a. [Sulion director 1] informed [APS employee 1] (APS) about the other events that had been and were due to be held and which Network PM had and would present. "*We held an event in Wakefield on 21st June and there'll be one in Newcastle on 12th July. Both of those have been held in conjunction with NEPO so Allpay is covering them. It's looking likely that we'll do further events in the autumn in the South East, East and West Midlands regions and*

482 UUIDs PSR0001-93050-005621 and 15 attached feedback forms, PSR0001-93050-005622, PSR0001-93050-005623, PSR0001-93050-005622, PSR0001-93050-005623, PSR0001-93050-005624, PSR0001-93050-005625, PSR0001-93050-005626, PSR0001-93050-005627, PSR0001-93050-005628, PSR0001-93050-005629, PSR0001-93050-005630, PSR0001-93050-005631, PSR0001-93050-005632, PSR0001-93050-005633, PSR0001-93050-005634, PSR0001-93050-005635, PSR0001-93050-005636.

483 By February 2013, allpay had entered into contracts with 4 of these councils – [Public body 13], [Public body 17], [Public body 12] and [Public body 16]. See the spreadsheet created by [Mastercard employee 5] (Mastercard) in February 2013 which shows the Councils grouped by region: UUID PSR0001-93050-002982.

484 Email from [Sulion director 1] to [APS employee 1] of APS and [Mastercard employee 3] of Mastercard, titled 'RE: National Prepaid Cards Steering Group Meeting': UUID PSR0001-93050-003223.

485 UUID PSR0001-93050-003223.

486 "*Outside of the Manchester & London events, where were the other 2 events, which Council's attended and which Programme Manager's presented – the reason I ask on the attendees is that the [Company H] are looking to put together some more prepaid events over the next few months and I don't necessarily want to duplicate effort.*". UUID PSR0001-93050-003223.

*I was thinking that, having covered the North West event, you might be interested in the South East one”.*⁴⁸⁷

5.36 On 17 September 2012 at 12:25, there was an email titled ‘*South East Prepaid event*’, from [Sulion director 1] of Sulion to [allpay employee 3] at allpay (copying [allpay director 1] of allpay (referred to as ‘[allpay director 1]’)) and [Mastercard employee 3] (Mastercard). As detailed in paragraph 3.111a), allpay was the only supplier approved under the NEPO framework at this time. The email exchange shows that Mastercard and [Sulion director 1] (Sulion) both decided which Network PMs were to attend which events. Further, the statement at (b) below, shows that Network PMs were not always happy about not getting allocated to attend a particular event (and thereby not getting exclusive access to the leads).

- a. [Sulion director 1] (Sulion) emailed [allpay employee 3] of allpay and [Mastercard employee 3] (Mastercard), stating “*We’re looking to hold a launch event for the South East region at Mastercard’s offices on the morning of 5th November.*⁴⁸⁸ *They’re keen to link into the NEPO contract so would you be available to fulfil the Programme Manager slot?*”⁴⁸⁹
- b. At 14:04, there was a follow-on email exchange,⁴⁹⁰ between [Mastercard employee 3] of Mastercard and [Sulion director 1] (Sulion) only. [Mastercard employee 3] (Mastercard) stated that [Sulion director 1]’s proposal that allpay take the PM slot at the South East regional event “*Might be controversial with APS as [first name of APS employee 1] was not happy about PFS getting the London one when they would say that they have a larger number of London councils on their books*”.
- c. [Sulion director 1] (Sulion) responded to [Mastercard employee 3] at 3.26pm stating “*I’d planned to offer [first name of APS employee 1] the London one I’m trying to put together with London Councils. We’ll come up with something*”.

5.37 Between 6 December 2012 and 25 January 2013 there was an email chain titled ‘*RE: Prepaid Cards Steering Group – [Public body 52] Presentation*’⁴⁹¹ regarding Network guidance document launch events to be held in various locations in January 2013.⁴⁹² This also shows Mastercard and [Sulion director 1] (Sulion) deciding which Network PMs were to attend which events.

- a. allpay ([allpay director 1]) expressed an interest to [Sulion director 1] (Sulion) in attending the Network promotional event to be held in Birmingham on 31 January 2013.⁴⁹³
- b. [Sulion director 1] (Sulion) then emailed [Mastercard employee 3] and [Mastercard employee 5] at Mastercard on 21 January 2013 at 10:26, stating “*Hmmm....I chose not to reply to this on Friday. As you know I already have APS lined up for the 31st but before I tell [first name of allpay director 1] [[allpay director 1] of allpay] that can you let me know*

487 Email from [Sulion director 1] (Sulion) to [APS employee 1] of APS and [Mastercard employee 3] of Mastercard, titled ‘RE: National Prepaid Cards Steering Group Meeting’: UUID PSR0001-93050-003223.

488 The proposed South East event to be held on 5 November 2012 was postponed until 23 January 2013. allpay had agreed to take the presenting slot in November 2012 but could not attend. PFS ended up taking the slot at the rescheduled South East event which was held on 23 January 2013.

489 UUID 101210601.

490 UUID PSR0001-93050-003133.

491 UUID 101210711.

492 In Cambridge on 16th, London on 23rd January 2013 and Birmingham on 31st January 2013.

493 [allpay director 1] (allpay) asked [Sulion director 1] (Sulion) – “*I was wondering if you had finalised arrangements for 31st and whether there would be an opportunity to attend?*”: UUID 101210711.

what line you want me to take generally with Allpay? I could stall by saying that we're having to reorganise the Cambridge event and that they can have that one. I don't want to inadvertently tread all over your delicate situation."⁴⁹⁴

- c. [Mastercard employee 5] of Mastercard responded to [Sulion director 1] (Sulion) and [Mastercard employee 3] (copying [Mastercard employee 1]) on 21 January at 10:26, stating *"Till the situation is sorted out re NEPO⁴⁹⁵, then my steer would be to stall Allpay from any further council activity funded by MasterCard. Clearly, the 31st is allocated to APS so we can be clear to Allpay on that ... and I like your steer re the Cambridge event. [first name of Mastercard employee 3] – are you comfortable with that?"*⁴⁹⁶
- d. On 25 January 2013 at 12:59 [Sulion director 1] emailed [allpay director 1] at allpay, stating *"Sorry for the delay in replying, it's been a busy week! ... APS is covering the Birmingham event next week but I have your name pencilled in for an event for the East of England authorities in March. Once we have a date finalised I'll get back to you."*⁴⁹⁷
- e. On 26 January 2013, [allpay director 1] (allpay) responded to [Sulion director 1] (Sulion) stating, *"Thanks for the response. I look forward to hearing about the details of the East Of England event. I hope the others go well"*⁴⁹⁸
- f. [Sulion director 1] (Sulion) then forwarded the email chain to [Mastercard employee 3] and [Mastercard employee 5] at Mastercard⁴⁹⁹ for information.

5.38

Another Network promotional event was held on 23 January 2013 in London for South East authorities to attend. PFS was again offered the PM slot to the exclusion of other PMs. This is set out in an email from [Sulion director 1] (Sulion) to [PFS director 1] and [PFS director 2] of PFS dated 21 December 2012 with title 'South East event'.⁵⁰⁰

- a. [Sulion director 1] (Sulion) stated at 12:07, *"As you'll be aware we're running an event for the South-East authorities at Mastercard's offices on the morning of 23rd January. Would you like to do the programme managers slot, as you did at the London event? We've got around 20 delegates to date..."*.
- b. [PFS director 1] of PFS responded at 12:18, that *"We would welcome the opportunity do that."*
- c. In the same email chain, [PFS director 1] of PFS responded to [Sulion director 1] (Sulion) and [PFS director 2] on 7 January 2013 at 18.05 with an email to [Sulion director 1] (Sulion) (copying [Mastercard employee 3] of Mastercard), stating that it will probably be [PFS director 1] and [PFS director 2] that will attend and asking [Sulion director 1] (Sulion)

494 UUID PSR0001-93050-003020: the 'delicate situation' referred to is understood to relate to the concerns that allpay were having problems implementing its prepaid card services contracts, including contracts under the first NEPO framework. This issue led to allpay leaving the Network in November 2013 – see paragraphs 4.58 onwards (above).

495 See UUID PSR0001-95087-000632 email of 19 July 2013 from [APS employee 1] (APS) where [APS employee 1] reports that NEPO are currently reviewing the existing Framework with allpay and may be looking to retender. Councils had problems going live using the allpay platform.

496 UUID PSR0001-93050-003020.

497 UUID 101210586.

498 UUID 101210586.

499 At 12:59, UUID PSR0001-93050-005357.

500 UUID PSR0001-93051-002527.

“Do you know who will be attending at present and more importantly do we know from the attendees which ones are already signed up for a prepaid solution with a provider and which ones are not”.

- d. [Sulion director 1] (Sulion) replied at 16:18 on 8 January 2013 that *“We don’t get to know in advance whether or not they already have schemes and I try to get that information during the introductions. Experience tells us that a majority won’t have anything in place but are thinking about it.”*

5.39 On 25 January 2013, the day after the South East Network promotional event, in an email titled ‘RE: Feedback forms from Wednesday’, [Sulion director 1] (Sulion) sent scanned copies of the feedback forms from the attending Public bodies to Mastercard ([Mastercard employee 5] and [Mastercard employee 3]) and PFS ([PFS director 2] and [PFS director 1]).⁵⁰¹

- a. Six councils – [Public body 37], [Public body 42], [Public body 48], [Public body 47] and [Public body 44] – each indicated in the feedback forms that they would like to be contacted by the PM to discuss prepaid cards in more detail.⁵⁰²
- b. On 27 January 2013 at 19:42, as part of the same email chain, [Mastercard employee 5] of Mastercard emailed [PFS director 2] and [PFS director 1] of PFS, as well as [Sulion director 1] (Sulion) and [Mastercard employee 3] of Mastercard, asking *“[first name of PFS director 2]/[first name of PFS director 1] – please can you let me know how/if we can help in following any of these leads up with you ... whether that be attending sessions in person or calling them direct ...”*.⁵⁰³
- c. On 5 February 2013 at 16:45, [Mastercard employee 5] of Mastercard emailed [PFS director 2] of PFS stating:

*“Hey [first name of PFS director 2], Hope all’s well ... as you’re probably rushed off your feet at the moment with France, DB and other activity ... is there any help I can give to follow up on any of the leads from the roadshow on the 23rd Jan? I know the following councils asked for follow up: [Public body 43], [Public body 44], [Public body 37], And potentially [Public body 47]... I can provide help with contacting them, booking some time in or just coming along with you/one of your colleagues. Let me know. Attached is the spreadsheet of attendees (and non attendees on another sheet) with their feedback form summaries and whether they asked for follow ups or not.”*⁵⁰⁴

- d. Later, as part of the same email chain, [PFS director 2] responded to [Mastercard employee 5] on 6 February 2013 at 11:11, giving feedback on the Public bodies that had expressed an interest in prepaid cards at the South-East event. [PFS director 2] advised that

501 UUIDs PSR0001-93051-002507 and 11 feedback forms – PSR0001-95290-006472, PSR0001-95290-006473, PSR0001-95290-006474, PSR0001-95290-006475, PSR0001-95290-006476, PSR0001-95290-006477, PSR0001-95290-006478, PSR0001-95290-006479, PSR0001-95290-006480, PSR0001-95290-006481, PSR0001-95290-006482, PSR0001-95290-006483.

502 Of these councils, PFS secured the prepaid card services contract with 4 – [Public body 42] (Tender submitted 12/12/2013, UUID 85070009), [Public body 48] (Tender submitted 9/06/14, UUID 85070009), [Public body 47] (Tender submitted 14/11/14, UUID 85070009 and the [Public body 44] (Tender submitted 10/12/2013, UUID 85070009). PFS then also secured [Public body 44] after approaching them directly on the back of their contract with [Public body 44] (UUID 85070009 (awarded contract 29/04/15)). See Annex 007 to PFS response to PSR request for information of 3 April 2018: UUID 85070009.

503 UUID PSR0001-95290-003575

504 UUID PSR0001-95290-003575

"[Public body 43] looked very good, I will follow up and copy you if that is ok? [Public body 37], have swapped a few emails, trying to get down to see them in Feb, waiting on their comeback. Would you fancy an away day in [3x]? I dropped a mail to [Public body 47] prior to the meeting, let me dig out and forward to you. I'd like to try and get them up on a pilot a least. Will follow up and copy you."

- e. On 6 February 2013 at 13:30, [Mastercard employee 5] of Mastercard emailed [PFS director 2] at PFS, titled 'RE: Feedback forms from Wednesday' stating that *"In the short term, you and APS have a run at all future steering committee/workshops as AllPay won't be participating for a while. I'll explain why in person"*.⁵⁰⁵

5.40 The next Network promotional event was held in Birmingham for councils in the West Midlands on 31 January 2013. This was the last Network promotional event where one Network PM was allocated to attend and had exclusive access to Public bodies as leads. APS attended as the sole PM. As with the previous events, [Sulion director 1] emailed APS and Mastercard after the event and forwarded copies of the feedback forms.

- a. [Sulion director 1] sent an email on 4 February 2013, to [APS employee 1] of APS copied to [Mastercard employee 5] of Mastercard, titled 'Birmingham Feedback'⁵⁰⁶, stating, *"Thanks again for helping to make Thursday's event a success. Here are the feedback forms and the delegates list as promised."*
- b. [APS employee 1] of APS responded on 4 February 2013 at 17:28 stating, *"First of all, many thanks for organising this event last Thursday, I thought it was very positive and an excellent opportunity for MasterCard and APS to get in front of Councils in the West Midlands area. I will be contacting all the people that would like further details over the next day or so – all organisations and councils that attended bar [Public body 58] had at least one person who would like more detail!"*⁵⁰⁷

5.41 Overall, as detailed above and summarised in Table IV below, there were at least six Network promotional events during the period in which this arrangement was in place:

⁵⁰⁵ UUID PSR0001-95290-003575. The PSR's investigation shows that the reference to allpay not *"participating"* in future *"steering committee/workshops"* was connected to allpay leaving the Network, which allpay ultimately did in November 2013 (see paragraphs 4.103 to 4.105 above). The PSR's investigation indicates that allpay did not attend any Network meetings after this date (6 February 2013) until it re-joined the Network in March 2016 – see Annex D of this Decision. Similarly, the PSR's investigation indicates that allpay did not attend other Network events after the event on 25 April 2013 (an event that all the Network PMs attended) until after allpay re-joined the Network in March 2016 – see Annex E to this Decision.

⁵⁰⁶ UUIDs PSR0001-93050-005315 and 25 feedback forms attached – PSR0001-93050-005316, PSR0001-93050-005317, PSR0001-93050-005318, PSR0001-93050-005319, PSR0001-93050-005320, PSR0001-93050-005321, PSR0001-93050-005322, PSR0001-93050-005323, PSR0001-93050-005324, PSR0001-93050-005325, PSR0001-93050-005326, PSR0001-93050-005327, PSR0001-93050-005328, PSR0001-93050-005329, PSR0001-93050-005330, PSR0001-93050-005331, PSR0001-93050-005332, PSR0001-93050-005333, PSR0001-93050-005334, PSR0001-93050-005335, PSR0001-93050-005336, PSR0001-93050-005337, PSR0001-93050-005338, PSR0001-93050-005339.

⁵⁰⁷ UUID PSR0001-93050-003008

Table IV: Network promotional events

Date of event	Network promotional event	Location where event was held	Programme Manager attending	Feedback forms sent to attending PM?
2 May 2012	North West of England	Manchester	APS	Yes
11 June 2012	London and the South East	London Mastercard's offices	PFS	Yes
21 June 2012	Yorkshire and Humberside	Wakefield	allpay	Yes
12 July 2012	North East England	Newcastle	allpay	Yes
5 November 2012	South East	London	Postponed to 23 January	N/A
23 January 2013	South East	London	PFS	Yes
31 January 2013	West Midlands	Birmingham	APS	Yes

The genesis and rationale of the conduct

5.42 [Mastercard employee 3] (Mastercard) stated at interview that:

- a. the Network regional promotional events were held with the purpose of having an early stage discussion with the Public bodies in that region about the operation and benefits of prepaid cards.⁵⁰⁸
- b. One of the Network PMs would attend to talk about their service offering and solutions⁵⁰⁹ along with [Sulion director 1] (Sulion) and Mastercard.
- c. *"the PMs who had presented on the day ... would get those particular leads"*⁵¹⁰.
- d. there had been *"a discussion"* prior to the Network-run regional promotional events taking place (the first event took place on 2 May 2012⁵¹¹) and that this discussion took place between [Mastercard employee 3], [Sulion director 1] (Sulion) and the PMs (that is, allpay, PFS, [Programme Manager 2] and APS). The discussion was along the lines of *"You guys are doing four events. Four of you, four events. Each of you gets the lead. Everyone happy"*

508 Interview of [Mastercard employee 3] on 29 October 2019, disc 3 of 4 at lines 347-352: UUID 242590003.

509 Interview of [Mastercard employee 3] on 29 October 2019, disc 3 of 4 at line 62: UUID 242590003.

510 Interview of [Mastercard employee 3] on 29 October 2019, disc 3 of 4 at line 295-296: UUID 242590003.

511 See Table IV at paragraph 5.41 above.

*with that?’ ‘Yes’.*⁵¹² Further, that “we would provide... [an] equal opportunity for each of the four PMs within the Network.”⁵¹³

- e. the arrangement was really just “*making best use of the sales resources available between the programme managers*” so that the Network PMs would “*focus their time and effort on new business, new business development*”.⁵¹⁴

5.43 The PSR considers that this conduct made sense in the early days of the Network, when there were relatively few Public bodies seeking prepaid card services contracts. Indeed in 2011 (the year before the conduct started) each of the Network PMs had only a handful of contracts in place⁵¹⁵ and Mastercard stated that the use of prepaid cards by Public bodies was not widespread.⁵¹⁶

5.44 In practice, as set out in Table IV in paragraph 5.41 above, after [Programme Manager 2] left the Network in May 2012⁵¹⁷ six Network promotional events took place that were split equally between APS, PFS and allpay (two each). Each of the Network PMs knew which regional event to attend and that other Network PMs would be attending certain other events, as communicated by Mastercard and Sulion.⁵¹⁸ The informal arrangement lasted from at least 2 May 2012⁵¹⁹ to at least 4 February 2013.⁵²⁰ This is consistent with [Sulion director 1]’s

512 Interview of [Mastercard employee 3] on 29 October 2019, disc 3 of 4, at lines 697 – 700. [Mastercard employee 3] stated that the discussion was along the lines of ‘*You guys are doing four events. Four of you, four events. Each of you gets the lead. Everyone happy with that?*’ ‘Yes’: UUID 242590003.

513 Interview of [Mastercard employee 3] on 29 October 2019, disc 3 of 4 at line 77 – 79: UUID 242590003.

514 Interview of [Mastercard employee 3] on 29 October 2019 disc 3 of 4 at lines 592-593: UUID 242590003.

515 APS already had a prepaid card local authority customer when they joined the Network in April 2011 (APS secured [Public body 38] as a prepaid customer on 28/3/2011 – APS’ response to Section 26 Notice of 11 April 2018, UUID 85040022) and gained a further 3 local authority customers that year (APS secured [Public body 9] as a customer on 01/06/2011- APS response to Section 26 Notice of 11 April 2018, 85040022. APS secured another 2 councils in 2011 ([Public body 21] and [Public body 46])). See email from [Mastercard employee 3] of 25 June 2012 at 9:04 to [Individual] at [Company F]: UUID PSR0001-93050-005641.

PFS already had a prepaid local authority customer before joining the Network in May 2011 and gained a further two that year. (PFS secured [Public body 3] as a customer in ‘mid 2010, [Public body 2] by January 2011 and [Public body 3] in September 2011. Annex 7 to PFS’ response to RFI dated 3 April 2018, being an Excel spreadsheet of actual and potential PFS customers: UUID 85070009 and PFS response of 10 April 2020 to PSR Section 26 Notice Q. 8.2: UUID 225160012.

allpay had 4 prepaid card public sector customers as at 31 January 2011, before it joined the Network: allpay response of 15 April 2020 to PSR’s Section 26 Notice of 25 March 2020, answer to Q8, 229300001.

516 See paragraph 4.3 above.

517 See paragraph 4.44 above.

518 There are various emails including either or both of Mastercard and [Sulion director 1] (Sulion) and one of the Network PMs discussing which Network PM will attend which event, for example, the email of 7 June 2012 (UUID PSR0001-93050-005731) which informs PFS of the events that APS and allpay will be attending, the email of 17 May 2012 (UUID PSR0001-95087-000867) where APS asks which PM will be attending the next London event and [Sulion director 1] states that “*I’ve asked PFS to present in London on the basis of their [Public body 3] and [Public body 6] work*”, and email of 25 January 2013 (UUID 101210711) where [Sulion director 1] (Sulion) informs allpay that “*APS is covering the Birmingham event next week*”.

519 This is the date that the Network promotional event took place in Manchester, see paragraph 5.30 and Table IV at paragraph 5.41 above. The PSR has not seen any evidence that the conduct started before this date.

520 This is the date on which [Sulion director 1] sent the feedback forms to one of the Network PMs following the West Midlands Network promotional event, see paragraph 5.40 above. The PSR has not seen any evidence that the conduct continued beyond this date.

(Sulion) interview evidence where Sulion director 1] stated that PMs having ‘exclusivity’ at Network-run promotional events happened only in the early days of the Network.⁵²¹

- 5.45** The approach taken by the Parties in both the Network non-targeting arrangement and the Exclusive allocation of leads arrangement appears to have been similar (as discussed in this section (Chapter 5, Section B)). In relation to existing customers, it was accepted by the Network PMs, Mastercard and [Sulion director 1] (Sulion) that they should not “*do that thing where we’re all just going after the same person to talk about one thing. Let’s make this a nice joined up network approach rather than anything else*”.⁵²² Also, in relation to resources and expanding the Mastercard brand, that “*it seemed a bit counterproductive to go after someone else’s customers when you had so many people who weren’t using the card.*”⁵²³

The value to the Network PMs of the exclusive allocation of leads

- 5.46** Although, the availability of the other PMs was briefly mentioned to Public bodies during the presentation⁵²⁴ at the event (that is, by naming the four PMs in the Network at that time⁵²⁵), as set out from paragraph 5.32 above onwards, if a particular Public body said that they would like a follow up conversation or expressed an interest in prepaid cards, that prospect or lead would go exclusively to the PM that attended on the day.⁵²⁶ No mention was made by [Sulion director 1] (Sulion) at this point of there being alternative Network PMs, their contact details or the services they offered. Further, Mastercard would offer to assist the allocated PM in the follow-up activity with the Public body.⁵²⁷
- 5.47** Attending the Network meetings gave Public bodies the opportunity to explore the product that was available and to meet one or more PMs, dependent upon actual attendance by the PMs. As noted in paragraphs 3.101 onwards⁵²⁸, Public bodies that wanted to purchase prepaid card services following the events did not always need to issue a formal tender, and could in some circumstances contract directly with the PMs that approached them.
- 5.48** The Network PMs attached value to securing access to the attendees as leads. In particular:
- a. According to [PFS director 2] of PFS, at interview, this arrangement “*really actually had a lot of value*”.⁵²⁹

521 Interview of [Sulion director 1] on 8 July 2019, disc 2, 1 of 2, at 1470-1479: UUID 238520003, “*So we decided that it would be better to just have one of the Programme Managers...at each one. But to share it so they each went to one*”.

522 Interview of [PFS employee 1] on 6 August 2019, disc 2 of 4 at lines 212-214: UUID 238550002.

523 Interview of [Sulion director 1] on 8 July 2019; disc 2 – 1 of 2, at line 189-191: UUID 238520003.

524 Interview of [Mastercard employee 3] on 29 October 2019, disc 3 of 4 at lines 506-508: UUID 242590003 – “[*first name of Sulion director 1*] would have referenced in this meeting, as [*Sulion director 1*] had done in the other one, ‘Okay, we’ve got PFS here but there are other suppliers – APS, [*Programme Manager 2*], allpay’”.

525 [Sulion director 1] Presentation slides ‘Prepaid cards – Improve services: Reduce cost’ referred to there being 4 Programme Managers in the Network – allpay, APS, [*Programme Manager 2*] and PFS: UUID PSR0001-93050-005850

526 See for example paragraph 5.32f.

527 See paragraph 5.39 above.

528 See Chapter 3.C on the Purchasing of Prepaid Card Services by public bodies – in particular, that free or small pilot programmes and low value contracts would not require a formal tender. It was also possible to make a draw down under the NEPO1 Framework Agreement, which was in operation at this time.

529 Interview of [PFS director 2] on 9 November 2018, 2 of 3, at line 2032: UUID 238180003.

5.49 Network PMs were not always happy about not getting allocated to attend a particular event (and thereby not getting access to the leads). The PSR considers that this was a restriction on their ability to compete for customers they would have liked to service. [Mastercard employee 3] (Mastercard) stated in the email on 17 September 2012⁵³⁰ (paragraph 5.36 above) that [Sulion director 1]'s proposal that allpay take the PM slot at the South East regional event on 5 November 2012 *"Might be controversial with APS as [first name of APS employee 1] was not happy about PFS getting the London one when they would say that they have a larger number of London councils on their books"*.

- a. Network PMs expressed their keen interest to attend any of the promotional events that were being scheduled. As referred to in paragraph 5.31 above, in an email of 17 May 2012⁵³¹ [APS employee 1] of APS emailed [Sulion director 1] (Sulion) (copying [Mastercard employee 3] of Mastercard) enquiring which Network PM was to present at the *"London/SE Launch on the 11th June?"* and stating that APS had *"4 London Boroughs signed up, with a further 4 at contract stage, therefore 25% of all London Boroughs"* and that if *"this opportunity is not free, please do not hesitate to contact me if you require a PM at any of the other meetings you are scheduling."* This shows that APS was keen (and well placed) to market its services to potential new customers that they would have had an interest in pursuing. As this slot went to PFS, APS was prevented from marketing its services in this way. Similarly, allpay expressed an interest to Sulion in attending the Network promotional event to be held in Birmingham on 31 January 2013⁵³², but this slot was allocated to another Network PM.

5.50 In relation to exclusive access to the leads, PFS stated that as the only PM with access to the leads arising from the events which it had attended on an exclusive basis, PFS would have pursued these leads aggressively in an attempt to convert them into opportunities, typically by offering a pilot in the first instance.⁵³³

Exclusive access to Public body contact details and feedback forms

5.51 One way to ensure that the PMs presenting at the Network regional events were given exclusive access to the Public bodies in attendance was by controlling who would get the attendee/delegate/contact list. Although the exact name of the list sometimes varied, these lists would detail the names and contact details of the Public body representatives that either were scheduled to attend and/or did attend on the day. It is clear from contemporaneous documents and corroborating witness evidence,⁵³⁴ that it was understood by the Parties that the attending Network PM would be the only PM that would receive the attendee/delegate/contact list, despite other Network PMs seeking to get access to them:

- a. For example, [Sulion director 1] (Sulion) confirmed in an email to APS of 2 July 2012 (referred to above in paragraph 5.35) that the delegate list for these events was only ever made available

530 UUID PSR0001-93050-003133

531 UUID PSR0001-93050-003284

532 See paragraph 5.37 above.

533 Paragraph 5.32, PFS Further Supplement to the Leniency Application submitted to the PSR on 13 April 2018, dated 12 June 2020: UUID 243590007.

534 Interview of [PFS director 2] on 9 November 2018, disc 2 of 3, at lines 2042-2045--: UUID 238180002 *"It just means that we know who's in the room, but they are not going to share that document with APS and allpay in terms of which local authorities turned up for the event"*.

“to the PM who came along on the day”⁵³⁵ and that this was something to take up “with [first name of Mastercard employee 3] [Mastercard employee 3] of Mastercard”⁵³⁶

- b. When asked at interview about contact lists for promotional events and whether these were *“also provided to the other programme managers”*, [Mastercard employee 3] (Mastercard) stated that *“The leads for each specific event [...] were provided only to the PM who attended those regional sessions in those early years.”⁵³⁷*
- c. This is corroborated by [PFS director 2] of PFS at interview, who stated that *“We [PFS] know who is in the room, but they [that is, [Sulion director 1] (Sulion) and Mastercard] are not going to share the documents with APS and allpay in terms of which local authority turned up for the event”⁵³⁸*
- d. As these events took place in 2012 and 2013, when there were few Public bodies using or even aware of prepaid cards, contacts at Public bodies that were potentially interested in prepaid cards would not have been readily available to the PMs.⁵³⁹ This is confirmed by PFS, who told the PSR that not receiving the contact details for the attendees at the Network meetings that PFS did not attend meant that PFS would not have known the identity or contact details of each Public body that attended that event, or which of those Public bodies that attended had expressed an interest in prepaid cards. Consequently, PFS would not have had the opportunity to access Public bodies who had expressed an interest in prepaid cards at those meetings attended on an exclusive basis by either APS or allpay. PFS added that as these contact details were not otherwise shared via the Network, it would have been difficult for PFS to actively approach local authorities in the North West and the North East of England at that time (where APS and allpay had exclusive access to the leads).⁵⁴⁰

535 Email from [Sulion director 1] (Sulion) to [APS employee 1] of APS and [Mastercard employee 3] of Mastercard, titled ‘RE: National Prepaid Cards Steering Group Meeting’: UUID PSR0001-93050-003223.

536 UUID PSR0001-93050-003223.

537 Interview of [Mastercard employee 3] on 24 October 2019, disc 3 of 4, at lines 936-938: UUID: 242590003.

538 Interview of [PFS director 2] on 9 November 2018, disc 2 of 3, at lines 2043-204: UUID 238180002.

539 [Sulion director 1] (Sulion) stated in Sulion director 1]’s response to the PSR of 25 May 2018 that there were over 200 public sector organisations using prepaid cards: Response of [Sulion director 1] (Sulion) to Q1 of the PSR’s Section 26 Notice of 24 April 2018: UUID 93510039. In comparison, out of APS, allpay, [Programme Manager 1] and PFS (4 of the main PMs at the time), in aggregate, the PMs had 9 public sector prepaid card customers in 2011, and won a further 9 contracts in 2012 and 13 contracts in 2013.

APS had 4 contracts in 2011, and secured 6 in 2012 and 11 in 2013 – APS Section 26 response of 4 May 2018, Table 6: UUID 85040022.

PFS had 2 contracts in 2011, and secured 1 in 2012 and 2 in 2013 – Spreadsheet at Annex 3 to PFS response of 6 December 2018: UUID 182270543. See also PFS response to question 9 of the PSR’s Section 26 Notice dated 25 March 2020: UUID 225160012.

[Programme Manager 1] had no contracts in 2011, and secured 1 in 2012 and none in 2013 – [Programme Manager 1] response to Question 10 of the PSR’s Section 26 Notice dated 11 April 2018 on 15 May 2018 titled ‘Section C – No 10 – Tender submissions’: UUID 85050082.

In 2011 allpay supplied prepaid card services to 4 Public bodies. allpay secured 1 new contract in 2012 and none in 2013 or 2014, spreadsheet titled ‘tenderwinlossesprepaidRM260618’, attached to allpay’s response to the PSR of 11/07/2018: UUID 101210066. See also allpay’s response to Question 10 of the PSR’s Section 26 Notice dated 22 June 2018: UUID 101210023 and allpay’s response to question 8 of the PSR’s Section 26 Notice dated 25 March 2020: UUID 229300001.

Mastercard stated that the use of prepaid cards by Public bodies was not widespread prior to 2011: Mastercard response to Question 4 (see paragraph 4.2) of Section 26 Notice dated 29 March 201: UUID 93230025.

540 Paragraph 5.41, PFS Further Supplement to the Leniency Application submitted to the PSR on 13 April 2018, dated 12 June 2020: UUID 243590007.

5.52 [Sulion director 1] (Sulion) would ask the attending representatives of the Public bodies to complete a feedback form at the end of each Network promotional event.⁵⁴¹ The responses contained detailed commercially valuable information⁵⁴² relating to which Public bodies were interested in prepaid cards, what services they were interested in and what queries and/or concerns they had in relation to prepaid cards.

- a. For example, a typical Network feedback form⁵⁴³ asked the Public bodies to provide contact details, and asked the following questions:

“What can we do to help you move forward?”

Are you interested in hearing more about the work of the Steering Group?

Would you like us to get in touch to further discuss the use of Prepaid Cards?

Your interest in Prepaid Cards

Do you use Prepaid Cards at the moment? If so, what for?

In which service areas do you think Prepaid Cards would be most useful?”

5.53 The way that the feedback forms were used to assist in giving exclusive access to the attending Network PM, and the type of follow up conduct and correspondence that [Sulion director 1]/Mastercard and the Network PMs had with the Public bodies and each other after an event, is illustrated in the email exchanges regarding the London and the South East Network promotional event on 11 June 2012 (detailed above in paragraph 5.32). PFS was the only Network PM in attendance at this event:

- a. [Sulion director 1] (Sulion) emailed the Public bodies that attended after the event making clear that it would be PFS that would be contacting them. [Sulion director 1] (Sulion) advised the councils that *“PFS will directly contact those who asked for a further discussion”*.⁵⁴⁴ [Sulion director 1] (Sulion) did not mention the availability of any of the other Network PMs.
- b. PFS then contacted the interested Public bodies. For example, PFS emailed one of the attending local authorities ([Public body 8]) on 19 June 2012⁵⁴⁵, stating:
- c. *“Following on from the prepaid event on the 11th with [first name of Sulion director 1], MasterCard and the attached presentation from [Public body 6], we would be very keen to support [Public body 8] in piloting prepaid cards. We noted your responses on the feedback form and the need for clarity on price and also ensuring you obtain value for money”*.

541 See, for example, the feedback form for the launch event in the West Midlands on 31 January 2013: UUID 94580103.

542 This information was not generally available outside of the Council as explained by PFS at paragraph 5.51, PFS Further Supplement to the Leniency Application submitted to the PSR on 13 April 2018, dated 12 June 2020: UUID 243590007.

543 Launch event – West Midlands – 31st January 2013, Feedback Form: UUID 94580103.

544 Email from [Sulion director 1] of 14 June 2012 UUID PSR0001-95290-004247.

545 Email from [Sulion director 1] of 14 June 2012 UUID PSR0001-95290-004247.

- d. Following this direct approach by PFS to [Public body 8] after the event, [Public body 8] contracted directly with PFS for prepaid card services.⁵⁴⁶ No tender process was used to award the contract.⁵⁴⁷

5.54 There are also exchanges between [Sulion director 1] (Sulion), [APS employee 1] of APS and [Mastercard employee 3] of Mastercard following the Manchester promotional event on 2 May 2012. APS was the only Network PM in attendance. The feedback forms for the Manchester event⁵⁴⁸ were sent by [Sulion director 1] to [APS employee 1] of APS and [Mastercard employee 3] of Mastercard on 22 May 2012⁵⁴⁹:

- a. The feedback reports were collated by [Sulion director 1] (Sulion) and sent to APS as one aggregated document containing feedback from 16 attendees representing 11 local councils.⁵⁵⁰
- b. The attendees were asked in the feedback forms, among other things, whether they would like someone to get in touch to discuss the use of prepaid cards.
- c. Of the council representatives that attended, 10 said that they would like someone to contact them to discuss the use of Prepaid Cards ([Public body 28], [Public body 39], [Public body 22], [Public body 23], [Public body 11], [Public body 25], [Public body 26]).⁵⁵¹
- d. In the same email chain, [APS employee 1] of APS replied to [Sulion director 1] (Sulion) and [Mastercard employee 3] of Mastercard at 17:30 on 22 May 2012, stating:

*"Many thanks for sending these through – a great hit rate! [Individual] from [Public body 39] has already been in touch with me and I have a meeting with [Individual] on 14th June. I will contact [Public body 22], [Public body 11], [Public body 23], [Public body 25] & [Public body 26] over the next day or so, and send you and [first name of Mastercard employee 3] an update from there."*⁵⁵²

⁵⁴⁶ PFS announced to Mastercard that it had concluded a deal with [Public body 8] the following year on 24/10/2013, after some negotiation with the council: UUID PSR0001-93050-002560. See also the spreadsheet at Annex 3 to PFS' response of 6 December 2018: UUID PSR0001-93050-002982.

⁵⁴⁷ See Chapter 3. C above on Council tendering for further information on how Councils typically tendered for prepaid cards services.

⁵⁴⁸ UUID PSR0001-93050-005801.

⁵⁴⁹ Email of 22 May 2012 titled 'Manchester Feedback Forms' with attachment 'Feedback Forms – Manchester.docx': UUIDs PSR0001-93050-005800, PSR0001-93050-005801.

⁵⁵⁰ [Public body 11], [Public body 39], [Public body 18], [Public body 19], [Public body 20], [Public body 21], [Public body 22], [Public body 23], [Public body 25], [Public body 26].

⁵⁵¹ UUID PSR0001-93050-005801.

⁵⁵² UUID PSR0001-93050-003273.

- e. Of the councils that attended the Manchester promotional event, APS subsequently entered into contracts with [Public body 22]⁵⁵³, [Public body 39],⁵⁵⁴ [Public body 20],⁵⁵⁵ [Public body 18]⁵⁵⁶ and [Public body 26]⁵⁵⁷ and was awaiting the contract with [Public body 23].⁵⁵⁸

The format of the Network regional events

- 5.55** In terms of the presenters at these events, as well as [Sulion director 1] (Sulion), Mastercard and a Network PM, [Sulion director 1] and Mastercard would seek to ensure that, where possible, a speaker from a supportive local council would be asked to discuss its experience of using prepaid cards and (ideally) its positive experience of using the services of the Network PM attending the event.⁵⁵⁹ This was intended to maximise the chances of the attending Network PM winning new prepaid card services business from the attending Public bodies. [Sulion director 1] explained in [Sulion director 1]'s paper titled '*Prepaid Cards in Local Government initiative – progress to date and proposed next stage*'⁵⁶⁰ from 2011, that "Evidence shows strongly that Councils are more likely to implement solutions which have been proven by, and are enthusiastically supported by, other Councils". In the same paper, [Sulion director 1] stated that "Previous experience from a variety of best practice programmes demonstrates that the most successful way of persuading councils to engage with new solutions is to capture the experiences, good and bad, of those who have completed, or are in the process of, implementing solutions. Other councils feel they can then benefit from their experience to reduce their risk and this usually extends to choosing the same solutions provider." For example, [Public body 18] (a local authority that was switching to APS from [Programme Manager 4]) attended the Manchester event on 11 June 2012 with APS and gave a case study.⁵⁶¹ At the London and South East event on 11 June 2012, [Public body 6] (a PFS customer) discussed a case study before PFS presented.⁵⁶²
- 5.56** Similarly, as referred to in paragraph 5.31 above, in order to maximise the chances of securing new council business, where possible a Network PM would be chosen by [Sulion director 1] (Sulion) and Mastercard to attend a particular event because it had the most programmes and/or traction within a particular region.

553 June 2012.

554 January 2013.

555 March 2013.

556 October 2012.

557 By March 2013.

558 UUID PSR0001-95087-000817 (APS Local Council client and prospect sheet, which shows the contracts won by APS as at 28 March 2014), and APS Section 26 response of 4 May 2018, Answer to Q 11 2018: UUID 85040022.

559 RE the Manchester event on 11 June 2012, [Sulion director 1] (Sulion) said to [APS employee 1] (APS) in an email of 17 April 2012 "We need to have a Council case study, ideally one of your customers from the NW region,": UUID PSR0001-93050-005890.

560 16/12/11, Prepaid cards -Phase 3- 3rd draft: UUID PSR0001-93050-005956.

561 UUIDs PSR0001-95290-003099, PSR0001-93050-003295, PSR0001-93050-003319.

562 Email of 1 June 2012, titled 'Presentation for 11th June' from [Sulion director 1] (Sulion) to [PFS director 1] (PFS) "[Individual] from [Public body 6] will be giving the Council case study before you speak": UUID PSR0001-95290-004217.

Key conclusions on the exclusive allocation of leads

- 5.57** The rationale for the exclusive allocation of leads was to focus the Network PMs' time and effort on developing new business by making *"the best use of the sales resources available between the programme managers"* (see paragraph 5.42).
- 5.58** As such, only one Network PM would attend each of the regional events and, as a result, only that Network PM would get the leads from those events. This is clearly stated in the emails between Mastercard and Sulion, and Mastercard, Sulion and PFS (see paragraphs 5.30 and 5.32 above). [Mastercard employee 3] (Mastercard) explained that, prior to the regional events, the Parties discussed that the Network events would be divided equally between the Network PMs and the attending Network PM would get the leads (see paragraph 5.42).
- 5.59** Mastercard and Sulion decided between themselves which Network PM would attend which Network regional event (see, for example, paragraphs 5.30, 5.32 and 5.36 above). They communicated those decisions to the Network PMs.⁵⁶³
- 5.60** The Network PM that would present at the regional event would typically have an existing relationship with a local council that would speak for that PM at the event. By engineering that the Network PM had a pre-existing relationship with a local Public body, and had the correct contact details for the attending Public bodies, the chances of that Network PM winning new prepaid card services business (either full contracts or pilot programmes) with these Public bodies were maximised for the Mastercard brand.
- 5.61** The Network PMs knew which regional event they would attend and knew there were other events allocated to others (see paragraphs 5.32, 5.35 and 5.37 above). They sometimes asked Mastercard/Sulion if they could attend those other events (see paragraphs 5.32 and 5.37 above).
- 5.62** Mastercard and Sulion controlled which one of the Network PMs got the delegate list of attending Public body representatives as well as the feedback forms from the events.⁵⁶⁴ This was a way of controlling that only the attending Network PM would devote time and effort to pursuing the leads from the events allocated to them.
- 5.63** If the Network PMs asked for the list of attendees from events allocated to others – like APS did – they were told that these lists were not available to them and only shared with the attending Network PM (see paragraph 5.35 above).
- a.** As these events took place in 2012 and 2013, when there were relatively few Public bodies using or even aware of prepaid cards⁵⁶⁵, contacts at Public bodies that were potentially interested in prepaid cards would not have been readily available to the PMs.⁵⁶⁶ Without those contacts the Network PMs would not know which Public bodies had expressed an

⁵⁶³ See, for example paragraphs 5.30 and 5.32 above, where both Mastercard and [Sulion director 1] (Sulion) are involved.

⁵⁶⁴ See, for example, paragraphs 5.32 and 5.35 above where both Mastercard and [Sulion director 1] (Sulion) are involved.

⁵⁶⁵ See paragraph 5.51d above.

⁵⁶⁶ See paragraph 5.51d above.

interest in prepaid cards, or the contact details of the right person at the Public body to make the initial contact. Therefore, each attending Network PM was reassured that, because the other Network PMs would not have access to the contacts and feedback forms of the events allocated to them, they would be the only ones to follow the leads and make a pitch.

- b. The process Mastercard and Sulion followed to allocate the events between the Network PMs, and ensure that only the attending Network PM would get the list of attendees and feedback forms, and would follow up with the leads from those events, was the same for each of the Network PMs (see paragraph 5.51 onwards). It was clear from the emails between Sulion/Mastercard and the Network PMs that the purpose of sharing the feedback forms and the list of attendees with the attending Network PM was for that Network PM to follow up with interested local authorities.
- c. Sometimes, Mastercard and Sulion tracked and assisted the attending Network PM in following up on the Public body leads in order to win a new prepaid card services contract. For example, [Sulion director 1] (Sulion) would typically contact the interested Public bodies (copying Mastercard) and tell them that a particular PM (that is, the one chosen to present at the event) would contact them to have a follow-up conversation.⁵⁶⁷ Further, Mastercard would offer to attend follow up meetings with the Public body along with the allocated PM.⁵⁶⁸

The exclusive allocation of leads and the non-targeting of existing customers

- 5.64** The exclusive allocation of leads and the non-targeting of existing customers operated at the same time. As referred to in paragraph 5.29 above, the exclusive allocation of leads, which lasted between May 2012 and February 2013, was focused on winning new business, which made sense in the early days of the Network when there were relatively few Public bodies seeking prepaid card services contracts.⁵⁶⁹ The importance of the arrangement between the Parties regarding the allocation of exclusive access to new prepaid card services customers reduced as the Network PMs started to secure more prepaid card services customers.⁵⁷⁰ As this happened, the non-targeting of existing customers arrangement, which was in place from the very early days of the Network, grew in practical significance. That is reflected in the increase of communications from 2013 onwards related to the non-poaching of existing customers.

2012–2017: The non-targeting of existing customers – how PMs identified which clients to target/not to target

- 5.65** The PSR provided in the beginning of this chapter an overview of the conduct related to the non-targeting of existing customers and how it was linked to the formation of the Network. The remaining parts of this chapter provide more details of the facts and contacts relevant for the conduct which occurred throughout the life of the Network.
- 5.66** As set out above in the *Overview of the conduct relating to non-targeting of existing customers within the Network* in Chapter 5, Section B, there is substantial evidence showing that the

⁵⁶⁷ See 5.32f above.

⁵⁶⁸ See for example the conduct of [Mastercard employee 5] regarding follow-up activity by PFS after the London and South East event in January 2013 (copying [Sulion director 1] (Sulion)), set out in paragraph 5.39 above.

⁵⁶⁹ See paragraph 5.43 above.

⁵⁷⁰ As can be seen from Chapter 3 (at paragraphs 3.71, 3.81 and 3.86), each of allpay, APS and PFS significantly increased their public sector prepaid card customer base during the period 2011 to 2016/17.

Parties operated an arrangement whereby the Network PMs should not target existing public sector prepaid card services customers who were under contract to another Network PM (or in the middle of a pilot programme) until they went to tender.⁵⁷¹

- 5.67** The operation of this arrangement required the Network PMs to know which clients they could approach and target to try to win business. The Network PMs could do so in two ways. First, they could ask each other directly or check with [Sulion director 1] (Sulion) as to whether a specific potential new client was already with one of the other Network PMs (including in a pilot programme). Secondly, they could refer to or receive information from a 'master' list detailing which Network PMs had won which contracts (including a pilot programme contract). Examples of these types of conduct are detailed below.

Contacts between the Parties checking whether Public bodies were already contracted to a Network PM

- 5.68** On 4 April 2012, Mastercard shared with a Network PM (APS) information regarding whether other Network PMs (PFS and allpay) had won any new prepaid public sector contracts and the implementation dates for another Network PM's prepaid card services contracts (allpay).⁵⁷² This exchange occurred shortly after allpay had won the NEPO framework contract. [APS employee 1] of APS updated [Mastercard employee 3] of Mastercard on APS's council wins etc and asked, *"How are the other programme managers getting on with their Council programmes, I know that PFS won [Public body 6] & Allpay won [Public body 7], but I have not heard of any others recently?"* [Mastercard employee 3] (Mastercard) responded stating, *"No news from PFS and [Programme Manager 2] on public sector wins. Allpay – no new wins. In regard to NEPO, [Public body 13] will be the first council brought on, thereafter [Public body 14], [Public body 15] and [Public body 12] will be implemented"*.
- 5.69** In an email of 12 June 2013⁵⁷³, following a meeting at which local authorities attended, [PFS director 2] (PFS) checked with [APS employee 1] (APS) whether certain local authority Public bodies (*"[Public body 39] and [Public body 27]"*) were customers of APS, and stated that if they were, PFS would not contact them.⁵⁷⁴ At this time, APS and PFS were the main PM members of the Network.⁵⁷⁵

⁵⁷¹ Including mini tenders and via a Framework Agreement. See paragraph 5.89 regarding the scope of the exception to the Network non-targeting arrangement

⁵⁷² Email titled 'Re: Pipe-line & wins' dated 4 April 2012 (shortly after allpay won the NEPO framework contract). [APS employee 1] of APS updated [Mastercard employee 3] of Mastercard on APS' council wins etc and asked, *"How are the other programme managers getting on with their Council programmes, I know that PFS won [Public body 6] & Allpay won [Public body 7], but I have not heard of any others recently?"*. [Mastercard employee 3] responded stating *"No news from PFS and [Programme Manager 2] on public sector wins. Allpay – no new wins. In regard to NEPO, [Public body 13] will be the first council brought on, thereafter [Public body 14], [Public body 15] and [Public body 12] will be implemented"*: UUID PSR0001-95087-000600.

⁵⁷³ UUID PSR0001-95290-001563

⁵⁷⁴ The email is dated 12 June 2013, titled 'Presentations for [Public body 27]' between [PFS director 2] (PFS) and [APS employee 1] (APS). At 17:50 [PFS director 2] asks [APS employee 1]: *"I was going to email a few from the council meeting today but obviously not any that are APS. Am I right to not email [Public body 39] and [Public body 27]?"*. In the same email chain, [APS employee 1] responds to [PFS director 2] at 13:51 stating: *"We have recently gone live with both of them"*. (UUID PSR0001-95290-001563). [APS employee 1] stated in [APS employee 1]'s interview that this statement in the email from [PFS director 2] *"would seem to imply that [PFS director 2]'s not looking to email APS current existing customers"*: interview of [APS employee 1] on 27 September 2019, disc 2 of 5, at lines 885-886: UUID 238510002.

⁵⁷⁵ At this time allpay's participation in the Network was reducing. See paragraphs 5.39 and 4.103 to 4.105 above.

- 5.70** In an email dated 21 August 2014, PFS ([PFS director 1]) sought contact details from [Sulion director 1] (Sulion) for those Public bodies that attended a Network meeting and that were not already running live pilot programmes with another Network PM. Under the Network non-targeting arrangement, such Public bodies would have been available for PFS to approach. The email was from [PFS director 1] of PFS to [Sulion director 1] (Sulion) and titled '*RE: Prepaid Network London meeting – agenda/attendees*'.⁵⁷⁶ [PFS director 1] (PFS) asked [Sulion director 1] (Sulion), "*From the London event do you know which of these [i.e. the attending Public bodies] are already running live pilots with another provider- For those that are not could I get the contact details to try chase them up please.*"
- 5.71** There is further evidence of [PFS employee 1] (PFS) checking with [Sulion director 1] (Sulion) as to whether certain Public bodies that were on an IPC pilot were with other Network PMs and therefore which were available for PFS to approach.⁵⁷⁷ The exchange is in an email chain dated between 31 March 2016 and 4 April 2016, titled '*[Public body 44] New Wallet – IPC Pilot*'.⁵⁷⁸ [Sulion director 1] (Sulion) responds to [PFS employee 1] (PFS) that PFS can approach most on the list but that "*[Public body 2] use Allpay's vanilla card ... and are in discussions about their new offer so best not to tread on their toes yet as I've asked them to play nicely in terms of poaching*".⁵⁷⁹
- 5.72** In line with the operation of the Network non-targeting arrangement, in an email of 21 March 2017, titled '*FW: Prepaid cards network – Birmingham agenda*', [PFS employee 2] (PFS), in preparation for an upcoming Network meeting, asked [PFS director 2] of PFS which councils were already with PFS or allpay and which were still "*potentially looking for a solution*".⁵⁸⁰

576 UUID PSR0001-93051-001500

577 On 31 March 2016 at 11:06 [PFS employee 1] (PFS) emailed [Sulion director 1] (Sulion) listing 9 IPC pilot sites and enquiring whether these councils were with another PM. [PFS employee 1] asks [Sulion director 1] "*Are you aware of the IPC pilot? Is there room here for us to contact the demonstrator sites...?*" "*You will also know which of those listed below are with other programme managers!*" UUID: PSR0001-93051-000315. [PFS employee 1] stated at interview that [PFS employee 1] had approached [Sulion director 1] because "*I wouldn't want to step on anyone else's toes*" at lines 98-99. "*...it just would have looked really...disjointed that, you know, the left didn't know what the right was doing as far as the network was concerned*" at lines 110 – 115. So I think it was from a perspective of "*of everyone knowing what was going on*" (Interview of [PFS employee 1] on 6 August 2019, disc 2 of 4, at line 110-115, UUID 238550002). [PFS employee 1] also stated that [PFS employee 1] understood that [Sulion director 1] had a "*central list*" of which "*local authorities or other organisations were working with anyone on the Surrey framework*": interview of [PFS employee 1] on 6 August 2019, disc 2 of 4, at lines 162-167: UUID 238550002.

578 UUID PSR0001-93051-000315

579 [Sulion director 1] explained that [PFS employee 1] was asking [Sulion director 1] about which of the councils listed were with other PM's because [PFS employee 1] "*understands that even though they might be on the pilot that if they're with other Programme Managers then it would be a no go area*". This is because "*it would be seen as poaching somebody else's*" ... customer ... "*who's in contract*": interview of [Sulion director 1] on 8 July 2019, disc 2 of 2, at lines 816-826: UUID 238520003.

580 UUID PSR0001-95502-001004. [PFS employee 2] (PFS) states "*Hi [first name of PFS director 2], I have just received the agenda for tomorrow from [first name of Sulion director 1] – with list of attendees. Would be good to understand which of these councils are already clients of PFS (or in fact Allpay) and which are potentially looking for a solution!*".

Contacts relating to the sharing and use of lists detailing which PMs were in contract with which Public bodies

5.73 As detailed below, there is contemporaneous email evidence that:

- a. certain lists, detailing which PM was providing prepaid card services to a particular Public body, were maintained by each of Mastercard and [Sulion director 1] (Sulion)
- b. these lists were shared with Network PMs, as well as information regarding whether a Public body was already a customer of a PM, particular contract wins, and contract implementation details; and
- c. such lists were used by the Network PMs to support the operation of the non-targeting arrangement.

As illustrated below, such lists were referred to variously from time to time as ‘master lists’, ‘Council status lists’ or ‘Council lists’.

5.74 As set out in this section in paragraphs 5.75 to 5.79, it was clear that from the early days of the Network this information was helpful and that the Network PMs were interested in knowing which PM had which Public body as a client, and whether they had commenced implementing the contract or not.⁵⁸¹

5.75 Mastercard^{582,583} maintained a ‘master list’ of which clients the Network PMs had contracts with; the information to produce and maintain these lists was in large part supplied by the individual PMs.⁵⁸⁴ Mastercard shared its ‘master list’ with [Sulion director 1] (Sulion).⁵⁸⁵ For example, on 18 February 2013, [Mastercard employee 5] of Mastercard emailed an Excel spreadsheet to [Sulion director 1] (Sulion) stating, “*I have tried to pull together an overview of the key local gov councils, unitary auths etc with an idea of who does what with who ...*”. The Mastercard spreadsheet showed which Network PM had a contract with which Public body and which were ‘prospects’ of the Network PMs.

⁵⁸¹ See, for example, paragraph 5.77 below.

⁵⁸² Interview of [Mastercard employee 1] on 9 September 2019, disc 2 of 4 at lines 749-755: UUID 242580002.

⁵⁸³ Email of 29 January 2019 at 16:24 from [Sulion director 1] (Sulion) to [Mastercard employee 8] (Mastercard) and [Mastercard employee 9] (Mastercard), titled ‘*RE: Prepaid Analysis*’, where [Sulion director 1] states “[Sulion director 1] is interesting. I don’t have them down on my list of Council users and nor do they appear on the master list that [first name of Mastercard employee 4] [Mastercard employee 4], Mastercard] sent to me last year”: UUID PSR0001-103189-000238.

⁵⁸⁴ Each of the Network PMs would supply Mastercard with monthly updates including details of tenders/quotes for contracts received from councils, tenders/quotes submitted by the Network PM and contracts wins. See for example an email from APS to Mastercard dated 6 November 2014, titled ‘October figures / pipeline update’: UUID PSR0001-95087-000586. See also the slides from the meeting between allpay and Mastercard titled ‘MasterCard/Allpay Meeting 18 May 2017’: UUID 101210075.

⁵⁸⁵ For example, on 18 February 2013, [Mastercard employee 5] of Mastercard emailed an excel spreadsheet to [Sulion director 1] stating, “*I have tried to pull together an overview of the key local gov councils, unitary auths etc with an idea of who does what with who...*”: UUID PSR0001-93050-002981. The spreadsheet shows the authorities grouped by UK region: UUID PSR0001-93050-002982.

- 5.76** [Sulion director 1] (Sulion) maintained [Sulion director 1]'s own list and sought input from the Network PMs⁵⁸⁶ and Mastercard⁵⁸⁷ from time to time to keep this up to date.⁵⁸⁸
- 5.77** The initial lists that were shared with the Network PMs and Mastercard in 2011 were anonymised (that is, the names of the Network PMs were omitted).⁵⁸⁹ However, later lists clearly set out which Public body was in contract with which PM.⁵⁹⁰ For example:
- a. In 2014, Sulion asked the Network PMs for updated details of their councils so that Sulion could respond to requests about who was working with who.⁵⁹¹
 - b. In 2015, [Sulion director 1] (Sulion) shared versions of the master list (detailing which PMs were contracted to which Public body) with the Network PMs (PFS and APS).⁵⁹²
 - In an email dated 9 June 2015⁵⁹³, at PFS's request, [Sulion director 1] (Sulion) sent [PFS director 1] (PFS) [Sulion director 1]'s master 'Council Prepaid Cards status list'⁵⁹⁴, which reveals which Public bodies were with which PMs that were active on the market at that time – that is, APS, PFS, allpay and [Programme Manager 1].⁵⁹⁵

586 For example, email of 14 October 2014 at 16:03, titled 'Updating the Council list', from [Sulion director 1] (Sulion) to [APS employee 1] (APS) and [PFS director 2] (PFS). [Sulion director 1] states *"I'm regularly asked for a list of Councils currently using prepaid cards and I think my current list is a little out of date. Could you arrange for someone to send me an updated list of your Councils, please? Any that are on the verge of signing a contract will do too. I'll then try to make sure I keep the list up to date with your new wins"*: UUID PSR0001-95290-001914.

587 Regarding maintaining a general contacts list, see the interview of [Sulion director 1] on 8 July 2019, disc 1, 1 of 2 at line 513 – 514: UUID 245370001, *"I would use contact lists provided to me by the Programme Managers and by MasterCard"*.

588 [Sulion director 1] (Sulion) also maintained a separate so-called 'no-contact list' which listed the councils where the Network did not have any contact details for anyone at the council. Interview of [Sulion director 1] on 8 July 2019, disc 1, 1 of 2, at lines 497-499: UUID 245370001.

589 Initially these lists were intended to better inform every one of the scope of the Network's activity nationally and identify the Network's current strengths and weaknesses (Prepaid Cards in Local Government initiative – progress to date and proposed next stage: UUID PSR0001-93050-005956).

590 [PFS employee 1] (PFS) confirmed at interview, that the Network PMs would let [Sulion director 1] (Sulion) know who they were *"currently contracted with"* and that [first name of Sulion director 1] *"would hold that master list on behalf of the"* Network PMs so that [Sulion director 1] *"knew at any given point who was working with which CCG, healthcare provider or local government"* – at lines 333-341. Further, [PFS employee 1] (PFS) stated at interview, that [Sulion director 1] (Sulion) would hold the master list and that in terms of [Sulion director 1]'s statement in the Update and State of the Nation email of 14 July 2016, about the master list being used so that everyone knows *"who is and isn't fair game for sales"*, [PFS employee 1] stated that *"you wouldn't be, you know, emailing a local authority that was current with allpay to say..."* *"... 'We know your contract's up in 18 months, can we talk to you?'..."* *"...that wasn't done"*. Interview of [PFS employee 1] on 6 August 2019, disc 2 of 4, at lines 320 and 361-371: UUID 238550002.

591 In an email of 14 October 2014 at 16:03, titled 'Updating the Council list', [Sulion director 1] asks [APS employee 1] (APS) and [PFS director 2] (PFS) for their council details to update [Sulion director 1]'s list. [Sulion director 1] states *"I'm regularly asked for a list of Councils currently using prepaid cards and I think my current list is a little out of date. Could you arrange for someone to send me an updated list of your Councils, please? Any that are on the verge of signing a contract will do too. I'll then try to make sure I keep the list up to date with your new wins"*: UUID PSR0001-95290-001914.

592 UUIDs PSR0001-93051-000835, PSR0001-95290-006184, PSR0001-93051-000849

593 UUIDs PSR0001-93051-000835, PSR0001-95290-006184, PSR0001-93051-000849

594 UUID PSR0001-93051-000836. On 5 June 2015 at 10:58 [PFS director 1] (PFS) emailed [Sulion director 1] (PFS) stating, *"Hi [first name of Sulion director 1], I cannot see from the attached how I see what councils are assigned to each provider"*. On 5 June at 11:21 [Sulion director 1] emailed [PFS director 1] stating, *"Hi [first name of PFS director 1], ...Would you like my list?"*. On 27 June 2015, in the same email chain, [PFS director 1] responded to [Sulion director 1] stating *"I also thought APS had [Public body 35] and [Public body 50] – is that not the case?"*.

595 [Programme Manager 1] was not a member of the Network.

- On the same date (9 June 2015), [Sulion director 1] (Sulion) sent the same Council Prepaid list to [APS employee 1] of APS (*'RE: Council Prepaid Cards status'*⁵⁹⁶), stating that [Sulion director 1] had attached a *"more up to date version"* of the Council Status list.
 - The Council Prepaid list that [Sulion director 1] (Sulion) shared with PFS and APS showed which Public bodies were with which PM (including the Network PMs at that time (that is, APS and PFS) and the non-network PMs (that is, allpay and [Programme Manager 1])).⁵⁹⁷
- c. The PSR considers that the email evidence from 14 July 2016 (outlined in paragraph 5.21 above) clearly demonstrates that these lists were used by the Parties to support the operation of the Network non-targeting arrangement. In the *'Update & State of the Nation'* email⁵⁹⁸ that [Sulion director 1] (Sulion) sent to Mastercard, APS, PFS and allpay, [Sulion director 1] requested *"up-to-date lists of councils and CCG's"* from each of the Network PMs at the time (allpay, APS and PFS). This was so that [Sulion director 1] could prepare an *"updated master list"*⁵⁹⁹ of who has who has prepaid customers so that the Parties know *"who is and isn't fair game for sales"*.^{600,601} At interview [Sulion director 1] (Sulion) explained that *"the main aim of this ... was so everybody knew who everyone else's customers were"*⁶⁰², so that the Network PMs *"would not approach a Council already under contract with another Programme Manager"*.⁶⁰³ None of the Network PMs or Mastercard objected to the request or the intended use of the list. Indeed, [allpay employee 1] of allpay replied to all⁶⁰⁴ stating, *"[first name of Sulion director 1], Many thanks for your email. ... We will come back to you on the client's lists"*.

596 UUID 94570135

597 UUID 94570140

598 UUID PSR0001-93051-000446

599 In [APS employee 1]'s interview on 27 September 2019, [APS employee 1] of APS stated that [APS employee 1]'s understanding of the term 'master list' in [Sulion director 1]'s email was that [Sulion director 1] (Sulion) *"had a list of prepaid card providers who were serving councils"*. (Interview of [APS employee 1] on 27 September 2019, disc 2 of 5, at lines 1784-1785: UUID 238510002)

600 'Update and State of the Nation' email from 14 July 2016: UUID PSR0001-93051-000446. The email is sent at 15:24 to [Mastercard employee 1] and [Mastercard employee 4] of Mastercard, [APS employee 1] of APS, [allpay employee 2] of allpay and [PFS director 1], [PFS director 2] and [PFS employee 1] of PFS. [Sulion director 1] (Sulion) states: *"Chatting to [first name of allpay employee 2] after yesterday's meeting we agreed that it would be a good idea to have an updated master list of who has who as prepaid customers so we know who is and isn't fair game for sales. I'd like to pull this together soon so can you please let me have your up-to-date lists of councils and CCG's?"*. [allpay employee 1] of allpay responded to all as part of the same email chain that *"We will come back to you on the client lists"*.

601 In [Mastercard employee 1]'s interview on 9 September 2019, when asked about this extract from the 'Update & State of the Nation' email, [Mastercard employee 1] from Mastercard stated that *"...it's specifically calling out about not targeting each other's customers"*. Interview of [Mastercard employee 1] on 9 September 2019, disc 3 of 4 at lines 369-370: UUID 242580003.

602 Interview of [Sulion director 1] on 8 July 2019, disc 2, 1 of 2, at line 1198-1199: UUID 238520003.

603 Interview of [Sulion director 1] on 8 July 2019, disc 2, 1 of 2, at lines 1187-1188: UUID 238520003. Further, that this was needed because having chatted to [allpay employee 2] at allpay about *"not actively pursuing each other's customers"*, it became clear that *"we don't particularly have a list of who has what."* Interview of [Sulion director 1] on 8 July 2019 disc 2, 1 of 2, at lines 1169-1170: UUID 238520003.

604 On 18 July 2016 at 11:16.

- 5.78** There are also examples from September 2016⁶⁰⁵ and April 2017⁶⁰⁶ of [Sulion director 1] (Sulion) asking [Mastercard employee 1] of Mastercard for a copy of Mastercard's latest master list showing which councils were signed with which PMs, and of Mastercard sending these to [Sulion director 1].
- a. In September 2016, [Sulion director 1] (Sulion) stated to [Mastercard employee 1] (Mastercard) that [Sulion director 1] wanted the list for the express purpose of passing it on to allpay *"so their sales people don't try to sell to others' customers"*.⁶⁰⁷ Even though Mastercard knew the express reason why [Sulion director 1] wanted the list, Mastercard still sent the list to [Sulion director 1] (Sulion), although [Mastercard employee 1] (Mastercard) asked Sulion not to pass it on to allpay.⁶⁰⁸
 - b. In April 2017 [Sulion director 1] emailed⁶⁰⁹ [Mastercard employee 1] (Mastercard) asking, *"Could you send me a copy of your latest master list "*. [Mastercard employee 1] replied, *"Master List will follow tomorrow. Please don't share with PFS or Allpay"*. Then, in a later email, [Mastercard employee 1] (Mastercard) stated to [Sulion director 1] (Sulion), *"Large volume of changes at moment – next update will be ready on Friday"*.
- 5.79** Such an aggregated master list, detailing which Public bodies were in contract with which PMs, was generally not readily available in the public domain. [Programme Manager 1], which was not a member of the Network, would not always know which PM had won a tender.⁶¹⁰ From time to time, [Programme Manager 1] would send Freedom of Information Act requests to Public bodies to ascertain, amongst other things, whether a Public body already had a prepaid card services provider⁶¹¹ (and if so, who and for what areas of business).

2015–2016: The episode of the readmission of allpay to the Network

- 5.80** The PSR referred to the readmission of allpay to the Network in Chapter 5, Section B, *Overview of the conduct relating to non-targeting of existing customers within the Network*, above because this episode triggered several communications between the Parties that unequivocally reaffirm that compliance with the non-targeting arrangement regarding existing customers was a 'rule' of the Network.

605 Email of 12 September 2016, titled 'RE: Master List': UUID PSR0001-93050-001608.

606 Email of 24 April 2017 between [Sulion director 1] (Sulion) and [Mastercard employee 1] (Mastercard), titled 'Re: A couple of things....'. [Sulion director 1] states, *"Hi....could someone send me a copy of the master list when you have a moment?"*: UUID PSR0001-93050-000735.

607 Email of 12 September 2016 between [Sulion director 1] (Sulion), [Mastercard employee 1] (Mastercard) and [Mastercard employee 4] (Mastercard), titled 'RE: Master List': UUID PSR0001-93050-001608.

608 Copied to [Mastercard employee 4] (Mastercard). [Mastercard employee 1] (Mastercard) stated that *"Happy to share with you. But please don't pass on to allpay. Information is shared by each of providers and not intended for competitors"*. [Sulion director 1] stated *"Ok, understood"*: UUID PSR0001-93050-001608.

609 Email titled 'Re: A couple of things....', 24 April 2017, copied to [Mastercard employee 4] and [Mastercard employee 13] (both of Mastercard): UUID PSR0001-93050-000735.

610 See excel spreadsheet titled 'Section C No 10- Tender submissions. XLSZ', submitted by [Programme Manager 1] in response to the PSR's Section 26 Notice dated 11 April 2018, which shows in column F, that if [Programme Manager 1] was not successful in winning the tender, it would not always know who had won: UUID 85050082.

611 Email from [employee 1 at Programme Manager 1] to [employee 2 at Programme Manager 1], titled 'Freedom of Info data', dated 1 May 2014: UUID PSR0001-93985-001167 and attached excel spreadsheet, headed *"Summary of Responses 30 April 14.xls"*: UUID PSR0001-93985-001168. Column I sets out which prepaid service provider the LA is using (if any) (see for example lines 32, 45, 46, 49, 50 and 58). See also [Public body 49] example of a single letter/LA response: UUID PSR0001-93181-000028.

- 5.81** Around May/June 2015, allpay was in discussions with Mastercard and [Sulion director 1] (Sulion) about re-joining the Network⁶¹² and re-joined the Network in March 2016.⁶¹³
- 5.82** This period in 2015 and 2016, when allpay was proposing to re-join the Network and after it re-joined, was referred to by [Sulion director 1] as a 'volatile' time and [Sulion director 1] stated that [Sulion director 1] needed to reassure APS and PFS.⁶¹⁴
- 5.83** [APS employee 1] (APS) refers to the Network non-targeting arrangement in an email dated 31 December 2015, titled 'Re: Pre-Paid Cards [Public body 36] quote'⁶¹⁵ in the context of the forthcoming potential readmission of allpay to the Network.
- a. In the email of 31 December 2015 at 11:30⁶¹⁶, [APS employee 1] (APS) complained to [Mastercard employee 1] (Mastercard) and [Sulion director 1] (Sulion) that allpay had been in contact with one of APS's existing customers, [Public body 36].⁶¹⁷ [Public body 36] was seeking to expand the use of prepaid cards to an additional team within the council⁶¹⁸ and was urgently seeking quotes for this additional prepaid card services contract. allpay submitted a quote to [Public body 36] for the additional work. [APS employee 1] complained that [APS employee 1] would not regard this behaviour as acceptable if allpay were to re-join the Network. [APS employee 1] (APS) stated to [Mastercard employee 1] (Mastercard) (copying [Sulion director 1] (Sulion)):
 - b. *"Hello [first name of Mastercard employee 1], Hope you had a great Christmas! I saw this yesterday and contacted [Individual]⁶¹⁹ [at [Public body 36]] late afternoon who did not realise that [Public body 36] are in contract with APS. I have sent [Individual] a start up pack and advised on set up times. They had already spoken to Allpay who had contacted them. Also need to discuss Allpay speaking to councils already in contract – no problem whilst not part of the Steering group but will not be happy for them to attend and then start contacting them!"⁶²⁰*
 - c. [Sulion director 1] (Sulion) responded to [APS employee 1] (APS) and [Mastercard employee 1] (Mastercard), stating, *"I agree with your point on Allpay, we probably need a round table when they rejoin to set a few lines in the sand"*.⁶²¹
- 5.84** In a separate email dated later that day (that is, 31 December 2015) at 12:05 titled 'FW: [Public body 36] – request a quote for prepaid cards', [APS employee 1] (APS) emailed [APS employee 1]'s direct boss, [APS employee 2], at APS, stating: *"I have spent a couple of hours*

612 Email of 18 January 2016 from [allpay employee 1] to [Sulion director 1], copying [allpay employee 2], [Mastercard employee 1] and [Mastercard employee 3] of Mastercard: UUID PSR0001-93050-000378.

613 See paragraph 4.44.

614 Interview of [Sulion director 1] on 8 July 2019, disc 2, 1 of 2, at lines 1360 – 1364: UUID 238520003.

615 UUID PSR0001-93050-000377

616 UUID PSR0001-93050-000377

617 APS won the contract with [Public body 36] and started providing cards on 1 March 2015. APS Section 26 response 4 May 2018: Table 6: UUID 85040022.

618 Within [X] department at [Public body 36] for a 12-month trial period.

619 From [Public body 36].

620 Re: Pre Paid Cards [Public body 36] quote: UUID PSR0001-93050-000377.

621 PSR0001-93050-001359. At interview [Sulion director 1] (Sulion) stated that *"really I suppose more accurately ought to have said, 'Restate a few lines in the sand'."* Interview of [Sulion director 1] on 8 July 2019, disc 2, 1 of 2, at lines 644-645: UUID 238520003.

on emails and phone with [Public body 36] over the last couple of days due to Allpay trying to poach our Council clients – should be OK on this one, but have already sent a note to [Mastercard employee 1] [at Mastercard] and [first name of Sulion director 1] advising them that this is happening and if they [allpay] were to come on to the Steering Group, part of the deal is that they don't try and poach outside of tenders / mini tenders!"⁶²²

- a. At interview [APS employee 1] (APS) was asked what [APS employee 1] meant when [APS employee 1] said that allpay were "trying to poach our Council clients". [APS employee 1] stated that "I think that's a very clumsy way of saying that allpay were speaking to an existing client".⁶²³
- b. [APS employee 1] added that at the time [APS employee 1] was concerned about allpay being readmitted to the Network because allpay hadn't delivered the last time they were in the market, which had damaged the market reputation of prepaid cards.⁶²⁴

5.85 The terms of allpay's readmission to the Network were discussed by [Sulion director 1] with APS and PFS in an email on 12 January 2016 titled 'Quick update', sent by [Sulion director 1] (Sulion) to [APS employee 1] (APS), [PFS director 1] and [PFS director 2] (PFS) and [Mastercard employee 1] (Mastercard). [Sulion director 1] stated, "Allpay is probably going to be readmitted this time around but we need to establish some turf ground rules with them beforehand".

- a. At interview [APS employee 1] (APS) was asked what [APS employee 1] understood by [Sulion director 1]'s statement regarding establishing some "turf ground rules". [APS employee 1] (APS) stated that "my understanding is that allpay were gonna come back into the network meetings, and 'the established turf ground rules', I'm assuming was the organic arrangement whereby, you know, absolutely join, but it's not a sales meeting. You can't just go after existing contracts. There's plenty more out [there]. But any tenders that come up, absolutely".⁶²⁵

5.86 On 1 March 2016, [Sulion director 1] (Sulion) confirmed to the Network PMs that allpay had accepted the Network non-targeting arrangement as a condition of re-joining the Network. In an email chain titled '[Sulion director 1] Councils'⁶²⁶, [Sulion director 1] (Sulion) emailed [APS employee 1] of APS and [PFS director 1] of PFS, regarding allpay re-joining the Network.

- a. At 11:16, [Sulion director 1] (Sulion) wrote to [PFS director 1] (PFS) and [APS employee 1] (APS), "You'll have noticed I included Allpay and they'll be at the upcoming network meetings too. I think on balance it's time to readmit them but they're only just ready to go on DP [direct payment]. You'll both [APS and PFS] remain my priority."

622 Email of 31 December 2015 from [APS employee 1] to [APS employee 2], FW: [Public body 36] – request a quote for prepaid cards: UUID PSR0001-95087-000753.

623 Interview of [APS employee 1] of APS on 27 September 2019, disc 2 of 5 at line 1214-1215: UUID 238510002.

624 [APS employee 1] stated at interview that "allpay, they've been in the market before, and hadn't delivered, and personally I had a frustration with that, because I'd been in prepaid, and it was damaging the market reputation of prepaid. So I just wanna sort of frame that as, it was just something whereby they'd let a lot of councils down, and we'd go into meetings, and people would say, 'prepaid doesn't work', and it does work. So there's a little bit of frustration on my behalf as well there." Interview of [APS employee 1] (APS) on 27 September 2019, disc 2 of 5 at lines 1121-1127: UUID 238510002.

625 Interview of [APS employee 1] of APS on 27 September 2019, disc 2 of 5, at lines 1291-1296: UUID 238510002.

626 UUID PSR0001-95087-000700

- b. At 12:14, [APS employee 1] of APS responded to [Sulion director 1] (Sulion) copying [PFS director 1]: *"I assume that you have had the conversation around not poaching existing Council partners, unless directly approached or via the Framework?"*⁶²⁷
- c. At 12:30, [Sulion director 1] (Sulion) responded to [APS employee 1] (APS) as part of the same email chain (but [PFS director 1] drops off the email chain): *"Absolutely, I made that a clear condition and they were happy to accept it"*.
- d. At 12:48, [APS employee 1] (APS) responded to [Sulion director 1] (Sulion), stating, *"Thanks for the update – I knew you would!"*

5.87 Each of [PFS director 2]⁶²⁸ (PFS), [PFS director 1]⁶²⁹ (PFS) and [APS employee 1]⁶³⁰ (APS) were asked at interview what they understood by this email exchange and each confirmed that this email evidences the existence of an arrangement or understanding between Network members not to target each other's existing Public body clients unless a Public body tendered, issued a mini tender or made a request under a Framework Agreement.⁶³¹

627 At interview [APS employee 1] was asked what [APS employee 1] meant by the phrase 'unless directly approached'. [APS employee 1] stated that if they went to *"tender, or a mini tender, or via the framework"* [that is, via a Framework Agreement]. Interview of [APS employee 1] of APS on 27 September 2019, disc 2 of 5 at lines 1510 – 1519: UUID 238510002.

628 [PFS director 2] (PFS) was asked at [PFS director 2]'s interview on 9 November 2018 what [PFS director 2] understood by [APS employee 1]'s statement to [Sulion director 1] that *"I assume that you have had the conversation around not poaching existing council partners unless directly approached or via the framework"*. [PFS director 2] stated that *"my understanding of this is, reading [first name of APS employee 1]'s email is it evidences the acknowledgement of an agreement between network members around not poaching existing council partners unless directly approached or via the framework."* at lines 54-58. Further that *"We wouldn't go and pitch to an existing client."* Interview of [PFS director 2] on 9 November 2018, disc 3 of 3, at 88-89: UUID 238180003.

629 [PFS director 1] of PFS was asked at [PFS director 1]'s interview on 7 November 2018 what [PFS director 1] understood by [APS employee 1]'s statement to [Sulion director 1] that *"I assume that you have had the conversation around not poaching existing council partners unless directly approached or via the framework"*. [PFS director 1] stated that *"I can only assume what [first name of APS employee 1] was referencing was the same scenario we've had where a council is live with an existing provider. There was this loose understanding that the members within the network wouldn't target those live customers"*. Interview of [PFS director 1] on 7 November 2018, disc 3 of 3, at lines 1145-1148: UUID 223980003,

630 [APS employee 1] of APS was also asked at interview what [APS employee 1] meant when [APS employee 1] stated, *"I assume that you'll have had the conversation around not poaching existing council partners?"* [APS employee 1] stated that there is *"almost an unwritten, like an arrangement right the way back from the beginning where, sort of, grown organically that being part of the group, the best practice group, ... it wouldn't be that, you know, you approach ... any other companies' existing council partner outside of any tenders or request to tender, or anything like that"*. (Interview of [APS employee 1] on 27 September 2019, disc 2 of 5 at lines 891-895, UUID 238510002). [APS employee 1] was further asked what [APS employee 1] meant by the phrase 'unless directly approached'. [APS employee 1] stated that *"if they went to tender, or if they went to mini tender, or if they ask you to, that's not an issue at all"* at lines 1510-1512. [APS employee 1] further stated that [APS employee 1] meant a situation where a PM was directly approached by the LA to do a tender. Interview of [APS employee 1] on 27 September 2019, disc 2 of 5 at line 1501-1502: UUID 238510002.

631 [PFS director 2] stated at interview that PFS may also be *"inclined"* pitch to a Network PM's existing customer if *"we were directly approached"* by the council to do so outside of a tender or framework agreement. However, none of the other Parties said this and the PSR does not think that this is part of the arrangement. Interview of [PFS director 2] on 9 November 2018, disc 3 of 3 at lines 98-100: UUID 238180003.

The scope of the non-targeting of existing customers conduct

- 5.88** The PSR concludes that the non-targeting arrangement of existing customers not only prevented the Network PMs from targeting Public bodies whose prepaid cards programmes were ongoing, to try to poach those contracts, until those contracts went out to tender, but also from targeting Public bodies for the roll out of prepaid cards in other areas of a Public body's business where a Network PM was already 'in contract' and providing prepaid card services to that Public body.⁶³² As detailed in Chapter 3, Section C (*The purchasing of prepaid card services by Public bodies*), paragraph 3.108, Public bodies could and did contract with different PMs for prepaid card services at the same time, usually in relation to different service areas.⁶³³
- a. The PSR considers that the fact that the Network non-targeting arrangement extended to other areas of business is demonstrated in an email relating to [Public body 36] from December 2015 (referred to in paragraph 5.83 above),⁶³⁴ where [Public body 36] was seeking to expand the use of prepaid cards to additional teams within the council.⁶³⁵ The existing [Public body 36] provider, APS ([APS employee 1]), complained to Mastercard and [Sulion director 1] (Sulion) when allpay submitted a quote for this additional council business. [APS employee 1] (APS) stated that [APS employee 1] would "*not be happy*" for allpay to re-join the Network and for them to start "*speaking to councils already in contract*".
 - b. Similarly, in an email of 4 April 2016, titled '*[Public body 44] New Wallet – IPC Pilot*', [Sulion director 1] (Sulion) told [PFS employee 1] (PFS) that PFS should not approach "*[Public body 2]*" with the PFS prepaid card solution in relation to potential new areas of business as [Public body 2] was an existing customer of allpay. [Sulion director 1] stated that [Public body 2] "*use Allpay's vanilla card for social fund payments and are in discussions about their new offer so best not to tread on their toes yet as I've asked them to play nicely in terms of poaching*".⁶³⁶ At this time, allpay had recently re-joined the Network.
 - c. This is corroborated by [PFS director 1] of PFS, who stated at interview that prepaid cards in the same business area and prepaid cards in another area of council business are "*kind of the same thing*".⁶³⁷
 - d. [APS employee 1] of APS at interview confirmed that it would be fine to go after another PM's existing client where the Public body was seeking services for a different service area, but only if the local authority "*decided to go out to a mini tender or a tender*".⁶³⁸

632 See below and the interview of [PFS director 1] on 7 November 2018, at part 1 of 3, at 2083-2091: UUID 223980001. [PFS director 1] stated that "*If it's the scenario where there's a Local Authority live with someone for one section...[PFS legal adviser]: And then they tender for another, but you would compete or wouldn't compete for that? [PFS director 1]: Well, it only ever happened in one scenario, so we didn't in that one scenario.*"

633 For example, different departments within a public body (such as adult social care, children's social care or asylum seeker services) could have different prepaid card requirements and may run separate procurement exercises. See Chapter 3. C. above at paragraph 3.108.

634 UUIDs PSR0001-93050-000377, PSR0001-95087-000753

635 These were teams within [Public body 36] department at [Public body 36].

636 UUID PSR0001-93051-000315

637 Interview of [PFS director 1] on 7 November 2018, disc 1 of 3, at 2068: UUID 223980001.

638 Interview of [APS employee 1] on 27 September 2019, disc 4 of 5, at line 39: UUID 238510003.

- 5.89** Any Public bodies that went out to tender⁶³⁹ (that is, a tender at the end of a contract or pilot programme) were not covered by the Network non-targeting arrangement. This exception to the Network non-targeting arrangement included mini tenders conducted by a Public body under a Framework Agreement (for example, under the Surrey or NEPO Framework Agreements).⁶⁴⁰
- a. In the '[S<] Councils' email of 1 March 2016 referred to in paragraph 5.86 above, [APS employee 1] (APS) referred to an exception being where a PM was "*directly approached*"⁶⁴¹ by a council. At interview [APS employee 1] (APS) clarified that what [APS employee 1] meant by this was where a PM was directly approached by a Public body to do a tender or mini tender or under a Framework Agreement.⁶⁴²
- 5.90** Overall the PSR finds that the Network non-targeting arrangement applied to:
- a. clients that were live with a prepaid card services contract with one of the Network PMs, including where the client was launching a prepaid card programme in a new area of business not previously covered by an existing prepaid card programme, and
- b. clients that were in a pilot programme/trial with one of the Network PMs

Alternative explanations for the non-targeting of existing customers conduct

- 5.91** [APS employee 1] (APS), [Sulion director 1] (Sulion) and [PFS director 1] (PFS) each said that in effect the non-targeting arrangement was simply a reflection of the commercial reality that it was not worth engaging with Public bodies that were already in contract. For example:
- a. [APS employee 1] (APS) stated at interview that for the Network PMs, there had been an element of "*pragmatism*" about the Network non-targeting arrangement, because if a council was working with a supplier of prepaid cards "*from a commercial point of view ... is it worth, you know, talking to someone while they're in the middle of a contract?*"

639 The Network PMs "*should not attempt to poach customers who were under contract to other Programme Managers in the network until they went to tender*". [Sulion director 1] (Sulion) response "Section A Q1": UUID 93510039. Also, statement from [Sulion director 1] in the Update and State of the Nation email, dated 14 July 2016, [Sulion director 1] stated that "*clearly any who choose to go out to open tender again must be considered fair game once they've taken the decision to come to market*".: UUID PSR0001-93051-000446

640 See email dated 31 December 2015 at 12:05 titled 'FW: [Public body 36] – request a quote for prepaid cards', [APS employee 1] stated that "*if they [allpay] were to come on to the Steering Group, part of the deal is that they don't try and poach outside of tenders / mini tenders*": UUID PSR0001-95087-000753. Also, [APS employee 1] interview on 27 September 2019, disc 2 of 5 at lines 1325 – 1333 1497-1502 and at lines 1592 – 1598: UUID 238510002 – "*if they went to tender, or if they went to mini tender, or if they ask you to, that's not an issue at all*".

641 '[S<] Councils' email of 1 March 2016, [APS employee 1] stated to [Sulion director 1] re allpay's readmittance "*Hello [first name of Sulion director 1], thank you for the update, 'I assume that you have had the conversation around not poaching existing council partners, unless directly approached or via the Framework*": UUID PSR0001-95087-000913. Interview of [APS employee 1] on 27 September 2019, disc 2 of 5 at lines 1592 – 1598: UUID 238510002 – "*if they went to tender, or if they went to mini tender, or if they ask you to, that's not an issue at all*". At line 1497-1502, and '*Unless directly approached*', means "*directly approached to do a tender*", at lines 1510-1514: UUID 238510002.

642 [APS employee 1] was asked at interview what [APS employee 1] meant by the phrase '*unless directly approached*'. [APS employee 1] stated that "*if they went to tender, or if they went to mini tender, or if they ask you to, that's not an issue at all*". [APS employee 1] stated that [APS employee 1] meant a situation where a PM was directly approached by the LA to do a tender. [APS employee 1] interview, 27 September 2019, disc 2 of 5, at line 1501-1502: UUID 238510002.

- b. [Sulion director 1] (Sulion) stated at interview that it was “*very unusual for Local Authorities to ditch suppliers mid-contract*”.⁶⁴³
- c. [PFS director 1] (PFS) stated at interview that PFS struggled to get councils to switch at the end of their contract, and getting them to switch mid-term was even harder.⁶⁴⁴

5.92 It is clear from the contemporaneous documentary and corroborating witness evidence set out in this chapter and Section C of Chapter 3 that it was worth PMs engaging with a Public body even if the body was in the middle of a prepaid card services contract (including a pilot programme), because Public bodies could, in fact, award contracts to PMs other than their incumbent providers (and some had done so).

- a. As set out in more detail in Section C of Chapter 3, on purchasing by Public bodies, it was often possible for Public bodies to terminate their prepaid card services contracts (including pilot programmes) while in contract either with⁶⁴⁵ or without cause. For example, a Public body could choose to terminate a contract mid-term where: (i) it became dissatisfied with a PM’s service or with the value for money it was receiving, or (ii) in the course of the duration of a contract, the functionality requirements or other services required by the Public body changed, or the Public body’s priorities altered as a result of change in circumstances. Paragraph 3.128 above sets out an example where a Public body terminated an existing contract and switched supplier: [Public body 7] terminated the contract with allpay and switched to PFS in 2015 (allpay was not a member of the Network at the time).⁶⁴⁶
- b. [PFS director 1] of PFS stated at interview that PFS had tried to poach public sector customers of [Programme Manager 1] (which was not a member of the Network) mid-contract (that is, during a contract).⁶⁴⁷
- c. [PFS director 2] of PFS gave the example (at interview) of a PM potentially winning or losing a local authority client from another PM mid-contract or at the end of a contract in circumstances where there was a “*damaged relationship*” between a client and a PM.⁶⁴⁸
- d. Engagement with a Public body that was contracted with another supplier could, in principle in a competitive market, offer a commercial opportunity for PMs. Such engagement could enable a PM to, for example, identify the benefits of its services or price structure, with a view to fostering new business opportunities such as a new contract for an existing area of business or by winning a contract with a new area of business of the Public body.
- e. Prepaid card services contracts will, in any event, come to an end at some point, and engagement with a Public body mid-contract may also have placed a PM in a better position to be ready to tender or quote for a contract in a manner which would meet that Public body’s requirements (or offer a pilot programme in a manner which satisfies that Public body’s priorities). The examples detailed in paragraph 3.128 demonstrate that switching was possible.

643 Interview of [Sulion director 1] on 8 July 2019, disc 2 – 1-2, at lines 153-157: UUID 238520003.

644 Interview of [PFS director 1] on 7 November 2018, disc 3 of 3 at 1163-1166: UUID 223980003.

645 For example, because the PM had become insolvent.

646 Annex 007 to PFS response to PSR request for information of 3 April 2018: UUID 85070009.

647 Interview of [PFS director 1] on 7 November 2018, disc 3 of 3 at line 1207-1232. [PFS director 1] stated that this was generally during the first three years of the Network and that [Sulion director 1] had not been aware that PFS had been seeking to poach customers of another Network PM: UUID 223980003.

648 Interview of [PFS director 2] on 9 November 2018, disc 2 of 3 at lines 966 – 968: UUID 238180002.

5.93 The Network PMs were not happy when another Network PM approached a Public body that they were in contract with, indicating that PMs approaching an existing customer of another PM while in contract could be commercially detrimental to the existing PM, and commercially beneficial to the PM seeking to poach:

- a. For example, in relation to [Public body 36]⁶⁴⁹ in December 2015, the existing [Public body 36] provider (APS) complained to Mastercard and [Sulion director 1] (Sulion) when another PM (allpay) approached the council with a quote for this additional business. [APS employee 1] (APS) stated that [APS employee 1] “*will not be happy*” for allpay to rejoin the Network and for them to start “*speaking to councils already in contract*”. [Public body 36] were seeking to expand the use of prepaid cards to additional teams within [Public body 36].⁶⁵⁰
- b. Similarly, [APS employee 1] of APS complained to [Sulion director 1] (Sulion) on 6 July 2016 that: “*When AllPay re-joined the network, I thought there was an understanding that AllPay would not proactively go after either PFS or APS’ clients? I don’t really appreciate being told that [first name of allpay employee 5] [allpay] is visiting Councils to talk initially about their ‘payments’ systems and then introducing their prepaid card solutions*”.⁶⁵¹

5.94 For the reasons set out at paragraphs 5.91 to 5.93 above, the PSR rejects the alternative explanations put forward by certain individuals employed by the Parties.

Monitoring and enforcement of the non-targeting of existing customers conduct

5.95 It is possible that some Network PMs might have been tempted not to follow the non-targeting rule, in particular if they were approached by a Public body. Also, [PFS director 1] stated at interview that, in the first three years of the Network, PFS had on occasion sought to target existing customers of allpay and APS, in particular during the pilot phase of a contract, despite the existence of the Network non-targeting arrangement.⁶⁵²

5.96 However, in the majority of cases, the Network non-targeting arrangement was voluntarily adhered to by the Network PMs.

5.97 In interview, [Sulion director 1] (Sulion) explained that the Network PMs “*were quite happy*” with the Network non-targeting arrangement. “*There is no great kickback or desire not to do it*” (that is, not to adhere to the Network non-targeting arrangement) “*because we were looking longer term rather than short-term. Plenty of scope for them to go into battle with one another when the tenders come up*.”⁶⁵³

649 See paragraph 5.83 where allpay was speaking to an existing client of APS ([Public body 36]) and APS complain to Mastercard/[Sulion director 1], email chains: UUIDs PSR0001-93050-000377 and PSR0001-95087-000753.

650 That is, various teams within [S<] department

651 UUID PSR0001-93050-000534

652 Interview of [PFS director 1] on 7 November 2018, disc 3 of 3 at lines 1207-1232. [PFS director 1] stated that this was generally during the first three years of the Network and that [Sulion director 1] had not been aware that PFS had been seeking to poach customers of another Network PM: UUID 223980003.

653 Interview of [Sulion director 1] on 8 July 2019, disc 2, 1 of 2, at lines 240 onwards.

5.98 [Sulion director 1] (Sulion) stated⁶⁵⁴ that, as issues arose, [Sulion director 1] would take action to ensure Network PMs complied with the Network non-targeting arrangement by reminding them of their ‘obligations’ as members of the Network, but that this was very rare. In this regard, [Sulion director 1]’s response to the PSR’s Section 26 Notice states:

“Almost without exception this hasn’t been a problem and suppliers have worked extremely well together in the network as they’ve seen the benefits of maintaining a positive and transparent environment”.

5.99 At interview [Sulion director 1] (Sulion) stated, *“Emails show that on a very few occasions I’ve had to remind suppliers about aspects of this and ‘playing fair’ but it’s very rare”. “I don’t remind them about”* the Network non-targeting arrangement *“on a regular basis in any way, shape or form, it’s just as issues arise”*.⁶⁵⁵

5.100 In addition, as detailed at paragraphs 5.17 to 5.20 above, the PSR has seen contemporaneous documentary evidence of a Network PM (APS) complaining about the non-compliance of another Network PM (allpay) with the Network non-targeting arrangement in an email chain of 6–7 July 2016⁶⁵⁶, and of Mastercard directly intervening to ensure that the Network non-targeting arrangement is complied with.

C Relevant facts relating to the End of contract agreement

Introduction

5.101 The previous section sets out the facts relevant to a customer allocation agreement or concerted practice between allpay, APS, Mastercard, PFS and Sulion that prevented, limited or restricted the ability of each Network PM to target, poach or market their services to certain customers. This occurred within the Network and covered different forms of conduct. One of those forms of conduct related to an unwritten non-targeting arrangement that prevented Network PMs from poaching or targeting each other’s existing customers, whether in contract for the supply of prepaid card services or in a pilot programme/trial with one of the Network PMs.

5.102 As explained above in paragraph 5.89, this non-targeting arrangement excluded contracts that would come up for retender at the end of a contract or a pilot programme, including mini tenders under a Framework Agreement.

5.103 However, there is also evidence that, outside of the Network, there was an arrangement between PFS and APS not to compete for each other’s existing public sector customers when a contract

⁶⁵⁴ [Sulion director 1] response to Section 26 Q 12: UUID 94570001.

⁶⁵⁵ Interview of [Sulion director 1] on 8 July 2019, disc 2, 1 of 2, at lines: 1416-1418, 1438-1439: UUID 238520003.

⁶⁵⁶ [APS employee 1] (APS) stated *“I don’t really appreciate being told that [first name of allpay employee 5] [allpay] is visiting Councils to talk initially about their ‘payments’ systems and then introducing their prepaid card solutions – 2 London Borough partners today have spoken to me about this. Can you confirm what was agreed with AllPay?”*. Email titled ‘Re: Allpay’: UUID PSR0001-93050-000534.

went out to tender at the end of a contract or pilot programme. This conduct spanned the period from at least 19 August 2014 to at least 18 July 2016 (the **'End of contract agreement'**).

- 5.104** By way of background, the PSR starts by referring below to the very early contacts between APS and PFS, which occurred before the setting up of the Network (in 2007). These contacts point to the existence of a long-standing relationship between [APS director 1] from APS and [PFS director 2] from PFS (who was at the time working for [Company A]), demonstrating that at this early stage there was already an understanding regarding how they should behave in relation to each other's customers.

Early contact between APS and PFS

- 5.105** Prior to the establishment of the Network, there was already a business relationship between [APS director 1] ([<] APS) and [PFS director 2] ([<] [Company A]). [Company A] was at the time the PM for PFS, and PFS was effectively a reseller of the services.⁶⁵⁷ [PFS director 2] later became [<] of PFS. As early as 2007 there was an understanding between [PFS director 2] ([Company A]) and [APS director 1] (APS) that they would not compete for each other's customers.
- 5.106** For example, [PFS director 2] ([Company A]) and [APS director 1] (APS) were in email contact in July 2007 regarding an informal dinner that was being arranged for 2 August 2007. Both [PFS director 2] ([Company A]) and [APS director 1] (APS) confirmed that they would attend.⁶⁵⁸ In the words of the organiser of the dinner, the dinner was organised "*for a not quite random selection of people engaged in prepaid, partly to get to know each other, partly to exchange views*".⁶⁵⁹ There was no agenda.
- 5.107** Later that year, in September 2007, there was bilateral email contact⁶⁶⁰ between [APS director 1] (APS) and [PFS director 2] ([Company A]). Neither APS nor PFS were active in the public sector at this time, but they discussed [Company A] agreeing not to "*steal*" an APS existing customer in the private sector that was looking to potentially switch suppliers.
- 5.108** The exchange took place in September 2007, in an email titled '*Re: A request*' regarding a company called [Company G] (an existing APS customer).⁶⁶¹ [Company G] was considering switching away from APS, midway through its contract, to another prepaid card services provider. On 24 September at 9:39, [PFS director 2] stated to [APS director 1], "*If [Company G] approaches [Company A], I will go through the motions, then tell [Company G] is better off with aps. ... [Shortened name of APS director 1], I won't try and steal this client, I will direct [Company G] back to where [Company G] is contracted*".
- 5.109** In [PFS director 2]'s interview, when asked about this email exchange, [PFS director 2] stated that [PFS director 2] "*wouldn't target a client you've got under contract. That's how we behave, and maybe, actually, this is how we behave in the prepaid network, but this is it. Just thinking*

657 PFS response to PSR's request for information of 10 July 2019 question 7, date of response: 31 July 2019: UUID 199960003.

658 UUID PSR0001-95290-003290

659 UUID PSR0001-95290-003666

660 UUID PSR0001-95290-003665

661 UUID PSR0001-95290-003665

back this morning ... it's a code of conduct. If you've signed a contract with somebody and then you are going to leave ... I'd rather not do it. It's not my thing. ... so I spoke to [[APS director 1]] and said, 'By all means, give [Company G] my phone, I just won't take [Company G]'s call'. It's not going to happen".⁶⁶²

Contacts between PFS and APS evidencing the End of contract agreement

- 5.110** The PSR sets out below evidence in relation to contacts between APS and PFS, where one of the PMs knows or suspects that the other PM has been providing prepaid card services to a specific local authority pursuant to an existing pilot programme or contract, and expresses its decision not to compete for those contracts.
- 5.111** [PFS director 2] (PFS) summarised the situation with APS at [PFS director 2] interview, stating that *"I just think it became like a standard of practice of, 'Oh, well it's their client, don't pitch for it, it's coming up for renewal, forget about it'.⁶⁶³ ... it gets just too comfortable I suppose".⁶⁶⁴* [PFS director 1] (PFS) said that [PFS director 1] thought it was an *"understanding ... that was formed over the initial two or three years of the Network"*. [APS employee 1] (APS) stated that [APS employee 1] considered that this arrangement with PFS had *"grown out of the nature of the steering group"*.⁶⁶⁵
- 5.112** Given the nascent nature of the prepaid card market in 2011 when the Network was established, and that contracts for the supply of prepaid card services typically lasted for between three and five years (as explained in Chapter 3, Section C, *Purchasing of prepaid card services by Public bodies*, paragraph 3.107)⁶⁶⁶, there were relatively few tenders of Public bodies seeking to renew contracts (including following a pilot programme) for prepaid card services during the early years of the operation of the Network. Public bodies that had contracted with one of the Network PMs generally started looking to retender or renew their contracts around 2014.⁶⁶⁷ For example, [Public body 45] retendered in August 2014⁶⁶⁸ and [Public body 7] retendered in April 2015.⁶⁶⁹ [Public body 42] retendered in July 2016⁶⁷⁰ and [Public body 41] and [Public body 3] both retendered in July 2017.⁶⁷¹ At interview [PFS director 2] stated that *"I have been the one responsible for most of the retenders, and there weren't very many, so it's not like there were dozens of these, there were so few"*.⁶⁷²

⁶⁶² Interview of [PFS director 2] on 9 November 2018, disc 2 of 3, at lines 1929-1939: UUID 238180002.

⁶⁶³ Interview of [PFS director 2] on 9 November 2018, disc 3 of 3 at lines 134-135: UUID 238180003.

⁶⁶⁴ Interview of [PFS director 2] on 9 November 2018, disc 1 of 3 at line 1893: UUID 238180001.

⁶⁶⁵ Interview of [APS employee 1] on 27 September 2019, disc 4 of 5, at line 372: UUID 238510003.

⁶⁶⁶ Pilot programmes typically lasted for 1 – 2 years – see paragraph 3.109 above.

⁶⁶⁷ Sometimes the initial contract with the council was by way of direct contract.

⁶⁶⁸ Following a mini tender which APS won.

⁶⁶⁹ allpay won the original contract with [Public body 7] in 2011. PFS submission Annex 7 to its response to PSR request for information of 3 April 2018: UUID 85070009.

⁶⁷⁰ PFS submission Annex 7: UUID 85070009.

⁶⁷¹ PFS submission Annex 7: UUID 85070009.

⁶⁷² Interview of [PFS director 2] on 9 November 2018, disc 2 of 3 at lines 776-778: UUID 238180002.

- 5.113** The first email evidencing this conduct is from 19 August 2014. The contact was initiated by PFS and related to an upcoming tender for **[Public body 45]**. APS had previously won a mini tender to conduct a pilot for [Public body 45] and had issued over 500 cards.⁶⁷³ [Public body 45] subsequently issued a full tender in 2014. Between 19 and 21 August 2014, there was an email exchange between [PFS director 2] and [PFS director 1] of PFS and [APS employee 1] of APS, titled '*[Public body 45] Tender*'. PFS asked APS to confirm if they were already supplying cards to [Public body 45], because if they were, PFS would not compete with them. APS responded confirming they were in fact supplying cards to that customer, and so PFS confirmed to APS that it would not be tendering for that contract.⁶⁷⁴
- 5.114** The full tender was won by APS⁶⁷⁵ and PFS did not submit a bid.⁶⁷⁶
- 5.115** A similar exchange of emails between PFS and APS occurred on 18 July 2016. PFS and APS discussed the upcoming retenders for (i) the [Public body 5] and (ii) [Public body 42].⁶⁷⁷ At the time of the retenders, APS had already supplied over 350⁶⁷⁸ prepaid cards to [Public body 5] and PFS had supplied over 5,000 cards to [Public body 42].⁶⁷⁹ In this email discussion, PFS confirmed to APS that it would not submit a tender for the upcoming [Public body 5] retender as APS was supplying prepaid cards to [Public body 5]. APS confirmed to PFS that it would not submit a tender in relation to the upcoming [Public body 42] retender.

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- 673 The 2014 [Public body 45] tender followed an April 2013 mini tender for an 18-month pilot project (for adult social care in certain postcodes in the [Public body 45] area amounting to a few hundred cards). PFS and APS both responded to the mini tender, which was won by APS (Table 6 of APS Section 26 response of 4 May 2018 to PSR Section 26 Notice dated 11 April 2018): UUID 85040022. Prior to the 2013 mini tender, PFS had offered a six month free pilot to [Public body 45] which the council declined; PFS representations on manifest errors of fact dated 14 December 2020: UUID PSR0001.000256.
- 674 On 19 August 2014 at 15:58, [PFS director 1] (PFS) contacted [APS employee 1] (APS) by email and asked: "Are you already live and providing cards to [Public body 45]. If you are and have a number of cards with them we won't compete on this one". [PFS director 2] (PFS) also emailed [APS employee 1] on 19 August 2014 at 16:10 (UUID 90430003), stating, "[shortened name of APS employee 1], we won't be pitching to APS 'live live' clients. It wouldn't be the right thing to do." In an email of 20 August 2014 at 21:58, [APS employee 1] forwarded the email chain with PFS to [APS employee 1]'s direct boss at APS, [APS employee 2], stating, "interesting couple of emails from the [Public body 45] and [Public body 45] at PFS re [Public body 45] CC": UUID PSR0001-95087-000806. [APS employee 1] then responded to [PFS director 1] and [PFS director 2] on 20 August 2014 at 22:14, stating: "we have been live since late last year and have over 500 accounts set up. Catch up with you soon". [PFS director 1] responded to [APS employee 1] (copying [PFS director 2]) on 21 August 2014 at 9:19: UUID PSR0001-95290-001741 stating, "Ok [first name of APS employee 1] we will opt out of this one". [APS employee 1] then forwards the latest email chain with [PFS director 1] to [APS employee 1]'s direct boss at APS, [APS employee 2] on 21 August 2014 at 9:20 stating "FYI": UUID PSR0001-95087-000809. [PFS director 1] stated that at interview that the reference to a 'live live' client in [PFS director 2]'s email was a reference to a client who had a significant number of cards live (ie in existence) with another PM. Interview of [PFS director 1] on 7 November 2018, 1 of 3, at lines 2550-2552: UUID 223980001. [PFS director 2] discussed what [PFS director 2] considered to be a significant number of cards in [PFS director 2]'s interview of 9 November 2018, disc 1 of 3, stating that "... for me it is about, you know, if you've got a couple of hundred cards live, if you've got 200 or 300 cards live, for me that's a significant number.": lines: 1695-1697: UUID 238180001.
- 675 APS response of 4.05.2018, Table 6: UUID 85040022 – the full contract was a continuation of the [Public body 45] pilot tender in 2013.
- 676 Annex 007 to PFS response to PSR request for information of 3 April 2018 – Re [Public body 45] – PFS "Did not respond to August 2014 tender": UUID 85070009. Interview of [PFS director 1] on 7 November 2018, disc 1 of 3, at lines 2223-2224: UUID 223980001, "that was one of the ones we didn't respond to".
- 677 Interview of [PFS director 1] on 7 November 2018, disc 2 of 3, at lines 601-606: UUID 223980002 – "[Public body 42] was the first client we ever had that went out for retender".
- 678 APS BD & Commercial Business Line Update – January 2016, slides: UUID PSR0001-95087-000698.
- 679 Interview of [PFS director 1] on 7 November 2018, Part 2 of 3 at 1282-1287: UUID 223980002 – this "was the first scenario where it worked the opposite for us where we had a live client who had to go out for a retender, [Public body 42] were live with us... with us for four years, three and half/four years I think and they had about 5,000 cards they're one of the biggest local authorities in the UK but they had to go out to retender due to the threshold".

- a. By way of background, APS had been providing prepaid card services to [Public body 5] since March 2013.⁶⁸⁰ There had been no tender in 2013 as the value of the contract was below the threshold required to run a tender. [Public body 42] had appointed PFS in February 2014 following a full tender exercise. The retenders for both [Public body 5] and [Public body 42]⁶⁸¹ were issued around July 2016.
- b. The initial contact was made by [PFS employee 1] of PFS to [APS employee 1] of APS in an email on 18 July 2016, titled '[Public body 5]'. [PFS employee 1] emailed [APS employee 1] on 18 July 2016 at 16:54 stating: *"I had a chat with [PFS director 2] today and I'm dropping you a line to apologise. We did not realise [Public body 5] were with you, and as such we will not be responding to their tender."*⁶⁸²
- c. [APS employee 1] responds on 18 July 2016 at 16:59 stating, *"No apology needed, anyone who goes out to tender is fair game, although from what I understand they then removed the tender! As we previously discussed, I will not be stepping on your toes with the [Public body 42] Card tender, good luck re-securing them."*⁶⁸³
- d. In line with the email exchange, PFS did not bid for the [Public body 5] retender.⁶⁸⁴ The tender was subsequently withdrawn by [Public body 5], who continued to work with APS. PFS explained that [Public body 5]'s Procurement department decided it did not need to issue a new tender as the value of the new contract was below the threshold required to run a tender.⁶⁸⁵
- e. At interview [PFS director 1] stated that *"[Public body 5] withdrew the tender ... they actually realised a few weeks after putting the tender out that they don't need I think it was in days that they don't need to put the tender out, they can actually still continue working with APS and they just pulled the tender ..."*⁶⁸⁶ This was also confirmed by [APS employee 1] at interview.⁶⁸⁷

680 From March 2013. Table 6 of APS response of 4 May 2018 to PSR Section 26 Notice dated 11 April 2018: UUID 85040022.

681 Internal PFS email exchange dated 28 June 2016, between [PFS director 1] and [PFS employee 1]. [PFS employee 1] says to [PFS director 1] *"This is the new contract. Estimated start date 01/09/16 and end date 31/08/19. (The old contract only permitted a year extension from memory – and we are in that extension period now.)"* [PFS director 1] states *"So we have to re tender to try retain the same client"*: UUID PSR0001-95290-006009.

682 [APS employee 1] (APS) was asked at interview why [APS employee 1] thought [PFS employee 1] felt [PFS employee 1] had to apologise regarding the [Public body 5] tender and stated that *"I think ... [PFS employee 1] felt that, 'Oh, we were going for the tender, but they're your customer'"*. Interview of [APS employee 1] on 27 September 2019, disc 4 at lines 721 – 725: UUID 238510003.

683 Regarding this email, [PFS director 1] (PFS) stated at interview that *"[first name of APS employee 1] kind of confirms back that [APS employee 1]'s not going to retender on the [Public body 42] one"*. See interview of [PFS director 1] on 7 November 2018, disc 1 of 3, at 2645-2646: UUID 223980001.

684 Annex 007 to PFS response to PSR request for information of 3 April 2018 – Re [Public body 5] – *"No tender – appointed APS"*: UUID 85070009. Interview of [PFS director 1] on 7 November 2018, disc 2 of 3, at line 1337: UUID 223980002, *"we don't respond to that one"*.

685 Interview of [PFS director 2] dated 9 November 2018, disc 2 of 3 at lines 369-372: UUID 238180002, *"actually, [Public body 5] dropped the tender. Which was when their procurement team realised they didn't have to go out for tender, so this is a tender that didn't even end up as a tender"*.

686 Interview of [PFS director 1] on 7 November 2018, disc 2 of 3 at lines 1345-1352: UUID 223980002.

687 [APS employee 1] stated at interview that [Public body 5] then *"removed the tender from the tender portal"*. Interview of [APS employee 1] on 27 September 2019, disc 4, at line 744, UUID 238510003.

- f. Similarly, in line with the email exchange, APS did not tender for the [Public body 42] contract. [PFS director 2] confirmed that PFS did retender for the [Public body 42] contract and won it.⁶⁸⁸
- g. [PFS employee 1] (PFS), was asked about the email exchange at interview. [PFS employee 1] (PFS) confirmed that not responding for a new contract with a Public body that was an existing customer of the other PM was regarded as a “*professional courtesy*”⁶⁸⁹ and it was considered the wrong thing to do to compete for the tender⁶⁹⁰, even if the new business would have been substantial.⁶⁹¹

5.116 The existence of a non-targeting arrangement between PFS and APS not to compete for each other’s existing public sector customers when a contract went out to tender at the end of a contract or pilot programme is explained in an email from [PFS director 1] of PFS to [allpay employee 1] of allpay in 2017.

- a. On 17 February 2017, PFS contacted allpay and referred to a previous ‘gentleman’s agreement’ that had been in place between PFS, [Programme Manager 1] and APS that if a tender came out for renewal and the council was already live using the services of one of the PMs, then the others would not compete for those existing customers. [PFS director 1] then asked if PFS could “*count on the same gentlemen’s agreement with Allpay and vice Versa from our side*”?⁶⁹² At the time of the email in February 2017, APS and [Programme Manager 1] had already exited the market and PFS and allpay were the only two PMs remaining.
- b. [allpay employee 1] of allpay responded to PFS declining to engage in this type of arrangement.⁶⁹³

688 [PFS director 2] stated at interview that “So, the [Public body 42] retender, we do retender. Our client, we won it the first time around. We won it again in the retender.” Interview of [PFS director 2] on 9 November 2018, 2 of 3, at lines 431-433: UUID 238180002.

689 Regarding [APS employee 1]’s (APS) response to [PFS employee 1] (PFS) that “As we previously discussed, I will not be stepping on your toes with the [Public body 42] Card tender...” [PFS employee 1] (APS) stated that this is “back to that professional courtesy thing” given that [Public body 42] was an existing PFS client: interview of [PFS employee 1] on 6 August 2019, disc 3, at line 259: UUID 238550003.

690 [PFS employee 1] (PFS) was asked at interview why [PFS employee 1] felt [PFS employee 1] had to tell [APS employee 1] (APS) that PFS would not be responding to the [Public body 5] tender? [PFS employee 1] stated that it was “Back to professional courtesy, so that [PFS director 2] would have been aware that if [APS employee 1]’d got wind of the fact that we were going to try and take [Public body 5] from them...” “that the right thing for me to do was apologise. I mean, I personally don’t see what we did wrong there. But the fact that [PFS director 2] decided to pull me out and talk to me about it, that for me would have been something that we’d done wrong: interview of [PFS employee 1] on 6 August 2019, disc 3 at lines 171-180: UUID 238550003. [PFS employee 1] added that “[PFS director 2] was pretty clear that we’d done the wrong thing”: interview of [PFS employee 1] on 6 August 2019, disc 3 at lines 492-493: UUID 238550003. “I can’t imagine why we wouldn’t go for it”: Interview of [PFS employee 1] on 6 August 2019, disc 3 at lines 208-209: UUID 238550003.

691 [PFS employee 1] stated at interview that “[Public body 42]’s massive.... It, you know, the sorts of numbers that you’re talking about for [Public body 44] are, ... rare.”: interview of [PFS employee 1] on 6 August 2019, disc 3 at lines 335-336: UUID 238550003.

692 Email of 17 February 2017 titled ‘Tenders’ – [PFS director 1] stated to [allpay employee 1] that: “Previously we had an agreement with APS and [Programme Manager 1] that if a tender came out for renewal and the council was already live using the services of another existing issuer then we would not compete for existing clients. Can we count on the same gentleman’s agreement with Allpay and vice Versa from our side?”: UUID PSR0001-95290-005446.

693 [allpay employee 1] stated that “allpay will not engage in any conversations of this kind, as a business regulated by the FCA we are fully compliant with the statutory objective to promote the competition in the market place and endeavour to continue working in this way”: UUID PSR0001-95290-005446.

- c. [PFS director 1]'s email to allpay stated that [Programme Manager 1] were also included in the arrangement. However, [PFS director 1] (PFS) and [PFS director 2] (PFS) subsequently explained to the PSR that although there had indeed been an arrangement with APS, the reference to an arrangement with [Programme Manager 1] was a 'bluff'⁶⁹⁴ to try to get allpay on board and that there had never been any such agreement or arrangement with [Programme Manager 1].⁶⁹⁵
- d. However, PFS confirmed the existence of the 'gentlemen's agreement' with APS. At interview, [PFS director 1] (PFS) confirmed that there had been a "*broad understanding with APS*", and that [PFS director 1] had "*reached out*" to allpay at this time because allpay were "*newly back into the network*" and a scenario had arisen whereby the [Public body 41] contract was up for retender.⁶⁹⁶ [Public body 41] was an existing PFS customer and PFS "*didn't want to go through the hassle of another month's work to win back our own client.*"⁶⁹⁷

5.117 Consistent with this arrangement, the examples of Public bodies switching between PMs set out in Chapter 3, Section C, paragraphs 3.127 to 3.128 above which involve retenders or negotiations at the end of a contract were not between APS and PFS.

694 In [PFS director 1] interview of 7 November 2018, [PFS director 1] stated, "*So I reach out to [allpay employee 1], that email was a bit of a bluff, ... there was no agreement with [Programme Manager 1].*": [PFS director 1] interview of 7 November 2018, disc 2 of 3, at lines 2127 – 2129: UUID 223980002. [PFS director 2] said that "*[Programme Manager 1] is the bit where it's an out and out lie*": [PFS director 2] interview of 9 November 2018, part 2 of 3, at lines 1449 – 1450: UUID 238180002.

695 In [PFS director 1] interview of 7 November 2018, [PFS director 1] stated, "*So I reach out to [allpay employee 1], that email was a bit of a bluff, ... there was no agreement with [Programme Manager 1].*" [PFS director 1] interview of 7 November 2018, disc 2 of 3, at lines 2127 – 2129: UUID 223980002. As explained in Chapter 1 above, the PSR closed the investigation against [Programme Manager 1].

696 Interview with [PFS director 1] on 7 November 2018, disc 3 of 3, at lines 69-71: UUID 223980003.

697 Interview with [PFS director 1] on 7 November 2018, disc 2 of 3, at lines 2248-2249: UUID 223980002.

6 The relevant market

A Purpose of assessing the relevant market

- 6.1** When applying the Chapter I prohibition, the PSR is not required to define the relevant market, unless it is impossible, without such a definition, to determine whether the agreement and/or concerted practice under investigation is liable to affect trade in the UK and whether it had as its object or effect the appreciable prevention, restriction or distortion of competition.⁶⁹⁸
- 6.2** In the present case, the PSR considers that it is not necessary to reach a definitive view on market definition in order to determine whether there has been an infringement.
- 6.3** Nonetheless, the PSR has formed a view of the relevant market(s) to be taken into account for the purposes of calculating the level of financial penalty imposed on the Parties.⁶⁹⁹ In this regard, the PSR recognises that Mastercard and Sulion are not active in the same relevant market as the PMs. In relation to these two Parties the PSR considers it is appropriate to use, as the starting point for the calculation of their penalty, the turnover in the markets in which their conduct, in relation to the infringement, occurred. For Sulion, this means that the relevant market is the provision of consultancy services to the Network in GB.⁷⁰⁰ Regarding the other parties, the PSR's considerations are set out in more detail in this chapter.
- 6.4** The CAT and the Court of Appeal have accepted that it is not necessary to carry out a formal analysis of the relevant market in order to assess the appropriate level of the penalty. Rather, the PSR must be 'satisfied, on a reasonable and properly reasoned basis, of what is the relevant product market affected by the infringement.'⁷⁰¹ As the Court of Appeal has stated:

*"... the market which is taken for calculation of the turnover relevant for Step 1 on a penalty assessment may properly be assessed on a broad view of the particular trade which has been affected by the proved infringement, rather than by a relatively exact application of principles that would be relevant for a formal analysis, such as substitutability or, on the other hand, by limiting the turnover in question to sales of the very products or services which were the direct subject of the price-fixing arrangement or other anti-competitive practice."*⁷⁰²

⁶⁹⁸ Case T-62/98 *Volkswagen AG v Commission* EU:T:2000:180, paragraph 230 and, Case T-29/92 *SPO and Others v Commission* EU:T:1995:34, paragraph 74. This principle has also been applied by the CAT in *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2005] CAT 13, in which the CAT stated at [176] that "[i]n Chapter I cases, unlike Chapter II cases, determination of the relevant market is neither intrinsic to, nor normally necessary for, a finding of infringement".

⁶⁹⁹ CMA's guidance as to the appropriate amount of a penalty (CMA73, 18 April 2018), adopted by the CMA Board, paragraphs 2.1 and 2.3 to 2.11.

⁷⁰⁰ Sulion's turnover resulted exclusively from the supply of consultancy services to the Network.

⁷⁰¹ Court of Appeal judgment in *Argos Limited and Littlewoods Limited v. OFT and JJB Sports plc v. OFT* [2006] EWCA Civ 1318 (*'Argos and Littlewoods and JJB'*), paragraph 170.

⁷⁰² Court of Appeal judgment in *Argos Limited and Littlewoods Limited v. OFT and JJB Sports plc v. OFT* [2006] EWCA Civ 1318, paragraph 173. The PSR considers that these principles established by the Court of Appeal also apply when assessing the geographic market.

- 6.5** The market definition reached in this case should therefore be viewed in context, and in light of its purpose as outlined above, and is not determinative for the purposes of any future cases.
- 6.6** The PSR is not bound by market definitions adopted in previous cases, although earlier definitions can, on occasion, be informative when considering the appropriate market definition. Equally, although previous cases can provide useful information, the relevant market must be identified according to the particular facts of the case in hand.
- 6.7** The analysis below sets out the PSR's view on the relevant market(s) in this case: it considers what products and/or services are part of the relevant market (the relevant product market) and the geographic scope of the relevant market (the relevant geographic market).

B Relevant product market

- 6.8** The PSR's starting point for assessing the relevant product market is the focal products which are subject to the Infringements. The PSR then assesses whether the product market should be broadened based on demand side and supply side substitutability with other products.
- 6.9** The focal product in this case is the supply of prepaid card services for welfare disbursements to Public bodies.⁷⁰³
- 6.10** Demand side substitution is the process by which customers of the focal products would switch some of their purchases from the focal product to other substitute products.⁷⁰⁴ In considering demand side substitutability in this case the PSR focuses primarily on the downstream customers, that is, the Public bodies, although the PSR does also consider the willingness of PMs, or card issuers, to substitute to alternatives (specifically, card networks other than Mastercard).
- 6.11** Supply side substitution explores whether entry into the candidate relevant market (that is, the market which includes the focal products and any sufficiently close demand side substitutes) would be likely to arise at relatively short notice and without incurring substantial sunk costs.⁷⁰⁵ For example, such entry may take place if assets utilised to supply other products/services could alternatively or additionally be used to supply the focal products. If this is the case, then the

703 Prepaid cards supplied on behalf of Public bodies may be used for adult and children direct payments, payments to asylum seekers, appointee and depute clients. In addition, "*welfare disbursements*" includes Prepaid Card Accounts (for the purposes of managing Direct Payments) and Limited-Load Prepaid Cards for emergency or one-off payments. See allpay response of 22 August 2019, Narrative email response to questions 1-11, responding to the PSR's s26 of 10 Jul 2019: UUID 183840040. See APS response of 25 July 2019 to the PSR's s26 Notice of 10 July 2019: UUID 179520001. See PFS response of 31 July 2019 to PSR RFI of 10 July 2019: UUID 199960003 & 203180004.

704 See [Market Definition](#), OFT403 (adopted by the Board of the Competition and Markets Authority).

705 If prices rise, undertakings that do not currently supply a product might be able to supply it at short notice and without incurring substantial sunk costs. This may prevent a hypothetical monopolist profitably sustaining prices 5 to 10 per cent above competitive levels. This form of substitution is carried out by suppliers and hence is known as supply side substitution. "*In this context, a sunk cost is a cost incurred on entering a market that is not recoverable on exiting that market. These could, for example, include investments in product placement, distribution and production technology*". See paragraph 3.13 and footnote 33 of Market Definition, OFT 403 (adopted by the Board of the Competition and Markets Authority).

market may be broadened to include the assets and other products or services supplied.⁷⁰⁶ Supply side substitution can be considered as a form of relatively rapid entry.⁷⁰⁷

- 6.12** In considering supply side substitution in this case, the PSR takes into account the fact that the Network PMs and Mastercard operate at different levels in the supply chain. As a result, the extent of supply side substitution may differ between the Network PMs and Mastercard and consequently the relevant markets may differ.⁷⁰⁸
- 6.13** In this section, the PSR first briefly describes the supply chain for prepaid card services for welfare disbursements. The PSR then assesses demand and supply side substitution at the different levels of the supply chain at which the Network PMs and Mastercard operate. More specifically, the PSR considers whether the relevant markets at these different levels of the supply chain should be expanded to include: alternatives to prepaid cards for welfare disbursements; alternative providers of network services for prepaid cards; prepaid cards used for purposes other than welfare disbursements; and alternative types of payment cards.

The supply chain for prepaid card services for welfare disbursements

- 6.14** Mastercard provides card network services for issuers of prepaid cards for Public bodies for the purposes of welfare disbursements.
- 6.15** Mastercard has outlined its role in the provision of prepaid cards as follows: *“Mastercard’s role in the provision of prepaid cards is the same as its role in the provision of other types of card. It operates a four party card scheme whereby a card payment by a consumer to a merchant is facilitated by a number of intermediary parties, including an issuer and an acquirer.”*

⁷⁰⁶ For example, supply side substitution in the context of payment systems has recently been considered by the CMA. The CMA assessed whether central infrastructure services for Bacs, Faster Payments, and LINK were in the same relevant market, on the basis of supply side substitution. See pages 16-18, *Anticipated acquisition by Mastercard UK Holdco Limited of VocaLink Holdings Limited*, 30 January 2017.

<https://assets.publishing.service.gov.uk/media/588f2c1fed915d4535000041/mastercard-vocalink-ftd.pdf>

⁷⁰⁷ “Supply side substitution can be thought of as a special case of entry – entry that occurs quickly (e.g. less than one year), effectively (e.g. on a scale large enough to affect prices), and without the need for substantial sunk investments. Supply side substitution addresses the questions of whether, to what extent, and how quickly, undertakings would start supplying a market in response to a hypothetical monopolist attempting to sustain supra competitive prices. In some cases, where there are high levels of supply-side substitutability, it may be appropriate to define a market with reference to the similarity of production methods”. Paragraphs 3.16-3.17, Market Definition, OFT 403.

⁷⁰⁸ This approach is consistent with the approach adopted by the Office of Fair Trading (‘OFT’) in the *Replica Kits* case. There, the OFT defined relevant product markets at two different levels of the market. First, a relevant market was defined for each club or national team’s replica kit. This relevant market was used to set the fines for the upstream supplier of the replica kits (Umbro) and various retailers of replica kits. Second, the OFT defined a relevant market for the granting of club or team trademark intellectual property (IP) licences for the manufacture or sale of Replica Kit for each respective club or team. This second market was defined for the purposes of calculating a financial penalty only for Manchester United and the Football Association, as only their businesses were active in this market. The right to use relevant IP was found to be an essential input for the manufacture and supply of Replica Kit. Demand for IP licences is derived from the demand for each replica kit. This case provides a parallel of the situation for prepaid card services where prepaid card network services provided by suppliers such as Mastercard are essential inputs for the supply of prepaid card services for welfare disbursements supplied by PMs. The OFT then assessed the application of demand and supply-side substitutability to the market for granting trademark IP licences for the manufacture or sale of Replica Kit for each respective club or team. Similarly, the PSR considers demand and supply substitutability in the upstream market for network services for prepaid cards for welfare disbursements. CA98/06/2003, Price-fixing of Replica Football Kit, 1 August 2003, paragraphs 540 and 557 to 558. <https://assets.publishing.service.gov.uk/media/555de4c5e5274a74ca00014b/replicakits.pdf>

*Mastercard's responsibilities include designing and monitoring the scheme rules and procedures, and licensing its brand to issuers and acquirers who meet the requirements of scheme membership".*⁷⁰⁹

- 6.16** Consistent with the characterisation of market definition for payment card networks by the EU Commission, the PSR considers that payment card networks operate in a separate upstream market and supply card network services to downstream issuers and PMs.⁷¹⁰ PMs then enter into commercial relationships with Public bodies for the supply of prepaid cards and associated prepaid card services for welfare disbursements. In return, the PMs benefit from programme fees charged to the Public bodies.⁷¹¹
- 6.17** As explained in Chapter 3, Section B (*Industry overview and the Parties' activities*), PMs may issue prepaid cards themselves or they may enter into a sponsorship agreement with a licensed issuer. Sponsorship provides the PM with access to the Mastercard scheme, and the ability to issue Mastercard branded cards, without having to become a direct member of the card scheme. Prior to becoming licensed issuers, allpay, APS and PFS had sponsorship arrangements with a third-party issuer.⁷¹²
- 6.18** The services of a payment card network are key inputs into the services which PMs supply to Public bodies. However, the PMs are not merely selling these services on to their customers. PMs also supply a tailored suite of prepaid card services to Public bodies and cardholders in their capacity as PMs.⁷¹³
- 6.19** Mastercard has indicated that, similar to the PMs, it also offers programme management services for prepaid cards in the private sector for consumer and commercial prepaid card products, but that it has not offered these prepaid card services to public sector customers for welfare disbursements.⁷¹⁴ The PSR does not consider further Mastercard's activities at this level of the supply chain.

709 Mastercard response to questions 1-3 of PSR Section 26 Notice dated 29 March 2019: UUID 93230007.

710 See Commission Decision 2001/782/EC in Case COMP/29.373 *Visa International* of 9 August 2001, OJ L293, 10.11.2001, p. 24, recital 34, and Commission Decision 2002/914/EC in Case COMP/29.373 *Visa International – Multilateral Interchange Fees* of 24 July 2002, OJ L 318, 22.11.2002, p. 17, recital 43: "Market definition is based on the analysis of the services provided within a payment card network. The following distinct groups of services can be identified: (i) services provided by a payment card network to financial institutions (typically members of that network) where competition between different payment card schemes or the so called 'inter-system' or 'upstream market' competition takes place; (ii) services provided by the issuing banks to cardholders; (iii) services provided by the acquiring banks to merchants, where competition between individual financial institutions for cardholders' and merchants' custom respectively takes place, such competition also being termed 'intra-system' or 'downstream markets' competition". Also Commission Decision 2002/914/EC, recital 45: "Accordingly, three separate markets can be differentiated: (i) a market for network services, in which card networks (such as Visa or MasterCard) provide services to individual financial institutions; (ii) an 'issuing market' in which card issuers compete with each other to issue cards and provide card-related services to individuals; (iii) an 'acquiring market' in which acquirers sign merchants for all of the services necessary for the merchant to accept cards".

711 PMs who are also issuers benefit from receipt of interchange fees on all transactions made on the cards they have issued, including prepaid cards issued for the purposes of welfare disbursements. See 3.99 of Chapter 3.

712 Mastercard's response of 23 April 2018 to questions 1-3 of PSR S26 of 29 March 2018: UUID 93230007.

713 The List of Defined Terms at Annex A of this Decision states that the provision of prepaid card services for welfare disbursements to Public bodies in GB, includes arranging for the provision of prepaid cards for distribution to end users and may also include other ancillary services such as the provision of contact centres, management information, transaction processing, banking-lite services and supply of card account information to clients and end users.

714 Paragraph 13.8 of Mastercard's response of 18 May 2020 to the PSR Section 26 Notice dated 25 March 2020: UUID 236860001.

- 6.20** Sulion provided consultancy services to Mastercard to help Mastercard promote the use of prepaid cards with Public bodies, including through the Network. Sulion was not a direct part of the supply chain providing prepaid cards and prepaid card services to Public bodies.⁷¹⁵

Alternatives to prepaid cards for welfare disbursements

- 6.21** The PSR has considered whether there are alternative means of transferring funds to recipients of welfare disbursements which are close substitutes to prepaid cards from the perspective of the Public bodies who fund the welfare disbursements. Potential alternatives which could be used by Public bodies are cash, cheques, or payments to a bank account.
- 6.22** As noted in Chapter 3 (paragraph 3.92 onwards), there are several benefits of prepaid cards and the prepaid card programmes supplied by the Network PMs relative to these potential alternatives. These benefits include: the ability to configure prepaid cards depending on how the Public body wants the prepaid card to be used; the ability for the Public body to have direct oversight of spending against each card; and the ability to reclaim unspent funds.
- 6.23** Prepaid cards are also well-suited to those who are unbanked or in debt to their bank, as cashing a cheque can incur substantial charges and requires the recipient to cash the full value of the cheque, leading them to carry large amounts of cash. The prepaid card programmes also allowed for: payments to be made by direct debit or standing orders; another person to be appointed to manage funds on the recipient's behalf; and the cost of a care plan to be shared with a local authority.⁷¹⁶
- 6.24** On the basis of these relative benefits, the PSR considers that alternative means of transferring funds to recipients of welfare disbursements are not sufficiently close demand side substitutes to be included in the relevant market. As there is no demand side substitution by final customers, these options cannot act as a constraint that is relevant to any of the points in the supply chain.

Alternative providers of prepaid card network services

- 6.25** The PSR has then considered whether the services of alternative card networks may be demand side substitutes for Mastercard's prepaid card network services in this area.
- 6.26** The PSR considers that, from the perspective of a card issuer, there are close demand side substitutes to Mastercard's network services for prepaid cards for welfare disbursements in the form of other suppliers of network services for prepaid cards for welfare disbursements. Both Mastercard and [Card scheme 1] have supported prepaid cards for welfare disbursements being issued on their respective networks.⁷¹⁷ An issuer may choose between these card networks

⁷¹⁵ This is consistent with Ofgem's approach to the facilitator, Dyball, in its decision to find a Chapter I, Competition Act 1998, infringement by Economy Energy, E (Gas and Electricity) and Dyball Associates, 26 July 2019 (see paragraph 8.32).

⁷¹⁶ See paragraph 3.94 of Chapter 3.B for further detail.

⁷¹⁷ As explained in Chapter 3 of this Decision (paragraph 3.65) aside from the issuers/PMs using Mastercard prepaid cards, there were a number of providers using [Card scheme 1]'s prepaid card network services and competing for public sector contracts. These providers were allpay (when it was not a member of the Mastercard card scheme), [Programme Manager 4], [Programme Manager 3] and [Programme Manager 1].

when seeking to issue a prepaid card for welfare disbursements. Therefore, the PSR considers that the supply of network services for prepaid cards for welfare disbursements by other card networks (in particular, [Card scheme 1]) is in the same relevant product market as the supply by Mastercard of network services for prepaid cards for welfare disbursements.

Prepaid cards used for purposes other than welfare disbursements

- 6.27** Prepaid cards are also used by Public bodies for reasons other than welfare disbursements. In particular, they are sometimes used by staff for travel and other types of expenditure, or when staff are procuring some products or services. In addition, prepaid cards are also used in the private sector by private sector corporates and individual consumers. As explained in paragraph 3.60, uses by private sector corporates include paying for staff expenses or as a method of disbursing employee rewards such as staff bonuses, while uses by individual consumers include using prepaid cards as gifts, having more control over their budgets, or as an alternative to cash for 'travel money'. In relation to market definition, the PSR considers first how prepaid cards may be used by Public bodies for reasons other than welfare disbursements, before considering whether the relevant market should be extended to include uses of prepaid cards in the private sector.
- 6.28** On the demand side, these cards have been used by Public bodies to provide a payment method for members of their staff, rather than recipients of welfare disbursements from Public Bodies. In addition, prepaid cards for travel and other types of expenditure do not have the functionality that is required for welfare disbursements. As discussed further below (paragraph 6.31), the Public bodies required additional functionality for prepaid cards for welfare disbursements, beyond what was available with prepaid cards used for travel and other expenses.
- 6.29** On the supply side, the PSR has considered whether PMs who supplied prepaid cards to Public bodies for purposes other than welfare disbursements would start supplying prepaid cards for welfare disbursements, relatively quickly and without incurring substantial sunk costs, in response to a relative price increase.⁷¹⁸
- 6.30** Some PMs initially supplied prepaid cards to Public bodies for the purposes of travel and expenses before supplying cards for welfare disbursements.⁷¹⁹ The PMs use the same assets (for example, IT platform and call centres) in supporting the travel and expenses products for public authorities as they do in supporting welfare disbursements. The same terms are offered for any type of prepaid card service to public sector clients and the PMs do not record separate revenues based on whether the Public body was purchasing services for welfare disbursements or for other end purposes.
- 6.31** However, the PMs had to make investments to expand their services to supply prepaid cards to Public bodies for welfare disbursements. The experience of the Network PMs and the specific investments they made are illustrative of the extent to which sunk costs would need to be incurred when expanding into the supply of prepaid card services for welfare disbursements.

⁷¹⁸ See paragraphs 3.13 and 3.15, Market Definition, OFT 403.

⁷¹⁹ allpay's product to Public bodies was provided for travel and expenses purposes which had basic functionality and did not offer any banking facilities. allpay response to Question 10 of the PSR's Section 26 notice dated 22 June 2018: UUID 101210023.

- 6.32** APS needed to develop a number of bespoke and enhanced features to serve the requirements of Public bodies.⁷²⁰ APS estimates that the scale of effort required was about 500 hours for internal development, representing £500,000 of internal set-up costs.⁷²¹ In addition, APS estimated that it incurred operating costs of about £100,000 annually to support its back office and telephone service to support the bespoke requirements of public sector customers.⁷²² In addition, these investment costs appear to have been large relative to the benefits which APS accrued.⁷²³ In this context, APS observed that *“It was the bespoke requirements of Local Authorities, who were less flexible than our other customers in respect of using our existing capability, that led to our exit of the LA market”*.⁷²⁴
- a. PFS initially provided a very simple prepaid card solution for welfare disbursements for [Public body 3] in 2010.⁷²⁵ However, from 2011, PFS gained a better understanding of what might be an optimal platform for local authorities, particularly around monitoring/reporting and the need to block certain types of transactions,⁷²⁶ and PFS needed to invest significant staff time and resources, as well as employing external suppliers, in order to meet the requirement of [Public body 6].⁷²⁷ PFS continued to bid for tenders from local authorities, but found that it needed to make further system enhancements which it estimates cost hundreds of thousands of pounds in salary payments. PFS estimates that it spent about £4 million developing the platform for Local Authorities since it entered into the market.
 - b. Similarly, [Programme Manager 1] identified a number of ways in which it extended its platform to create a dedicated solution to support prepaid cards which could be used by local authorities for welfare disbursements.⁷²⁸

720 APS identified the specific enhanced functionality to its standard consumer product and process as: (i) delegated authority; (ii) bespoke reporting – as defined by each local council; (iii) telephone banking / payment processing (payment over the phone via customer services); and (iv) back office email and telephone support for public sector teams. In relation to the bespoke reporting suite, APS noted that it had attempted to streamline this process by providing transaction data feeds, similar to that which it used for its Business group, but this proved unsuccessful as local authorities had limited ability to utilise data other than via specifically defined and created reports, requiring APS to provide these bespoke reports at additional cost. APS response to Questions 1 and 9 of the PSR’s section 26 Notice dated 10 July 2019: UUID 179520001

721 APS response to Questions 1 and 9 of the PSR’s Section 26 Notice dated 10 July 2019: UUID 179520001

722 APS response to Questions 1 and 9 of the PSR’s Section 26 Notice dated 10 July 2019: UUID 179520001

723 The profitability of a market into which entry is taking place is relevant to the assessment of supply side substitution. If the expected sunk costs that need to be incurred are high relative to the expected returns, then entry would be less likely to occur in response to an increase in relative prices in the candidate relevant market. *“Undertakings may be unwilling to switch production from an existing product to a new one, if producing the former product is more profitable than the latter.”* Paragraph 3.16, Market Definition, OFT 403.

724 APS response to Questions 1 and 9 of the PSR’s Section 26 Notice dated 10 July 2019: UUID 179520001.

725 PFS’ response of 31 July 2019 to the PSR’s s26 Notice of 10 July 2019: UUIDs 199960003 & 203180004.

726 PFS’ response of 31 July 2019 to the PSR’s s26 Notice of 10 July 2019: UUIDs 199960003 & 203180004.

727 PFS estimate that the total days put into the [Public body 6] tender and the meetings and demonstrations with [Public body 6] took at least 30 FTE days. The development of the platform took the best part of another 60 days of development time.

728 These included: (i) Integration with the pre-paid card provider for ordering, loading and unloading of cards from the funding account; (ii) Management and reconciliation of account holder contribution payments; (iii) Dedicated management reports; and (iv) Automated alerts and notifications based on the client organisation’s specific requirements. [Programme Manager 1]’s response to the PSR’s s26 of 11 April 2018, response to question 7: UUID 85050054.

- 6.33** The PSR considers that the scale of the investment costs outlined above mean that the relevant market, at the level of the supply chain where the Network PMs operate, should not be extended beyond the supply of prepaid card services supplied to Public bodies for welfare disbursements. In particular, at the level of the supply chain at which the Network PMs operate, the relevant market should not include prepaid cards supplied to Public bodies for purposes other than welfare disbursements.
- 6.34** The investments that were made by the PMs in entering into the supply of prepaid cards for welfare disbursements to Public bodies would similarly be incurred when considering potential entry from adjacent markets, particularly the supply of prepaid cards to private sector corporates and consumers. Therefore, for the same reasons, the relevant market, at the level of the supply chain at which the Network PMs operate, should not include prepaid cards supplied to other customer types such as consumers and private sector corporates.
- 6.35** The PSR has next considered whether the relevant product market, at the level of the supply chain where payment card networks operate, should be broadened on the basis of supply side substitution. In particular, the PSR has considered whether network services for other types of prepaid cards, including prepaid cards used by private sector corporates and consumers, may be supply side substitutes.
- 6.36** The PSR considers that, at a high level, many of the services which four-party card networks, such as Mastercard and [Card scheme 1], provide to issuer and acquirer members are applicable to, and scalable across, the different card products which a card scheme supports.⁷²⁹ [Card scheme 1] and Mastercard have developed detailed rule books and sophisticated IT systems to support the transactions of their members. Different types of cards (prepaid, debit, and credit) will utilise similar card network IT capability and capacity, and the PSR considers that many aspects of the rulebook are common across different card products.
- 6.37** Nevertheless, in assessing the extent of the relevant market, the PSR has specifically assessed whether suppliers of prepaid card network services for purposes other than welfare disbursements would enter into the supply of prepaid card network services for welfare disbursements relatively quickly and without incurring substantial sunk costs. Network services have been supplied to support prepaid cards for use by Public bodies, for end uses like expenses, for use by private sector corporates, and for use by consumers. The prepaid cards supplied for these end uses are identical⁷³⁰ and the structure of Mastercard's fees across these is the same.⁷³¹ Therefore, the PSR has assessed whether the relevant market should be extended to include network services for these end uses.

729 "Mastercard's role in the provision of prepaid cards is the same as its role in the provision of other types of card. It operates a four party card scheme whereby a card payment by a consumer to a merchant is facilitated by a number of intermediary parties, including an issuer and an acquirer. Mastercard's responsibilities include designing and monitoring the scheme rules and procedures, and licensing its brand to issuers and acquirers who meet the requirements of scheme membership". Mastercard response to questions 1-3 of PSR Section 26 Notice dated 29 March 2018, paragraph 1.3: UUID 93230007.

730 "Prepaid cards supplied for use in the public sector and the private sector are in all material respects identical. Both provide for a depositor loading funds onto the card and both allow for a wide variety of potential usage cases". Mastercard response to questions 1-3 of PSR Section 26 Notice dated 29 March 2018: UUID 93230007.

731 "Mastercard's fee structure is the same across all card products and it does not have any specific fee structure that applies only to prepaid cards, or to prepaid cards in the public sector": Letter from Mastercard to the PSR ([3<]), 1 July 2019: UUID 182250040.

- 6.38** In making this assessment, the PSR has considered the time taken and costs incurred by Mastercard when it entered into the supply of network services for prepaid cards for welfare disbursements. The PSR has also considered the experience of [Card scheme 1] in supplying network services for prepaid cards for welfare disbursements (in paragraph 6.50).
- 6.39** Prior to entering into the supply of prepaid card network services for welfare disbursements, Mastercard was already active in the supply of network services for prepaid cards for consumers and private sector corporates. Prior to 2010, Mastercard developed, with its issuers, a prepaid card offering for consumers and a commercial prepaid card offering for use by corporate bodies. These commercial prepaid cards could be used by private or public sector corporate bodies to manage corporate expenses, such as procurement of office supplies and travel expenses.⁷³²
- 6.40** The first uses of Mastercard-branded prepaid cards for public sector welfare disbursements in the UK were in 2010/2011.⁷³³ Mastercard's entry into supplying network services for prepaid cards for welfare disbursements took place prior to the establishment of the National Prepaid Cards Network, although Mastercard came to an initial agreement with Sulion in April 2011, in order to grow the prepaid card public sector market and expand Mastercard's share of that market (see paragraph 4.24). Moreover, the resources which Mastercard needed to commit to enter into the supply of network services for prepaid cards for welfare disbursements were relatively small. Mastercard was able to utilise a very small number of staff whose time was only partly allocated to supporting entry into prepaid cards for welfare disbursements.⁷³⁴ Mastercard's work in this area was managed out of the wider UK & Ireland Prepaid team.

732 At a similar time to developing pre-loaded gift cards that were retailer specific, "(that is, up to and including 2010), Mastercard's commercial team developed a commercial prepaid product for use by corporate funders / companies to manage corporate expenses. Use cases for commercial prepaid cards included areas such as procurement (e.g. of office supplies) and employee travel. These commercial prepaid cards could also be used in a similar way by public sector funders and Mastercard worked with its issuer/programme manager partners to help market such cards to public sector funders." Mastercard's response of 18 May 2020 to the PSR Section 26 Notice dated 25 March 2020: UUID 236860001, paragraph 1.3.

733 Mastercard-branded prepaid cards for public sector welfare disbursements were first used by the [Public body 6] in late 2010/2011 and the [Public body 9] in 2011. Mastercard's response of 18 May 2020 to the PSR Section 26 Notice dated 25 March 2020: UUID 236860001, paragraph 2.5.

734 It was the UK & Ireland Prepaid team within Mastercard which developed, in 2010, Mastercard's prepaid cards business for welfare disbursements, alongside other activities in relation to prepaid use cases across consumer, private sector and public sector. At this time, the UK & Ireland Prepaid team comprised of two individuals. Mastercard's response of 18 May 2020 to the PSR Section 26 Notice dated 25 March 2020: UUID 236860001, paragraphs 5.2 and 5.5. Paragraph 5.2: "The UK & Ireland Prepaid team was established during 2007 – 2008, and initially was comprised of a single Mastercard staff member ([Mastercard employee 14]). In 2010, [Mastercard employee 2] joined the UK & Ireland Prepaid team. At this time, Mastercard's UK & Ireland Prepaid team was attempting to develop public sector welfare disbursement prepaid business for interested issuing partners and programme managers (alongside Mastercard's other activities in relation to other prepaid use cases across consumer, private sector and public sector)". Paragraph 5.5: "In early 2012, [Mastercard employee 3] took over from [Mastercard employee 2] in supporting public sector welfare disbursement work, which involved attending the quarterly meetings, and overseeing Mastercard's entry into a more formal contract with [Sulion director 1] as chair of a new prepaid group for local authorities (the National Prepaid Cards Network (or Network))."

Moreover, the public sector element of the role of the responsible Mastercard team was still a relatively small part of the team's PM relationships.⁷³⁵

- 6.41** In late 2012 and early 2013 there was sufficient work for Mastercard within the public sector to justify establishing a dedicated public sector team: the Government and Public Sector team.⁷³⁶ The team comprised two or three people and looked at the whole breadth of Mastercard's relationships in the public sector, including prepaid cards for welfare disbursements.⁷³⁷ It was this team that sponsored the work of the National Prepaid Cards Network and corresponded with members of the Network.
- 6.42** Mastercard has claimed that one of the main tasks of the Government and Public Sector team was to develop specialised functionality to support the specific requirements of the public sector welfare disbursement market.⁷³⁸ Mastercard claims that, on the basis of these additional requirements and its funding of the National Prepaid Cards Network, its role and activities in the public sector welfare disbursement market are materially different from its role in supporting prepaid cards for other public sector use cases, such as procurement or employee travel, or prepaid cards for private sector corporates or consumers.⁷³⁹
- 6.43** The PSR has sought to quantify the costs of the investments which Mastercard incurred in developing this specialised functionality, and when these costs were incurred. However, Mastercard is unable to estimate the costs of the 'technical investments' Mastercard made

735 Interview of [Mastercard employee 3]: "when I joined I was in – so effectively the market development team, which is another word for business development. So – and public sector was one part of my job of many in terms of verticals. So, we had public sector vertical. We had a travel vertical. We had a general purpose vertical. We had working with TfL ongoing contact list. This was before the days that TfL, Transport for London, went contactless. And during that time, I was working with the business development team on – I picked up the work that was the public sector network or steering group". "So, by vertical – so business that – so vertical would be a section of the market. So in terms of we had public sector, we had prepaid travel as a vertical. We had general purpose reloadable. And we had – and this is what I mean by is prepaid solutions for a variety of different uses. Another use would have been gaming, so payout gaming cards. So, yeah, so my point is public sector was a small part of what my day job was and I never had public sector in my job title throughout my career at Mastercard". "It was just a sector of the market which we were focusing on". Page 7, disc 1: UUID 242590001.

736 Mastercard's response of 18 May 2020 to the PSR Section 26 Notice dated 25 March 2020: UUID 236860001.

737 Confirmed in Mastercard's response of 18 May 2020 to the PSR Section 26 Notice dated 25 March 2020 (UUID 236860001), paragraph 6.1. Lines 527-528. Also confirmed in the transcript of the interview with [Mastercard employee 1], interview of 9 September 2019, disc 1, at lines 323-336, at lines 724-725: UUID 242580001.

PSR: When was it you moved into the prepaid market, and particularly the market we're interested in, which is the public sector market?

[Mastercard employee 1]: So, I built a team that covered all aspects of how we interact with public sector, so it's not specifically a role I've done around public sector because I looked at the whole breadth of our relationships. So, that included card acceptance, and it included the commercial side, in terms of procurement and travel, as well as prepaid, but also it covered asylum-seekers.

PSR: Right, and what date was that? What particular date would you really, for Mastercard?

[Mastercard employee 1]: 2012 to '13 is when the prepaid side started to gain some traction, and it was worthwhile taking under the wing of the Government team.

738 Mastercard identified six specific requirements: (i) close monitoring (and reporting) of cardholder use and spend so councils could closely monitor/manage spend of welfare disbursements; (ii) blocking of certain merchants; (iii) claw-backs of unused funds; (iv) ring-fencing of funds for items such as rent payment; (v) application of curfews; (vi) linking prepaid cards to shadow bank accounts and shadow sort codes to allow for the setting up of direct debits and standing orders for items such as rent and utility bills. Mastercard's response of 18 May 2020 to the PSR Section 26 Notice dated 25 March 2020, paragraph 5.8: UUID 236860001.

739 Mastercard's response of 18 May 2020 to the PSR Section 26 Notice dated 25 March 2020, paragraph 12.6: UUID 236860001.

to support Mastercard's issuers'/PMs' welfare disbursement offerings.⁷⁴⁰ Mastercard is also unable to confirm which of the specific requirements represented early investments and which came later.⁷⁴¹

6.44 In addition, to the extent that Mastercard did incur investment costs in supporting expansion into prepaid cards for welfare disbursements, the move into welfare disbursements was only one of the drivers for these investments.⁷⁴² To the extent that investments in products and services were made to support prepaid cards for welfare disbursements, they were primarily undertaken by Mastercard issuers and PMs, rather than Mastercard itself.⁷⁴³

6.45 Considering more specifically the actions that Mastercard says it undertook in relation to the 'specific requirements' developed by the Government and Public Sector team, the PSR notes the following:⁷⁴⁴

- a. **Close monitoring of cardholder use:** Mastercard made available API⁷⁴⁵ information, and one of the uses to which the API information was put was the provision of services by third parties to allow for close monitoring (and reporting) of cardholder use and spend. No changes were required to Mastercard's core or non-core systems.
- b. **Blocking of certain merchants:** This was a global change to prevent money laundering and other illegal activity and required a change to Mastercard's acquirer-facing core technical systems and rules. The public sector customer base was only one of the drivers for this change.
- c. **Claw-backs of unused funds:** This required Mastercard to grant waivers to its rules. It did not require any changes to Mastercard's core or non-core systems.
- d. **Ring-fencing of funds:** This required changes to Mastercard's core technical systems, but this functionality was developed from similar functionality used for multi-currency cards.

740 Mastercard notes that such costs would have included time spent by developers and others in Mastercard's Global Products & Solutions (GP&S) division in developing functionalities aimed at supporting the public sector welfare disbursement market but that Mastercard is not in a position to be able to provide any meaningful estimate of these figures. Mastercard's response of 18 May 2020 to the PSR Section 26 Notice dated 25 March 2020, paragraph 8.1: UUID 236860001.

741 Mastercard's response of 18 May 2020 to the PSR Section 26 Notice dated 25 March 2020, paragraph 7.1: UUID 236860001.

742 Mastercard's response to questions dated 16 June 2020: UUID 236860002.

743 When interviewing [Mastercard employee 3], the PSR asked why suppliers of prepaid cards through [Card scheme 1] had not met the needs of local authorities. [Mastercard employee 3]: "*The bit that they missed was the standing orders and direct debit functionality. So, you essentially, at the time of that product, meant that you could load a prepaid card with cash and give it to someone but they couldn't go and pay [Utility A] so, they couldn't go and pay [Utility B] or they couldn't pay their rent, you know, more importantly. So that was the key. I can't remember – so there's a few things. So, from memory, things like multi-language call centres. So, [Public body 6], being one of the most diverse local authorities in, well, not just London but in the UK, they needed to support upwards of 12 languages. That's not what a high street bank is geared up to do. So that was an example of the flexibility which the programme managers could give and how they responded and adapted to the needs. But the key driver would have been the ability to take a baseline Mastercard prepaid card and overlay the direct debits and standing orders functionality that Mastercard didn't provide. This was provided from the programme managers and, more importantly, by the issuers that they worked with*". Interview transcript, pages 33-34, disc 1: UUID 242590001.

744 Mastercard's response to questions dated 16 June 2020: UUID 236860002.

745 Application programming interface

- e. **Application of curfews:** This required Mastercard to grant waivers to its rules. It did not require any changes to Mastercard's core or non-core systems.
- f. **Linking prepaid cards to shadow bank accounts:** Mastercard did not need to make any changes to its systems or rules, or grant any waivers, in order to enable this functionality.

6.46 Based on the foregoing, the PSR does not consider that Mastercard needed to incur substantial sunk costs in amending its systems and rules in supporting its entry into the supply of network services for prepaid cards for welfare disbursements.

6.47 In addition, the PSR has considered the costs which Mastercard incurred in supporting the Government and Public Sector team and the National Prepaid Cards Network. In this way, should investments of this sort be seen as important for entry, then one can assess whether they represent a substantial upfront sunk cost.

6.48 The aggregate cost to Mastercard of the Government and Public Sector team and the sponsorship of the National Prepaid Cards Network was around £102,000 in 2012.⁷⁴⁶ The PSR notes that Mastercard began providing network services for prepaid cards for welfare disbursement prior to the establishment of the National Prepaid Card Network and prior to the establishment of its Government and Public Sector team. Even if the PSR were to consider the costs of the Government and Public Sector team, and sponsorship of the National Prepaid Cards Network, to be necessary costs of entry, the PSR does not consider the scale of these investments to represent substantial sunk costs.

6.49 In addition, this cost can be compared to the level of business it generated for Mastercard.⁷⁴⁷ The work of the Government and Public Sector team, with the National Prepaid Cards Network, led to 15 additional councils implementing programmes with Mastercard prepaid cards.⁷⁴⁸ This provided an additional £48 million of funds being placed on Mastercard prepaid cards in 2012, with a similar figure expected in 2013.⁷⁴⁹ Moreover, Mastercard had targeted prepaid cards for welfare disbursements in expectation of the opportunities arising with Universal Credit, which was expected to lead to £1 billion being spent on Mastercard prepaid cards with public sector sources of funding.⁷⁵⁰

746 Direct employment costs ranged from around £75,000 in 2012 to around £277,500 in 2018; expenses relating to items such as meeting and conference attendance ranged from around £1,000 in 2012 to around £8,000 in 2015; and funding of the National Prepaid Cards Network ranged from £26,000 in 2012 to £110,000 in 2017. Mastercard's response of 18 May 2020 to the PSR Section 26 Notice dated 25 March 2020: UUID 236860001, paragraph 8.2.

747 The relative costs and expected revenues are relevant to the assessment of supply side substitution. As noted in the CMA's guidance on market definition, "Undertakings may be unwilling to switch production from an existing product to a new one, if producing the former product is more profitable than the latter". Paragraph 3.16, 'Market Definition', OFT403.

748 Mastercard marketing/professional fees request form: UUID 93230164.

749 Mastercard refers to these funds as turnover. However, this does not represent income/revenue received by Mastercard and, so, is not turnover as this term is commonly used.

750 "So, the potential, when we first started, was we could grow this to £1 billion worth of turnover. In terms of revenue, probably around, you know, I think at that point a couple of million pounds worth of revenue. However, we were just, you know, we were learning as the market was learning. When we were established and understood what the opportunities were with universal credit, as an alternative to a basic bank account, then the market potential was massively extended". Interview of [Mastercard employee 1], on 9 September 2019, disc 1, at lines 586-592: UUID 242580001.

- 6.50** The PSR also considers it relevant that [Card scheme 1] provided prepaid card network services for welfare disbursements when supporting the offers of allpay, [Programme Manager 4], [Programme Manager 3], and [Programme Manager 1]. [Card scheme 1] similarly supports prepaid cards for consumer use.⁷⁵¹ The PSR does not have information on the sunk cost investments incurred by [Card scheme 1] but notes that it did not need to incur the costs of sponsoring the Network when its issuers were active in this area. The PSR recognises that [Card scheme 1] issuers of prepaid cards for welfare disbursements had less success in securing contracts with Public bodies than Mastercard issuers. However, [Card scheme 1]'s presence in supplying network services for its prepaid card issuers indicates that Mastercard was not exceptional in entering into this area and that expenditure to sponsor something similar to the Network was not necessary to enter into the supply of network services for prepaid cards for welfare disbursements.
- 6.51** The balance of evidence indicates that Mastercard's investment in supporting its entry into prepaid cards for welfare disbursements was not large and was incurred incrementally, increasing as the revenues from that business grew. Mastercard entered into the supply of prepaid card scheme services for welfare disbursements using staff who were, initially, working on Mastercard's network services for prepaid cards across corporates (both private and public sector) and consumers. The PSR also considers that Mastercard was able to apply much of the technology, rules and processes to supporting welfare disbursements as it was already applying to its corporate and consumer prepaid cards.
- 6.52** Given Mastercard's ease of entry into the supply of network services for prepaid cards for welfare disbursements, the PSR considers that the relevant market should be extended to include the supply of prepaid card network services to public sector bodies for purposes other than welfare disbursements, including use cases such as travel and procurement.⁷⁵² Similarly, the PSR considers that the relevant market should be extended to include the supply of network services for prepaid cards for private corporates and consumers.
- 6.53** Therefore, the PSR considers that the relevant product market in which Mastercard operates extends at least to including prepaid card network services for all prepaid cards.

Alternative types of payment cards

- 6.54** The PSR has also considered whether the relevant product market should be extended further to include alternatives to prepaid cards, particularly other types of payment cards (that is, debit and credit cards).
- 6.55** The PSR began by considering demand side substitution to debit and credit cards. Similar to the earlier discussion of the willingness of Public bodies to substitute from prepaid cards for welfare disbursements to alternatives such as cash and bank transfers, the PSR considers that neither debit nor credit cards are close demand side substitutes. This is due to the relative benefits of prepaid cards (see paragraphs 6.21 to 6.24).

751 [X]

752 Mastercard estimates that the total spend on Mastercard-branded prepaid cards in the public sector outside the distinct welfare disbursement market (that is, including for uses such as travel and subsistence, or procurement) would have been insignificant in terms of the overall spend on Mastercard-branded prepaid cards in the public sector: See Mastercard's response to questions dated 16 June 2020: UUID 236860002.

- 6.56** The PSR has next considered whether debit and credit cards might be supply side substitutes at the level of the supply chain at which Network PMs operate. As noted earlier (paragraph 6.31), the Network PMs had to make specific sunk cost investments to enter into the supply of prepaid card services for welfare disbursements. The PSR considers that similar investments would need to be made by issuers of debit and credit cards. For this reason, the PSR does not consider debit and credit cards to be supply side substitutes at the level of the supply chain at which the Network PMs operate.
- 6.57** Finally, the PSR has considered whether debit and credit cards might be supply side substitutes at the level of the supply chain at which Mastercard operates.
- 6.58** Mastercard has noted that a prepaid card is a form of debit card.⁷⁵³ In addition, Mastercard's role in the provision of prepaid cards is the same as its role in the provision of other types of cards.⁷⁵⁴ Mastercard has also explained that its scheme fee structure does not differ between prepaid cards and other payment cards, suggesting that the costs of supply for Mastercard are similar.⁷⁵⁵
- 6.59** Nevertheless, the PSR recognises that debit and credit cards are substantially different products from prepaid cards and entry into the supply of network services for prepaid cards, for providers of network services for debit and credit cards, could be costly.⁷⁵⁶ Therefore, the PSR does not consider that the relevant product market should be broadened further to include debit or credit cards.

Conclusion on relevant product market

- 6.60** The PSR has concluded that the relevant product market, at the level of the supply chain at which the Network PMs operated, is that for the supply of prepaid card services for welfare

753 "Mastercard's prepaid cards (which are debit cards) deliver solutions for consumers, businesses and governments who seek faster, more secure and smarter payment methods for the widest possible range of goods and services". Mastercard response to questions 1 to 3 of PSR Section 26 Notice dated 29 March 2018: paragraph 1.1: UUID 93230007.

754 "Mastercard's role in the provision of prepaid cards is the same as its role in the provision of other types of card. It operates a four party card scheme whereby a card payment by a consumer to a merchant is facilitated by a number of intermediary parties, including an issuer and an acquirer. Mastercard's responsibilities include designing and monitoring the scheme rules and procedures, and licensing its brand to issuers and acquirers who meet the requirements of scheme membership": Mastercard response to questions 1 to 3 of PSR Section 26 Notice dated 29 March 2018, paragraph 1.3: UUID 93230007.

755 "Mastercard's fee structure is the same across all card products and it does not have any specific fee structure that applies only to prepaid cards, or to prepaid cards in the public sector": Letter from Mastercard to the PSR ([3]), 1 July 2019: UUID 182250040. "There is no variation in the amounts of the network fees charged to PFS, APS and AllPay. The levels of certain of Mastercard's network fees are volume driven but the same bands of fees apply to all issuers.... Mastercard also enters into Customer Support Agreements ("CBAs") ...Mastercard concluded a CBA with PFS on 21 February 2014 and a CBA with APS on 18 December 2014.". Paragraph 13.5, Mastercard response to Questions 2, 6, 7 and 13 of PSR RFI dated 10 May 2019: UUID 166040004.

756 Mastercard has stated that "Most of Mastercard's main issuer/programme manager partners for prepaid cards are smaller fintech providers [], whereas Mastercard's main issuer partners for debit/credit cards are the major high street banks. Prepaid issuer/programme managers also often have to provide more nuanced programmes to their customers and typically require more assistance from Mastercard in tailoring such offerings and meeting customer requirements (as has been the case in relation to the public sector welfare disbursement market). In consequence, the assistance that Mastercard provides to its prepaid issuer/programme managers is often more involved than the assistance that it provides to the more sophisticated high street banks that issue debit/credit cards." Paragraph 18.7, Mastercard's response of 18 May 2020 to the PSR Section 26 Notice dated 25 March 2020: UUID 236860001.

disbursements to Public bodies. The PSR considers that there are no sufficiently close demand or supply side substitutes to expand the relevant market beyond the focal products in relation to which the Infringement(s) took place.

- 6.61** The PSR has concluded that the relevant product market, at the level of the supply chain at which Mastercard operated, is that for the supply of card scheme services for prepaid cards, including prepaid cards supplied to (or funded by) public sector corporates, private sector corporates and consumers.
- 6.62** Summarising the PSR's approach to market definition in relation to Mastercard, the PSR started with Mastercard's supply of network services for prepaid cards used for welfare disbursements. The PSR then found that the relevant product market should be broadened, on the basis of demand side substitution, to include alternative card networks which also supply network services for prepaid cards used for welfare disbursements. In addition, the PSR considered that the relevant product market should be extended further, on the basis of supply side substitution, to include network services for prepaid cards for uses other than welfare disbursements. This includes network services for prepaid cards issued to Public bodies for uses other than welfare disbursements; network services for prepaid cards for use by private sector corporates; and network services for prepaid cards used by consumers. In this way, the extent of the relevant product market differs between the Network PMs and Mastercard, which operate on different levels of the supply chain.

C Relevant geographic market

- 6.63** As discussed above, the Network PMs and Mastercard operated at different levels of the supply chain in relation to where the infringement(s) occurred and have been found to operate in different relevant product markets. In the same way, the PSR has separately considered the relevant geographic market for the Network PMs and Mastercard given the different relevant product markets.

Relevant geographic market for prepaid card services for welfare disbursements

- 6.64** The Network PMs operated across GB when supplying prepaid card services for welfare disbursements during the Relevant Periods. On the basis of the evidence which the PSR has seen to date, the PSR considers that the Network PMs did not operate in Northern Ireland during the Relevant Periods and that Public bodies in Northern Ireland did not use prepaid cards.⁷⁵⁷
- 6.65** In addition, the PSR has not seen evidence of suppliers of prepaid card services based outside GB supplying these services in GB or submitting competitive bids in response to tenders. Neither has the PSR seen evidence to date of Public bodies seeking bids from

⁷⁵⁷ An email between [Sulion director 1] (Sulion) and Mastercard refers to there being no local authorities in Northern Ireland using prepaid cards as at March 2019 and that the Network should hold an event there as they currently have no traction: UUID PSR0001-103189-000277. Another email between [Sulion director 1] (Sulion) and Mastercard discusses the proposed move into Northern Ireland: UUID PSR0001-103189-000264.

providers of prepaid card services based outside GB. There also appear to be challenges in entering the market for operators not already operating in GB or the UK.⁷⁵⁸

- 6.66** The PSR therefore concludes that the relevant geographic market in which the Network PMs operated when supplying prepaid card services for welfare disbursements was not broader than GB during the Relevant Periods.

Relevant geographic market for network services for prepaid cards

- 6.67** The PSR has also considered the relevant geographic market in which card networks operate when supporting prepaid cards.
- 6.68** The PSR considers that the conditions of competition are the same across the whole of the UK for network services for prepaid cards. Therefore, the PSR considers the relevant geographic market to be at least the entire UK.
- 6.69** The PSR has also considered whether the relevant geographic market may be wider than the UK. Card networks such as Mastercard and [Card scheme 1] operate globally and appear to standardise their network rules across geographic areas broader than the UK. For example, where they are required to meet EU regulation, they are likely to standardise their operations across the EU. This could suggest that the geographic market may have been wider than the UK.
- 6.70** However, there may be features of the market for prepaid cards in the UK which are specific to the UK. In particular, it may be that substantial sunk cost investments would need to be made by a card network in developing relationships with UK prepaid card issuers and PMs if that card network was not already operating in the UK. Similarly, if the card network was not already supporting prepaid cards in the UK, then it would also need to establish relationships with card acquirers and develop UK brand recognition. For these reasons, the PSR has concluded, on a conservative basis, that the relevant geographic market is no wider than the UK.

D Conclusion on the relevant market

- 6.71** The PSR concludes that the relevant market in which Network PMs operate, in relation to the Infringement(s), is that for the supply of prepaid card services for welfare disbursements to Public bodies in GB.
- 6.72** The PSR also concludes that the relevant market in which Mastercard operates, in relation to the Network market sharing agreement, is the supply of network services for prepaid cards in the UK.

⁷⁵⁸ In relation to the supply of prepaid card services to local authorities, allpay told the PSR that it was not straightforward to come into the UK market because “*it is difficult to understand the way UK Local Authorities operate. It is difficult to come in – if you don’t tick all the boxes, Local Authorities won’t let you in. For example, sometimes they require call centres which presents an added cost for firms given the language difference*”. Internal note of meeting between the PSR, the FCA and allpay, 15th September 2017: UUID 243110004.

7 Legal assessment: market sharing

A Introduction

- 7.1** This chapter sets out the PSR's legal assessment of the Parties' conduct, in light of the factual background set out in Chapter 3, the formation and operation of the Network set out in Chapter 4 and the evidence of the Parties' conduct set out in Chapter 5.
- 7.2** The key legal principles, including references to the relevant case law and primary and secondary legislation, are also included in this chapter which means references are also made to European case law and decisional practice where appropriate. Section 60A of the Act provides that, when determining a question in relation to the application of Part I of the Act (which includes the Chapter I prohibition), the court (and the PSR) must act with a view to securing that there is no inconsistency with the principles laid down by the TFEU, CJEU and the GC before the end of the Transition Period, so far as applicable immediately before the end of the Transition Period, and any relevant decision of the CJEU and GC in respect of any corresponding question arising in EU law. Likewise, this includes any relevant decision or statement of the European Commission.
- 7.3** The PSR has collated a large amount of evidence, largely encompassing contemporaneous documents, and has conducted witness interviews with key individuals from each of the Parties.⁷⁵⁹ References to specific paragraphs of Chapters 3, 4 and 5 are footnoted for ease of reference to the key relevant facts. The PSR's conclusions are reached in light of the totality of the relevant facts presented in Chapters 3, 4 and 5.⁷⁶⁰

B Burden and standard of proof

- 7.4** The burden of proving an infringement of the Chapter I prohibition lies with the PSR.⁷⁶¹ This burden does not preclude the PSR from relying, where appropriate, on inferences

⁷⁵⁹ In Case T-110/07 *Siemens AG v the European Commission*, EU:T:2011:68, paragraph 54, the CJEU held that “as regards the probative value which should be attached to the various pieces of evidence, it must be noted that the sole criterion relevant for evaluating freely adduced evidence is the reliability of that evidence”. See also Case T-44/00 *Mannesmannröhren-Werke v Commission* [2004] EU:T:2004:218, paragraph 84 and the case-law cited; Case T-50/00 *Dalmine v Commission* [2004] EU:T:2004:220, paragraph 72, and Case T-67/00 *JFE Engineering and Others v Commission*, EU:T:2004:221 paragraph 273).

⁷⁶⁰ Where appropriate this section also refers to Chapter 6 which pertains to market definition.

⁷⁶¹ *Napp Pharmaceutical Holdings Ltd and Subsidiaries v Director General of Fair Trading* [2002] CAT 1 (“Napp”) at paragraphs 95, 100 and 110. See also *JJB Sports plc v Office of Fair Trading* [2004] CAT 17 (“JJB”), paragraphs 164 and 928 to 931; and *Tesco Stores Limited and Others v Office of Fair Trading* [2012] CAT 31 (“Tesco”), paragraph 88.

or evidential presumptions.⁷⁶² The PSR must show precise and consistent evidence to establish the existence of an infringement of the Chapter I prohibition. However, it is sufficient that the body of evidence relied on by the PSR, viewed as a whole, meets that requirement. It is normal that agreements and concerted practices assume a clandestine character and that associated documentation is fragmentary and sparse. In those circumstances, the existence of an agreement or concerted practice contrary to the Chapter I prohibition must be inferred from a number of coincidences and indicia which, taken together, may, in the absence of another plausible explanation, constitute evidence of an infringement of the competition rules.⁷⁶³

7.5 The PSR is not required to adduce only written or documentary evidence.⁷⁶⁴ The CAT has stated that “*oral evidence of a credible witness, if believed, may in itself be sufficient to prove an infringement [of Chapter I], depending on the circumstances of a particular case.*”⁷⁶⁵

⁷⁶² See Joined Cases C-204/00, C-205/00, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P *Aalborg Portland A/S and Others v Commission*, EU:C:2004:6 (*‘Aalborg Portland’*), paragraphs 56 to 57: “*Even if the Commission discovers evidence explicitly showing unlawful contact between traders, such as the minutes of a meeting, it will normally be only fragmentary and sparse, so that it is often necessary to reconstitute certain details by deduction. In most cases, the existence of an anti-competitive practice or agreement must be inferred from a number of coincidences and indicia which, taken together, may, in the absence of another plausible explanation, constitute evidence of an infringement of the competition rules.*”

⁷⁶³ *Aalborg Portland*, paragraphs 55 to 57. Commenting on the availability of evidence in cartel cases, the European Courts have noted that it is necessary to take into account that “*anticompetitive activities take place clandestinely, meetings are held in secret, the associated documentation is reduced to a minimum, the evidence discovered by the Commission is normally only fragmentary and sparse, and, accordingly, in most cases, the existence of an anticompetitive practice or agreement must be inferred from a number of coincidences and indicia which, taken together, may, in the absence of another plausible explanation, constitute evidence of an infringement of the competition rules.*”: Case T-438/14 *Silec Cable SAS and General Cable Corp v European Commission*, EU:T:2018:447, paragraph 64, citing *Aalborg Portland*, paragraphs 55 to 57; Case C-634/13 P *Total Marketing Services v Commission*, EU:C:2015:614, paragraph 26 and the case-law cited; and Case T-439/07 *Coats Holdings v Commission*, EU:T:2012:320, paragraph 42.

⁷⁶⁴ According to the generally applicable rules on evidence, the credibility and, therefore, the probative value of a document depends, inter alia, on its origin, the circumstances in which it was drawn up, the person to whom it is addressed and the soundness and reliable nature of its contents (Joined Cases T-25/95, T-26/95, T-30/95, T-31/95, T-32/95, T-34/95, T-35/95, T-36/95, T-37/95, T-38/95, T-39/95, T-42/95, T-43/95, T-44/95, T-45/95, T-46/95, T-48/95, T-50/95, T-51/95, T-52/95, T-53/95, T-54/95, T-55/95, T-56/95, T-57/95, T-58/95, T-59/95, T-60/95, T-61/95, T-62/95, T-63/95, T-64/95, T-65/95, T-68/95, T-69/95, T-70/95, T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95 *Cimenteries CBR and Others v Commission* (*‘Cement’*) [2000] EU:T:2000:77, paragraph 1053; Opinion of Advocate General Vesterdorf, in Case T-1/89 *Rhône Poulenc v Commission* [1991] EU:T:1991:56, section: ‘E. General remarks on the assessment of the evidence and on the categories of evidence and the evidence itself’, paragraph: ‘4. Documentary evidence’. In particular, the fact that a document was drawn up in close connection with the events may be important in the fact-finding exercise (Case T 157/94 *Ensidesa v Commission* [1999] EU:T:1999:54, paragraph 312, and Joined Cases T 5/00 and T 6/00 *Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied and Technische Unie v Commission*, [2003] EU:T:2003:342, paragraph 181. The fact that a document was drawn up by a direct witness of relevant events may also be important (Case T-67/00 *JFE Engineering and Others v Commission*, EU:T:2004:221, paragraph 207).

⁷⁶⁵ *Claymore Dairies Ltd and Express Dairies Plc v Office of Fair Trading* [2003] CAT 18, paragraph 8. In, Case T-110/07 *Siemens AG v the European Commission*, EU:T:2011:68, paragraph 54, the CJEU held that “*as regards the probative value which should be attached to the various pieces of evidence, it must be noted that the sole criterion relevant for evaluating freely adduced evidence is the reliability of that evidence.*” See also Case T 44/00 *Mannesmannröhren Werke v Commission* [2004] EU:T:2004:218, paragraph 84 and the case law cited; Case T 50/00 *Dalmine v Commission* [2004] EU:T:2004:220, paragraph 72, and Case T-67/00 *JFE Engineering and Others v Commission*, EU:T:2004:221 paragraph 273.

- 7.6 The PSR has assessed the evidence in this case in light of the principles set out in the case law by reference to the civil standard of proof, namely whether it is sufficient to establish on the balance of probabilities that an infringement occurred.⁷⁶⁶

C General

- 7.7 For present purposes, the PSR's findings are made by reference to the Chapter I prohibition, which prohibits agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade within the UK and which have as their object or effect the prevention, restriction or distortion of competition within the UK. This prohibition applies unless an applicable exclusion is satisfied or the agreements, decisions, or concerted practices in question are exempt in accordance with the provisions of the Act. References to the UK are to the whole or part of the UK.⁷⁶⁷
- 7.8 Section 2(2)(c) of the Act expressly prohibits “*agreements ... or practices ... which ... share markets*”. In practice, market sharing agreements may take a number of different forms. For instance, they can include different forms of conduct designed to divide or allocate customers between suppliers, including allocating to specific suppliers the customers they can pitch to (including restrictions on approaching individual customers or groups of customers by, for instance, direct mail or visits) or supply their services to, including non-targeting or non-poaching arrangements.⁷⁶⁸

D Undertakings

Key legal principles

- 7.9 For the purposes of the Chapter I prohibition, the term ‘undertaking’ covers every entity engaged in economic activity regardless of its legal status and the way in which it is financed.⁷⁶⁹

⁷⁶⁶ *Tesco Stores Limited v Office of Fair Trading* [2012] CAT 31, paragraph 88. The CAT clarified in the *Replica Football Kit* appeals that: “[t]he standard remains the civil standard. The evidence must however be sufficient to convince the Tribunal in the circumstances of the particular case, and to overcome the presumption of innocence to which the undertaking concerned is entitled.”: *JJB*, paragraph 204. See also *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2004] CAT 24 (‘*Argos and Littlewoods*’), paragraphs 164 to 166. The Supreme Court has further clarified that this standard of proof is not connected to the seriousness of the suspected infringement: *Re S-B (Children)* [2009] UKSC 17 [34]. See also *Re B (Children)* [2008] UKHL 35, paragraph 72. The CAT has also expressly accepted the reasoning in this line of case law: *North Midland Construction plc v Office of Fair Trading* [2011] CAT 14, paragraphs 15 to 16.

⁷⁶⁷ Section 2(1) and (7) of the Act.

⁷⁶⁸ See paragraphs 7.168 to 7.171 below.

⁷⁶⁹ Case C-41/90 *Kalus Höfner and Fritz Elser v Macrotron GmbH*, EU:C:1991:161, paragraph 21. An entity is engaged in “economic activity” where it conducts any activity “of an industrial or commercial nature by offering goods and services on the market”: Case C-118/85 *Commission v Italian Republic*, EU:C:1987:283, paragraph 7.

- 7.10** The term ‘undertaking’ designates an economic unit, even if in law that unit consists of several natural or legal persons.⁷⁷⁰ It is well established that an undertaking does not correspond to the commonly understood notion of a legal entity – for example, under English commercial or tax law – and that a single undertaking may comprise one or more legal or natural persons.⁷⁷¹
- 7.11** The term ‘undertaking’ encompasses any natural or legal person that engages in commercial or economic activities, regardless of legal form. It therefore includes, among others, companies⁷⁷², partnerships,⁷⁷³ and individuals operating as sole traders⁷⁷⁴, and may include trade associations.⁷⁷⁵

Legal assessment

- 7.12** The PSR finds that during 2012 to 2018:
- a. allpay, APS and PFS were engaged in economic activity, namely the supply of, among other things, prepaid card services to entities within the public and private sectors within the UK, and therefore each formed an undertaking for the purposes of the Chapter I prohibition⁷⁷⁶;
 - b. Sulion was engaged in economic activity, namely as a supplier of, among other things, consultancy and advisory services in relation to the supply of prepaid card services to entities in the public sector within the UK, and therefore formed an undertaking for the purposes of the Chapter I prohibition⁷⁷⁷; and
 - c. Mastercard was engaged in economic activity, namely as a payment system operator, and therefore formed an undertaking for the purposes of the Chapter I prohibition⁷⁷⁸

⁷⁷⁰ Case C-97-08 P *AKZO Noble NV and Other v Commission*, EU:C:2009:536, paragraph 55.

⁷⁷¹ *Sepia Logistics Limited v Office of Fair Trading* [2007] CAT 13, paragraph 70; Case 170/83 *Hydrotherm Gerätebau GmbH v Compact* EU:C:1984:271, paragraph 11.

⁷⁷² In all their corporate forms, including a limited partnership (see Case 258/78 *Nungesser v Commission*, EU:C:1982:211) or a trust company (see Commission Decision 79/253/EEC of 31 January 1979 *Fides*).

⁷⁷³ Commission Decision 85/561/EEC of 13 December 1985 *Breeders' rights: roses*. Partnerships includes limited liability partnerships.

⁷⁷⁴ Case 210/81 *Demo-Studio Schmidt v Commission*, EU:C:1983:277.

⁷⁷⁵ Case 71-74 *FRUBO v Commission*, EU:C:1975:61.

⁷⁷⁶ See Chapter 3, paragraphs 3.2, 3.7 and 3.23 above.

⁷⁷⁷ See paragraph 3.30 in Chapter 3 above. See also Chapter 4.

⁷⁷⁸ See paragraphs 3.12 to 3.19 in Chapter 3 above and generally paragraphs 3.42 and 3.95 above regarding Mastercard's economic activities.

E Agreements between undertakings and concerted practices

Key legal principles: agreements and concerted practices

Agreements

- 7.13** The word ‘agreements’ in the Chapter I prohibition is intended to catch a wide range of agreements, including oral agreements and ‘*gentlemen’s agreements*’.⁷⁷⁹ An agreement may be express or implied by the parties, and there is no requirement for it to be formal or legally binding, nor for it to contain any enforcement mechanisms.⁷⁸⁰ Tacit acquiescence may also be sufficient to give rise to an agreement for the purpose of the Chapter I prohibition.⁷⁸¹ An agreement may also consist of either an isolated act or a series of acts or a course of conduct.⁷⁸²
- 7.14** The key question in establishing an agreement for the purposes of the Chapter I prohibition is whether there has been “*a concurrence of wills between at least two parties, the form in which it is manifested being unimportant, so long as it constitutes the faithful expression of the parties’ intention*”.⁷⁸³
- 7.15** In explaining the concept of ‘concurrence of wills’, the European Courts have concluded that for there to be an agreement, it is sufficient that at least two undertakings have expressed their joint intention to conduct themselves on the market in a specific way⁷⁸⁴ in accordance with the terms of the agreement. It is not necessary to establish a joint intention to pursue an anti-competitive aim.⁷⁸⁵

Concerted practices

- 7.16** A concerted practice can take many different forms, but it does not require the working out of an actual plan.⁷⁸⁶ It is “*a form of coordination between undertakings which, without having*

⁷⁷⁹ Case C-41/69 *ACF Chemiefarma v Commission* EU:C:1970:71, paragraphs 106 to 114.

⁷⁸⁰ *Argos and Littlewoods*, at [658]; Commission Decision of 9 December 1998, *Greek Ferries*, Case IV/34466, paragraph 141 (upheld on appeal). See also Case T-41/96, *Bayer AG v Commission* EU:T:2000:242, paragraph 71.

⁷⁸¹ See for example Case T-41/96 *Bayer v Commission* EU:T:2000:242, paragraph 71; OFT decision No. CA98/08/2004 of 8 November 2004, Case CE/2464-03 (*double glazing*), paragraphs 242 to 243.

⁷⁸² Case C-49/92 P *Commission v Anic Partecipazioni*, EU:C:1999:356 (*‘Anic’*), paragraph 81.

⁷⁸³ Case T-41/96 *Bayer v Commission*, EU:T:2000:242, paragraph 69 (upheld on appeal in Judgment of 6 January 2004 in Joined Cases C-2/01 P and C-3/01 P *BAI and Commission v Bayer*, EU:C:2004:2, paragraphs 96 and 97) and Case T-7/89 *Hercules Chemicals v Commission*, EU:T:1991:75, paragraph 256.

⁷⁸⁴ Case T-168/01 *GlaxoSmithKline Services Unlimited v Commission*, EU:T:2006:265, paragraph 76.

⁷⁸⁵ Case T-168/01 *GlaxoSmithKline Services Unlimited v Commission*, EU:T:2006:265, paragraph 77 (upheld on appeal in Judgment of 6 October 2009 in Joined cases C-501/06 P, C-513/06 P, C-515/06 P and C-519/06 P *GlaxoSmithKline Services Unlimited v Commission*, EU:C:2009:610).

⁷⁸⁶ The Court of Appeal in *Argos and Littlewoods and JJB*, at [22], has noted that “*concerted practices can take many different forms, and the courts have always been careful not to define or limit what may amount to a concerted practice for [the] purpose of determining whether there is consensus between the undertakings said to be party to a concerted practice*”.

*reached the stage where an agreement properly so-called has been concluded, knowingly substitutes practical cooperation between them for the risks of competition”.*⁷⁸⁷

- 7.17** The concept of a concerted practice must be understood in light of the principle whereby each economic operator must determine independently the policy he intends to adopt on the market, including the choice of persons and undertakings to which he makes offers or sells.⁷⁸⁸
- 7.18** Although the requirement of independence does not deprive undertakings of the right to adapt themselves intelligently to the existing and anticipated conduct of their competitors, it does preclude “*any direct or indirect contact between such operators, the object or effect whereof is either to influence the conduct on the market of an actual or potential competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market, where the object or effect of such contact is to create conditions of competition which do not correspond to the normal conditions of the market in question, regard being had to the nature of the products or services offered, the size and number of the undertakings and the volume of the said market*”.⁷⁸⁹
- 7.19** A concerted practice may arise if there are reciprocal contacts between the parties which have the object or effect of removing or reducing uncertainty as to the future conduct on the market.⁷⁹⁰ Reciprocal contacts are established where one competitor discloses its future intentions or conduct on the market to another when the latter requests it or, at the very least, accepts it.⁷⁹¹ It is sufficient that, by its statement of intention, the competitor should have eliminated or, at the very least, substantially reduced uncertainty as to the conduct on the market to be expected on its part.⁷⁹² Thus, the mere receipt of information may be sufficient to give rise to a concerted practice.⁷⁹³ It is irrelevant whether the exchange of information constituted the main purpose of the contact between competitors.⁷⁹⁴

787 Case C-48/69 *ICI Ltd v Commission*, EU:C:1972:70, paragraph 64. See also judgment in Case C-8/08 *T-Mobile Netherlands*, EU:C:2009:343 (*‘T-Mobile Netherlands’*), paragraph 26; *JJB*, at paragraphs 151 to 153 and Case 48/69 *ICI v Commission* (*‘Dyestuffs’*), EU:C:1972:70, paragraph 64. The Courts have added that: “*By its very nature, then, a concerted practice does not have all the elements of a contract but may inter alia arise out of coordination which becomes apparent from the behaviour of the participants*”: *Dyestuffs*, paragraph 65.

788 Case 40/73, *Suiker Unie v Commission*, EU:C:1975:174 (*‘Suiker Unie’*), paragraph 173 and followed in *Anic*, paragraph 116 and Case C-199/92 P, *Hüls AG v Commission*, EU:C:1999:358 (*‘Hüls’*), paragraph 159. See also *Apex Asphalt and Paving Co Limited v OFT* [2005] CAT 4, paragraphs 198 and 206(iv) (followed in *Makers UK Limited v Office of Fair Trading* [2007] CAT 11, paragraphs 102 and 103(iv)).

789 *Anic*, paragraph 117 (followed in *Hüls*, paragraphs 159 to 160 and Case T-9/99 *HFB Holding für Fernwärmetechnik Beteiligungsgesellschaft mbH & Co KG and Others v Commission* EU:T:2002:70, paragraph 212). See also *Apex Asphalt and Paving Co Limited v OFT* [2005] CAT 4, paragraphs 198, 201 and 206(v) (followed in *Makers UK Limited v Office of Fair Trading* [2007] CAT 11 (*‘Makers’*), paragraphs 102 and 103(v)).

790 *Apex Asphalt and Paving Co Limited v OFT* [2005] CAT 4, paragraph 206 (vi) citing *Suiker Unie*, paragraph 175.

791 *Apex Asphalt and Paving Co Limited v OFT* [2005] CAT 4, paragraph 206 (vii) citing *Cement*, paragraph 1849 and (followed in *Makers UK Limited v Office of Fair Trading* [2007] CAT 11, paragraphs 103(vii) and 103(viii)).

792 *Apex Asphalt and Paving Co Limited v OFT* [2005] CAT 4, paragraph 206 (viii) citing *Cement*, paragraph 1852.

793 *JJB*, paragraph 658 (and 159). See Case T-202/98 *Tate & Lyle and Others v Commission*, EU:T:2001:185, (*‘Tate & Lyle’*), paragraph 58 (citing Case T-1/89 *Rhône-Poulenc v Commission*, EU:T:1991:56, paragraphs 122 to 123). See also *Apex Asphalt and Paving Co Limited v OFT* [2005] CAT 4, paragraph 200; and *Argos and Littlewoods*, paragraph 155.

794 Advocate General’s opinion in Case C-286/13 P *Dole Food Co. v Commission* (*‘Dole’*), EU:C:2015:184, paragraph 122 relying on the CJEU’s judgments in Case 96/82 to 102/82, 104/82, 105/82, 108/82 and 110/82, *IAZ International Belgium and Others v Commission*, EU:C:1983:310, paragraph 25; Case C-551/03 P, *General Motors v Commission*, EU:C:2006:229, paragraph 64; and Case C-209/07, *Competition Authority v Beef Industry Development Society and Barry Brothers*, EU:C:2008:643, paragraph 21.

- 7.20** It follows that a concerted practice implies: (i) undertakings concerting together, through any direct or indirect contact between them which has the object or effect of influencing the conduct on the market of an undertaking, or disclosing a course of conduct; (ii) conduct on the market pursuant to those collusive practices; and (iii) a relationship of cause and effect between the two.⁷⁹⁵
- 7.21** However, that does not necessarily mean that the conduct should produce the concrete effect of restricting, preventing or distorting competition.⁷⁹⁶ A concerted practice which has as its object the prevention, restriction or distortion of competition will infringe competition law even where there is no effect on the market.⁷⁹⁷ Where an undertaking participating in a concerted practice remains active on the market, there is a presumption that it will take account of information exchanged with its competitors when determining its own conduct on the market, particularly when they concert together on a regular basis over a long period.⁷⁹⁸ In *Balmoral*, the Court of Appeal confirmed that this presumption applies even if there is an exchange on a single occasion (an “*isolated exchange of information*”).⁷⁹⁹ What matters is not so much the number of meetings held between the participating undertakings, as whether the meeting or meetings which took place afforded them the opportunity to take account of the information exchanged with their competitors in order to determine their conduct on the market in question.⁸⁰⁰ This will depend on the subject matter of the concerted action and the particular market conditions.⁸⁰¹

⁷⁹⁵ *Anic*, paragraph 118 and in *Hüls*, paragraph 161. See also *Apex Asphalt and Paving Co Limited v OFT* [2005] CAT 4, paragraph 206(ix) (followed in *Makers UK Limited v Office of Fair Trading* [2007] CAT 11, paragraph 103(ix)).

⁷⁹⁶ *Anic*, paragraph 124. See also *Apex Asphalt and Paving Co Limited v OFT* [2005] CAT 4, paragraph 206(xi) (followed in *Makers UK Limited v Office of Fair Trading* [2007] CAT 11), paragraph 103(xi)).

⁷⁹⁷ *Hüls*, paragraphs 163 to 164 and *Anic*, paragraph 123. See also *Apex Asphalt and Paving Co Limited v OFT* [2005] CAT 4, paragraphs 201 and 206(xi and xii), citing *Anic*, paragraphs 123 to 124.

⁷⁹⁸ *Anic*, paragraph 121; *Hüls*, paragraph 162 and *Cement*, paragraphs 1865 and 1910. See also *Apex Asphalt and Paving Co Limited v OFT* [2005] CAT 4, paragraph 206(x) (followed in *Makers UK Limited v Office of Fair Trading* [2007] CAT 11, paragraph 103(x)). Case C-8/08 *T-Mobile Netherlands* EU:C:2009:343, paragraphs 58 to 59, the CJEU held that this presumption of a causal connection applies even where the concerted action was the result of a meeting held by the participating undertakings on a single occasion.

⁷⁹⁹ *Balmoral Tanks v Competition and Markets Authority*, [2019] EWCA Civ 162, paragraph 18. See also *T-Mobile Netherlands*, paragraphs 58 to 61 and reference to a “*single information exchange*”. See also the Advocate General’s opinion in *Dole* that the frequency and regularity with which information having an anti-competitive object was exchanged was only relevant, if at all, to the amount of any fine (*Dole* paragraph 125). See also *JJB*, paragraph 873. Since *JJB*, the CAT has consistently cited the wording from *Hüls* and *Anic*, see for example *Apex Asphalt and Paving Co Limited v OFT* [2005] CAT 4, paragraph 206; *Makers*, paragraph 103; *Tesco*, paragraph 49.

⁸⁰⁰ Case C-8/08, *T-Mobile Netherlands*, paragraph 61. The EU Commission’s *Guidelines on the applicability of Article 101 of the TFEU to horizontal co-operation agreements*: OJ 2011/C 11/01 (*‘Horizontal Cooperation Guidelines’*) also state in § 62 that “a situation where only one undertaking discloses strategic information to its competitor(s) who accept(s) it can also constitute a concerted practice”. The Guidelines further make clear in § 62: “When a company receives strategic data from a competitor (be it in a meeting, by mail or electronically), it will be presumed to have accepted the information and adapted its market conduct accordingly unless it responds with a clear statement that it does not wish to receive such data”.

⁸⁰¹ *Balmoral Tanks v Competition and Markets Authority*, [2019] EWCA Civ 162, paragraph 18; *T-Mobile Netherlands*, paragraph 60.

Agreements and/or concerted practices

- 7.22** The Chapter I prohibition applies to ‘agreements’ and ‘concerted practices’ and ‘decisions by associations of undertakings’.⁸⁰² The inclusion of these different concepts is intended to apply to all collusion between undertakings, whatever form it takes.⁸⁰³
- 7.23** The concepts of ‘agreements’ and ‘concerted practices’ are fluid and may overlap; they are distinguishable from each other only by their intensity and the forms in which they manifest themselves.⁸⁰⁴ Not least, infringements may evolve over time and may start in one form and progressively assume the characteristics of another.⁸⁰⁵
- 7.24** It is not necessary therefore, for the purpose of finding an infringement, to distinguish between agreements and concerted practices, or to characterise conduct as exclusively an agreement or a concerted practice.⁸⁰⁶ Nothing turns on the precise form taken by each of the elements comprising the overall agreement and/or concerted practice. As explained by the CJEU, “*it is settled case-law that although [Article 101(1) TFEU] distinguishes between ‘concerted practice’, ‘agreements between undertakings’ and ‘decisions by association of undertakings’, the aim is to have the prohibitions of that article catch different forms of coordination between undertakings of their conduct on the market [...] and thus to prevent undertakings from being able to evade the rules on competition on account simply of the form in which they coordinate that conduct*”.⁸⁰⁷

Parties to an agreement and/or concerted practice

*Participation in anti-competitive agreements and/or concerted practices:
public distancing and implementation*

- 7.25** The CJEU has held that passive modes of participation in the infringement, such as the presence of an undertaking in meetings at which anti-competitive agreements were concluded, without that undertaking clearly opposing them, are indicative of collusion capable of rendering the undertaking liable for the infringement.⁸⁰⁸

⁸⁰² Section 2(1) of the Act. Section 2 (1) of the Act is materially the same as Article 101(1) of the Treaty on the Functioning of the European Union.

⁸⁰³ *Anic*, paragraph 108.

⁸⁰⁴ *T-Mobile Netherlands*, paragraph 23; also *Anic*, paragraph 131 and *Apex Asphalt and Paving Co Limited v OFT* [2005] CAT 4, [206(ii)].

⁸⁰⁵ See Opinion of Advocate General Bobek, Case C-228/18, *Budapest Bank and Others*, EU:C:2019:678, paragraph 86.

⁸⁰⁶ See, for example, *Argos and Littlewoods and JJB*, paragraph 21. See also Case T-7/89 *Hercules Chemicals v Commission* EU:T:1991:75, paragraph 264; Case T-1/89 *Rhône-Poulenc v Commission* EU:T:1991:38, paragraph 127; *Anic*, paragraphs 131 to 132 and 133; *Roofing Felt*, OJ 1986 L232/15, paragraph 72, whereby the conduct of the undertakings was found to be an agreement as well as a decision of an association. See also Opinion of Advocate General Bobek in Case C-228/18, *Budapest Bank and Others*, EU:C:2019:678, paragraph 85.

⁸⁰⁷ Case C-382/12 P *Mastercard and Others v Commission*, EU:C:2014:2201, paragraph 63 and case law cited. See also Case T-9/99 *HFB and Others v Commission* EU:T:2002:70, paragraphs 186 to 188; Case C-238/05 *Asnef-Equifax* EU:C:2006:734, paragraph 32; Joined cases T-305/94, T-306/94 etc., *LVM v Commission*, EU:T:1999:80, paragraph 696: “*In the context of a complex infringement which involves many producers seeking over a number of years to regulate the market between them, the Commission cannot be expected to classify the infringement, precisely, for each undertaking and for any given moment, as in any event both those forms of infringement are covered by [Article 101] of the Treaty.*”

⁸⁰⁸ Case T-180/15 *ICAP v Commission* [2017] EU:T:2017:795, paragraphs 100 to 101.

- 7.26** Where it is established that an undertaking participates in a meeting of a manifestly anti-competitive nature, it is for the undertaking to adduce evidence to establish that it indicated its opposition to the anti-competitive arrangement to its competitors.⁸⁰⁹ Absent evidence that the undertaking manifestly opposed the arrangement, there is a presumption that the undertaking's participation in the meeting was unlawful.⁸¹⁰ This is because a party which tacitly approves of an unlawful initiative, without publicly distancing itself from its content or reporting it to the administrative authorities, encourages the continuation of the infringement and compromises its discovery.⁸¹¹
- 7.27** Similarly, the same presumption applies where a party receives information regarding anti-competitive arrangements via email, rather than in the context of a meeting.⁸¹²
- 7.28** The concept of public distancing is to be interpreted narrowly.⁸¹³ Public distancing must be understood as such by the other participants.⁸¹⁴ The GC has held that: "*the communication that is intended to constitute a public distancing from an anti-competitive practice must be expressed firmly and unambiguously*".⁸¹⁵
- 7.29** The fact that a party does not abide by the outcome of meetings,⁸¹⁶ or the fact that a party may have played only a limited part in setting up an agreement and/or concerted practice, or may not be fully committed to its implementation, or may have participated only under pressure from other parties, does not mean that it is not a party to the agreement and/or concerted practice.⁸¹⁷
- 7.30** Additionally, the fact that a party does not act on, or subsequently implement, the agreement and/or concerted practice at all times does not preclude the finding that an agreement and/or concerted practice existed.⁸¹⁸ Similarly, the fact that a party does not respect the agreement and/or concerted practice at all times or comes to recognise that it can 'cheat' on the

809 See for example, Case C-113/04 P *Technische Unie BV v Commission*, EU:C:2006:593, paragraph 114.

810 See for example, Case C-634/13 P *Total Marketing Services v Commission*, EU:C:2015:614, paragraph 21.

811 Joined Cases C-189/02 P, C-202/02 P, C-205/02 P and C-2103/02 P, *Dansk Rørindustri and Others v Commission*, EU:C:2005:408, paragraphs 142 and 143; Case C-194/14 P *AC-Treuhand* EU:C:2015:717, paragraph 31, Case C-70/12 P *Quinn Barlo v Commission*, EU:C:2013:351, paragraph 29.

812 Case C-74/14 *Eturas UAB and Others v Lietuvos Respublikos konkurencijos taryba*, EU:C:2016:42, paragraph 50: "Article 101(1) TFEU must be interpreted as meaning that, where the administrator of an information system [...] sends to those economic operators, via a personal electronic mailbox, a message informing them that the discounts on products sold through that system will henceforth be capped [...] those economic operators may – if they were aware of that message – be presumed to have participated in a concerted practice within the meaning of that provision, unless they publicly distanced themselves from that practice, reported it to the administrative authorities or adduce other evidence to rebut that presumption, such as evidence of a systematic application of a discount exceeding the cap in question".

813 Case T-303/02 *Westfalen Gassen Nederland v Commission* [2006] EU:T:2006:374, paragraphs 76 onwards, in particular, paragraph 103.

814 Case C-373/14 P *Toshiba Corporation v Commission*, EU:C:2016:26, paragraph 71.

815 Case T-377/06 *Comap SA v Commission*, EU:T:2011:108; paragraph 76.

816 *Cement*, paragraph 1389.

817 See *Agreements and concerted practices* (OFT401, December 2004), adopted by the CMA, para 2.8. See also, for example, *Cement*, paragraphs 1389 and 2557 upheld on liability by CJEU in *Aalborg Portland and Anic*, paragraphs 79 and 80.

818 Case C-86/82 *Hasselblad v Commission*, EU:C:1984:65, paragraph 46; and Case C-277/87 *Sandoz prodotti farmaceutici SpA v Commission*, EU:C:1990:6, paragraph 3. See also Case C-373/14 P *Toshiba Corporation v Commission*, EU:C:2016:26, paragraphs 61 to 63.

agreement and/or concerted practice at certain times does not preclude the finding that an agreement and/or concerted practice existed.⁸¹⁹

Participation and facilitation

- 7.31** Participation in a Chapter I infringement can take several forms, including facilitation. In addition, any undertaking can, in principle, infringe the competition rules and be held liable for an infringement even if it does not operate in the market in which the infringement occurs.⁸²⁰
- 7.32** Engaging in activities that promote or facilitate anti-competitive practices between undertakings or serving as a conduit for collusive communications may be prohibited under certain conditions.
- 7.33** The CJEU has held, on many occasions, that unlawful agreements or concerted practices may result from collaboration by several undertakings, who are all co-perpetrators of the infringement *“but whose participation can take different forms according, in particular, to the characteristics of the market concerned and the position of each undertaking on that market, the aims pursued and the means of implementation chosen or envisaged”*.⁸²¹ However, the CJEU added that *“the mere fact that each undertaking takes part in the infringement in ways particular to it does not suffice to exclude its responsibility for the entire infringement, including conduct put into effect by other participating undertakings but sharing the same anti-competitive object or effect”*.⁸²²
- 7.34** The liability of a facilitator is determined by applying ordinary principles of participation, including the test for passive participation and lack of public distancing (see paragraphs 7.25 to 7.30 above) and the single and continuous infringement test for liability for the whole of the infringement (see generally paragraphs 7.97 to 7.111 below). In this sense, the CJEU has held that a facilitator may be liable for all the various elements comprising the infringement and therefore participated in it, if it intended, through its own conduct, to contribute to the common anti-competitive objectives pursued by other undertakings, provided that it was aware of the conduct planned or implemented in pursuit of the same objectives or that it could reasonably have foreseen it and that it was prepared to take the risk.⁸²³ Intent can be presumed where an undertaking fails to distance itself from the conduct.⁸²⁴
- 7.35** Whether a participant’s conduct in an anti-competitive arrangement is to be characterised as being that of a facilitator as opposed to a primary participant depends on the facts.⁸²⁵ In making that determination the PSR considers a number of factors that have been highlighted

819 Case T-588/08 *Dole v Commission*, EU:T:2013:130, paragraph 484.

820 Case C-194/14 P *AC-Treuhand AG v Commission*, EU:C:2015:717, paragraphs 27 and 30.

821 *Anic*, paragraph 79.

822 *Anic*, paragraph 80. See also Case C-194/14 P *AC-Treuhand v Commission* EU:C:2015:717, paragraphs 30 and 34 to 35. The fact an undertaking has not taken part in all aspects of an anticompetitive scheme or that it only played a minor role does not have an impact on the establishment of the existence of an infringement on its part: Opinion of Advocate General Bobek, Case C-228/18 *Budapest Bank and Others*, EU:C:2019:678, paragraph 107 and case law cited. In paragraph 108, Advocate General Bobek found that, even though the credit card companies were not directly involved in defining the content of the agreement, they facilitated its adoption, accepted and implemented it and accordingly may be considered liable for that infringement.

823 See Case C-194/14 P *AC-Treuhand AG v Commission*, EU:C:2015:717, paragraph 30 and the case law cited in the judgment.

824 See Case C-70/12P *Quinn Barlo v Commission*, EU:C:2013:351, paragraph 29.

825 *Anic*, paragraphs 79 to 80. See also Case C-194/14 P *AC-Treuhand AG v Commission*, EU:C:2015:717, paragraph 30.

in case law.⁸²⁶ In *Delfatina*, the GC considered the “*direct and leading role*” an undertaking played in the infringement which was not confined to the role of external coordinator and/or facilitator.⁸²⁷ Besides the level of involvement in setting up and implementing the anti-competitive arrangement, in *Budapest Bank* Advocate General Bobek refers, in particular, to the direct and immediate interest in the execution of an anti-competitive agreement of an undertaking (in that case a credit card company) operating in a market related (that is, an upstream market) to that market affected by the anti-competitive arrangement.⁸²⁸

7.36 It follows that the participation of an undertaking in an agreement or concerted practice, and/or as part of a broader “*single and continuous infringement*”, may infringe the Chapter I prohibition regardless of the markets in which it operates, provided it contributes to restricting competition in a given market.⁸²⁹

Legal assessment: agreement and/or concerted practice in relation to the Network market sharing agreement

Summary of conclusions

7.37 For the reasons set out below, the PSR concludes that during the Relevant Period 1, the Parties engaged in an agreement and/or concerted practice through the Network in relation to the supply of prepaid card services for welfare disbursements to Public bodies in GB.⁸³⁰

7.38 This agreement and/or concerted practice had the object of sharing the market through the allocation of customers between the Network PMs. The Network PMs coordinated their commercial behaviour regarding the customers they could pitch to, target or poach, and exchanged information on customers to achieve their aim. The arrangement was commercially advantageous:

- a. to the Network PMs, by reducing the threat of competition for the contracts which they held or which they were pursuing, and
- b. to Mastercard, by ensuring that the Network PMs’ marketing efforts were focused on the expansion of the total number of public bodies using Mastercard branded cards (instead of competing for the same customers which would not lead to any growth of the scheme).

7.39 This agreement and/or concerted practice manifested itself in different ways and the course of conduct evolved throughout the Relevant Period 1. At its centre, and throughout the Relevant Period 1, it included a restriction on the Network PMs’ ability to pitch, target or poach each other’s existing customers, including these customers’ new areas of business (that is, the ‘**Network non-targeting arrangement**’). Existing customers (commonly referred to as ‘live’ clients) meant customers that were either in a contract or in a pilot programme with a Network PM. The exception to the Network non-targeting arrangement was when

826 Case T-29/05 *Delfatina v Commission*, EU:T:2010:355, paragraphs 110 to 112 and 133 to 134.

827 Case T-29/05 *Delfatina v Commission*, EU:T:2010:355, paragraph 110.

828 Opinion of Advocate General Bobek, Case C-228/18 *Budapest Bank and Others*, EU:C:2019:678, paragraphs 100 to 102.

829 Case C-194/14 P *AC-Treuhand AG v Commission*, EU:C:2015:717, paragraph 35.

830 See definition of supply of prepaid cards services to Public bodies in Annex 1.

Public bodies went out for tender (sometimes following a pilot programme) or retender.⁸³¹ The agreement and/or concerted practice also included a restriction, from 2012 to 2013, on the Network PMs' ability to target, approach or contact potential new customers that had been exclusively allocated to other Network PMs through the attendance of Network promotional events (that is, the '**Exclusive allocation of leads arrangement**').⁸³²

- 7.40** The Parties expressed a joint intention and designed and adhered to a joint plan that would have the Network PMs conducting themselves on the market in a certain way by allocating customers between themselves. This included agreeing: (i) not to target or poach each other's existing customers until the contracts came out for tender;⁸³³ and (ii) not to target potential new customers by approaching or contacting them, if they had been allocated to other Network PMs as a result of their attendance at Network promotional events.⁸³⁴
- 7.41** The agreement and/or concerted practice was supported by the sharing of information detailing the customers each Network PM was supplying prepaid cards to, and the Public bodies that had not engaged either with the Network or with one of its PMs. This was not public information or information that was readily available to PMs, nor was it equally accessible to all competitors and customers.⁸³⁵ This conduct included Network PMs checking with each other who their customers were or were likely to be, or seeking that confirmation from [Sulion director 1] (Sulion). [Sulion director 1] (Sulion) would also share with Network PMs the so-called customer lists that [Sulion director 1] and Mastercard prepared. These direct and indirect exchanges of information made it easier for Network PMs to know which customers they were allowed to target in compliance with the Network non-targeting arrangement, thus contributing to the objectives of the Network market sharing agreement.
- 7.42** The PSR finds that in relation to the Network market sharing agreement, which includes the non-targeting of existing customers supported by the sharing of customer information, and the allocation of access to potential new customers, there was a concurrence of wills between the Parties. As a result, the PSR concludes that the Parties' conduct gave rise to an agreement to prevent, restrict or distort competition in the market for the supply of prepaid card services for welfare disbursements to Public bodies in GB.
- 7.43** At the very least, the PSR finds that the Parties' conduct gave rise to a concerted practice. Throughout the Relevant Period 1, the Parties were involved in exchanges and contacts which were capable of influencing the Network PMs' future conduct on the market, resulting in coordination of their conduct regarding existing and potential new public sector customers.
- 7.44** These contacts (which included the sharing of information) were clearly contrary to the requirement that each economic operator must determine independently their policy and strategy on the market, and demonstrate that the Parties knowingly substituted practical cooperation for the risks of competition. To the extent the Parties remained active on the market, the PSR is entitled to presume that the Parties took into account the information

831 See paragraph 5.89 above.

832 See Chapter 5.B above which describes the 'Network non-targeting arrangement' and 'exclusive allocation of leads'.

833 See Chapter 5.B above, in particular, paragraph 5.5 above.

834 See Chapter 5.B above, in particular, paragraphs 5.28 to 5.63.

835 See, for example, paragraph 5.79 above.

exchanged for the purposes of determining their conduct.⁸³⁶ In fact, there is evidence that the Network PMs did not target/avoided targeting customers following such exchanges of information (see, for example, paragraphs 5.17 to 5.20, 5.68, 5.71, 5.72, and 5.80 to 5.86).

7.45 Throughout the Relevant Period 1, the Parties participated in some or all of the contacts described in Chapter 5 regarding the Network non-targeting arrangement and exclusive allocation of leads; further, they were a party to either all or some of the exchanges of information regarding customer lists and customer status information that supported the agreement and/or concerted practice.

7.46 The PSR has not seen any evidence of any of the Parties distancing themselves publicly from the contacts described in Chapter 5.

Existence of an 'agreement' and/or 'concerted practice'

7.47 The PSR finds that the contacts and exchanges which took place through the Network during the Relevant Period 1 concerning the Network non-targeting arrangement and the exclusive allocation of leads, as set out in Section B of Chapter 5, constituted an agreement and/or concerted practice for the purposes of the Chapter I prohibition. For the purposes of this Decision, the PSR refers to this agreement and/or concerted practice as the **'Network market sharing agreement'**.

7.48 Further, the PSR considers that there is ample evidence of a meeting of minds or concurrence of wills between the Parties in respect of the Network market sharing agreement.

7.49 There is evidence that this agreement and/or concerted practice started in the early days of the Network (see paragraphs 5.5 to 5.27 above). However, the PSR has concluded, on a conservative basis, that the start date of the Network market sharing agreement was, at the latest, 2 May 2012, which is when there is specific documentary evidence of the exclusive allocation of leads as part of the market sharing conduct as set out below. Nevertheless, the PSR has had regard to all the evidence set out in Section B of Chapter 5 above when interpreting the specific forms of conduct which took place from May 2012.

7.50 This agreement or concerted practice lasted at least until the PSR conducted an inspection of the business premises of some of the Network PMs.

7.51 There are express references in emails between the Parties to a non-targeting or non-poaching arrangement of the Network PMs in relation to each other's existing customers, as well as, in the period between 2 May 2012 and 4 February 2013, an arrangement to allocate leads (potential new customers) exclusively to specific Network PMs. The existence of these arrangements is further supported by corroborating evidence from representatives of several of the Parties with direct knowledge of the facts relevant to the anti-competitive conduct and whose statements on the existence of these facts went against their own interests and those of the undertaking they represented. This body of evidence also demonstrates a concurrence of wills between the Parties in respect of the Network market sharing agreement. Some of these examples are provided below:

⁸³⁶ See, for example, *Hüls*, paragraph 162; *Anic*, paragraph 121: when an undertaking receives strategic data from a competitor, it will be presumed to have accepted the information and adapted its market conduct accordingly.

- a. A clear reference in the contemporaneous documents gathered during the investigation to the existence of the Network non-targeting arrangement between the Parties that had been in force for a long time is an email dated 14 July 2016 (see paragraph 5.21 above). This email from [Sulion director 1] to all Parties states that the Parties “*always agreed*” not to target each other’s customers. Witness evidence from several of the Parties confirms (as set out in paragraphs 5.5 to 5.20 above, including evidence provided by [Sulion director 1] (Sulion) in [Sulion director 1]’s Section 26 response of 25 May 2018) that this agreement between all Parties was in force since the inception of the Network and continued to be in force as long as the Network PMs remained members of the Network or, at least, until the PSR inspected the premises of some of the Parties in February 2018. This arrangement was to be abided by “*whoever was in the Network at the time*”.⁸³⁷ Moreover, the Parties agreed it would be helpful to have an updated list of customers – who has who as prepaid customers – so the Parties knew “*who is and isn’t fair game for sales*.”⁸³⁸ The PSR has not seen evidence of the Parties contesting this understanding of the long-standing agreement between them. On the contrary, when responding to [Sulion director 1]’s email, [allpay employee 1] of allpay replied “*[first name of Sulion director 1], Many thanks for your email. [...] We will come back to you on the client’s lists*”.⁸³⁹
- b. As set out in paragraphs 5.5 to 5.26, (including Sulion’s response to a Section 26 Notice and several witness interviews), this arrangement was understood by the Parties as a “*rule*” of membership of the Network that was in place “*right the way back from the beginning*”. Clear evidence of the common understanding that the Network non-targeting arrangement was a condition for being a member of the Network are the emails relating to the readmission of allpay to the Network and the complaint from APS that allpay was not following the rules (see paragraphs 5.17 onwards and 5.80 onwards above). On 1 March 2016, [APS employee 1] (APS) specifically asked [Sulion director 1] (Sulion) what had been agreed with allpay for their readmission into the Network, and [Sulion director 1] confirmed that allpay were admitted on the “*clear condition*” of abiding by the Network non-targeting arrangement, which allpay were “*happy to accept*” (see paragraph 5.86 above). [Sulion director 1] noted at [Sulion director 1]’s interview that when allpay were readmitted to the Network [Sulion director 1] wanted to remind everyone of the rules.⁸⁴⁰
- c. The emails referred to above in this paragraph, which evidence the existence and scope of the anti-competitive arrangement, are from around the time allpay re-joined the Network (March 2016). This event triggered a series of communications between the Parties, which were needed at that point in time to ensure that the arrangement was and could continue to be in place and adhered to.
- d. As part of the joint intention to coordinate their conduct in the market regarding the allocation of customers, there was also a common understanding that the Network PMs that attended a specific Network regional event would get exclusivity on the leads from those events. The PSR considers that direct evidence of the existence of this arrangement occurring between May 2012 and February 2013, and the concurrence of wills between the Parties, is contained in paragraphs 5.29 to 5.63c), summarised below:

837 This quote was made by [Sulion director 1] (Sulion) at interview: see paragraph 5.7b) above. See also Chapter 4 above.

838 See paragraph 5.21 above.

839 See paragraph 5.21b above.

840 Paragraphs 5.17, 5.98, 5.99 above and corresponding footnotes: Interview with [Sulion director 1] disc 2: 1-2: UUID 238520003.

- The exclusive allocation of leads was first decided between Mastercard and Sulion on or before May 2012. In an email exchange dated 3 May 2012, [Mastercard employee 3] (Mastercard) and [Sulion director 1] (Sulion) discussed Network promotional events and expressed concerns about “diluting” positive feedback if more than one Network PM attended these events.⁸⁴¹
- The exclusive allocation of leads was then cascaded down to the Network PMs by Mastercard and Sulion.⁸⁴² This is clearly stated in the email between Mastercard, Sulion and PFS (see paragraph 5.32). The Network PMs understood which events to attend and that other Network PMs would be attending other events (see paragraph 5.44 above). APS and allpay requested to attend regional events that had not been allocated to them, but Mastercard and Sulion refused (see, for example, paragraphs 5.37, 5.49 to 5.49a)). The Network PMs also understood that only the Network PM presenting at those events would get from Mastercard and Sulion the contact details and contact forms of the attending Public authorities (see paragraph 5.51 onwards). The email from Sulion to APS of 2 July 2012 shows that the Network PMs knew that the delegate list for the event was only made available to the attending PM even if other Network PMs requested it (see paragraph 5.51 above).
- The *modus operandi* of the exclusive allocation of leads was the same in relation to each Network PM: Mastercard and Sulion would decide which Network PM would attend a specific regional event; the Network PM would be invited to present/told of the decision; and the feedback forms and contact lists would only be sent to the attending Network PM so that they could follow up with the leads (see, for example, paragraphs 5.30, 5.32, 5.35 and 5.51 onwards above).
- Each Network PM understood this *modus operandi*. They also understood that the purpose of the feedback forms and contact lists was for them to pursue those leads. As set out above, that was made abundantly clear in the emails from Sulion and Mastercard (see generally paragraphs 5.30, 5.31, 5.32, and 5.34 to 5.41). As stated by PFS, this access to the forms and contacts identifying leads from the events was extremely valuable as the Network PMs would not know who to approach if it were not for those forms (see paragraph 5.51d) above). As a result, each Network PM understood and accepted that they would each get the exclusivity to pursue the leads from the events they attended.
- [Mastercard employee 3] (Mastercard) explained at interview that prior to the commencement of these Network promotional events on 2 May 2012, the Parties had a discussion where Mastercard proposed the allocation of events and the leads from those events between the Network PMs, and the Parties agreed. An express reference to a previous “discussion” is contained in an email chain of 7 May 2012 between [APS employee 1] (APS), [Sulion director 1] (Sulion) and [Mastercard employee 3] (Mastercard) where [APS employee 1] (APS) expresses APS’s interest in participating in the London/South East event, given that they had the “most traction” in the region. However, [APS employee 1] (APS) also adds that in case the opportunity was not free, APS was willing to attend other events.⁸⁴³ Given the event was allocated to PFS, this

841 See paragraph 5.30.

842 See paragraphs 5.29 onwards above.

843 See paragraph 5.31 above.

meant that PFS would then have exclusivity on the leads from that event as described in paragraph 5.32 above.

- APS was not pleased about not getting the London events, but accepted the decision.⁸⁴⁴ This shows that even when the exclusive allocation of leads did not serve well the individual business interests of the Network PMs, the Network PMs were willing to follow the arrangement as proposed by Mastercard and Sulion.⁸⁴⁵
- Notwithstanding the episode above, the Network PMs viewed this arrangement favourably. There is evidence that after directly approaching the attending Public bodies, the presenting Network PM secured contracts, often for a trial period, with the various Public bodies attending the event (see paragraphs 5.32g), 5.34 and 5.54 above). [PFS director 2] (PFS) described the benefits of this arrangement as being “*great for us, this issue of leads*”.

7.52 The fact that the Parties agreed to share the market/allocate customers between the Network PMs is also evidenced by the several contacts – either direct contacts between Network PMs or indirect contacts via [Sulion director 1] (Sulion) – through which they inquire about which customers were already with another Network PM so they knew who to target. These instances of email exchanges are further evidence of the Parties expressing a joint intention of behaving on the market in a certain way. There are contemporaneous emails which the PSR considers show these contacts taking place on a number of occasions during the Relevant Period 1 (see paragraphs 5.68 onwards). For example:

- a. In June 2013, [PFS director 2] (PFS) checks with [APS employee 1] (APS) whether certain public authorities were APS customers; if they were, APS confirmed they would not contact them (see paragraph 5.68 above).
- b. In August 2014, [PFS director 1] (PFS) asks [Sulion director 1] (Sulion) for the contact details of the public authorities that attended a Network event that were not already running pilot programmes with another Network PM so PFS “*could try to chase them up*” (see paragraph 5.70 above).
- c. In July 2016, [Sulion director 1] (Sulion) sent an email to all Parties reiterating the Network non-targeting arrangement and adding that [Sulion director 1] and [allpay employee 2] from allpay “*agreed it would be a good idea to have an updated master list of who has who as prepaid customers so we know who is and isn’t fair game for sales*” (see for example, paragraphs 5.21a) and 5.77c) above).

7.53 The PSR assessed the role and extent of involvement of each participant. The PSR concludes that all the Parties participated, both actively and passively, in the Network market sharing agreement, although they had different roles in the infringement. As explained below in more detail (paragraphs 7.66 to 7.78), Sulion and Mastercard, although not active in the same market as the Network PMs, had a direct and active role in the Network market sharing agreement, in particular in the exclusive allocation of leads to specific Network PMs and the implementation and enforcement of the Network non-targeting arrangement. In relation to the

844 [Mastercard employee 3] (Mastercard) email to [Sulion director 1] (Sulion) 17 September 2012): UUID PSR0001-93050-003133.

845 See, for example, paragraph 5.31 above.

Network PMs, PFS and APS were very actively involved in the Network market sharing agreement, with a higher degree of regular participation in contacts than allpay.⁸⁴⁶

- 7.54** Proof of implementation is not vital for a finding that the Parties were party to an agreement and/or concerted practice for the purpose of the Chapter I provision. Nevertheless, in the circumstances of this case, the Parties did in fact implement the Network market sharing agreement, and, in relation to the Network non-targeting arrangement, took steps to monitor and enforce it which further confirms the Parties' joint intention to allocate customers between the Network PMs thereby limiting competition between them.
- 7.55** See Chapter 5, Section B, for example, paragraphs 5.17, 5.48 to 5.54, 5.80 to 5.87, and 5.95 to 5.100, which show that the agreement and/or concerted practice was implemented. The evidence demonstrates that if a Network PM was not in the Network, then their existing customers could be targeted and were in fact targeted by the Network PMs.⁸⁴⁷
- 7.56** Paragraphs 5.95 to 5.100 show that the Network PMs would mostly abide by the arrangement.⁸⁴⁸ Also, [PFS director 2] (PFS) confirmed at interview that "... *it just becomes like a matter of course where you are not targeting a customer*".⁸⁴⁹
- 7.57** If, however, there were issues of non-compliance, these would typically be brought to Sulion and Mastercard's attention. [Sulion director 1] (Sulion) stated that it was very rare for [Sulion director 1] to need to remind the Network PMs of the terms of the arrangement and their "*obligations*".⁸⁵⁰ Likewise, in response to an email from [PFS employee 1] of PFS in March 2016 asking which customers were available for PFS to approach, [Sulion director 1] (Sulion) responded by asking PFS to not to tread on allpay's toes as [Sulion director 1] had "*asked them [allpay] to play nicely in terms of poaching*".⁸⁵¹
- 7.58** Similarly, on the occasion in July 2016 when APS complained against allpay approaching Public bodies that were already under contract to another Network PM, Mastercard intervened and

846 See also paragraph 7.29 above which describes how a party can still participate in an agreement or concerted practice even if it may have played only a limited part in setting up an agreement and/or concerted practice or was not fully committed to its implementation etc.

847 For instance, in an email of 31 December 2015 [APS employee 1] (APS) stated to Mastercard and Sulion, as part of allpay seeking to re-join the Network, that "...*Also need to discuss Allpay speaking to councils already in contract – no problem whilst not part of the Steering group but will not be happy for them to attend and then start contacting them!*": see paragraph 5.83b) above.

848 [Sulion director 1] (Sulion) also confirmed [Sulion director 1] rarely needed to take action to ensure the Network PMs complied with the Network non-targeting arrangement: for example, paragraph 5.97 onwards above. [PFS director 1] (PFS) stated at interview that PFS had tried to poach public sector customers of [Programme Manager 1] mid-contract, but that on occasion had also sought to target existing customers of allpay and APS, in particular during the pilot phase of a contract, despite the existence of the Network non-targeting arrangement. The case law is, however, clear that 'cheating' on an agreement does not preclude the finding that an agreement existed: Case T-588/08 *Dole v Commission*, EU:T:2013:130, paragraph 484.

849 See paragraph 5.11b above. See also paragraphs 5.13 and 5.14, which describe [PFS employee 1]'s (PFS) understanding of the Network non-targeting arrangement during interview, as well as the understanding that [APS employee 1] (APS) had of the arrangement during interview. In an email of 1 March 2016, [APS employee 1] (APS) described the behaviour expected of allpay when re-joining the Network as a member: "*I assume that you have had the conversation around not poaching existing Council partners, unless directly approached or via the Framework?*": paragraph 5.86 above.

850 See paragraph 5.98 above.

851 See paragraph 5.71 above.

enforced the terms of the Network non-targeting arrangement against allpay (see paragraphs 5.17 to 5.20 above). This action was undertaken at the insistence of [APS employee 1] of APS.

7.59 In addition, paragraphs 5.29 to 5.63c) above, which contain the details of the exchanges regarding the Network promotional regional events that took place between 2 May 2012 and 31 January 2013, demonstrate that the Exclusive allocation of leads arrangement was also implemented. These exchanges show that the allocation of promotional events decided by Mastercard and Sulion was followed in practice by the Network PMs; and as a result, only the attending PM would get the necessary contact details and forms to be able to contact the potential new customers (see paragraphs 5.51 to 5.54). The Network PMs, therefore, adhered to the strategy designed by Mastercard and Sulion and followed their decision on the exclusive allocation of leads.⁸⁵²

Sharing of customer information in support of the Network market sharing agreement

7.60 In order to implement the Network market sharing agreement (as well as to monitor compliance with its terms), the Parties exchanged customer information to know whether the Network PMs could approach or target a certain customer. Paragraphs 5.65 onwards (in particular paragraphs 5.73 to 5.79) show the ways in which this was achieved. The PSR considers that the paragraphs detailing the ways the information sharing occurred also show that there was a meeting of minds and a concurrence of wills between the Parties.

7.61 The Network PMs on occasion shared that information directly between themselves (for example, paragraph 5.69).

7.62 Some other times this information was obtained through Sulion (for example, paragraph 5.71).

7.63 The Parties also agreed having an updated “*master*” list as something useful to help implement the Network non-targeting arrangement.⁸⁵³ This is clearly demonstrated by the ‘*Update & State of the Nation*’ email (see paragraph 5.21) that further shows that the Parties understood that these lists were meant to be used to support the customer allocation arrangement described above.

7.64 This information regarding ‘who was with who’ was not being exchanged publicly and was not equally accessible to all competitors or customers. This is demonstrated by [Programme Manager 1]’s requests under the Freedom of Information Act 2000 (see paragraph 5.79 above).⁸⁵⁴

7.65 The PSR finds that the sharing of this information, through the direct and indirect contacts between the Parties, supported the overall agreement and/or concerted practice between the Parties to use that exchange to support their aim of allocating customers between the

852 See, for instance, paragraph 7.17 onwards which describes the importance of the principle that each economic operator must determine independently the policy it intends to adopt on the market.

853 See paragraph paragraphs 5.73 onwards which sets out the contacts relating to the sharing and use of lists detailing which PMs were in contract with which Public bodies.

854 The value of the information is implicit by the fact [Programme Manager 1] made the Freedom of Information Act requests. This is also demonstrated in paragraph 5.78b) whereby [PFS director 1] (PFS) states [PFS director 1] is unable to see from the list which councils are assigned to which provider and prompts [Sulion director 1] (Sulion) to provide [PFS director 1] with a copy of [Sulion director 1]’s own more detailed list, which provides this information.

Network PMs.⁸⁵⁵ In any event, the PSR is entitled to presume that, as long as the Network PMs remained active in the market, they could not have failed to take account of the information received to determine their conduct.⁸⁵⁶ By sharing information that was not publicly available, the Parties facilitated the collusion between themselves.⁸⁵⁷

Mastercard as a primary participant

- 7.66** Although Mastercard does not operate in the same market in the UK as the Network PMs – Mastercard operates in an upstream market – it may be considered a party to the agreement and/or concerted practice as per the case law cited in paragraphs 7.31 to 7.36 above.
- 7.67** Mastercard had an active participation in the agreement and/or concerted practice, and had a commercial interest in the execution of the anti-competitive arrangement.
- 7.68** Mastercard actively participated in the agreement and/or concerted practice by, for example:
- taking a direct and active role in the exclusive allocation of leads to specific Network PMs (see, for example, paragraphs 5.30, 5.32, 5.36, 5.59 and 5.62), and its implementation (see, for example, paragraphs 5.37 to 5.45)⁸⁵⁸
 - taking a direct and active role in enforcing the Network non-targeting arrangement and making sure it was adhered to by the Network PMs; this is illustrated by [Mastercard employee 1] (Mastercard) directly intervening to ensure that allpay, who were not following the Network non-targeting arrangement, would comply with it in the future (see paragraphs 5.17 to 5.20 and 5.80 to 5.85)
 - participating in many of the exchanges between the Parties described in Chapter 5
- 7.69** Mastercard had a close working relationship with [Sulion director 1] (Sulion), whom Mastercard had specifically chosen to run the Network (for which Sulion was compensated), which Mastercard funded.⁸⁵⁹ The facts outlined in Chapters 4⁸⁶⁰ and 5 demonstrate the frequent contact between Mastercard and [Sulion director 1] (Sulion), which included the sending of updates and requests for strategic input.⁸⁶¹ Mastercard was consistently included in correspondence relating to the Network activity and strategy. [Sulion director 1] (Sulion) would defer to Mastercard, seeking advice, guidance and approval for issues that arose. This was particularly evident when [APS employee 1] (APS) complained about allpay's disregard of the Network non-targeting arrangement.⁸⁶²

855 See *Aalborg Portland*, paragraph 281 where the CJEU held that the information exchanged infringed Article [85(1)] where it underpins another anti-competitive arrangement.

856 See *Hüls*, paragraph 162; *Anic*, paragraph 121.

857 See above.

858 Mastercard decided which Network PM would attend certain promotional events and informed the Network PM accordingly: see, for example, paragraphs 5.30, 5.32, 5.42 above.

859 See paragraph 4.39 above. The PSR notes that in 2016 Sulion asked the Network PMs to make a contribution to the running of the Network: see paragraph 4.41.

860 See also Annex D below which summarises the agendas and attendees of the Network meetings.

861 See, for example, paragraphs 4.70 onwards, 5.75 and 5.78 above.

862 See, for example, paragraphs 5.17 onwards and 5.80 onwards above.

- 7.70** Although Mastercard was operating in an upstream market, it had a commercial interest in the execution of the agreement and/or concerted practice on the downstream market for the supply of prepaid card services to Public bodies.⁸⁶³ In particular, the increase of the share of the market held by the Network PMs benefited Mastercard as the upstream supplier to the Network PMs. This was achieved by coordinating the Network PMs' commercial behaviour in relation to customers, through the restriction of competition between them, and the focus on gaining new business from competitors outside the Network. This conduct is consistent with Mastercard's strategic objective to grow the sector and become the brand of choice for public sector customers.⁸⁶⁴ Through its actions and decisions Mastercard sought to strengthen its reputation in the public sector, in the event the government rolled out Universal Credit using prepaid card technology.⁸⁶⁵ Therefore, there were potentially significant commercial advantages to be gained through the operation of the market sharing conduct. Even though Mastercard's strategic objective to grow the sector was not in itself anti-competitive, as demonstrated in Section F of this chapter, the means by which that strategic objective was achieved were restrictive of competition.⁸⁶⁶
- 7.71** Given the nature of Mastercard's involvement, the importance of the role it played in the anti-competitive arrangement and its interest in the furtherance of the objectives of the cartel, the PSR concludes that Mastercard was a primary participant in the agreement and/or concerted practice (along with allpay, APS and PFS as primary participants and Sulion as a facilitator), having participated in all its elements (that is, the Exclusive allocation of leads arrangement and the Network non-targeting arrangement, together with the information exchange that supported it).

Sulion as a facilitator

- 7.72** Sulion was not active on the market to which the agreement and/or concerted practice relates. However, pursuant to the principles in the case law outlined in paragraphs 7.31 to 7.36 above, that does not prevent Sulion from being considered a party to the agreement and/or concerted practice.
- 7.73** The PSR concludes that, in light of the facts set out in Chapter 5, Sulion was also a party to the Network market sharing agreement by facilitating the sharing of markets and allocation of customers between the Network PMs.
- 7.74** [Sulion director 1] (Sulion) was tasked by Mastercard to chair the Network and was given a high degree of autonomy to run the Network within the agreed parameters of the Statements of Work and Framework Agreements described in Chapter 4 above.⁸⁶⁷ [Sulion director 1] (Sulion) played a key role in setting up the Network, together with Mastercard, and was actively involved in the running of the day-to-day affairs of the Network. As detailed

863 Additionally, the levels of certain of Mastercard's network fees are volume driven: see footnote of paragraph 6.58 above. Mastercard earns revenue from the fees it charges its customers (issuers and acquirers) each time a Mastercard-branded card is used to make a transaction: paragraph 4.36e) above.

864 See paragraphs 4.3 onwards, Chapter 4.

865 See paragraphs 3.96 onwards and Chapter 4.

866 See Case C-209/07 *Competition Authority v Beef Industry Development Society and Barry Brothers*, EU:C:2008:643, paragraph 21.

867 See paragraphs 4.22 onwards.

in Chapter 4 above, Sulion's work was conducted under the supervision and guidance of Mastercard. Sulion was also prevented from acting for competitors of Mastercard.⁸⁶⁸

7.75 By [Sulion director 1]'s own admission (paragraphs 5.7 to 5.9), [Sulion director 1] actively participated in the agreement and/or concerted practice by, for example:

- Taking a direct and active role in the Exclusive allocation of leads arrangement to specific Network PMs and its implementation (see paragraphs 5.29 to 5.40, which shows the contemporaneous evidence supporting [Sulion director 1]'s role).
- Taking a direct and active role in designing the Network non-targeting arrangement and monitoring and enforcing it, and making sure it was adhered to by the Network PMs.⁸⁶⁹ [Sulion director 1] (Sulion) explained in interview that [Sulion director 1] only needed to remind Network PMs about "*playing fair*" on "*very few occasions*", and that the Network non-targeting arrangement was a part of the positive and transparent environment [Sulion director 1] wanted to set at Network meetings.⁸⁷⁰
- Actively facilitating the implementation of the anti-competitive arrangement by, for example, sharing information regarding the customers each Network PM was supplying (see paragraphs 5.76 to 5.78).

7.76 Even though Sulion's involvement in the agreement and/or concerted practice was significant, Sulion's interest in the execution of the infringement was different from that of Mastercard⁸⁷¹ as it was not active on the market for the supply of prepaid card services to Public bodies or on a market that was related to it.

7.77 As set out below in paragraphs 7.127 to 7.130, Sulion intended to contribute and did contribute through its own conduct to the overall plan in pursuit of the common objective of sharing the market by allocating customers between the Network PMs. In addition, Sulion was aware of the conduct planned and/or put into effect by the Network PMs and Mastercard in pursuit of the same anti-competitive objective.

7.78 Therefore, the PSR finds that Sulion participated as a facilitator in all the elements of the Network market sharing agreement (that is, the Exclusive allocation of leads arrangement and the Network non-targeting arrangement, together with the information exchange that supported it).

⁸⁶⁸ See paragraph 4.29 above.

⁸⁶⁹ See in general Section 5.B of Chapter 5, in particular, paragraphs 5.95 to 5.100 and see Case C-194/14 P *AC-Treuhand* EU:C:2015:717, paragraphs 37 to 39.

⁸⁷⁰ See paragraph 5.98.

⁸⁷¹ That is, Sulion was a consultant hired by Mastercard to perform its functions in accordance with the terms of its SoWs and Framework agreements. The firm did not, as in the case of Mastercard, act on a directly concerned upstream or downstream market. Additionally, the firm did not earn commission on sales, though did have certain project deliverables, such as generating new turnover and adding more Public bodies to the numbers already using Mastercard Prepaid programmes (see, for example, paragraph 4.35 above).

Legal assessment: End of contract agreement: agreement and/or concerted practice

Summary of conclusions

7.79 On the basis of the facts and evidence set out in Chapter 5 above, the PSR concludes that during the Relevant Period 2 PFS and APS engaged in an agreement and/or concerted practice to share markets by allocating customers relating to the supply of prepaid card services for welfare disbursements to Public bodies in GB, as there was a concurrence of wills between PFS and APS or, at the very least, they knowingly substituted practical cooperation between them for the risks of competition. For the purposes of the Chapter I prohibition, the PSR considers this sufficient to amount to an agreement and/or concerted practice.

Existence of an ‘agreement’ or ‘concerted practice’

7.80 The PSR finds that the contacts and exchanges described above in paragraphs 5.110 to 5.117 that took place during Relevant Period 2 between PFS and APS constituted an agreement and/or concerted practice for the purposes of the Chapter I prohibition.⁸⁷² The PSR refers to this agreement and/or concerted practice as the ‘**End of contract agreement**’.

7.81 The PSR considers that there is evidence that the End of contract agreement extended beyond the Network market sharing agreement outlined in paragraphs 7.37 to 7.65 above. More specifically, the scope of the Network market sharing agreement excluded the non-targeting of existing customers when a contract came up for tender (including at the end of a trial or pilot programme).⁸⁷³ The End of contract agreement, on the other hand, evolved outside the Network to cover additionally the non-targeting of existing customers at the point when a contract goes out to tender at the end of a contract (that is, a retender) or at the end of a trial or pilot programme.

7.82 As described from paragraph 5.110 onwards above, the earliest direct reference to the agreement and/or concerted practice in contemporaneous documentary evidence is a series of emails between PFS and APS starting in August 2014.

7.83 [PFS director 1] of PFS emailed [APS employee 1] of APS to ask, in respect of an upcoming tender for [Public body 45], whether APS was already providing cards to [Public body 45], in which case PFS “... *won’t compete on this one*”. [PFS director 2] of PFS also confirmed PFS’s position by reiterating that they would not be pitching for “*APS ‘live live’ clients*”.⁸⁷⁴

7.84 Having forwarded the email chain internally to [APS employee 2] of APS, [APS employee 1] of APS responded confirming that [Public body 45] was their customer. As a result, PFS did not submit a bid and APS won the tender.⁸⁷⁵

872 See paragraphs 5.101 onwards.

873 See paragraphs 5.88 to 5.90 and 7.39 above.

874 See paragraph 5.113 above.

875 See paragraph 5.114 above.

- 7.85** This exchange of emails shows that PFS shared their intentions not to compete with APS for its clients. APS did not distance itself from the exchange, but instead accepted the anti-competitive proposal by confirming that [Public body 45] was indeed one of their customers.
- 7.86** [PFS director 2] (PFS) explained in [PFS director 2]'s interview of 2018 that pitching for APS's live clients was equivalent to an aspect of the arrangement in respect of the Network market sharing agreement whereby the Network PMs were prevented from poaching existing customers of their fellow Network PMs: "*I just think it became like a standard of practice of, 'Oh, well it's their client, don't pitch for it, it's coming up for renewal, forget about it'. 'It gets just too comfortable I suppose'.*"⁸⁷⁶ Likewise, [APS employee 1] of APS stated that [APS employee 1] considered that this arrangement with PFS had "*grown out of the nature of the steering group*".⁸⁷⁷
- 7.87** Further documentary evidence of the existence of the agreement and/or concerted practice is an email from July 2016, whereby PFS confirmed to APS that they would not be competing for the [Public body 5] because that council was already an APS customer (see paragraph 5.115 above). APS in response, although acknowledging the understanding regarding the Network non-targeting arrangement, nevertheless clearly reciprocated by confirming they would not be competing for [Public body 42] who were a customer of PFS.⁸⁷⁸
- 7.88** APS did not bid for the [Public body 42] retender despite it being one of the largest prepaid card tenders in the country and as such implemented the agreement.⁸⁷⁹
- 7.89** The above demonstrate the faithful expression of PFS and APS's joint intention to conduct themselves in a specific way, namely by sharing markets and limiting competition between them through the allocation of customers in relation to the supply of prepaid card services to Public bodies.
- 7.90** In addition, this arrangement was described by [PFS director 1] (PFS) in an email to allpay dated 17 February 2017, as a "*gentleman's agreement*" that had always been in place between PFS, APS and [Programme Manager 1] (see paragraph 5.116 above).⁸⁸⁰ [PFS director 1] (PFS) explained in interview that the reference to [Programme Manager 1] was a "*bluff*", but confirmed the existence of the agreement in relation to APS. The reason for the bluff was to try to convince allpay to agree to this arrangement as PFS "*didn't want to go through the hassle of another month's work to win back our own client.*"⁸⁸¹

876 See paragraph 5.111 above.

877 See paragraph 5.111 above.

878 See paragraph 5.115. In [APS employee 1]'s (APS) words "*[...] anyone who goes out to tender is fair game, although from what I understand they then removed the tender! As we previously discussed, I will not be stepping on your toes with the [Public body 42] Card tender, good luck re-securing them*". The PSR notes that these contracts tended to last for around 3 years, see paragraph 3.107.

879 See paragraph 5.115 above.

880 Chapter 3 explains how by the end of 2016/end of early 2017 both APS and [Programme Manager 1] had left the market.

881 See paragraph 5.116 above.

- 7.91** The existence of the End of contract agreement between APS and PFS is corroborated in several interviews (see paragraphs 5.111 to 5.116 above). For example, [PFS employee 1] (PFS) referred to it as a “*professional courtesy thing*”.⁸⁸² That is, PFS and APS expected each other to conduct themselves in a particular way regarding their existing customers.⁸⁸³
- 7.92** Even though, for the purposes of establishing an ‘agreement’, the case law does not require the PSR to establish a joint intention to pursue an anti-competitive aim, nor require a party to act on or implement an agreement, the evidence set out above shows that the receipt of information from PFS meant APS had advance notice of PFS’s anti-competitive intentions and joined its intentions, and the agreement was in fact implemented.
- 7.93** PFS argued both at interview and in their responses to the PSR’s RFIs that Public bodies did not switch providers at the end of contract due to a number of reasons, but largely because a provider would become embedded into the customer’s systems and the costs and disruption of changing provider would be too great.⁸⁸⁴ However, there is evidence of switching occurring after the end of contract on retender, as shown in paragraphs 3.122 to 3.129 and 5.117 above. Irrespective of whether switching was likely to occur, the parties to this agreement would have had the security of knowing their direct competitor’s intentions that they would not have to compete for the contract. In fact, this was how PFS and APS expected each other to behave.⁸⁸⁵
- 7.94** The PSR finds that the email exchanges described in paragraphs 5.110 onwards show that PFS and APS expressed a joint intention to share the market by not competing for each other’s customers once a contract came up for retender or tender at the end of a pilot.
- 7.95** At the very least, the PSR finds that the conduct amounted to a concerted practice in so far as the contacts between PFS and APS⁸⁸⁶: (i) show that their conduct in informing each other of their plans in relation to upcoming tenders was mutually accepted – they did not act unilaterally, as both APS and PFS responded positively to the information provided; (ii) infringe the principle that each undertaking must determine independently the policy it intends to adopt on the market; (iii) constitute direct contact between PFS and APS which has as its object or effect the disclosure by PFS to APS of the course of conduct which both PFS and APS were to adopt or contemplated adopting in the tendering process, and influenced their conduct on the market as long as they remained active on the market – and this is also borne out by the fact neither tendered as revealed to their direct competitor. As described in paragraph 7.21 above, the PSR is entitled to presume that both PFS and APS would have taken the information received into account when determining their own conduct.⁸⁸⁷
- 7.96** These contacts therefore constitute a prohibited reciprocal contact in that PFS contacted a competitor, APS, twice in order to specifically disclose to APS its future intentions on the market, which disclosure APS accepted. Moreover, at no point did APS distance itself from the receipt of such information from PFS or question its sensitivity. Likewise, APS specifically disclosed to PFS its future intentions in relation to the retender for [Public body 42], which

882 See paragraph 5.115 above.

883 See above.

884 See generally paragraphs 3.122 onwards.

885 See for example, [PFS director 2]’s interview of 9 November 2018, disc 3 or 3, at lines 134 – 135: “*Oh, well it’s their client, don’t pitch for it, it’s coming up for renewal, forget about it*”, UUID 238180003: paragraph 5.111 above.

886 See paragraphs 7.16 to 7.21 above.

887 See *Hüls*, paragraph 162; *Anic*, paragraph 121.

disclosure PFS accepted and did not distance itself from. The PSR concludes that the exchange of commercially sensitive information in their contacts (future bidding intentions) was at least capable of reducing uncertainty as to the conduct on the market to be expected on their part.

F Single and continuous infringement

Key legal principles

- 7.97** A complex cartel may properly be viewed as a single and continuous infringement for the timeframe in which it existed. The concept of '*single infringement*' presupposes a complex of practices adopted by various parties in pursuit of a single anti-competitive economic aim.⁸⁸⁸ An infringement of the Chapter I prohibition need not, therefore, be based on a single, isolated act, but may operate through a pattern of conduct involving a series of agreements and concerted practices over a period of time.⁸⁸⁹
- 7.98** The cartel may vary from time to time, or its mechanisms may evolve and adjust to take account of new requirements or circumstances. It would be artificial and contrary to the commercial reality of the situation to seek to split up such continuous conduct where it is characterised by a single purpose or objective, by treating it as consisting of a number of separate infringements "*when what was involved was a single infringement which progressively manifested itself in both agreements and concerted practices*".⁸⁹⁰ In these circumstances, it is not necessary to divide the conduct by treating it as consisting of a number of separate infringements where there is sufficient consensus to adhere to a plan in pursuit of a single economic aim.⁸⁹¹
- 7.99** The characterisation of a complex cartel as a single and continuous infringement is not affected by the possibility that one or more elements of a series of actions, or of a continuous course of conduct, could individually and in themselves constitute infringements.⁸⁹²
- 7.100** It is settled case law that a series of agreements, concerted practices or decisions by associations of undertakings can be characterised as constituting a single and continuous infringement where they are interlinked in terms of pursuing a common objective. Therefore, an infringement may be comprised of both agreements and concerted practices at the same time.⁸⁹³

888 *Cement*, paragraph 3699.

889 See for example, *Anic*, paragraphs 113 to 114. See also Case T-105/17 *HSBC Holdings v Commission*, EU:T:2019:675, paragraph 197.

890 *Anic*, paragraph 82.

891 Case T-1/89 *Rhône-Poulenc v Commission*, EU:T:1991:56, paragraph 126. See also Case T-105/17 *HSBC v Commission*, EU:T:2019:675: "*an infringement of Article 101(1) TFEU can result not only from an isolated act, but also from a series of acts or from continuous conduct, even if one or more aspects of that series of acts or continuous conduct could also, in themselves and taken in isolation, constitute an infringement of that provision. Accordingly, if the different actions form part of an 'overall plan' because their identical object distorts competition on the internal market, the Commission is entitled to impute responsibility for those actions on the basis of participation in the infringement considered as a whole*": paragraph 197.

892 *Anic*, paragraphs 111 to 114. See also Commission Decision of 10 December 2003, *Organic peroxides*, Case COMP/E-2/37.857, paragraph 308. See also Case T-53/03, *BPB v Commission*, EU:T:2008:254, paragraph 249: "[w]here there is a complex, single and continuous infringement, each manifestation corroborates the actual occurrence of such an infringement".

893 Case T-7/89 *Hercules v Commission* [1991] EU:T:1991:75, paragraph 264.

7.101 The European Courts have established a number of conditions which need to be satisfied in order that an undertaking's liability for a single and continuous infringement be established:

- a. The existence of an overall plan pursuing a common objective.⁸⁹⁴ The common objective must be based on objective elements linking the various actions together.⁸⁹⁵ It is necessary to look at the available elements together. Not every element listed below is necessarily mandatory, and in that sense there is a margin of discretion as to which combination of elements are relevant to an authority's decision.⁸⁹⁶ Therefore a combination of objective factors, some of which are listed below, may be relevant to the assessment, rather than dependence on a single element:⁸⁹⁷
- The identical nature of objectives of the practices at issue⁸⁹⁸
 - The identical nature of the goods and/or services and/or geographic area concerned
 - The identical nature of undertakings participating⁸⁹⁹

894 There must therefore be evidence showing the existence of a series of efforts made by the undertakings in pursuit of a "common objective" or "single economic aim": Joined Cases T-204/08 and T-212/08 *Team Relocations v Commission*, EU:T:2011:286, paragraph 37 and *Anic*, paragraph 197. That is, what might otherwise appear to be different conduct has an 'identical' purpose or object to the anti-competitive aims allegedly being pursued, so that the various practices can be considered to be part of a series of efforts made by the undertakings in question in pursuit of a single economic aim: see *Anic*, paragraph 42.

895 When assessing the common features of a set of anti-competitive practices in order to determine whether there is a series of efforts made by the undertakings in pursuit of a common objective, it is necessary to look at the available elements together: see joined cases T-259/02 to T-264/02 and T-271/02 *Raiffeisen Zentralbank Österreich v Commission*, EU:T:2006:396, paragraph 121. Where it is established that a set of individual agreements or concerted practices are interlinked in terms of pursuing a single anti-competitive aim, they can be characterised as constituting a single and continuous infringement: *Anic*, paragraph 113; Cases T-101&111/05 *BASF v Commission*, EU:T:2007:380, paragraphs 158 onwards; Case T-295/94 *Buchmann v Commission*, EU:T:1998:88, paragraph 79; Case T-21/99 *Dansk Rorindustri v Commission* EU:T:2002:74, paragraph 67. See also Case T-380/10 *Wabco v Commission*, EU:T:2013:449, paragraph 92; Case T-147&148/09 *Trelleborg Industrie v Commission*, EU:T:2013:259, paragraph 61 and Case T-410/09 *Almamet GmbH Handel mit Spänen und Pulvern aus Metall v Commission*, EU:T:2012:676, paragraph 152. In a number of judgments, the GC has found that to find a common objective, the practices at issue must not only share a common purpose, but they must also be complementary in nature. However, the CJEU has clarified that no such criterion must be fulfilled. Nevertheless, an authority must ascertain whether there are any elements characterising the various instances of conduct forming part of the infringement which are capable of indicating that the conduct in fact implemented by other participating undertakings does not have an identical object or identical anti-competitive effect: Case C-239/11 P *Siemens v Commission*, EU:C:2013:866, paragraph 248: "The General Court is not in fact required to examine such an additional condition of complementarity" Also referred to in Case T-105/17 *HSBC v Commission*, EU:T:2019:675, paragraph 201.

896 See CMA decision of 4 March 2020, *Nortriptyline Tablets*, Case 50507.2, paragraph 5.139.

897 Case T-147&148/09 *Trelleborg Industrie v Commission*, EU:T:2013:259, paragraph 60 and case law cited; Case T-410/09 *Almamet GmbH Handel mit Spänen und Pulvern aus Metall v Commission*, EU:T:2012:676, paragraph 174 and case law cited; Case T-91/11 *InnoLux v Commission*, EU:T:2014:92, paragraph 128. The elements are not fixed or exhaustive. See also Case T-105/17 *HSBC v Commission*, EU:T:2019:675, paragraphs 233 to 234.

898 Case T-101/05 *BASF and UCB v Commission*, EU:T:2007:380, paragraph 180: there needs to be more than a general reference to the distortion of competition in the relevant product market. See also Case T-113/07 *Toshiba v Commission*, EU:T:2011:343, paragraph 228; see also joined cases C-239/11 P, C-489/11 P and C-498/11 *Siemens and Others v Commission*, EU:C:2013:866, paragraph 246.

899 Though "members may join or leave a cartel from time to time without it having to be treated as a new agreement with each change in participation.": Commission Decision in *Pre-insulated Pipes Cartel*, (COMP/35691), paragraph 134.

- Whether the individuals involved on behalf of the undertakings are identical⁹⁰⁰
- b. The intentional contribution of the undertaking to the common objectives pursued by all the participants;⁹⁰¹ and
- c. The undertaking's awareness of the offending conduct of the other participants in pursuit of the same objectives, or the fact that it could have reasonably foreseen it and was prepared to take the risk.⁹⁰²

7.102 An undertaking does not have to be present on the relevant market for it to participate in a single and continuous infringement.⁹⁰³

7.103 The fact that an undertaking does not abide fully by an anti-competitive agreement and/or concerted practice does not relieve that undertaking of responsibility for it, particularly if the undertaking knew or must have known that the collusion in which it participated was part of an overall plan intended to distort competition.⁹⁰⁴

7.104 Moreover, a finding of a single and continuous infringement does not require that each undertaking has given its express or implied consent to each and every aspect of the single and continuous infringement: the parties may show varying degrees of commitment to the common objectives.⁹⁰⁵

900 See Case T-147&148/09 *Trelleborg Industrie v Commission*, EU:T:2013:259, paragraph 60. In Case T-105/17 *HSBC v Commission*, EU:T:2019:675, the GC referred to “the central element which establishes that there was an ‘overall plan’, as referred to in recital 451 of the contested decision, is the fact that the cartel was ‘controlled and maintained’ by a stable group of individuals” (paragraph 233).

901 Case T-204/08 and T-212/08 *Team Relocations v Commission*, EU:T:2011:286, paragraph 37. *Anic*, paragraph 206: it is necessary to establish evidence for each undertaking to have contributed, at its own level, to the pursuit of the common objective. Thus, the undertakings, through their conduct, must have contributed to an anti-competitive “identical purpose” or “single economic aim” which can be characterised as their “common objective”. Accordingly, it is necessary to show that each undertaking made an ‘intentional contribution’ to the pursuit of the common objective: Joined Cases T-204/08 and T-212/08, *Team Relocations v Commission*, EU:T:2011:286, paragraph 37.

902 *Anic*, paragraphs 87 and 203. Even if a particular undertaking did not directly participate in every aspect of the single and continuous infringement it can still be held liable for the whole infringement if it was aware of the offending conduct of the other participants: Case T-204/08 and T-212/08 *Team Relocations v Commission*, EU:T:2011:286, paragraph 37. The requirement of awareness is subject to a low threshold: the mere reasonable foreseeability of illicit acts by the other participants is deemed to fulfil this requirement: *Anic*, paragraph 87. It is not, however, necessary for each undertaking to be aware of the full detail of all the participants activities, so long as each had sufficient awareness of the overall common objective and intended to contribute to it: Joined Cases T-259/02 to T-264/02 and T-271/02 *Raiffeisen Zentralbank Österreich v Commission*, EU:T:2006:396, paragraph 193. In In case T-67/00 *JFE Engineering and Others v Commission*, EU:T:2004:221, paragraph 371, the Commission fined several undertakings for a single and continuous infringement involving two market sharing agreements, one between European and Japanese producers, and one among European producers. The GC upheld the Commission's finding, stating that “[a]lthough the exclusion of the European producers from the Japanese market logically constituted the feature of [the single and continuous infringement] which was of interest to the Japanese producers, the latter knew, or ought necessarily to have understood that that principle was applicable as much at intra-community level as at inter-continental level”.

903 Case T-29/05 *Deltafina v Commission*, EU:T:2010:355, paragraphs 45 to 51. See also *Anic*, paragraph 79: “the agreements and concerted practices referred to in Article [85(1)] of the Treaty necessarily result from collaboration by several undertakings, who are all co-perpetrators of the infringement but whose participation can take different forms according, in particular, to the characteristics of the market concerned and the position of each undertaking on that market, the aims pursued and the means of implementation chosen or envisaged”. See also Case C-626/13 *P Villeroj & Boch v Commission*, EU:C:2017:54, paragraph 69 (*Bathroom fixtures and fittings*).

904 Case T-305/94 etc *Limburgse Vinyl Maatschappij v Commission*, EU:T:1999:80, paragraph 773; Case T-141/89 *Tréfileurope Sales SARL v Commission*, EU:T:1995:62, paragraphs 60 and 85; *Argos and Littlewoods*, paragraph 687 and Commission decision *Pre-Insulated Pipe Cartel* OJ 1999 L24/1, paragraph 134.

905 See *Anic*, paragraph 80. See also paragraph 79 of *Anic*: participation can take different forms according, in particular, to the characteristics of the market concerned and the position of each undertaking on that market.

- 7.105** Each participating undertaking may bear personal responsibility not only for its own conduct, but also for the operation of the overall anti-competitive arrangement during the period in which it participated in it.⁹⁰⁶ An undertaking can be held liable for all known aspects of a cartel even if it only participated in limited aspects.⁹⁰⁷ It is not necessary for each undertaking to be aware of the full detail of all the participants' activities, so long as each had sufficient awareness of the overall plan and intended to contribute to it.⁹⁰⁸ However, limited participation in the single and continuous infringement may be taken into account at a later stage, when assessing the gravity of the infringement in order to determine the level of the fine for the particular undertaking.⁹⁰⁹
- 7.106** Undertakings may participate more or less over the period of the infringement, where there is evidence of continuity of method, practice and/or purpose.⁹¹⁰ An arrangement may even be suspended during a short period.⁹¹¹ Some participants may drop out, others may join in, and an undertaking may not necessarily be involved in every aspect of the infringing arrangement or may play only a minor role in the aspects in which it does participate.⁹¹²
- 7.107** The continuity of a practice over time is an essential feature of a single and continuous infringement and is linked to the requirement to establish the duration of the infringement. However, even if the PSR has no evidence of the participation of the undertaking concerned in the infringement for a specific period, it may assume an infringement has not been interrupted provided that the various actions which form part of the infringement pursue a single purpose and are capable of falling within the framework of a single and continuous infringement.⁹¹³ Hence the notion of an overall plan means that the PSR may assume that an infringement has not been interrupted in respect of that specific period, provided that that undertaking

906 *Anic*, paragraph 83. An undertaking can only be held liable for the conduct in which it participated directly and for the conduct planned or put into effect by the other participants in pursuit of the same objectives as those of the undertaking itself, where it is shown that the undertaking was aware of the conduct or was able reasonably to foresee it and prepared to take the risk: Case C-441/11 P *Verhuizingen Coppens*, EU:C:2012:778, paragraph 44. Establishing an undertakings' awareness of the infringement as a whole is key to establishing the extent of its liability: Joined cases T-67/00, T-68/00, T-71/00 and T-78/00 *JFE Engineering Corp v Commission*, EU:T:2004:221, paragraph 371 and Case T-53/03 *BPB v Commission*, EU:T:2008:254, paragraph 253.

907 *Anic*, paragraph 90 and Case T-204/08 and T-212/08 *Team Relocations v Commission*, EU:T:2011:286, paragraph 37. Participation need only be minimal in order to demonstrate involvement in a single and continuous infringement. The fact that the participation of an undertaking was limited to minor aspects of the infringement does not affect its liability for the conduct of other undertakings in the context of the infringement throughout the period of its participation in the infringement, as long as the undertaking was aware of the illicit acts of the other participants, in view of the overall common objective. See also Case C-99/17 P *Infineon Technologies v Commission*, EU:C:2018:773, paragraphs 171 to 177.

908 In joined cases T-259/02 to T-264/02 and T-271/02 *Raiffeisen Zentralbank Österreich v Commission*, EU:T:2006:396, paragraph 193: "Similarly, neither the fact that RBW was not familiar with the detail of the concerted practices taking place within numerous committees in which it did not participate nor the fact that it was unaware of the existence of certain committees, such as those concerning cross-border operations, if their existence is established, can detract from the Commission's finding that it participated in the cartel as a whole".

909 See *Anic*, paragraph 90, *Aalborg Portland*, paragraph 86 and Case C-441/11 P *Commission v Verhuizingen Coppens NV*, EU:C:2012:778, paragraph 45.

910 Case T-385/06 *Aalberts Industries v Commission*, EU:T:2011:114, paragraph 105.

911 Case T-23/99 *LR AF 1998 v Commission*, EU:T:2002:75, paragraphs 106 to 109.

912 Case T-23/99 *LR AF 1998 v Commission*, EU:T:2002:75, paragraphs 106 to 109; Case C-246/86 *Belasco v Commission*, EU:C:1989:301, paragraphs 10 to 16; Commission Decision of 21 October 1998, *Pre-Insulated Pipe Cartel*, Case no IV/35.691/E-4, paragraphs 129 to 134; Case T-99/04 *AC-Treuhand v Commission*, EU:T:2008:256, paragraph 132.

913 Case T-147&148/09 *Trelleborg Industrie v Commission*, EU:T:2013:259, paragraphs 59 and 61.

participated in the infringement prior to and after that specific period and provided there is no proof of indicia that the infringement was interrupted so far as concerns that undertaking.⁹¹⁴

- 7.108** In determining the duration of the Infringements, the PSR is entitled to rely on pieces of evidence that an undertaking actively participated in the agreement and/or concerted practice, lack of evidence that an undertaking publicly distanced itself from the agreement and/or concerted practice, and the perception of the other participants in the cartel.⁹¹⁵
- 7.109** Further, if there is no evidence “*directly establishing the duration of the infringement*”, it is sufficient to adduce evidence of the facts sufficiently proximate in time for it to be reasonable to accept that the infringement continued uninterrupted between two specific dates.⁹¹⁶ In the context of an infringement extending over a number of years, if evidence has not been produced for certain specific periods, that does not preclude the infringement from being regarded as established over a longer overall period than those periods, provided that such a finding is supported by objective and consistent indicia.⁹¹⁷ Although the period separating two manifestations of infringing conduct is a relevant criterion in order to establish the continuous nature of an infringement, the fact of whether or not that period is long enough to constitute an interruption of the infringement cannot be examined in the abstract, but should be assessed in the context of the functioning of the cartel in question.⁹¹⁸
- 7.110** In this regard, the GC has specifically considered that “*unlike a price fixing agreement under which participants are required to meet regularly to take account of the market evaluation to be able to adapt their conduct on that market during the period of the agreement, a market sharing agreement, by definition, must be respected by the parties to the agreement with effect from its conclusion and may occasionally be adjusted either by amending the existing agreement or by means of other agreements.*”⁹¹⁹
- 7.111** As to the end of the infringement, the CJEU has held that “*it is sufficient, in order for Article 101 TFEU to apply, that they produce their effects beyond the date on which the unlawful contacts formally come to an end. It follows that the duration of an infringement may be*

914 Case T-147&148/09 *Trelleborg Industrie v Commission*, EU:T:2013:259, paragraph 87. Hence a gap of several months between manifestations in the context of an overall common objective extending over many years may be immaterial. See also Case T-83/08, *Denki Kagaku*, EU:T:2012:48, paragraphs 223 to 224 and Case C-113/04 P *Technische Unie BV v Commission*, EU:C:2006:593, paragraph 169.

915 Case C-634/13 P *Total Marketing Services v European Commission*, EU:C:2015:614, paragraphs 26 to 31.

916 Case T-43/92 *Dunlop Slazenger International Ltd v Commission*, EU:T:1994:79, paragraph 79; cited further in Case T-62/98 *Volkswagen AG v Commission*, EU:T:2000:180, paragraph 188; Case T-279/02 *Degussa v Commission*, EU:T:2006:103, paragraph 153; Case T-120/04 *Peróxidos Orgánicos v Commission*, EU:T:2006:350, paragraph 51. See also Case T-113/07 *Toshiba v Commission*, EU:T:2011:343, paragraph 235 and the case law cited; cited further in for example, Case T-450/13 *Sumitomo Electric Industries Ltd v Commission*, EU:T:2018:455, paragraph 52 and Case T-448/14, *Hitachi Metals Ltd v Commission*, EU:T:2018:442, paragraph 122.

917 Case C-113/04 P *Technische Unie BV v Commission*, EU:C:2006:593, paragraph 169.

918 Case T-18/05 *IMI and Others v Commission*, EU:T:2010:202, paragraph 89 and Case T-83/08 *Denki Kagaku*, EU:T:2012:48, paragraphs 223 to 224: in this case “*the gap of slightly less than nine months between the applicants’ participation in the cartel meeting of 12 or 13 May 1993 in Florence and their participation in the cartel meeting of 8 or 9 February 1994 in Tokyo (or a gap of eleven months between the meeting of 12 or 13 May 1993 in Florence and the meeting of 11 April 1994 in Zurich), is not relevant. The cartel extended over a number of years and, accordingly, a gap of nine months between the various manifestations of that cartel, during which the applicants did not distance themselves from it, is immaterial.*”

919 Case T-439/07 *Coats Holding Ltd v Commission*, EU:T:2012:320, paragraph 152.

*assessed by reference to the period during which the undertakings concerned engaged in conduct prohibited by that article”.*⁹²⁰

Legal assessment: Network market sharing agreement

- 7.112** The PSR has uncovered evidence that, over a long period of time, the Parties participated in an agreement and/or concerted practice comprised of various aspects of conduct, all of which pursued the same anti-competitive object of sharing the market between the Network PMs for the supply of prepaid card services for welfare disbursements to Public bodies through the allocation of public sector customers in GB.

Overall plan pursuing a common objective

- 7.113** As set out in paragraphs 7.37 to 7.78 and 7.112 above, the Network market sharing agreement comprised various types of conduct, all of which pursued a common anti-competitive objective, namely to share the market between the Network PMs for the supply of prepaid card services for welfare disbursements in the public sector through the allocation of customers (existing and potential new customers).
- 7.114** The Parties intended to coordinate their activities regarding which customers to target, with a view to suppressing competition between the Network PMs so they could focus their commercial efforts on targeting customers that were not yet Mastercard prepaid card users (see, for example, paragraphs 5.8 to 5.21b)). This would result in an expansion of Mastercard prepaid cards in the market and assist Mastercard in becoming the brand of choice in the public sector (see paragraphs 3.96, 4.3 to 4.13 and 4.23).⁹²¹ It would also be advantageous to the Network PMs, as it would assist in securing their customer base, reducing the threat of competition for the contracts which they held or which they were pursuing.
- 7.115** As set out in paragraphs 4.3 to 4.13 and 4.46 onwards above, the Parties expected that by building a reputation through developing a close connection with Public bodies, Mastercard and Mastercard PMs would have an important advantage in the roll-out of prepaid card programmes for the Universal Credit scheme.⁹²²
- 7.116** The Network non-targeting arrangement was set out at the beginning of the Network. In the early days of the Network, around 2011 to 2013,⁹²³ the Network PMs had very few Public body customers (see, for example, paragraph 5.43). As a result, the instances in which the Network non-targeting arrangement could apply were more limited compared to later years when more

⁹²⁰ Case C-70/12 P *Quinn Barlo v Commission*, EU:C:2013:351, paragraph 40.

⁹²¹ Such an objective is not in itself anti-competitive, but the means in which the objective was achieved were anti-competitive (see for example, Case C-209/07 *Competition Authority v Beef Industry Development Society and Barry Brothers*, EU:C:2008:643, paragraph 36).

⁹²² Paragraphs 4.3 to 4.13 show Mastercard's strategic aim to grow its share, downstream, of the overall public sector prepaid market, to which end it created the Network. This would give Mastercard the leverage it needed to show credibility as a trustworthy corporate operating in the public sector, with a view to positioning itself as the go-to payment provider of universal credit. In order to achieve this strategic aim, Mastercard encouraged Sulion (through the Service Agreements and Framework Agreements) and the Network PMs to focus resources on expanding the overall public sector prepaid cards market (paragraphs 4.14 to 4.42). See paragraph 4.8 regarding APS' interest in Universal Credit. See also paragraph 3.99 above.

⁹²³ See paragraphs 5.23 onwards.

contracts (including pilot programmes) had been awarded. The Exclusive allocation of leads arrangement was put in place to coordinate the business strategies of the Network PMs on potential new customers. Both arrangements are an expression of the Parties' focus on growing the market by increasing the overall number of Public bodies buying Mastercard prepaid cards, instead of having the Network PMs competing with each other. The Network PMs would thus maintain their existing customer bases or sales leads secure in the knowledge that competition between them was restricted.⁹²⁴

The identical nature of objectives of the practices

- 7.117** Although certain aspects of the practices changed over the Relevant Period 1, namely the exclusive allocation of leads (which occurred during the first years of the cartel), the objective of the anti-competitive practices stayed the same throughout the period. In addition, the two forms of conduct were connected and supported each other. As explained in Chapters 4 and 5 above, the development of personal relationships with the Public bodies and knowing who to contact was a key aspect of competition (see, for instance, paragraph 5.51). In fact, a significant amount of the initial marketing contacts with local authorities would result either in contracts being directly awarded to the Network PM that first approached the Public body or an offer for a trial/pilot programme being taken by the Public body (see generally paragraphs 3.101 onwards and 5.47). Once the contract was awarded or arrangements for a pilot programme had been put in place, the arrangement not to poach existing customers would then dictate that no other Network PM could poach or try to poach that customer (until the contract came to an end).

Identical nature of the goods and/or services and/or geographic area

- 7.118** All forms of conduct related to the same product or service (prepaid card services for welfare disbursements supplied to Public bodies) and applied in the same geographical area (GB). That the cartel did not extend beyond GB during the Relevant Period 1 is demonstrated in an email dated 6 March 2019 between Sulion and Mastercard, where [Sulion director 1] (Sulion) discusses a draft statement of work, which refers to "*the move into Northern Ireland*".⁹²⁵ This is subsequently confirmed by an email chain between Sulion and Mastercard dated 12 March 2019, which refers to there being no Public bodies that use prepaid cards in Northern Ireland (as set out in a table contained in the email chain) and that the Network should hold an event there to gain traction and introduce prepaid cards and their use.⁹²⁶

Identical nature of undertakings participating

- 7.119** The PSR considers that the fact that the same undertakings participated in the different manifestations of the cartel throughout Relevant Period 1 is a further factor that leads to the conclusion that there was a common objective.⁹²⁷

924 See, for example, paragraph 5.45: "... *it seemed a bit counterproductive to go after someone else's customers when you had so many people who weren't using the card*". See also paragraph 5.64.

925 See UUID PSR0001-103189-000264.

926 See UUID PSR0001-103189-000277.

927 See Commission Decision, *Pre-insulated Pipes Cartel*, paragraph 134: "*members may join or leave a cartel from time to time without it having to be treated as a new agreement with each change in participation*". Therefore, the fact that allpay was not a member of the Network between [2013] and [2016] (as explained in paragraphs 4.44 and Table III above) and therefore did not participate in the cartel during that time, does not alter the finding that there was a single and continuous infringement throughout the Relevant Period 1.

7.120 The individuals participating in the infringement were also broadly the same throughout the Relevant Period 1. The key representatives from Mastercard, PFS, APS and Sulion ([Sulion director 1]) remained the same throughout the Relevant Period 1: from Mastercard, the key staff were [Mastercard employee 1], who was appointed [X],⁹²⁸ [Mastercard employee 3] (and to some extent [Mastercard employee 5] and [Mastercard employee 2]) until 2014/15, and [Mastercard employee 4] (who joined in [X]); from PFS the key representatives were [PFS director 1] and [PFS director 2]; from APS the key representative was [APS employee 1]; and from allpay, the key staff were [allpay director 1] and [allpay employee 3], who were both involved in the early days of the Network ([allpay director 1], however, remained at allpay, though not in that role throughout the Relevant Period 1) and [allpay employee 1], who joined allpay in 2015 then remained with allpay until the end of the Relevant Period 1.

7.121 As such, the cartel was operated and maintained by a stable group of individuals.⁹²⁹ As explained above (see for example, paragraphs 5.17, 5.24, 5.25, 5.73, 5.83 onwards and 5.100), Mastercard and Sulion had a central role in designing the objectives of the cartel and the methods to achieve them. Although Sulion was more active in monitoring the conduct and sharing of information to support the Network market sharing agreement, both Sulion and Mastercard had a key role in enforcing the anti-competitive arrangement (see paragraphs 5.29 onwards and 5.95 onwards). The methods of the cartel stayed the same as well.⁹³⁰

The intentional contribution of the undertakings to the common objectives pursued by all the participants/the undertakings' awareness of the offending conduct of the other participants in pursuit of the same objectives

7.122 The PSR considers that each of the Parties (including Sulion – see paragraphs 7.127 to 7.130 below) intentionally contributed, at its own level, to the pursuit of the common objective of sharing the market by allocating customers. This is clearly demonstrated by the Parties expressing on a number of occasions their intention to conduct themselves in the market in a specific way, including:

- a. when all the Parties reiterated their long-lasting joint intention for the Network PMs not to target each other's customers (see, for example, paragraph 5.21); or when in relation to allpay's readmission to the Network, APS, PFS, Sulion and Mastercard re-stated that a condition of membership of the Network is not poaching each other's clients, and allpay agreed to that (paragraphs 5.17 to 5.20 and 5.83 to 5.86)

⁹²⁸ See Mastercard's response to the PSR's Section 26 Notice of 25 March 2020, paragraph 5.7: UUID 236860001. Mastercard explained that "A dedicated Government and Public Sector team was established in late 2012/ early 2013 to support the development of public sector welfare disbursement prepaid cards. The team operated in parallel to and in collaboration with the UK & Ireland Prepaid team. [Mastercard employee 1] was appointed to lead the Government and Public Sector team [X]. [Mastercard employee 5] joined the Government and Public Sector team towards the [X] (taking over from [Mastercard employee 3]) and remained until [X]. Thereafter, a number of people worked for periods of around 1-2 years in the Government and Public Sector team, including [Mastercard employee 4] and, [X], [Mastercard employee 8]. Each of these team members reported into [Mastercard employee 1] who had ultimate responsibility for the Government and Public Sector team".

⁹²⁹ Case T-105/17 *HSBC v Commission*, EU:T:2019:675, paragraph 233.

⁹³⁰ See Case T-147&148/09 *Trelleborg Industrie v Commission*, EU:T:2013:259, paragraph 60. In Case T-105/17 *HSBC v Commission*, EU:T:2019:675, the GC referred to "the central element which establishes that there was an 'overall plan', as referred to in recital 451 of the contested decision, is the fact that the cartel was 'controlled and maintained' by a stable group of individuals": paragraph 233.

- b. when PFS and APS (at the time the only PM members of the Network) and [Sulion director 1] (Sulion) checked with each other which customers the Network PMs could approach (see paragraph 5.65 onwards)
- c. when all the Parties agreed to create a list of ‘who was with who’ to support the Network non-targeting arrangement (see, for example, paragraph 5.21) and, for example, PFS, APS and Sulion also exchanged information to that effect in 2015 (see paragraphs 5.73 onwards)
- d. their common understanding that the expected rules of behaviour within the Network prevented the Network PMs from approaching and trying to poach each other’s customers (see paragraphs 5.4 to 5.21b above), and
- e. when the Parties adhered to a common approach to the exclusive allocation of leads (see paragraphs 5.30 to 5.42 and paragraphs 5.51 onwards)

7.123 In addition, all the Parties (including Sulion (see paragraphs 7.127 to 7.130 below)) were aware of the actual conduct planned or put into effect by other undertakings in pursuit of the same objective (or could reasonably have foreseen it and were prepared to accept the risk)⁹³¹ in relation to all elements of the Network market sharing agreement. This is demonstrated by the examples outlined above (see paragraph 7.122 above). The vast majority of the contacts described in Chapter 5 involved the same steady group of individuals from each of the Parties. As regards the exclusive allocation of leads, the PSR notes that the evidence reveals that all the Parties participated directly in the conduct, and were aware of, or could reasonably have foreseen, the offending conduct of the other participants. Each Party understood the essential *modus operandi* of the cartel – that is, that Mastercard and Sulion decided who would attend the Network regional events; that the regional events not attended by allpay would be attended by others; and that only the Network PM attending the event would have access to the contact lists and feedback forms that would identify the leads and would have, therefore, exclusivity in following up on the leads.

7.124 The PSR notes that, in relation to the sharing of information relating to customers, on two occasions – September 2016 and April 2017 – [Mastercard employee 1] (Mastercard) asked [Sulion director 1] (Sulion) not to forward the customer lists to allpay, and allpay or PFS, respectively. In the communication of September 2016, [Sulion director 1] (Sulion) explained that the reason [Sulion director 1] was asking for the list was because [Sulion director 1] wanted to “*let allpay have a copy so their sales people don’t try to sell to others’ customers*”. [Mastercard employee 1] (Mastercard) shared the customer list and told [Sulion director 1] (Sulion), “*Happy to share with you. But please don’t pass on to allpay. Information is shared by each of [the] providers and not intended for competitors*” (see paragraph 5.78 above). In a previous exchange of 14 July 2016 (just two months prior) between all Parties, in which Mastercard was copied, it was clear that the master customer list was being shared to assist the Parties in knowing who they could and could not poach. Mastercard was aware of this and did not object. In the communication of April 2017 [Sulion director 1] (Sulion) again asked [Mastercard employee 1] (Mastercard) for “*your latest master list*”, which [Mastercard employee 1] said [Mastercard employee 1] would supply the following day and asked [Sulion director 1] not to share it with PFS or allpay (see paragraph 5.78 above).

⁹³¹ See, in particular, the email of 14 July 2016 from [Sulion director 1] (Sulion) as described in paragraphs 5.21 onwards above.

- 7.125** The requests not to pass the information on to allpay or PFS need to be viewed in their context, namely that Mastercard: (i) knew of the Network non-targeting arrangement, (ii) knew of the sharing of information regarding customers lists, and (iii) was specifically told by [Sulion director 1] (Sulion) in the email of September 2016 (and in the communication of 14 July 2016) why [Sulion director 1] wanted the information. In these circumstances, Mastercard could have reasonably foreseen [Sulion director 1] (Sulion) would use the information or, at least, appreciated the very high risk that [Sulion director 1] would use the information to implement the Network non-targeting arrangement.
- 7.126** The PSR concludes that all Parties participated directly in all elements of the Network market sharing agreement. The PSR has not seen evidence of any of the Parties seeking to distance themselves publicly from any aspect of the agreement and/or concerted practice.
- 7.127** In relation to Sulion, the PSR concluded in paragraph 7.78 that Sulion participated in all elements of the Network market sharing agreement as a facilitator.
- 7.128** Sulion sought to contribute through its own proactive conduct to the allocation of customers between the Network PMs. Paragraphs 5.5 to 5.9, 5.17 to 5.20, 5.24 to 5.25, 5.29 to 5.45, 5.51 to 5.54, 5.67 onwards, 5.73 onwards and 5.95 onwards demonstrate Sulion's involvement in deciding and organising the allocation of Network PMs to promotional events (in conjunction with Mastercard), as well as the Network non-poaching arrangement and the exchange of non-public information on customers that supported it.
- 7.129** Sulion was also aware of the actual conduct planned or put into effect by other Parties in pursuit of that same objective (or at least it could have reasonably foreseen it and was ready to take the risk). Sulion had detailed knowledge of the restrictions imposed on the Network PMs' ability to independently determine their commercial policy regarding the customers they could approach or target. In fact, as shown in paragraphs such as 5.5 to 5.27, 5.42 to 5.45 and 5.95 to 5.100, Sulion, as the Chair of the Network, together with Mastercard, designed the anti-competitive restrictions and sought the adherence of the Network PMs to those restrictions when they joined the Network.
- 7.130** Moreover, Sulion actively facilitated the implementation of the anti-competitive arrangement by, for example, sharing information regarding the customers each Network PM was supplying (see paragraphs 5.68 to 5.79). This is evidence that Sulion was aware of the unlawful conduct of the other Parties in pursuit of the common objective, or could have reasonably foreseen such conduct, but was nevertheless prepared to accept the risk.

Duration and continuous nature of the practices at issue

- 7.131** The PSR considers that the Network market sharing agreement continued uninterrupted throughout the Relevant Period 1.
- 7.132** There is evidence in the file indicating that the Network non-targeting arrangement was in place from the beginning of the Network, in 2011. In a response to a Section 26 Notice, Sulion identified certain "*basic rules*" the Parties agreed to in the context of setting up the Network, which included a rule not to "*attempt to poach customers who were under contract to other Network PMs until they went to tender*" (see, for example, paragraph 5.5 above).

[Sulion director 1] (Sulion) reiterated this point in [Sulion director 1]'s interview.⁹³² [Sulion director 1]'s account, as Chair of the Network, regarding the introduction of the Network non-targeting arrangement in [Sulion director 1]'s Section 26 responses and witness interview are detailed and cogent. As Chair of the Network and as someone that was closely involved in establishing the Network along with Mastercard, [Sulion director 1] was ideally placed to describe the events that took place. [Sulion director 1]'s Section 26 response was also given before the PSR opened its case against Sulion. The fact that the Network non-targeting arrangement existed from the start of the Network is also corroborated by the interviews of the directors of PFS ([PFS director 1] and [PFS director 2]) and [APS employee 1] (APS), who actively participated in the activities of Network as representatives of their undertakings.⁹³³

- 7.133** However, the first contemporaneous documents in the file that reveal a specific conduct pursuant to a customer allocation arrangement are from May 2012. These relate to potential new customers – that is, to public sector customers that were not yet buying prepaid card programmes from the Network PMs. The evidence shows that the Parties, in the beginning of the Network, allocated to each Network PM exclusive access to new customers so that each Network PM would be allowed to approach or contact such new customers to make a first pitch. There is evidence that the Parties coordinated their actions in relation to the allocation of pitching opportunities and potential new customers from May 2012 until February 2013.
- 7.134** Although it is plausible that the Network market sharing agreement developed after the establishment of the Network in 2011, as explained above, the PSR took the administrative prioritisation decision to consider that the infringement started on 2 May 2012.⁹³⁴
- 7.135** The facts in Chapter 5 also show that the frequency and content of these contacts changed throughout the Relevant Period 1, reflecting the need for the Parties to adapt their conduct to the different stages of the market. In the beginning of the Network, between May 2012 and February 2013, the Parties needed to communicate more frequently to implement the arrangement regarding the allocation of access to potential new customers. At that time, each of the Network PMs had only a few customers each. Therefore, the emphasis was on coordinating the Network PMs' attendance at Network promotional events, so that each could focus their commercial activities in trying to win new customers for the Mastercard brand from the leads they were allocated. Paragraphs 5.29 to 5.41 and 5.51 onwards above reveal that, between May 2012 and February 2013, the Parties engaged in regular contacts mainly related to the implementation of the arrangement, in particular around each one of the original seven dates for the Network promotional events on 2 May 2012, 11 June 2012, 21 June 2012, 12 July 2012, 5 November 2012, 23 January 2013 and 31 January 2013.
- 7.136** As each of the Network PMs started getting more customers (through the award of contracts or pilot programmes), the Network non-targeting arrangement relating to existing customers gained relevance, and with it, the need to ascertain 'who was with who'. The first documentary evidence gathered in the investigation of contacts between the Parties regarding the exchange

932 The PSR considers that the description of the events given by Sulion, in response to a section 26 Notice, and [Sulion director 1] in interview are particularly credible, given their level of detail, the role [Sulion director 1] played at the centre of the anti-competitive arrangements and the fact that those statements go against the interests of Sulion and [Sulion director 1].

933 At interview, when describing allpay's approach to competing for public sector prepaid card business [allpay employee 1] (allpay) stated that "...If that company was already contracted, we wouldn't do anything about that" (paragraph 5.15 above).

934 See paragraph 5.27 above.

of information on existing customers is an email between Mastercard and APS dated 4 April 2012 (see paragraph 5.68 above).

- 7.137** There are subsequent emails of 12 June 2013 (between PFS and APS)⁹³⁵ and 21 August 2014 (between PFS and Sulion) (paragraphs 5.68 to 5.72 above) where the undertakings in question exchanged customer information or asked for it to be disclosed in order to implement the Network non-targeting arrangement.
- 7.138** As set out in Chapter 5 above, it was between June 2015 and September 2016 that these contacts became more frequent.⁹³⁶ The PSR considers that this would be anticipated, mainly for two reasons:
- a. at this time, allpay had re-joined the Network (or was in talks to re-join and, therefore, there were now three Network PMs, instead of two); and
 - b. each of the Network PMs now had many more customers than in 2012/2013⁹³⁷
- 7.139** This made it more difficult for the Parties to implement or monitor compliance with the terms of the Network non-targeting arrangement and required more regular contact between them.
- 7.140** Given the differing frequency and intensity of contacts between the Parties during the Relevant Period 1 (as described in paragraph 7.138 above), the PSR has considered whether any gap in contacts is sufficient to warrant an interruption of the infringement. The PSR considers, in line with the case law, that, in examining the continuous nature of an infringement, the question of whether or not a gap is long enough to constitute an interruption of the infringement cannot be examined in the abstract and should be assessed in the context of the functioning of the cartel in question.⁹³⁸
- 7.141** As the case law in paragraph 7.110 above sets out, a market sharing/customer allocation agreement of the nature of the one described above does not require as many regular contacts as other types of cartels, and *“by definition, must be respected by the parties to the agreement with effect from its conclusion and may occasionally be adjusted.”*⁹³⁹
- 7.142** As set out above, the Network market sharing agreement was in fact widely respected as expressed by [Sulion director 1] at interview.⁹⁴⁰ Witness evidence from [Sulion director 1] (Sulion), [PFS director 2], [PFS director 1] and [PFS employee 1] (all of PFS), and [APS employee 1] (APS) confirm that an agreement not to target each other’s customers was the behaviour expected from the Network PMs, so long as they were members of the Network.⁹⁴¹

⁹³⁵ allpay left the Network in November 2013 and re-joined in March 2016.

⁹³⁶ See for example, paragraphs 5.17 to 5.21b), 5.80 to 5.87 and 5.78.

⁹³⁷ See generally Chapters 3 (paragraphs 3.70 onwards) and 5.

⁹³⁸ See Case T-18/05 *IMI and Others v Commission*, EU:T:2010:202, paragraph 89 and Case T-83/08 *Denki Kagaku and Denka Chemicals v Commission*, EU:T:2012:48, paragraphs 223 to 224.

⁹³⁹ See generally paragraphs 7.105 to 7.110 above.

⁹⁴⁰ At interview [Sulion director 1] (Sulion) explained that there was little scope for [Sulion director 1]’s intervention, given that the Network PMs usually respected the Network non-targeting arrangement: see paragraphs 5.97 and 5.98.

⁹⁴¹ See paragraphs 5.7 to 5.16 above: [allpay employee 1] (allpay) described allpay’s approach to competing for public sector prepaid card business was consistent with the Network non-targeting arrangement (paragraph 5.15).

Compliance with the Network non-targeting arrangement was a condition of membership of the Network, which had been clearly reiterated to allpay in 2016 when allpay sought to re-join the Network, and had been accepted (see paragraphs 5.17 to 5.20 and 5.80 to 5.87). Without any evidence of distancing from the Parties, having regard to the continuing involvement of Sulion, Mastercard, allpay and PFS with the Network (including the continuing involvement of individuals who had represented the Parties through much of the time since the Network was established), the PSR is entitled to conclude that the Network market sharing agreement continued from at least May 2012 until such point that PFS, allpay and Mastercard were no longer members of or participants in the Network (which was up until the Spring of 2019, when they withdrew⁹⁴²). However, on a conservative basis, the PSR concludes that the end of the Network market sharing agreement was 6 February 2018, the date on which the PSR conducted an inspection of the premises of some of the Parties.

7.143 In addition to the above, APS exited the market at the end of 2016, leaving PFS and allpay as the only two Network PMs. [Programme Manager 1] – which was the only active PM outside the Network – also exited the market at the beginning of 2017. The PSR considers that with only two competitors left in the market, who were both members of the Network, it was consequently far easier for the remaining Parties to comply and monitor the non-poaching Network arrangement, without the need for regular contacts between them.

7.144 The PSR has not uncovered documentary evidence of contacts between the Parties where they shared customer information or convened an understanding of sharing the market after April 2017, when [Sulion director 1] again requested a list of the Network PMs' customers from Mastercard. Consistent with the operation of the Network non-targeting arrangement and the point that regular contacts between the remaining members of the Network were no longer as necessary, there is an internal email of 21 March 2017 from [PFS employee 2] (PFS) to [PFS director 2] (PFS) asking which councils were already with PFS and allpay to see which were worth pursuing at the next Network meeting.⁹⁴³

Conclusions: single and continuous infringement

7.145 The above shows that the conduct described in Chapter 5 was an ongoing process and not an isolated or sporadic occurrence. The different elements of the infringement were in pursuit of a single anti-competitive aim, which remained the same throughout the period: market sharing and customer allocation.

7.146 During the Relevant Period 1, and having regard to the nature of the infringement, there were sufficient contacts between the Parties to conclude that the infringement continued uninterruptedly throughout the Relevant period 1.

7.147 Having regard to the legal principles set out in paragraphs 7.97 to 7.111 above, the PSR concludes there to have been a single and continuous infringement, given that: there was an overall plan pursuing a common objective; each of the Parties intentionally contributed to the common objective of sharing the market relating to the supply of prepaid card services for welfare disbursements to Public bodies in GB; and each of the Parties were involved in all elements of the conduct and were aware of the offending conduct of the other participants

⁹⁴² See paragraphs 4.101 to 4.106 above.

⁹⁴³ See paragraph 5.72 above.

in pursuit of the same objectives (or they could have reasonably foreseen it and were prepared to take the risk). The PSR has not seen any evidence of any of the Parties seeking to distance themselves publicly from any aspect of the Network market sharing agreement and much of the evidence from the interviews overwhelmingly supports this.

- 7.148** The PSR therefore concludes that it would be artificial to split the different elements that constitute the Network market sharing agreement, in circumstances where they clearly form part of an overall plan to distort the normal competitive process, with the aim of sharing the market and limiting competition between the Network PMs.
- 7.149** As explained in paragraphs 7.101 to 7.105, the liability of an undertaking for an infringement is not affected by the fact that it played only a minor part in the aspects in which it did participate. However, the role and extent of participation in the single and continuous infringement may be taken into account at a later stage, when determining the appropriate level of the penalty.

Legal assessment: End of contract agreement

Overall plan pursuing a common objective

- 7.150** In addition to the Network market sharing agreement, PFS and APS agreed and/or concerted not to compete for retenders issued by an existing customer of the other (including tenders following a pilot programme) – that is, the End of contract agreement. This agreement, which evolved outside the Network, covered the non-poaching of existing customers at the point when a contract went out to tender at the end of a contract (such as a retender) or a pilot programme.⁹⁴⁴
- 7.151** As a result, the PSR finds that APS and PFS had the common anti-competitive objective to restrict competition between them by sharing the market in respect of their existing public sector customers at the point a contract went out for tender at the end of a contract or pilot programme. Section C of Chapter 5 above shows the two parties' efforts in pursuit of this aim. As noted at paragraphs 7.101 above, in order to determine whether there exists a series of efforts made in pursuit of a common objective, it is necessary to consider the available elements together.

The identical nature of objectives of the practices

- 7.152** The relevant contacts pursued an identical objective, namely, to coordinate the activities of APS and PFS with a view to suppressing competition between them by sharing their intentions not to compete for their existing customers at the point a contract went out for tender at the end of a contract or pilot programme (as set out in paragraphs 5.110 to 5.115 above).

⁹⁴⁴ See paragraphs 5.101 to 5.104 and 5.110 onwards above which explains the scope of the End of contract agreement.

Identical nature of the goods and/or services and/or geographic area

- 7.153** All the contacts related to the same product or service (the supply of prepaid card services for welfare disbursements to Public bodies) and applied in the same geographical area (GB).

Identical nature of undertakings participating

- 7.154** The PSR considers that the fact that the same undertakings participated in the cartel throughout Relevant Period 2 is a further factor that leads to the conclusion that there was a common objective.⁹⁴⁵
- 7.155** The individuals participating in the infringement remained the same throughout the Relevant Period 2. The key representatives from PFS and APS remained the same, namely [PFS director 2] and [PFS director 1] (both of PFS) and [APS employee 1] of APS. The cartel was therefore controlled and maintained by a stable group of individuals.⁹⁴⁶

The intentional contribution of the undertakings to the common objectives pursued by all the participants/the undertakings' awareness of the offending conduct of the other participants in pursuit of the same objectives

- 7.156** Paragraphs 5.110 to 5.115 above demonstrate how each of PFS and APS intended to contribute and did contribute to the common objective by its own conduct and that each of PFS and APS was aware of the conduct planned or put into effect by the other in pursuit of the same objective (or that they could reasonably have foreseen it and were prepared to take the risk). The PSR has not seen evidence of APS or PFS seeking to distance themselves publicly from any aspect of the End of contract agreement.
- 7.157** In support of its conclusion, the PSR highlights the following:
- a. The contacts between APS and PFS demonstrate their intentional contribution to the pursuit of the common objective, and that each actively participated in the exchanges regarding their tender intentions, where they knew or suspected that the other had been providing prepaid cards to a specific local authority. Each confirmed to the other who they were supplying prepaid card services to and expressed their intention not to compete for each other's contracts coming up for retender. Thereby both APS and PFS proactively informed the other of their intentions.
- 7.158** APS and PFS, when receiving and subsequently accepting each other's tender intentions in relation to the upcoming tenders, were aware – or at least could not have failed to be aware – of each other's conduct. The language used by APS and PFS in their communications expressly confirms that they “*would not compete*” for each other's existing customers and that, upon it being confirmed that a particular Public body was with the other party, they would “*opt out of this one*” or would not “*be stepping on your toes*”.⁹⁴⁷

⁹⁴⁵ Case T-147&148/09 *Trelleborg Industrie v Commission*, EU:T:2013:259, paragraph 60.

⁹⁴⁶ See Case T-105/17 *HSBC v Commission*, EU:T:2019:675, paragraph 233.

⁹⁴⁷ See paragraphs 5.113 to 5.115 above.

Duration and continuous nature of the practices at issue/interruptions

- 7.159** The first documentary evidence that reveals the existence of the End of contract agreement is dated 19 August 2014. The investigation uncovered another episode of a similar exchange in emails dated 18 July 2016.⁹⁴⁸ The PSR considers that the infringement continued uninterruptedly between these two dates (that is, throughout the Relevant Period 2).
- 7.160** The PSR has considered whether the gap between the two episodes of anti-competitive conduct would preclude the finding of an uninterrupted single continuous infringement. There is no evidence of any of the two parties publicly distancing themselves from the conduct between the two relevant dates.⁹⁴⁹ In addition, the PSR considered the following:
- a. In an email of 17 February 2017 to allpay, after APS exited the market, [PFS director 1] of PFS referred to the End of contract agreement as a “*gentleman’s agreement*” that had been in place between PFS and APS, which indicates its continuous nature.⁹⁵⁰
 - b. Also, at interview, [PFS director 1] (PFS) confirmed that there had been a “*broad understanding with APS*” in respect of the End of contract agreement. Likewise, [PFS employee 1] (PFS) confirmed that not responding for a new contract with a Public body that was an existing customer of the other PM was regarded as a “*professional courtesy*” and it was considered the wrong thing to do to compete for the tender, even if the new business would have been substantial.⁹⁵¹
 - c. The PSR notes that there were relatively few contracts coming up for retender during the Relevant Period 2. This was because contracts for the supply of prepaid card services typically lasted for between three and five years, and hence it was not until 2014 that Public bodies that had contracted with one of the Network PMs generally started looking to retender. As such, there were not many opportunities for contact between PFS and APS relating to such retenders which specifically involved each other.⁹⁵²
 - d. At interview [PFS director 2] (PFS) confirmed that “*I have been the one responsible for most of the retenders, and there weren’t very many, so it’s not like there were dozens of these, there were so few*”.⁹⁵³
- 7.161** Against this background, it is not surprising that there were also few instances of manifestation of the anti-competitive conduct uncovered in the investigation. Realistically, given the infrequency of such contracts coming up for tender, there would not have been the need for very frequent contact during the Relevant Period 2.⁹⁵⁴

948 The communications between APS and PFS during the Relevant Period 2 demonstrate this as set out in paragraphs 5.110 to 5.115 above.

949 See Case C-634/13 P *Total Marketing Services v European Commission*, EU:C:2015:614, paragraphs 26 to 31.

950 See paragraph 5.116 above. allpay responded by publicly distancing itself from that conduct.

951 See paragraph 5.115 above.

952 See for example paragraph 5.112 above.

953 See paragraph 5.112 above.

954 See Case T-439/07 *Coats Holding Ltd v Commission*, EU:T:2012:320, paragraph 152.

Conclusions: single and continuous infringement

- 7.162** Having regard to the legal principles set out in paragraphs 7.97 to 7.111 above, the PSR concludes there to have been a single and continuous infringement on the basis that:
- a. There was an overall plan pursuing a common objective, namely to restrict competition between APS and PFS by sharing the market in respect of their existing public sector customers at the point a contract went out for tender at the end of a contract or pilot programme.
 - b. Each of APS and PFS intentionally contributed to the common objective relating to the supply of prepaid card services for welfare disbursements to Public bodies in GB; and
 - c. Each of APS and PFS were aware of the conduct that was put into effect by the other in pursuit of the common objective, or could reasonably have foreseen it and were prepared to take the risk. The PSR has not seen any evidence of either APS or PFS seeking to distance themselves publicly from any aspect of the End of contract agreement.

G Restriction of competition by object

Key legal principles

- 7.163** The Chapter I prohibition prohibits agreements between undertakings or concerted practices which *'have as their object or effect the prevention, restriction or distortion of competition'*.
- 7.164** It is settled case law that infringements by object are those forms of coordination between undertakings that reveal a sufficient degree of harm to competition, such that there is no need to examine their effects.⁹⁵⁵ This case law arises from the fact that certain types of coordination between undertakings can be regarded, by their very nature, as being harmful to the proper functioning of normal competition.⁹⁵⁶ If an agreement has as its object the prevention, restriction or distortion of competition, it is not necessary to prove that the agreement has had, or would have, any anti-competitive effects in order to establish an infringement.⁹⁵⁷ In particular, where an

⁹⁵⁵ Case C-67/13 P *Groupeement des Cartes Bancaires v Commission*, EU:C:2014:2204, paragraph 49 and 57. See also Case C-373/14 P *Toshiba Corporation v Commission*, EU:C:2016:26, paragraph 26. In Case C-67/13 P *Groupeement des Cartes Bancaires v Commission*, EU:C:2014:2204, paragraph 51, the CJEU held that experience shows that such behaviour leads to falls in production and price increases, resulting in poor allocation of resources to the detriment, in particular, of consumers.

⁹⁵⁶ *Dole*, paragraph 114; Case C-67/13 P *Groupeement des Cartes Bancaires v Commission*, EU:C:2014:2204, paragraphs 49, 50 and 57; Case C-32/11 *Allianz Hungária Biztosító Zrt and Others*, EU:C:2013:160, paragraph 35; and Case T-472/13 *H. Lundbeck A/S v. Commission*, EU:T:2016:449, paragraph 340. Also Case C-382/12 P *MasterCard Inc and Others v Commission*, EU:C:2014:2201, paragraphs 184 and 185.

⁹⁵⁷ See, for example: Case C-56/64 *Consten and Grundig v Commission*, EU:C:1966:41, page 342; Case C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P *Aalborg Portland A/S and Others v Commission*, EU:C:2004:6, paragraph 261; Case C-105/04 P *Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied v Commission*, EU:C:2006:592, paragraph 125; Case C-209/07 *Competition Authority v Beef Industry Development Society Ltd*, EU:C:2008:643, paragraph 16; Case C-226/11 *Expedia Inc v Autorité de la concurrence and Others*, EU:C:2012:795, paragraph 35; Case C-67/13 P *Groupeement des Cartes Bancaires v Commission*, EU:C:2014:2204, paragraphs 51 and 58; *Dole*, paragraph 115; and Case T-472/13 *H. Lundbeck A/S v. Commission*, EU:T:2016:449, paragraph 339. See also: Case E-3/16, *Ski Taxi SA, Follo Taxi SA and Ski Follo Taxidrift AS v The Norwegian Government, represented by the Competition Authority* [2016] EFTA Ct., paragraph 61; *Cityhook Limited v OFT* [2007] CAT 18, paragraph 269; *Hüls*, paragraph 164 and Case No: C3/2018/2863 *Ping Europe Limited v Competition and Markets Authority*, [2020] EWCA Civ 13, paragraph 23.

agreement has the object of restricting competition, parties cannot avoid liability for the resulting infringement by arguing that the agreement was never put into effect.⁹⁵⁸

7.165 The term ‘*object*’ refers to the sense of ‘*aim*’, ‘*purpose*’ or ‘*objective*’ of the coordination between the undertakings in question.⁹⁵⁹ The object of an agreement or concerted practice is identified primarily from an examination of objective factors, such as the content of its provisions, its objectives and the legal and economic context.⁹⁶⁰ When determining that context, it is also necessary to take into consideration ‘*all relevant aspects*’, having regard in particular to the nature of the goods or services affected, as well as the real conditions of the functioning and structure of the market or markets in question.⁹⁶¹ In respect of agreements that form part of an established category of restrictions of competition ‘by object’, such as market sharing agreements, the CJEU has held that such an object cannot be justified by an analysis of the economic context of the anti-competitive conduct concerned.⁹⁶² The analysis of the economic and legal context may therefore be limited to what is strictly necessary to establish the existence of a restriction of competition by object.⁹⁶³

7.166 Anti-competitive subjective intentions on the part of the parties can also be taken into account in the assessment, but they are not a necessary factor for a finding that there is an anti-competitive restrictive object.⁹⁶⁴

958 See for example, Case 19/77 *Miller v Commission* EU:C:1978:19, paragraphs 7 to 10; Case C-277/87 *Sandoz v Commission* EU:C:1990:6.

959 See, for example, respectively: Case C-56/64, *Consten & Grundig v Commission*, EU:C:1966:41, page 343 (“...*Since the agreement thus aims at isolating the French Beer market...it is therefore such as to distort competition...*”); Joined cases 96-102, 104, 105, 108 and 110/82, *IAZ and Others v Commission*, EU:C:1983:310, paragraph 25; Case C-209/07, *Competition Authority v Beef Industry Development Society Ltd*, EU:C:2008:643, paragraphs 23 to 33.

960 *Dole*, paragraph 117; Case C-67/13 P *Groupement des Cartes Bancaires v Commission*, EU:C:2014:2204, paragraph 53; Case C-32/11 *Allianz Hungária Biztosító Zrt and Others*, EU:C:2013:160, paragraph 36. See also joined cases C-501/06 P C-513/06 P, C-515/06 P and C-519/06 P *GlaxoSmithKline Unlimited v Commission*, EU:C:2009:610, paragraph 58; Case C-209/07 *Competition Authority v Beef Industry Development Society Ltd*, EU:C:2008:643, paragraphs 16 and 21 and joined cases C-403/08 and C-429/08 *Football Association Premier League and Others*, EU:C:2011:631, paragraph 136.

961 Case C-67/13 P *Groupement des Cartes Bancaires v Commission*, EU:C:2014:2204, paragraphs 53 and 78; Case C-32/11 *Allianz Hungária Biztosító Zrt and Others*, EU:C:2013:160, paragraphs 36 and 48; and judgment in Case T-472/13 *H. Lundbeck A/S v. Commission*, EU:T:2016:449, paragraph 343.

962 Case C-373/14 P *Toshiba Corporation v Commission*, EU:C:2016:26, paragraphs 28 and 29. See also Case C-172/14 *ING Pensii v Commission*, EU:C:2015:484, paragraphs 32 to 34 and Case C-239/11 P *Siemens AG and Others v Commission*, EU:C:2013:866, paragraph 218-219, where the CJEU has found to be “*immaterial*”, in so far as concerns the existence of an infringement, the fact that a market sharing agreement was concluded in spite of the existence for one party of purported technical and economic barriers to entry into the market.

963 Case C-373/14 P *Toshiba Corporation v Commission*, EU:C:2016:26, paragraph 29: “*In respect of such agreements, the analysis of the economic and legal context of which the practice forms part may thus be limited to what is strictly necessary in order to establish the existence of a restriction of competition by object*”. AG Wathelet stated that “*taking into account the economic and legal context therefore means that the agreement at issue must be capable in an individual instance of resulting in the prevention, restriction or distortion of competition*”: paragraph 68.

964 Case C-32/11 *Allianz Hungária Biztosító Zrt and Others*, EU:C:2013:160, paragraph 37; Case C-67/13 P *Groupement des Cartes Bancaires v Commission*, EU:C:2014:2204, paragraph 54.

- 7.167** An agreement, decision or concerted practice may be regarded as having a restrictive object even if it does not have the restriction of competition as its sole aim but also pursues other legitimate objectives.⁹⁶⁵

Market sharing: an established category of restriction by object

- 7.168** Section 2(2)(c) of the Act expressly prohibits ‘agreements ... or practices ... which ... share markets’.

- 7.169** The EU Commission includes market sharing or allocation of markets/customers in the list of practices that are considered to restrict competition ‘by object’ as they are likely to produce negative effects on the market. Besides pure market sharing agreements between competitors, allocation of markets can also be achieved through restrictions on where the parties may sell actively and/or passively.⁹⁶⁶ The EU Commission further explains that active sales mean actively approaching: individual customers by, for instance, direct mail or visits; or a specific customer group or customers in a specific territory through advertisements or other promotions specifically targeted at them.

- 7.170** Market sharing agreements (for example, where undertakings agree to apportion particular markets, by means of allocating customers⁹⁶⁷ or territories⁹⁶⁸ between themselves and/or agreeing not to compete⁹⁶⁹) reveal a sufficient degree of harm to competition that it is unnecessary to examine their actual effects. These forms of collusion have consistently been found to have, in themselves, an object restrictive of competition.⁹⁷⁰ Indeed, agreements whose object is to share customers constitute forms of collusion that are particularly injurious

965 Case C-551/03 *General Motors BV v Commission*, EU:C:2006:229, paragraph 64; Case C-209/07 *Competition Authority v Beef Industry Development Society and Barry Brothers*, EU:C:2008:643, paragraphs 20 to 21; and Case C-67/13 P *Groupement des Cartes Bancaires v Commission*, EU:C:2014:2204, paragraph 70. Where the obvious consequence of an agreement or concerted practice is to prevent, restrict or distort competition, that will be its object for the purpose of the Chapter I prohibition, even if the agreement or concerted practice had other objectives: Joined Cases 96-102, 104, 105, 108 and 110/82 *NV IAZ International Belgium and Others v Commission of the European Communities*, EU:C:1983:310, paragraphs 22 to 25. See also *Ping Europe* [2018] CAT 13, paragraphs 101 and 130 and Case No: C3/2018/2863 *Ping Europe Limited v Competition and Markets Authority*, [2020] EWCA Civ 13, paragraphs 73, 93 to 96; and Case-228/18 *Budapest Bank and Others*, EU:C:2020:265, paragraph 52.

966 The Commission Staff Working Document: Guidance on restrictions of competition “by object” for the purpose of defining which agreements may benefit from the De Minimis Notice, SWD (2014) 198 final, paragraph 2.2.1.

967 See *Methyglucamine*, OJ 2004 L38/18, paragraphs 98 and 227; Case C-440/11 P *Commission v Stichting Administratiekantoor Portielje*, EU:C:2013:514, paragraphs 95 and 111. In Case COMP/F/38.638 *Butadiene Rubber and Emulsion Styrene*, the parties agreed not to try to win the major customers of their competitors, instead opting to preserve the status quo in the market, “Occasionally market sharing agreements were also made on the fringes of meetings, and bilaterally between meetings. These normally took the form of agreements not to try to win the major customers of the competitors, thereby preserving the status quo of the market and if the competitors made such an aggressive move, they could expect an attack on their main clients in retaliation”: recital 98.

968 Case C-373/14 P *Toshiba Corporation v Commission*, EU:C:2016:26, paragraphs 23 to 26; Case C-449/11 *Solvay Solexis v Commission*, EU:C:2013:802, paragraph 82 and Case C-408/12 P *YKK Corporation and Others v Commission*, EU:C:2014:2153, paragraph 26.

969 See Case T-49/02 etc *Brasserie Nationale v Commission*, EU:T:2005:298, paragraph 85 where the parties agreed not to compete for each other’s customers as a form of market sharing. See also the EU Commission’s decisional practice, for example *Cast iron and steel rolls* OJ 1983 L317/1 (*‘Cast Iron and Steel Rolls’*); *Roofing Felt* (OJ 1986 L 232/15) and *Luxembourg Brewers* OJ 2002 L 253/21.

970 Case C-373/14 P *Toshiba Corporation v Commission*, EU:C:2016:26, paragraph 28; Joined cases C-239/11 P, C-489/11 P and C-498/11 P *Siemens and Others v Commission*, EU:C :2013:866, paragraph 2018 and case-law cited.

to the proper functioning of normal competition and belong to the most serious restrictions of competition.⁹⁷¹

- 7.171** Businesses may agree to share markets in a number of ways. The EU Commission and European Courts have found market sharing through the allocation of customers on the basis of existing commercial relationships to be a restriction of competition by object.⁹⁷² For example, in the *Pre-Insulated Pipe* case, a market sharing agreement by suppliers to respect each other's "existing" customer relationships was found by the EU Commission to restrict competition by its very nature.⁹⁷³ Similarly, in the UK, in the *Stock check pads* decision, the Office of Fair Trading considered that the market sharing arrangement whereby the parties agreed not to target each other's exclusively allocated customers was an object infringement.⁹⁷⁴
- 7.172** Market sharing agreements may be written, such as in the case of *Luxembourg Brewers*, where there was a written agreement between five brewers which sought to defend the Luxembourg market against imports from other EU Member States.⁹⁷⁵ However, a market sharing arrangement may also be oral, such as in *Gas Insulated Switchgear*, where the CJEU endorsed the EU Commission's finding of a "common understanding" that Japanese undertakings would not compete for switchgear apparatus in Europe and vice versa.⁹⁷⁶

Tendering

- 7.173** In *Apex Asphalt*, the CAT found a number of principles of general applicability to the nature of a tendering process.⁹⁷⁷
- 7.174** The CAT held that, particularly in the context of a selective tendering process (commonly used by local authorities), any interference with the selected bidders' independence can result in significant distortions of competition.⁹⁷⁸

971 Case 50283 Decision of the Competition and Markets Authority, *Cleanroom laundry services and products: anti-competitive agreement*, 14 December 2017, paragraph 5.55. Case C-373/14 P *Toshiba Corporation v Commission*, EU:C:2016:26, paragraph 28 "agreements which aim to share markets have, in themselves, an object restrictive of competition and fall within a category of agreements expressly prohibited by Article 101(1) TFEU, and that such an object cannot be justified by an analysis of the economic context of the anticompetitive conduct concerned".

972 Commission Decision *Cast Iron and steel rolls*, paragraph 56; Commission Decision *Roofing Felt*, OJ 1986 L 232/15 and Commission Decision *Luxembourg Brewers*, OJ 2002 L 253/21, paragraph 47 (appeals dismissed in Joined Cases T-49/02, T-50/02, T-51/02 *Brasserie Battin v Commission*, EU:T:2005:298).

973 Commission Decision *Pre-Insulated Pipe Cartel* OJ 1999 L 24/1. See also Commission Decision *Choline Chloride*, (COMP/37533) OJ 2005 L 190/22.

974 Case CA98/03/2006, see paragraphs 102, 112 and 219: the parties "...agreed not to target each other's existing customers (to "stop beating the hell out of one another")", paragraph 102 and 112.. See also the OFT's decision in relation to the *Supply of prescription medicines to care homes in England* (Case CE/9627/12), paragraphs 5.43 to 5.45; 6.136 to 6.140; Case 50283 Decision of the Competition and Markets Authority, *Cleanroom laundry services and products: anti-competitive agreement*, 14 December 2017, paragraphs 5.56 to 5.58; see also Case CE/9882-16, Decision of the Competition and Markets Authority of 27 March 2017 – *Supply of products to the furniture industry (drawer wraps)*, paragraphs 5.40 to 5.45.

975 Case L 253/21, upheld on appeal in Cases T-49/02 etc, *Brasserie Nationale v Commission* EU:T:2005:298.

976 See Case T-110/07 etc *Siemens v Commission*, EU:T:2011:68, paragraph 13; Case T-133/07 etc *Mitsubishi v Commission*, EU:T:2011:345, paragraph 8.

977 Case 1032/1/1/04 *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4, paragraphs 207 to 214.

978 As above, paragraph 211. For instance, interference may: reduce the number of competitive bids submitted; deprive the tenderer of the opportunity of seeking a replacement competitive bid; prevents other contractors wishing to place competitive bids in respect of that particular tender from doing so; gives the tenderer a false impression of the nature of competition in the market, leading at least potentially to future tender processes being similarly impaired.

Information exchange

- 7.175** The European Courts and EU Commission have held on numerous occasions that the exchange of information between competitors, by itself, is liable to be unlawful if it reduces or removes the degree of uncertainty as to the operation of the market in question, with the result that competition between undertakings is restricted.⁹⁷⁹ In particular, an exchange of information which is capable of reducing or removing the degree of uncertainty between participants as to the timing, extent and details of the modifications to be adopted by the undertakings concerned in their conduct on the market must be regarded as pursuing an anti-competitive object.⁹⁸⁰
- 7.176** However, if the information exchange is part of another horizontal cooperation arrangement, such as a cartel, the assessment of that exchange should be carried out in the context of the assessment of the cartel itself.⁹⁸¹
- 7.177** Exchanges of genuinely public information (that is, information that is generally equally accessible (in terms of costs of access) to all competitors and customers) are unlikely to constitute an infringement of the Chapter I prohibition. A possibility to gather the information in the market (for example, to collect it from customers) does not necessarily mean that such information constitutes market data readily accessible to competitors. However, even if there is public availability of data, the existence of an additional information exchange by competitors may give rise to restrictive effects on competition if doing so further reduces strategic uncertainty in the market for those competitors.⁹⁸² This is particularly the case if the information exchanged allowed the participants in the exchange to become aware of it “*more simply, rapidly and directly than they would via the market*”.⁹⁸³

Legal assessment: Network market sharing agreement

The content and objectives of the provisions

- 7.178** The content of the communications and contacts between the Parties as described in Chapter 5 reveals that the object of the agreement and/or concerted practice through the Network was to share the market relating to the supply of prepaid card services for welfare disbursements to Public bodies in GB. To this end, the Parties agreed to coordinate the Network PMs’ commercial behaviour by allocating customers, including pitching opportunities for new customers, between them. This included a restriction on the Network PMs’ ability to target or poach each other’s existing customers that were in the middle of their contracts or pilot

979 *Dole*, paragraph 121; *T-Mobile Netherlands*, paragraph 35.

980 *Dole*, paragraph 122.

981 The Commission’s Guidelines on the applicability of Article 101 TFEU to horizontal cooperation agreements, OJ C 11/1, 14 January 2011, paragraphs 56 and 59. See *Aalborg Portland*, paragraph 281 where the CJEU held that the information exchanged infringed Article [85(1)] where it underpins another anti-competitive arrangement. The CJEU referred to paragraphs 1510 to 1511, 1634 of the GC’s judgment which stated: “*Those exchanges are thus considered unlawful not in themselves, but in that they were the linchpin or, at the very least, one of the linchpins of the Cembureau agreement...Accordingly, the Court need only ascertain whether or not they were carried out with the anticompetitive object found by the Commission...There is no need to examine whether the intrinsic nature of the information exchanged might or might not by itself make them unlawful*”.

982 The Commission’s Guidelines on the applicability of Article 101 TFEU to horizontal cooperation agreements, OJ C 11/1, 14 January 2011, paragraphs 92 to 94; see also Case T-587/08 *Fresh Del Monte v Commission*, EU:T:2013:129, paragraph 323.

983 Joined cases T-202/98 *Tate & Lyle v Commission*, EU:T:2001:185, paragraph 60.

programmes, until the point of tender, as well as a restriction in the early days of the Network on the Network PMs' ability to approach or contact new customers that had been exclusively allocated to other Network PMs through the attendance of Network promotional events.

- 7.179** The anti-competitive aim is explained by [Sulion director 1] (Sulion) as follows: "... *there is no point, to my way of thinking, of them trying to poach each other's customers ... in those early days ... we'd only got a handful of people using prepaid cards out of the 153 or so Authorities, it seemed a bit counterproductive to go after someone else's customers when you had so many people who weren't using the card*".⁹⁸⁴
- 7.180** This conduct ensured that the Network PMs were able to maintain their respective customer bases and instead focus on obtaining new business and grow the sector, which was of benefit to the Network PMs and Mastercard.
- 7.181** As a result, competition was eliminated in relation to customers who were already supplied (either in contract or through a pilot) by one of the Network PMs. In the absence of the agreement, the Network PMs would have actively competed for each other's existing customers, and customers would have been approached by other Network PMs and would have had the benefit of choice with all the pro-competitive consequences associated with it in terms of better prices and quality of service.
- 7.182** In the early days of the Network (between 2012 and 2013), the coordination of the Network PMs' commercial strategy regarding customer allocation also included a restriction on the potential new customers the Network PMs could approach to make a sales pitch. This ensured that each Network PM would be guaranteed exclusivity in the first approach/pitch to customers which put them in a privileged position to win contracts from those customers in the future.⁹⁸⁵ At interview [Mastercard employee 3] of Mastercard said [Mastercard employee 3] had wanted the Network PMs to "*focus their time and effort on new business, new business development*".⁹⁸⁶ Network PMs would "*aggressively*"⁹⁸⁷ pursue those Public bodies that attended their own allocated events and not pursue those Public bodies attending other Network PM's events. Consequently, competition between the Network PMs was restricted in respect of their ability to compete for new business as they were prevented from approaching, marketing their services to and pitching to those Public bodies attending other events. In the normal course of business, each of the Network PMs should have been free to proactively contact, engage with and pitch to any potential new customers for prepaid card services.
- 7.183** This limitation on competition between the Network PMs meant that the Network PMs were restricted from developing relationships with Public bodies in contract with other Network PMs (and, between 2012 and 2013, with new Public bodies attending promotional events).
- 7.184** Ultimately, the Network PMs were encouraged by Sulion and Mastercard to cooperate, to work together and to leave "*aside their obviously, the competitive side*".⁹⁸⁸ Over the course of a number of years, the Network PMs did not necessarily always see each other as 'competitors'

984 See paragraph 5.8 above.

985 See generally paragraphs 5.28 onwards.

986 See paragraph 5.42 above.

987 See paragraph 5.50 above.

988 See paragraph 5.9 above.

and the norms of behaviour between competitors were therefore often blurred and not acted on. [Sulion director 1] (Sulion) considered that the Network had been very successful in maintaining a “*supportive environment*” and that everything was “*friendly*”. This would not “*have been the case had they been actively trying to go after the limited number of customers they had at the time*”.⁹⁸⁹

- 7.185** As explained in paragraphs 5.68 to 5.72, the Parties privately exchanged information between themselves to clarify which customers each Network PM was supplying, and to prevent competition for existing customers taking place between the Network PMs.
- 7.186** The coordination of the Network PMs’ commercial strategy with the aim of allocating customers (or potential customers) between themselves, and the information exchanged in support of such coordination, was by its nature harmful to competition by restricting the Network PMs’ freedom to determine which customers to target – thus reducing the competitive constraints Network PMs faced, as well as customer choice. At the very least, the conduct of the Parties was capable of reducing the degree of uncertainty amongst the Network PMs regarding the conduct they would adopt in the market in relation to new and existing customers.
- 7.187** Although the Parties’ intention is not a necessary factor in determining whether an agreement or concerted practice has an anti-competitive object, the PSR finds that the objective of the agreement and/or concerted practice is further supported by evidence of the Parties’ subjective intentions.⁹⁹⁰
- 7.188** The Parties’ intention to coordinate the Network PMs’ commercial behaviour as described above is explicit on the face of much of the evidence set out in Chapter 5. The Parties understood that competition between the Network PMs would be limited as a result of the constraints imposed on their commercial activities. That understanding is clearly demonstrated, for example, in an email by [APS employee 1] of APS, where [APS employee 1] requests that Mastercard and [Sulion director 1] (Sulion) discipline allpay for approaching APS’s existing customer;⁹⁹¹ and in an email from [Sulion director 1] (Sulion) to all Network PMs and Mastercard where [Sulion director 1] (Sulion) sets out the ground rules of the arrangement on not targeting each other’s existing customers.⁹⁹² Furthermore, the Parties’ intention to coordinate their commercial strategy in relation to which customers to target is explicit from the various email exchanges where they seek to confirm each other’s existing customers (see paragraph 5.68 onwards). For instance, in September 2016, following the ‘*Update & State of the Nation*’ email, [Sulion director 1] (Sulion) wrote to [Mastercard employee 1] of Mastercard asking for the master list so that [Sulion director 1] could pass it on to allpay “*so their sales people don’t try to sell to others’ customers*”.⁹⁹³ Likewise, the Parties did not dispute the arrangement regarding the allocation of Network promotional events and understood the behaviour expected of the Network PMs and the limits it imposed on their ability to actively pitch for sales in relation to each other’s allocated attendees of promotional events.

989 See paragraph 5.9 above.

990 See Case C-32/11 *Allianz Hungária Biztosító Zrt and Others*, EU:C:2013:160, paragraph 37; Case C-67/13 P *Groupement des Cartes Bancaires v Commission*, EU:C:2014:2204, paragraph 54.

991 See paragraph 5.17 to 5.20 above (see also paragraphs 5.83 to 5.87).

992 See for example paragraph 5.21 above: ‘Update & state of the nation’ email of 14 July 2016.

993 See paragraph 5.78 above.

Legal and economic context

- 7.189** The legal and economic context of which the agreements and/or concerted practices form part is described in Chapters 3, 4 and 6 above.⁹⁹⁴
- 7.190** In 2011, when the Network was set up, the supply of prepaid card services to the public sector was still a nascent market.⁹⁹⁵ From the data gathered,⁹⁹⁶ only nine Public bodies had prepaid card programmes with the three main PMs (allpay, APS, PFS) in 2011. By 2018, there were over 200 public sector organisations using prepaid cards.⁹⁹⁷
- 7.191** As set out in paragraph 4.10 above, based on figures provided to Mastercard by the Department for Welfare and Pensions, the UK prepaid market in the public sector would grow enormously and was expected to be worth £28 billion by 2021. Therefore, as described in paragraph 4.4 onwards, Mastercard's aim was to grow its presence in the public sector.
- 7.192** Establishing a relationship and having the right contacts at the Public bodies was an important factor in gaining business (see, for example, paragraph 5.51d) above). Therefore, the Network was an important route for the Network PMs to access potential (as well as existing) customers. As noted in Chapter 4, only those PMs supplying Mastercard prepaid cards could join the Network.⁹⁹⁸ The advantages of the networking/relationship building, expertise and business development opportunities that the Network afforded to its PM members is clear from those PMs supplying [Card scheme 1] prepaid cards that wanted to join it and were denied membership.⁹⁹⁹
- 7.193** Chapter 4, in particular paragraphs 4.71 to 4.82 above, demonstrate the success and importance of the Network in driving the use of Mastercard prepaid cards by Public bodies.
- 7.194** On the supply side, the market for the supply of prepaid card services to Public bodies has always been fairly concentrated, evolving from having six main players in 2011 to 2013 (some supplying [Card scheme 1] prepaid cards) to the current two players, both Mastercard issuers.¹⁰⁰⁰
- 7.195** In a nascent market so concentrated as this one, where having access to the right contacts at the relevant Public body was important to win business and to succeed as a PM, having an arrangement that allocated between competitors the exclusive access to leads from promotional events and reduced the competitive pressure on the Network PMs by dictating who was or was not "*fair game*" to target is likely to have had a material effect on competition in the sector.

⁹⁹⁴ See Case C-373/14 P *Toshiba Corporation v Commission*, EU:C:2016 26, paragraphs 28 and 29.

⁹⁹⁵ See Chapter 3. C above.

⁹⁹⁶ See for example, Chapters 3 and 4, in particular paragraphs 3.71, 3.82, and 3.86. See also paragraph 4.4 above (Statement of Work Appendix 1, Project Brief, signed August 2012: UUID PSR0001-93050-005586).

⁹⁹⁷ Response of [Sulion director 1] (Sulion) to Q1 of the PSR's Section 26 Notice of 24 April 2018: UUID 93510039.

⁹⁹⁸ See for example, paragraph 4.57 above. See also paragraphs 4.63 and 4.67 above.

⁹⁹⁹ See paragraphs 4.64 to 4.68 above. This inability to take part in the Network was one of the reasons why [Programme Manager 1] exited the market and sold its books of business to PFS: see paragraph 4.66 above.

¹⁰⁰⁰ See paragraph 3.87 Table I: indicative ranges of shares of revenue.

- 7.196** As part of their pitch to Public bodies, Network PMs would sometimes offer free trials or pilots.¹⁰⁰¹ These would typically last from three months to five years.¹⁰⁰² It was not uncommon that, at the end of the trial, the Public body would award the contract directly to the PM that was supplying the trial.¹⁰⁰³ Also, once a Public body was in a trial or pilot with one of the Network PMs, it was considered an 'existing customer' and therefore came under the terms of the Network non-targeting arrangement, thereby reinforcing the impact of the exclusive allocation of leads.¹⁰⁰⁴
- 7.197** In addition, the way contracts were awarded meant that any attempt to allocate customers by ring-fencing existing customers from competition from other Network PMs (whether during a pilot or contract) was capable of restricting competition to an appreciable extent. It was not uncommon for Public bodies to award contracts directly to certain suppliers and sometimes switch suppliers. Public bodies could roll forward or extend contracts.¹⁰⁰⁵ This shows there was significant value in PMs seeking to engage and develop relationships with Public bodies that were in contract and during a pilot programme and not just with 'new' customers that were looking to roll out a prepaid card programme for the first time.
- 7.198** As set out above, the PSR received submissions that it was unlikely that Public bodies would switch prepaid card providers during the life or at the end of a contract. Paragraphs 3.124 to 3.129 above demonstrate, however, that authorities did indeed switch (and would consider switching supplier) and could switch prepaid card provider both during and at the end of a contract.¹⁰⁰⁶ Contracts could also be terminated early. Given Public bodies could switch or consider switching – for example, by conducting a mini tender – particularly for other prepaid services, meant that Public bodies may have effectively lost out on any potential competition, which may have affected price and quality of service. Moreover, Public bodies were not aware of the customer allocation arrangements between the Network PMs.¹⁰⁰⁷
- 7.199** The Network non-targeting arrangement also shielded Network PMs from competition when their existing customers were looking to expand prepaid cards to new areas of business – that is, areas of business that were not currently under contract or in the middle of a trial or pilot.¹⁰⁰⁸
- 7.200** The evidence shows that the agreement and/or concerted practice was designed to constrain competition between the Network PMs as they were clearly capable of competing for and marketing to potential new customers or each other's existing customers across GB. Absent the agreement and/or concerted practice the Network PMs would have been free to actively market and sell to customers.¹⁰⁰⁹ If the agreement and/or concerted practice had not constrained the Network PMs from targeting certain customers, each Network PM could

1001 See paragraph 3.109 above.

1002 See paragraph 3.109a) above.

1003 See paragraph 3.110 above.

1004 See paragraphs 5.88 to 5.90 above.

1005 See Chapter 3.C. on the purchasing of prepaid cards by Public bodies, in particular at paragraphs 3.116 to 3.129 above. Public bodies were also often able to terminate their contracts early: see, for example, paragraph 3.111 above.

1006 See also [APS employee 1]'s (APS) comment in paragraph 3.108 that Public bodies could have a number of suppliers providing prepaid cards for different services. The significance of this is that the Network non-targeting arrangement meant that a Network PM was prevented from pitching/targeting/poaching for other prepaid card business from a Public body that was already in contract with another Network PM (see paragraph 5.93).

1007 See paragraph 5.7d) referring to the interview with [Sulion director 1] (Sulion).

1008 See paragraphs 5.10, 5.14 above.

1009 See Case-228/18, *Budapest Bank and Others*, EU:C:2020:265.

have made itself known to those customers, potentially leading to customers inviting that Network PM to tender, or to tender for an additional service, or start a pilot or switch their contract and thereby benefit from a more suitable product or service or a more competitive price.¹⁰¹⁰ This was evident in the Network PMs desire to compete actively against [Programme Manager 1]¹⁰¹¹ and, at times, allpay when outside the Network.¹⁰¹²

- 7.201** In view of the restrictions placed on the Network PMs' behaviour at different times, competition was lost as the Network PMs were restricted from competing for new and existing customers. Consequently, Public bodies were deprived of competition between suppliers and potentially of lower prices and better quality and choice of services.

Conclusions on the object of preventing, restricting or distorting competition: Network market sharing agreement

- 7.202** For the reasons set out above, the PSR concludes, having taken all the evidence in the round, that the Network market sharing agreement had as its object the prevention, restriction or distortion of competition within the UK by sharing the market through the allocation of customers, such objective in itself being a restriction of competition by object as it falls in a category of agreements expressly prohibited by section 2(2) of the Act.¹⁰¹³ Such an objective is at odds with the proper functioning of normal competition and the principle that undertakings should independently determine their own behaviour on the market.¹⁰¹⁴ In assessing the content, objectives and legal and economic context, the PSR concludes that the Network market sharing agreement revealed in itself a sufficient degree of harm because, by its nature, it was harmful to the proper functioning of normal competition and may therefore be considered a restriction of competition 'by object'. Consequently, it is not necessary to examine its effect.

¹⁰¹⁰ As explained by Mastercard in its letter of 1 July 2019 to the PSR, "effective competition should drive down PM fees to local authority customers, thereby reducing barriers to adoption by new customers and wider roll-out by existing customers. Similarly, competition also means that PMs should be investing more resources into their marketing efforts to win customers, "knocking on doors" of the local authorities more frequently and underlining the benefits to them of adopting or expanding a prepaid card solution. If a PM knows it may lose an existing customer at tender renewal to a competitor, it is also likely to invest more heavily in good customer service and maintaining the competitiveness of its charges, making it more likely that its customers will maintain or expand their existing prepaid card programme"; "If there were an anti-competitive agreement between the PMs, then...one would in general expect the PMs to benefit from being able to increase their revenue by increasing PM fees to local authorities and avoiding certain costs, such as those associated with a tender": UUID 182250040.

¹⁰¹¹ For example, on 18 July 2016, [Sulion director 1] (Sulion) wrote to [PFS employee 1] (PFS), [APS employee 1] (APS), [allpay employee 1] and [allpay employee 2] (both of allpay) with the subject '[Public body 51]', stating "A quick report back about my kick off meeting with [Public body 51] on Friday. The decision to go ahead with prepaid has pretty much been made by their director, they're putting together a quick report to get it rubber stamped this month before moving onto producing a detailed plan. The numbers are interesting as they already have 1,500 people on direct payments, annual budget c£10m. They took my innocent, thinly veiled comments [Programme Manager 1] being 'small & different' on board so I'm fairly optimistic they won't go down that route": UUID PSR0001-93051-001181.

¹⁰¹² For example, in an email chain dated 7 May 2014 between [Sulion director 1] (Sulion), [Mastercard employee 5] (Mastercard), [APS employee 1] (APS), [PFS director 2] (PFS), [Mastercard employee 3] (Mastercard) with subject line '[Public body 52]...', [Sulion director 1] reports that [Public body 52] has been in touch and [Sulion director 1] was going to speak to them on 4 June 2014: "Could be a biggie given their UC involvement, and of course they use Allpay to handle their payments so they'd be a great one to nick": UUID PSR0001-93050-004513. Following the meeting with [Public body 52], [Sulion director 1] sends an email on 5 June 2014 to [PFS director 2] (PFS); [APS employee 1] (APS); [Mastercard employee 1] (Mastercard) and [Mastercard employee 3] (Mastercard) stating that "They have a long term relationship with Allpay so I pointed out the reasons why their cards aren't suitable at the moment."

¹⁰¹³ Case C-373/14 P *Toshiba Corporation v Commission*, EU:C:2016:26, paragraphs 26 to 28. The Act, section 2(2)(c).

¹⁰¹⁴ Case C-209/07 *Competition Authority v Beef Industry Development Society*, EU:C:2008:643, paragraph 34.

Legal assessment: End of contract agreement

The content and objectives of the provisions

- 7.203** The content of the communications and contacts between the Parties as described in Chapter 5, Section C, paragraphs 5.110 to 5.117 above reveals that the object of the agreement and/or concerted practice was to share the market relating to the supply of prepaid card services for welfare disbursements to Public bodies in GB at the point of tender. To this end, PFS and APS agreed not to tender for each other's existing customers when a contract went out to tender at the end of a contract or pilot programme.¹⁰¹⁵
- 7.204** The communications reveal that PFS and APS's objective was to coordinate their commercial behaviour on the market vis-à-vis their existing customers.
- 7.205** The fact that PFS and APS expected each other not to poach their existing customers is evident as far back as 2007.¹⁰¹⁶ Even though the factual scenario was different, the notion that [PFS director 2] (who was at that time [X] of [Company A]) would try and "steal" APS's customer who was looking to switch away from APS was clearly not seen as appropriate behaviour.¹⁰¹⁷
- 7.206** The objective pursued by the agreement and/or concerted practice is further supported by evidence of PFS and APS's stated subjective intentions,¹⁰¹⁸ as set out in the email correspondence between them referred to in paragraphs 5.111 to 5.115 above and corroborated by [PFS director 1]'s (PFS) email of 17 February 2017 to [allpay employee 1] (allpay). PFS's intention to limit competition between themselves and APS is clear from the face of the emails exchanged and further supported by interview evidence.¹⁰¹⁹ Each knew that the other would refrain from tendering for an upcoming contract and informed the other that they would not compete.¹⁰²⁰

¹⁰¹⁵ See paragraphs 5.110 to 5.117 above.

¹⁰¹⁶ See paragraphs 5.104 to 5.109, which describe the early contact and relationship between APS and [PFS director 2]'s (PFS) former company, [Company A], and the commercial behaviour expected of the two entities.

¹⁰¹⁷ [PFS director 2] (PFS) and [APS director 1] of APS previously corresponded with each other in relation to their conduct in respect of each other's existing customers, whereby [PFS director 2] told [APS director 1] in relation to a customer that was considering switching away from APS: "[Shortened name of APS director 1], I won't try and steal this client": paragraph 5.108. The customer was not a public sector customer.

¹⁰¹⁸ See for example, Case C-67/13 P, *Groupeement des Cartes Bancaires v Commission*, EU:C:2014:2204, paragraph 54.

¹⁰¹⁹ Paragraphs 5.110 to 5.117 above. The interpretations provided by [PFS employee 1] (PFS) and [APS employee 1] (APS) in their respective interviews, described the behaviour expected of them in respect of each other's existing customers. With hindsight, in respect of the [Public body 5] tender, [PFS employee 1] (PFS) was surprised that PFS "...wouldn't go for it": paragraph 5.115g) above.

¹⁰²⁰ Paragraphs 5.110 to 5.117. The interpretations provided by [PFS employee 1] (PFS) and [APS employee 1] (APS) in their respective interviews, described the behaviour expected of them in respect of each other's existing customers. With hindsight, in respect of the [Public body 5] tender, [PFS employee 1] was surprised that PFS "...wouldn't go for it": paragraph 5.115g). The PSR notes that an agreement and/or concerted practice does not need to be implemented in order to restrict competition by object: see Case C-86/82 *Hasselblad v Commission*, EU:C:1984:65, paragraph 46; and Case C-277/87 *Sandoz prodotti farmaceutici SpA v Commission*, EU:C:1990:6, paragraph 3. See also Case C-373/14 P *Toshiba Corporation v Commission*, EU:C:2016:26, paragraphs 61 to 63. Therefore, the fact [Public body 5] withdrew the tender does not affect the PSR's assessment.

- 7.207** The coordination of APS and PFS's commercial strategy with the aim of preventing each one of them from competing for the other's customers at the point of tender was by its nature harmful to competition. It restricted their freedom to determine which customers to bid for, thus reducing the competitive constraints between them, as well as customer choice. At the very least, the conduct of these two parties was capable of reducing the degree of uncertainty between them regarding the conduct they would adopt in the market in relation to tenders of existing customers.
- 7.208** Some of the witnesses in their interviews have contended that Public bodies rarely switch at the point of retender.¹⁰²¹ If that was the case, there would not be the need to engage in such an arrangement as so clearly expressed in the correspondence between APS and PFS. Moreover, PFS should not have needed to send allpay an email in 2017 inviting allpay to adhere to the same conduct it had agreed with APS.¹⁰²²
- 7.209** In addition, some Public bodies have in practice switched at the point of tender or retender.¹⁰²³ This was the case with [Public body 41], which switched from PFS to allpay as its relationship with PFS had broken down.¹⁰²⁴ Had allpay been persuaded to join the arrangement proposed by PFS, then PFS would have retained its customer and [Public body 41] would have been denied the opportunity to choose an alternative supplier. This further demonstrates that by restricting competition in this way, PFS and APS had a real impact on a market, which was already affected by the deficit of competition as a result of the Network market sharing agreement.¹⁰²⁵
- 7.210** The PSR therefore concludes that PFS and APS had the clear anti-competitive objective of sharing the market by allocating customers and thereby limiting competition between them by retaining their existing customer bases including at the point of retender or tender following a pilot programme.

Legal and economic context

- 7.211** The legal and economic context described in paragraphs 7.189 to 7.201 above details the context relating to the structure of the market in which the Network market sharing agreement operated and the nature of the goods or services affected, which is equally relevant to the legal and economic context of the End of contract agreement.¹⁰²⁶ It supports the finding that the objective pursued by the End of contract agreement was to restrict competition and that the agreement and/or concerted practice was capable of restricting competition. In addition, the following points are of relevance to the legal and economic context pertaining to the End of contract agreement:

1021 See paragraph 3.122 above: in interview [PFS director 1] of PFS stated that PFS "*didn't want to go through the hassle of another month's work to win back our own client*" (see paragraph 5.116d)). See also paragraph 3.123 regarding the view of Mastercard's former employees.

1022 See paragraphs 5.116 above demonstrating that PFS and APS implemented the agreement and/or concerted practice.

1023 See paragraphs 3.127 and 3.128 above.

1024 See paragraph 3.127 above.

1025 In *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4, paragraphs 207 to 214, the CAT found that the competitive tendering process may be interfered with if the tenders submitted are not the result of individual economic calculation but of knowledge of other tenders by other participants or concertation between participants. Such behaviour by undertakings leads to conditions of competition which do not correspond to the normal conditions of the market.

1026 See Case C-373/14 P *Toshiba Corporation v Commission*, EU:C:2016 26, paragraphs 28 and 29.

- a. The End of contract agreement was conducted in parallel with the Network market sharing agreement, extending the customer allocation conduct to cover the situations that were excluded from the scope of the latter – that is, tenders after a pilot or retenders. This reduced even further the competitive constraints PFS and APS faced and worsened outcomes for their customers through less choice, and potentially higher prices and/or lower quality of service.¹⁰²⁷ By agreeing not to compete for the limited amount of retenders during the Relevant Period 2, PFS and APS deprived their customers of opportunities to switch supplier.¹⁰²⁸ The small number of PMs in the market at that time and the restrictions on the Network PMs from targeting or poaching each other's customers during the life of a contract meant that competition was already weak. By 2016, PFS and APS held a significant share of the market (over 75%).¹⁰²⁹ Therefore, agreeing not to tender for each other's customers at the end of a contract or pilot restricted competition further and would have been especially harmful to competition.¹⁰³⁰
- b. PFS and APS would have been familiar with local authority tender requirements that bidders comply with competition law. Not least, bidders were specifically asked to certify under the NEPO framework,¹⁰³¹ Surrey framework and the 2016 [Public body 42] tender that there had been no collusive behaviour in respect of the upcoming bid.¹⁰³² Therefore, the conduct of both APS and PFS was carried out in a context where they both would have known the strict tender requirements expected of them in relation to their compliance with competition law when submitting a bid.

Conclusion on the object of preventing, restricting or distorting competition: End of contract agreement

7.212 For the reasons set out above, the PSR concludes, having taken all the evidence in the round, that the End of contract agreement had as its object the prevention, restriction or distortion of competition within the UK by sharing the market through the allocation of customers between PFS and APS, such objective in itself being a restriction of competition by object as it falls in a category of agreements expressly prohibited by section 2(2) of the Act.¹⁰³³ Such an objective is at odds with the proper functioning of normal competition and the principle that undertakings should independently determine their own behaviour on the market.¹⁰³⁴ In assessing the content, objectives and legal and economic context, the PSR concludes that the End of contract agreement revealed in itself a sufficient degree of harm because, by its nature, the End of contract agreement was harmful to the proper functioning of normal competition and may therefore be considered a restriction of competition 'by object'. Consequently, it is not necessary to examine its effect.

¹⁰²⁷ See for example, Case AT.39563 *Retail Food Packaging*, decision of 24 June 2015 (appealed: Case T-522/15 *CCPL and Others v Commission*, EU:T:2019:500). See also *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4, paragraphs 207 to 214.

¹⁰²⁸ See generally paragraphs 3.101 and 3.116 onwards.

¹⁰²⁹ See paragraph 3.87 above.

¹⁰³⁰ See *North Midland Construction PLC v Office of Fair Trading* [2011] CAT 14, paragraph 59 where the CAT found that given the limited nature and extent of the market, the importance of the tendered work and of the competition for it may properly be regarded as enhanced.

¹⁰³¹ NEPO2 referred to it as a statement of 'non-collusion': see paragraph 3.113 above.

¹⁰³² See paragraph 3.115 above.

¹⁰³³ Case C-373/14 P *Toshiba Corporation v Commission*, EU:C:2016:26, paragraphs 26 to 28. The Act, section 2(2)(c).

¹⁰³⁴ Case C-209/07 *Competition Authority v Beef Industry Development Society*, EU:C:2008:643, paragraph 34.

H Appreciable restriction of competition

Key legal principles

- 7.213** An agreement and/or concerted practice will only infringe the Chapter I prohibition if it has as its object or effect the appreciable prevention, restriction or distortion of competition within the UK or a part of it.¹⁰³⁵
- 7.214** The CJEU has clarified that an agreement that may affect trade between Member States and that has the object of preventing, restricting or distorting competition constitutes, by its nature and independently of any concrete effect that it may have, an appreciable restriction of competition.¹⁰³⁶ In accordance with section 60A of the Act¹⁰³⁷, this principle also applies *mutatis mutandis* in respect of the Chapter I prohibition: accordingly, an agreement that may affect trade within the UK or a part of it and that has an anti-competitive object constitutes, by its nature and independently of any concrete effect that it may have, an appreciable restriction on competition.

Application to the Infringements

The Network market sharing agreement

- 7.215** As set out in paragraph 7.202 above, the PSR has concluded that the Network market sharing agreement had the object of preventing, restricting or distorting competition by sharing the market for prepaid card services for welfare disbursements to Public bodies in GB through the allocation of customers.
- 7.216** The PSR therefore finds that the Network market sharing agreement constitutes, by its very nature and independently of any concrete effect that it may have, an appreciable restriction of competition.

¹⁰³⁵ Case C-5/69 *Völk v Vervaecke*, EU:C:1969:35, paragraph 7. See also *North Midland Construction plc v. Office of Fair Trading* [2011] CAT 14 [45], [52]. It is settled case law that an agreement between undertakings falls outside the prohibition in Article 101 TFEU if it has only an insignificant effect on the market: see Case C-226/11 *Expedia Inc v Autorité de la concurrence and Others* EU:C:2012: 795, paragraph 16.

¹⁰³⁶ Judgment in Case C-226/11, *Expedia Inc v Autorité de la concurrence and Others* EU:C:2012:795, paragraph 37; and *Communication from the Commission: Notice on agreements of minor importance which do not appreciably restrict competition under Article 101(1) of the Treaty on the Functioning of the European Union (De Minimis Notice)*, OJ C 291/01, 30 August 2014, paragraphs 2 and 13.

¹⁰³⁷ Section 60A of the Act provides that, when determining a question in relation to the application of Part 1 of the Act (which includes the Chapter I prohibition), the court (and the CMA) must act with a view to securing that there is no inconsistency with any relevant decision of the European Court made before the end of the Transition Period, so far as applicable immediately before the end of the Transition Period, in respect of any corresponding question arising in EU law. See also *Carewatch and Care Services Limited v Focus Caring Services Limited and Others* [2014] EWHC 2313 (Ch), paragraph 148.

The End of contract agreement

- 7.217** As set out in paragraph 7.212 above, the PSR has concluded that the End of contract agreement had the object of preventing, restricting or distorting competition by sharing the market for prepaid card services for welfare disbursements to Public bodies in GB through the allocation of customers.
- 7.218** The PSR therefore finds that the End of contract agreement constitutes, by its very nature and independently of any concrete effect that it may have, an appreciable restriction of competition.

I Duration of the Infringements

- 7.219** The duration of the Infringements is a relevant factor for determining any financial penalties that are imposed on the Parties.
- 7.220** As set out in Chapter 7, the PSR has concluded that there are two separate single and continuous infringements, namely the Network market sharing agreement and the End of contract agreement.

The Network market sharing agreement

- 7.221** The PSR finds that the Network market sharing agreement had a duration from at least 2 May 2012 to at least 6 February 2018, a total of five years and nine months.
- 7.222** For the purposes of determining any financial penalties, where the duration of an infringement is for more than one year, the PSR will round up part years to the nearest quarter year for the purpose of calculating the number of years of that infringement (other than in exceptional circumstances).¹⁰³⁸ Accordingly, for the purposes of determining any financial penalties, the PSR has found the Parties responsible and liable for their participation in the Network market sharing agreement as follows:
- a. **allpay:** (i) 2 May 2012 to 1 November 2013 and (ii) 1 March 2016 to 6 February 2018 (a total of three years and six months)
 - b. **APS:** 2 May 2012 to 12 October 2016 (four years and six months)
 - c. **Mastercard:** 2 May 2012 to 6 February 2018 (six years)
 - d. **PFS:** 2 May 2012 to 6 February 2018 (six years)
 - e. **Sulion:** 2 May 2012 to 6 February 2018 (six years)

¹⁰³⁸ CMA's guidance as to the appropriate amount of a penalty ('**CMA73**'), paragraph 2.16 – available at www.gov.uk/government/publications/appropriate-ca98-penalty-calculation.

The End of contract agreement

- 7.223** The PSR finds that the End of contract agreement between APS and PFS had a duration from at least 19 August 2014 to at least 18 July 2016, a total of one year and eleven months.
- 7.224** For the purposes of determining any financial penalties, where the duration of an infringement is for more than one year, the PSR will round up part years to the nearest quarter year for the purpose of calculating the number of years of that infringement (other than in exceptional circumstances).¹⁰³⁹ Accordingly, for the purposes of determining financial penalties, the PSR has found that each of APS and PFS was responsible and liable for their participation in the End of contract agreement for a total of two years.

J Effect on trade within the UK

Key legal principles

- 7.225** By virtue of section 2 of the Act, the Chapter I prohibition applies to agreements and/or concerted practices which '*... may affect trade within the United Kingdom*'.
- 7.226** For the purposes of the Chapter I prohibition, the UK includes any part of the UK where an agreement and/or concerted practice operates or is intended to operate.¹⁰⁴⁰
- 7.227** As to whether the effect on trade within the UK should be appreciable, the CAT has held that there is no need to import into the Act the rule of 'appreciability' under EU law, the essential purpose of which is to demarcate the fields of EU law and UK domestic law respectively: the effect on trade within the UK does not therefore necessarily need to be appreciable.¹⁰⁴¹ In a subsequent case, the CAT held that it was not necessary to reach a conclusion on that question.¹⁰⁴²
- 7.228** An agreement or concerted practice is not in fact required to affect trade provided it is capable of doing so.¹⁰⁴³ EU and domestic guidance states that market sharing agreements are, by their very nature, capable of affecting trade.¹⁰⁴⁴ Further, the CMA's guidance states that, in practice, it is very unlikely that an agreement and/or concerted practice which appreciably restricts competition within the UK does not also affect trade within the UK.¹⁰⁴⁵

1039 CMA73, paragraph 2.

1040 The UK includes any part of the UK in which an agreement and/or concerted practice operates or is intended to operate: the Act, section 2(7).

1041 *Aberdeen Journals v Director General of Fair Trading* [2003] CAT 11, at paragraphs 459 and 460.

1042 *North Midland Construction plc v Office of Fair Trading* [2011] CAT 14 at paragraphs 48 to 51 and 62.

1043 As is the case in respect of Article 101(1) TFEU, it is not necessary to demonstrate that an agreement has had an actual impact on trade – it is sufficient to establish that the agreement is capable of having such an effect: joined cases T-202/98, T-204/98 and T-207/98. *Tate & Lyle plc and Others v Commission*, EU:T:2001:185, paragraph 78.

1044 Commission Notice: Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty (now Articles 101 and 102 of the TFEU), OJ C101/81, 24 April 2004, paragraph 64.

1045 See *Agreements and concerted practices* (OFT401, December 2004), adopted by the CMA, paragraph 2.25.

Assessment

The Network market sharing agreement and End of contract agreement

- 7.229** The PSR finds that by their very nature both market sharing and/or customer allocation agreements and/or concerted practices are capable of affecting trade within the UK. The very object of the Network market sharing agreement and End of contract agreement was to prevent, restrict or distort competition and therefore, by their very nature, they constituted an appreciable restriction of competition and were therefore capable of affecting trade within the UK. In respect of this finding the PSR notes that both agreements and/or concerted practices covered the whole of GB (or a significant part of it) and were implemented either throughout GB or the South East of England.¹⁰⁴⁶ The agreements and/or concerted practices covered the Parties' activities in the supply of prepaid card services for welfare disbursements to Public bodies in GB or a significant part of it.¹⁰⁴⁷ The evolution of the market as described in Section B of Chapter 3 above demonstrates that a limited number of businesses competed in this sector as PMs from 2012 onwards, and by 2017 only two PMs remained active in the public sector market, namely PFS and allpay.¹⁰⁴⁸ The Network PMs all supplied Mastercard prepaid cards and Sulion provided consultancy services to Mastercard by running the Network.¹⁰⁴⁹
- 7.230** The nature of the services and products covered by the Network market sharing agreement and the End of contract agreement and the importance of the Parties on the market (see Table I (in paragraph 3.87 above) setting out indicative ranges of shares of revenue for the main PMs for 2016–2018) all support the Network market sharing agreement and End of contract agreement being capable of having an effect on trade within the UK. The PSR is not required to reach a conclusion on whether the effect on trade was appreciable,¹⁰⁵⁰ but if there were any such requirement it would, in the PSR's view, be satisfied.

K Exemption and exclusion

Individual exemption / Parallel exemption

- 7.231** Agreements which are found to restrict competition under section 2 of the Act but satisfy the criteria set out in section 9 of the Act are exempt from the Chapter I prohibition.

¹⁰⁴⁶ In an email of 6 March 2019, [Sulion director 1] (Sulion) refers to a “move into Northern Ireland” and refers to the “additional travel and meeting costs of targeting a new, remote territory”: see UUID PSR0001-103189-000264. In a subsequent email, [Sulion director 1] also refers to there being no local authorities in Northern Ireland that use prepaid cards as at March 2019 and that the Network should hold an event in Northern Ireland as it currently has no traction: see UUID PSR0001-103189-000277.

¹⁰⁴⁷ See Chapter 3.B. above.

¹⁰⁴⁸ In 2016, PFS and APS constituted at least half of those businesses active on the market during that period and held the largest share of revenue (see Table I at paragraph 3.87 above).

¹⁰⁴⁹ See Chapter 3.A. above.

¹⁰⁵⁰ See paragraph 7.227 above.

There are four cumulative criteria to be satisfied:

- the agreement contributes to improving production or distribution, or promoting technical or economic progress,
- while allowing consumers a fair share of the resulting benefit;
- the agreement does not impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; and
- the agreement does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question

7.232 The PSR notes that agreements and/or concerted practices which have as their object the prevention, restriction or distortion of competition, are unlikely to benefit from individual exemption as such restrictions generally fail (at least) the first two conditions for exemption: they neither create objective economic benefits, nor do they benefit consumers.¹⁰⁵¹ Moreover, such agreements and/or concerted practices generally also fail the third condition (indispensability).¹⁰⁵² However, each case ultimately falls to be assessed on its merits.

7.233 Any undertaking claiming the benefit of an exemption bears the burden of proving that the conditions in section 9(1) of the Act are satisfied.¹⁰⁵³ It is therefore for the party claiming the benefit of exemption to adduce evidence that substantiates its claim.¹⁰⁵⁴ The Parties have not argued or sought to prove that the arrangements between them in each instance are exempted from the Chapter I prohibition by the operation of section 9 of the Act.

7.234 Additionally, pursuant to section 10 of the Act, an agreement is exempt from the Chapter I prohibition if it does not affect trade between EU Member States but otherwise falls within a category of agreement which is exempt from Article 101(1) of the TFEU by virtue of a retained block exemption regulation. It is for the parties wishing to rely on these provisions to adduce evidence that the exemption criteria are satisfied.¹⁰⁵⁵ The PSR has not received any such evidence and there is no parallel exemption from the Chapter I prohibition under section 10 of the Act that would apply to the Infringements.

Exclusion

7.235 The Chapter I prohibition does not apply in any of the cases in which it is excluded by or as a result of Schedules 1 to 3 of the Act, as set out in section 3 of the Act.¹⁰⁵⁶

¹⁰⁵¹ See Article 101(3) Guidelines, paragraph 46. The PSR concludes in this Decision that the Infringements each had an anti-competitive object.

¹⁰⁵² See Article 101(3) Guidelines, paragraph 46.

¹⁰⁵³ The Act, section 9(2); *GlaxoSmithKline and others v CMA (Paroxetine)* [2018] CAT 4, paragraph 79.

¹⁰⁵⁴ Article 101(3) Guidelines, see paragraphs 51 to 58; *Guidelines on Vertical Restraints* [2010] OJ C130/1, paragraph 47. See also section 9(2) of the Act.

¹⁰⁵⁵ See by analogy section 9(2) of the Act.

¹⁰⁵⁶ Section 3 of the Act sets out the following exclusions: Schedule 1 covers mergers and concentrations, Schedule 2 covers competition scrutiny under other enactments; and Schedule 3 covers general exclusions.

- 7.236** The PSR finds that none of the exclusions from the Chapter I prohibition provided by section 3 of the Act apply to the Infringements.

L Attribution of liability

Key legal principles: identification of the appropriate legal entity

- 7.237** Competition law refers to the activities of undertakings. If an undertaking infringes the competition rules, it falls, under the principle of personal responsibility, to that undertaking to answer for and therefore be liable for that infringement.¹⁰⁵⁷ An undertaking may consist of several persons, legal or natural. In determining who is liable for an infringement and subject to any financial penalty which may be imposed and to whom an infringement decision is to be addressed, it is necessary to identify the legal or natural persons that form part of the undertaking involved in the infringement.¹⁰⁵⁸
- 7.238** For each Party which the PSR finds has infringed the Act, the PSR has first identified the legal entity directly involved in the Infringement(s) as appropriate.¹⁰⁵⁹ It has then determined whether liability for the Infringements should be shared with another legal entity forming part of the same undertaking, in which case each legal entity's liability will be joint and several.¹⁰⁶⁰
- 7.239** The conduct of a subsidiary undertaking may be imputed to its parent company where, although having a separate legal personality, that subsidiary does not decide independently upon its own conduct on the market, but carries out, in all material respects, the instructions given to it by the parent company, having regard in particular to the economic, organisational and legal links between those two entities.¹⁰⁶¹ This is because, in such a situation, the parent company and its subsidiary form a single economic unit, and therefore a single undertaking for the purposes of the relevant prohibitions.¹⁰⁶²

¹⁰⁵⁷ Case C-97/08 P *Akzo Nobel NV and Others v Commission*, EU:C:2009:536, paragraphs 54 to 56.

¹⁰⁵⁸ As above, paragraph 57.

¹⁰⁵⁹ Direct involvement is typically assessed by identifying the employees who participated in the infringement(s) and the undertaking which employed those individuals: see Case C-68/12 *Protimonopolný úrad Slovenskej republiky v Slovenská sporiteľňa a.s.*, EU:C:2013:71, paragraphs 25 to 28; Case C-542/14 *VM Remonts v Pārtikas kompānija*, EU:C:2016:578, paragraphs 23 to 25 and *Tesco Stores Ltd, Tesco Holdings Ltd and Tesco plc v OFT* [2012] CAT 31, paragraph 62.

¹⁰⁶⁰ See above. In respect of legal succession see Case C-279/98 P *Cascades SA v Commission*, EU:C:2000:626, paragraph 9 and CE/9531-11 Paroxetine investigation: anti-competitive agreements and conduct, paragraph 9.12. Additionally, the conduct of a service provider can be attributed to an undertaking where it is in fact acting under the direction or control of an undertaking that is using its services. Such direction or control might be inferred from the existence of particular organisational, economic and legal links between the service provider in question and the user of the services, just as with the relationship between parent companies and their subsidiaries: see, for example, Case C-542/14 *VM Remonts v Pārtikas kompānija*, EU:C:2016:578, paragraph 27 and Case C-293/13 P and C-294/13 P *Fresh Del Monte Produce v Commission* and *Commission v Fresh Del Monte Produce*, EU:C:2015:416, paragraphs 75 and 76.

¹⁰⁶¹ Case C-48/69 *ICI v Commission*, EU:C:1972:70, paragraphs 132 and 133; Case C-97/08 P, *Akzo Nobel NV and Others v Commission* EU:C:2009:536, paragraphs 58 to 59. See also Case C-155/14 P *Evonik Degussa GmbH v Commission*, EU:C:2016:446, paragraph 27.

¹⁰⁶² Case C-155/14 P *Evonik Degussa GmbH v Commission*, EU:C:2016:446, paragraph 27, Case T-517/09 *Alstom v Commission*, EU:T:2014:999, paragraph 55; Case C-97/08 P *Akzo Nobel NV and Others v Commission*, EU:C:2009:536, paragraph 59: the CJEU endorsed the principal that the ultimate parent company of the Akzo Nobel group, Akzo Nobel NV, could be held liable for the infringement.

7.240 Where a parent company owns 100% of a subsidiary which has infringed the competition rules,¹⁰⁶³ there is a rebuttable presumption that:

- a. the parent company is able to exercise 'decisive influence' over the conduct of its subsidiary; and
- b. the parent company does in fact exercise such decisive influence over the conduct of its subsidiary,
- c. such that the two entities can be regarded as a single economic unit and thus jointly and severally liable.¹⁰⁶⁴

7.241 It is for the parent company in question to rebut the presumption by adducing sufficient evidence to show that its subsidiary acted independently on the market.¹⁰⁶⁵ The presumption also applies to situations where the parent company indirectly holds 100% of a subsidiary – for example, via one or more intermediary companies.¹⁰⁶⁶

7.242 The PSR took the following approach:

- a. Where a party which was directly involved in an infringement was 100% directly or indirectly owned by a parent company, the presumption above applies, and liability for the infringement will extend to that parent company.
- b. Where a party which was directly involved in an infringement was owned by natural persons during the Relevant Period, liability for the infringement will not extend to those individuals.

¹⁰⁶³ This presumption also applies if the ownership of the subsidiary is just below 100 per cent: see for example, C-97/08 P, *Akzo Nobel NV and Others v Commission*, EU:C:2009:536, paragraphs 60 and 61, Case T-174/05, *Elf Aquitaine v Commission*, EU:T:2009:368, paragraphs 153 to 157 (where the presumption was held to apply in relation to a shareholding of approximately 98 per cent); Case T—24/05, *Alliance One International & Others v Commission*, EU:T:2010:453, paragraphs 126 to 130. The GC has indicated, among other things, that neither the fact that the subsidiary operates independently in specific aspects of its policy on the marketing of the products concerned by the infringement, nor the lack of any direct involvement in, or knowledge of the facts alleged to constitute the infringement by directors of the parent company, are sufficient, of themselves, to rebut the presumption. Case T-190/06, *Total and Elf Equitaine v Commission*, EU:T:2011:378, paragraph 64; Case T-189/06, *Arkema France v Commission*, EU:T:2011:377, paragraph 65.

¹⁰⁶⁴ Case C-155/14 P *Evonik Degussa GmbH v Commission*, EU:C:2016:446, paragraph 28 and the case law cited; Cases C-628/10 P and C-14/11 P *Alliance One & Others v Commission*, EU:C:2012:479, paragraphs 46 to 48; Case C-97/08 P *Akzo Nobel NV and Others v Commission*, EU:C:2009:536, paragraphs 59 to 61; Case C-107/82 *Allgemeine Elektrizitäts-Gesellschaft AEG-Telefunken AG v Commission*, EU:C:1983:293, paragraph 50; Case C-97/08 P *Akzo Nobel NV and Others v Commission*, EU:C:2009:536, paragraph 59.

¹⁰⁶⁵ Cases C-628/10 P and C-14/11 P *Alliance One & Others v Commission*, EU:C:2012:479, paragraph 47, citing Case C-97/08 P *Akzo Nobel NV and Others v Commission*, EU:C:2009:536, paragraph 61. Case T-517/09 *Alstom v Commission*, EU:T:2014:999, paragraph 55.

¹⁰⁶⁶ Case C-90/09 P *General Química SA and Others v Commission*, EU:C:2011:21, paragraphs 86 to 87.

Application to the Parties

allpay

7.243 The PSR finds that allpay (allpay Limited, a company incorporated in England and Wales)¹⁰⁶⁷ was directly involved in and is therefore liable for the Network market sharing agreement throughout the Relevant Period 1.¹⁰⁶⁸

7.244 This Decision is therefore addressed to allpay.

APS

7.245 The PSR finds that APS (Advanced Payment Solutions Limited, a company incorporated in England and Wales)¹⁰⁶⁹ was directly involved in and is therefore liable for: (i) the Network market sharing agreement, and (ii) the End of contract agreement throughout the Relevant Periods.¹⁰⁷⁰

7.246 This Decision is therefore addressed to APS.

Mastercard

7.247 As set out in paragraphs 3.14 to 3.18 above, during the Relevant Period 1, Mastercard's operating companies, Mastercard Europe SPRL¹⁰⁷¹ (between 2012 and 2014) and subsequently Mastercard Europe Services Limited¹⁰⁷² (between 2014 and 2018), carried on the marketing of Mastercard products and services (including prepaid cards in the public sector) within the UK.

7.248 However, these undertakings relied on staff hired by another undertaking of the Mastercard group of companies – Mastercard UK Management Services Limited – to carry out their activities in the UK. Mastercard UK Management Services Limited¹⁰⁷³ is a management services company and has no operational role. During the Relevant Period 1, it provided employees (including those employees who were involved in public sector prepaid cards and/or the Network and the conduct described in Chapters 4 and 5 above) to both Mastercard Europe SPRL and Mastercard Europe Services Limited.¹⁰⁷⁴ Those employees operated within those entities.¹⁰⁷⁵ The PSR finds that those employees were directed and controlled

¹⁰⁶⁷ Companies House registration number 02933191.

¹⁰⁶⁸ See paragraph 3.3.

¹⁰⁶⁹ Companies House registration number 04947027.

¹⁰⁷⁰ See paragraph 3.8.

¹⁰⁷¹ Company number 0448.038.446

¹⁰⁷² Companies House registration number 09210818.

¹⁰⁷³ Companies House registration number 04617367.

¹⁰⁷⁴ See Mastercard's clarification to the PSR's Section 26 Notice of 25 March 2020: UUID 246610001. Mastercard Europe Services Limited's accounts for year ended December 2017, state "All employees are contracted to Mastercard UK Management Services Limited and costs are recharged to this entity in full; costs received as a recharge are included below with the employee numbers detailed within Mastercard UK Management Services Limited": <https://find-and-update.company-information.service.gov.uk/company/09210818/filing-history> [accessed on 03/11/20].

¹⁰⁷⁵ See paragraph 3.18 above.

by the operating companies at the relevant times and formed, together with Mastercard Incorporated, a single economic entity due to the organisational, economic and legal links between them as described in paragraphs 3.13 to 3.19 above.¹⁰⁷⁶

- 7.249** Consequently, the PSR finds for the period 2012 to 2018 Mastercard UK Management Services Limited (a company incorporated in England and Wales)¹⁰⁷⁷ was directly involved in and is liable for the Network market sharing agreement.¹⁰⁷⁸ The PSR finds that as the employees of Mastercard UK Management Services Limited were directed and controlled by the operating companies, Mastercard Europe SPRL and Mastercard Europe Services Limited, those operating companies are jointly and severally liable for the Network market sharing agreement during the Relevant Period 1.
- 7.250** During the Relevant Period 1, Mastercard Europe SPRL (a company incorporated in Belgium), Mastercard Europe Services Limited (a company incorporated in England and Wales) and Mastercard UK Management Services Limited (a company incorporated in England and Wales) are (or were) ultimately, indirectly, 100% owned by Mastercard Incorporated (a company incorporated in Delaware, United States of America).¹⁰⁷⁹
- 7.251** It can therefore be presumed that Mastercard Incorporated exercised decisive influence over the conduct of Mastercard Europe SPRL, Mastercard Europe Services Limited and Mastercard UK Management Services Limited throughout the Relevant Period 1 and that these entities formed a single economic unit for the purposes of the Chapter I prohibition.
- 7.252** The PSR finds for the period 2012 to 2018 Mastercard UK Management Services Limited, for the period 2012 to 2014 Mastercard Europe SA,¹⁰⁸⁰ for the period 2014 to 2018 Mastercard Europe Services Limited and for the period 2012 to 2018 Mastercard Incorporated (their ultimate parent company) jointly and severally liable for the Network market sharing agreement during the Relevant Period 1 as appropriate.

¹⁰⁷⁶ See, Case C-542/14 *VM Remonts v Pärtikas kompānija*, EU:C:2016:578, paragraph 27 and Case C-293/13 P and C-294/13 P *Fresh Del Monte Produce v Commission* and *Commission v Fresh Del Monte Produce*, EU:C:2015:416, paragraphs 75 and 76. See also paragraph 7.238 above. This is further supported by, for example, [Mastercard employee 1] (Mastercard) who considered [Mastercard employee 1] to be retired from “Mastercard” and, more specifically, from Mastercard Europe Services Limited (post 2014 when it took over the activities and assets of Mastercard Europe SPRL). The fact the employees operated within those entities and were provided by Mastercard UK Management Services Limited was confirmed by Mastercard: UUID 246610001. In respect of those individuals operating within Mastercard Europe SPRL, [Mastercard employee 2]’s (Mastercard) email footer was “Mastercard Europe SPRL”: see UUID PSR0001-95290-004412. Additionally, [Sulion director 1]’s (Sulion) invoices for work undertaken on behalf of the Network were for the attention of “Mastercard Europe SPRL”: see UUID 94581217. See also the interview of [Mastercard employee 1] on 9 November 2019, disc 1 of 4, at lines 63 and 72 – 73: UUID 242580001: “The holding company is Mastercard Incorporated and European is Mastercard European Services Limited” regarding [Mastercard employee 1] former employer.

¹⁰⁷⁷ See Case C-68/12 *Protimonopolný úrad Slovenskej republiky v Slovenská sporiteľňa a.s.*, EU:C:2013:71, paragraphs 25 to 28; Case C-542/14 *VM Remonts v Pärtikas kompānija*, EU:C:2016:578, paragraphs 23 to 25 and *Tesco Stores Ltd, Tesco Holdings Ltd and Tesco plc v OFT* [2012] CAT 31, paragraph 62.

¹⁰⁷⁸ See paragraphs 3.14 to 3.19 above.

¹⁰⁷⁹ This presumption also applies if the ownership of the subsidiary is just below 100 per cent: see footnote [348] above and see also Case C-90/09 P, *General Química SA and Others v Commission*, EU:C:2011:21, paragraphs 86 to 87. See Mastercard structure chart, dated February 2020, UUID 230000002 and Mastercard’s response to the PSR’s further questions of 20 August 2020 UUID 244250004 and of 7 October 2020 UUID 246610001.

¹⁰⁸⁰ As described in paragraph 3.14 above, Mastercard Europe SPRL became Mastercard Europe SA.

- 7.253** This Decision is therefore addressed to Mastercard UK Management Services Limited, Mastercard Europe SA, Mastercard Europe Services Limited and Mastercard Incorporated.

PFS

- 7.254** The PSR finds that Prepaid Financial Services Limited (a company incorporated in England and Wales)¹⁰⁸¹ was directly involved in and is therefore liable for: (i) the Network market sharing agreement, and (ii) the End of contract agreement throughout the Relevant Periods.
- 7.255** During the Relevant Periods, Prepaid Financial Services Limited was 100% owned by Prepaid Financial Services (Ireland) Limited (a company incorporated in Ireland).¹⁰⁸²
- 7.256** It can therefore be presumed that Prepaid Financial Services (Ireland) Limited exercised decisive influence over the conduct of Prepaid Financial Services Limited throughout the Relevant Periods and that the two entities formed a single economic unit for the purposes of the Chapter I prohibition.
- 7.257** The PSR finds Prepaid Financial Services Limited and Prepaid Financial Services (Ireland) Limited jointly and severally liable for the Infringements during the Relevant Periods.
- 7.258** This Decision is therefore addressed to Prepaid Financial Services Limited and Prepaid Financial Services (Ireland) Limited.

Sulion

- 7.259** The PSR finds Sulion (Sulion Limited, a company incorporated in England) was directly involved in and is therefore liable for the Network market sharing agreement throughout the Relevant Period 1.¹⁰⁸³
- 7.260** This Decision is therefore addressed to Sulion.

1081 Companies House registration number 06337638.

1082 See paragraph 3.24 above.

1083 See paragraph 3.30 above.

8 The PSR's action

A The PSR's decision

- 8.1** On the basis of the evidence set out in this Decision, the PSR has decided that the Parties participated in:
- a. an agreement and/or concerted practice, constituting a single and continuous infringement, which infringed the Chapter I prohibition from at least 2 May 2012 to at least 6 February 2018, which had as its object the prevention, restriction or distortion of competition in relation to the supply of prepaid card services for welfare disbursements to Public bodies in GB, and may have affected trade within the UK.
- 8.2** On the basis of the evidence set out in this Decision, the PSR has decided that APS and PFS participated in:
- a. an agreement and/or concerted practice, constituting a single and continuous infringement, which infringed the Chapter I prohibition from at least 19 August 2014 to at least 18 July 2016, which had as its object the prevention, restriction or distortion of competition in relation to the supply of prepaid card services for welfare disbursements to Public bodies in GB, and may have affected trade within the UK.

B Directions

- 8.3** Section 32(1) of the Act provides that, if the PSR has made a decision that an agreement infringes the Chapter I prohibition, it may give to such person or persons as it considers appropriate such directions as it considers appropriate to bring the infringement to an end.¹⁰⁸⁴ The PSR has decided that the Infringements have terminated and that it would be unnecessary to give directions to any Party to bring to an end the Infringements.

C Financial penalties

General points

- 8.4** Section 36(1) of the Act provides that on making a decision that an agreement (or concerted practice) has infringed the Chapter I prohibition, the PSR may require an undertaking which is party to the agreement and/or concerted practice concerned to pay the PSR a penalty in respect of the infringement. In accordance with section 38(8) of the Act, the PSR must have

¹⁰⁸⁴ The Act, sections 32(1) and 33(1).

regard to the CMA's published guidance on penalties in force at the time when setting the amount of the penalty (the '**Penalties Guidance**').¹⁰⁸⁵

- 8.5** The Penalties Guidance sets out the basis on which the PSR will calculate penalties for infringements of the Act where it decides to exercise its discretion to impose a penalty under section 36(1) and 36(2) of the Act. Provided the PSR has had regard to the Penalties Guidance, and provided the PSR's penalties are within the range of penalties permitted by section 36(8) of the Act and the Competition Act 1998 (Determination of Turnover for Penalties) Order 2000¹⁰⁸⁶, it retains a margin of appreciation when determining the appropriate amount of the penalty.¹⁰⁸⁷ The PSR makes its assessment on a case-by-case basis and is not bound by the decisions of other regulators in previous cases.¹⁰⁸⁸
- 8.6** The PSR concludes that it is appropriate to impose a financial penalty on each of the Parties for the relevant Infringement(s). Such financial penalties have been calculated in accordance with the Penalties Guidance and relevant legislation.
- 8.7** As part of the settlement process, the PSR provided draft penalty calculations to the Parties, and gave them the opportunity to make representations, which were taken into account in reaching the final penalty calculation.

Small agreements

- 8.8** Section 39(3) of the Act provides for limited immunity from penalties in relation to the Chapter I prohibition. In particular, it provides that a party to a "*small agreement*" is immune from financial penalties for infringements of the Chapter I prohibition, provided that the agreement is not a "*price fixing agreement*" as defined in section 39(9) of the Act ('the small agreements immunity').
- 8.9** A small agreement is an agreement between undertakings whose combined turnover does not exceed £20 million in the business year ending in the calendar year preceding one during which the infringement occurred.¹⁰⁸⁹

¹⁰⁸⁵ On 16 December 2021, the CMA published updated *Guidance as to the Appropriate Amount of the Penalty* (CMA73) which applies from the date of its publication to new CA98 cases and to ongoing CA98 cases in which a Draft Penalty Statement or, if there are ongoing settlement discussions, a draft penalty calculation has not yet been issued. Since in this case the draft penalty calculation was issued prior to that date, the applicable penalties guidance is the version of CMA73 that was published on 18 April 2018. Reflecting section 38(8) of the Act, paragraph 1.10 of the Penalties Guidance indicates that concurrent regulators must have regard to the Penalties Guidance when setting the amount of any financial penalty to be imposed. See also paragraph 1.8 of the CA98 Guidance.

¹⁰⁸⁶ The Competition Act 1998 (Determination of Turnover for Penalties) Order 2000 (SI 2000/309) and the Competition Act 1998 (Determination of Turnover for Penalties) (Amendment) Order 2004 (SI 2004/1259).

¹⁰⁸⁷ *Umbro Holdings and Manchester United and JJB Sports and Allsports v OFT* [2005] CAT 22, paragraph 102.

¹⁰⁸⁸ *Eden Brown and Others v OFT* [2011] CAT 8, paragraph 78; see also *Kier Group and others v Office of Fair Trading* [2011] CAT 3, paragraph 116.

¹⁰⁸⁹ Regulation 3 of the Competition Act 1998 (Small Agreements and Conduct of Minor Significance) Regulations 2000 (SI/2000/262) provides that the category of agreements for which no penalty may be imposed under section 39 of the Act comprises "*all agreements between undertakings the combined applicable turnover of which for the business year ending in the calendar year preceding one during which the infringement occurred does not exceed £20 million*" (SI/2000/262). The applicable turnover of an undertaking for this purpose is limited to the amounts derived by the undertaking from the sale of products and the provision of services falling within the undertaking's ordinary activities after deduction of sales rebates, value added tax and other taxes directly related to turnover.

Application to this case

- 8.10** allpay submitted that it would benefit from the small agreements immunity as its turnover was less than £20 million and requested that the PSR apply the relevant provisions of the Act and grant allpay immunity from penalties.
- 8.11** The PSR concludes that section 39 of the Act does not apply in the present case on the basis that the combined applicable turnover of the Parties (in relation to the Network market sharing agreement) and of APS and PFS (in relation to the End of contract agreement) is greater than £20 million.

Intention/negligence

Key legal principles

- 8.12** The PSR may impose a penalty on an undertaking which has infringed the Chapter I prohibition only if it is satisfied that the infringement has been committed intentionally or negligently.¹⁰⁹⁰ However, the PSR is not obliged to specify whether it considers the infringement to be intentional or merely negligent.¹⁰⁹¹

- 8.13** The CAT has defined the terms ‘intentionally’ and ‘negligently’ as follows:

“...an infringement is committed intentionally for the purposes of section 36(3) of the Act if the undertaking must have been aware, or could not have been unaware, that its conduct had the object or would have the effect of restricting competition. An infringement is committed negligently for the purposes of section 36(3) if the undertaking ought to have known that its conduct would result in a restriction or distortion of competition”.¹⁰⁹²

- 8.14** This is consistent with the approach taken by the CJEU, which has confirmed:

“the question whether the infringements were committed intentionally or negligently... is satisfied where the undertaking concerned cannot be unaware of the anti-competitive nature of its conduct, whether or not it is aware that it is infringing the competition rules of the Treaty”.¹⁰⁹³

¹⁰⁹⁰ Section 36(3) of the Act.

¹⁰⁹¹ *Napp Pharmaceutical Holdings Ltd v Director General of Fair Trading* [2002] CAT 1, paragraphs 453 to 457; see also *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2005] CAT 13, at 221.

¹⁰⁹² *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2005] CAT 13, at 221; see also *Napp Pharmaceutical Holdings Limited and Subsidiaries v Director General of Fair Trading* [2002] CAT 1 paragraph 456: *“...an infringement is committed intentionally for the purposes of the Act if the undertaking must have been aware that its conduct was of such a nature as to encourage a restriction or distortion of competition... It is sufficient that the undertaking could not have been unaware that its conduct had the object or would have the effect of restricting competition, without it being necessary to show that the undertaking also knew that it was infringing the Chapter I or Chapter II prohibition”.*

¹⁰⁹³ Case 280/08 P *Deutsche Telekom v Commission*, EU:C:2010:603, paragraph 124.

- 8.15** The PSR notes that the CMA considers that the circumstances in which it might find that an infringement has been committed intentionally include situations in which the agreement or conduct in question has as its object the restriction of competition.¹⁰⁹⁴
- 8.16** The intention or negligence relates to the facts, not the law. Ignorance or a mistake of law does not prevent a finding of intentional infringement even where such ignorance or mistake is based on independent legal advice.¹⁰⁹⁵
- 8.17** In establishing whether or not there was intention or negligence, the PSR will have regard to the entire evidence obtained in the course of the investigation, including documents generated by the undertakings in question and witness evidence.

Application to this case

Network market sharing agreement

- 8.18** As stated in paragraphs 7.163 to 7.202 above, the PSR has found that the Network market sharing agreement had as its object the prevention, restriction or distortion of competition and the Parties must therefore have been aware (or could not have been unaware) that their conduct was capable of harming competition.¹⁰⁹⁶ The fact that the Network market sharing agreement had as its object the restriction of competition supports the view that it was committed intentionally.¹⁰⁹⁷
- 8.19** By allocating existing and potential new customers (including pitching opportunities for new customers) between the Network PMs, thereby maintaining their existing customer base and so limiting competition between them, the Parties must have been aware, or could not have been unaware that their conduct had the object or would have the effect of restricting competition. This is supported by strong evidence including:
- An email from [Sulion director 1] (Sulion) dated 14 July 2016 to the other Parties (allpay, APS, Mastercard and PFS) (see paragraph 5.21 above), which explains the Network non-targeting arrangement and states that “*We’ve always agreed not to target each other’s customers*” and that “*we agreed that it would be a good idea to have an updated master list of who has who as prepaid customers so we know who is and isn’t fair game for sales*”.
 - [allpay employee 1] of allpay responded to all as part of the same email chain that “*We will come back to you on the client lists*”.

¹⁰⁹⁴ See for example, the CMA decision of 22 January 2020 in Case 50565-3 *Online resale price maintenance in the guitar sector*, paragraphs 5.16 to 5.19; the CMA decision of 3 May 2017 in Case 50343 *Online resale price maintenance in the light fittings sector (Light Fittings)*, paragraph 5.14; the CMA decision of 10 May 2016 in Case CE/9857-14 *Online resale price maintenance in the bathroom fittings sector*, paragraph 7.16; the CMA Decision of 24 May 2016 in Case CE/9856/14 *Online resale price maintenance in the commercial refrigeration sector*, paragraph 7.19; the CMA decision of 1 August 2019 in Case 50565-2 *Online resale price maintenance in the digital piano and digital keyboard sector*, paragraph 5.18.

¹⁰⁹⁵ See Case C-681/11 *Bundeswettbewerbsbehörde v Schenker & Co. AG*, EU:C:2013:404, paragraph 38.

¹⁰⁹⁶ See paragraphs 8.13 to 8.14 above.

¹⁰⁹⁷ See paragraph 8.15 above.

- The readmission of allpay to the Network in 2016 when [APS employee 1] (APS) complained to [Sulion director 1] (Sulion) and Mastercard about allpay approaching Public bodies that were already in contract with another Network PM (see paragraph 5.17 above): *“When AllPay re-joined the network, I thought there was an understanding that AllPay would not proactively go after either PFS or APS’ clients?”* [Sulion director 1] responded to [APS employee 1] (APS) (copying [Mastercard employee 1] at Mastercard), stating that *“Absolutely it was on those terms, it was stated on more than one occasion and I take this very seriously.”*¹⁰⁹⁸ Mastercard directly intervened in speaking to allpay about their conduct and subsequently reported back to Sulion.¹⁰⁹⁹ [Mastercard employee 1] (Mastercard) then asked [Sulion director 1] to report back to [APS employee 1] (APS).
- The email chain referred to above states that [Mastercard employee 1] of Mastercard *“completely”* agreed that Network PMs should not be seeking to poach existing prepaid card customers of other Network PMs. Upon receiving the complaint from APS, [Sulion director 1] forwarded the email chain to [Mastercard employee 1] (Mastercard), stating: *“Bugger! Just what we need at the moment. I’m sure you’ll agree we can’t have this.”* [Mastercard employee 1] (Mastercard) responded to [Sulion director 1] stating: *“Completely agree, [first name of Sulion director 1].”*¹¹⁰⁰
- Market sharing and customer allocation are well-established competition law infringements. The Parties ought to have known that restricting the Network PMs’ ability to compete for existing or potential new customers would, by its nature, be injurious to the proper functioning of normal competition.

8.20 The PSR therefore concludes that each of the Parties committed the Network market sharing agreement intentionally or, at the very least, acted negligently.

End of contract agreement

8.21 As stated in paragraphs 7.203 to 7.212 above, the PSR has found that the End of contract agreement had as its object the prevention, restriction or distortion of competition and APS and PFS must therefore have been aware (or could not have been unaware) that their conduct was capable of harming competition.¹¹⁰¹ The fact that the End of contract agreement had as its object the restriction of competition supports the view it was committed intentionally.¹¹⁰²

8.22 By allocating their existing customers when contracts went out to tender (or retender), PFS and APS restricted competition by maintaining their existing customer base and must have been aware, or could not have been unaware, that their conduct had the object or would have the effect of restricting competition. This is supported by strong evidence, including:

¹⁰⁹⁸ See also paragraph 5.86 above regarding the ‘[Sulion] Councils’ email where [Sulion director 1] (Sulion) confirmed to the Network PMs that allpay had accepted the Network non-targeting arrangement as a condition of re-joining the Network.

¹⁰⁹⁹ See paragraph 5.17 above.

¹¹⁰⁰ [Mastercard employee 1] (Mastercard) clarified at interview that [Mastercard employee 1] meant that *“I agree that we can’t have, you know, the programme managers falling out with each other when we’re trying to expand the size of the market”*: see paragraph 5.18 above.

¹¹⁰¹ See paragraph 8.13 – 8.14 above.

¹¹⁰² See paragraph 8.15 above.

- [PFS director 1]'s (PFS) email of 17 February 2017 to [allpay employee 1] (allpay), which referred to a previous “*gentleman’s agreement*” with APS.
- The content of the communications between APS and PFS (as set out from paragraph 7.178 onwards) meant each knew that the other would refrain from tendering for an upcoming contract, and each informed the other that they would not compete. In particular, the content of the communications indicates that APS and PFS were aware, or at least, should have been aware, of the illegal nature of their conduct by stating that they “*would not compete*” for each other’s existing customers and that, upon it being confirmed that a particular Public body was with the other party, they would “*opt out of this one*” or would not “*be stepping on your toes*”.¹¹⁰³ Moreover, the End of contract agreement was implemented by APS and PFS in respect of several Public bodies.¹¹⁰⁴
- PFS and APS would have been familiar with local authority tender requirements for bidders to comply with competition law. Not least, bidders were specifically asked to certify under the NEPO framework,¹¹⁰⁵ Surrey framework and the 2016 [Public body 42] tender that there had been no collusive behaviour in respect of the upcoming bid.¹¹⁰⁶ Therefore APS and PFS, at the very least, ought to have known that their conduct had the object or effect of restricting competition.
- Market sharing and customer allocation are well-established competition law infringements and APS and PFS ought to have known that their conduct would, by its nature, be injurious to the proper functioning of normal competition.

8.23 The PSR therefore concludes that APS and PFS committed the End of contract agreement intentionally or, at the very least, acted negligently.

D Calculation of the penalties

8.24 In deciding the appropriate level of the penalties, the PSR had regard to the Penalties Guidance, which sets out a six-step approach to calculating the penalties, and each Party’s representations on the draft penalty calculation pursuant to settlement discussions.¹¹⁰⁷

8.25 APS and PFS each committed two infringements. With regard to the penalty calculation for each of these two Parties, the PSR proceeded as follows:

- a. the PSR calculated the penalty separately for each of the two Infringements from Steps 1 to 3
- b. the PSR carried out a single assessment of the overall combined penalty at Step 4

¹¹⁰³ See paragraphs 5.113 to 5.115 above.

¹¹⁰⁴ See generally paragraphs 5.101 to 5.117 above.

¹¹⁰⁵ NEPO2 referred to it as a statement of ‘*non-collusion*’: see paragraph 3.113 above.

¹¹⁰⁶ See paragraph 3.115 above.

¹¹⁰⁷ Regarding the six-step approach, the PSR notes the observation of the CAT in *Argos Limited and Littlewoods Limited v Office of Fair Trading [2005] CAT 13* that “*In our view, however, it would not be appropriate to analyse each individual “Step” in arriving at the penalty in isolation from the other Steps*” (paragraph 169) and “*the Guidance in our view cannot be treated as if the OFT is merely making a mechanical calculation according to a predetermined mathematical formula*” (paragraph 171).

- c. Steps 5 and 6 were applied to the combined figure reached at the end of Step 4

Step 1: Calculation of the starting point

- 8.26** The starting point for determining the level of financial penalty imposed on an undertaking is calculated having regard to:

- a. the relevant turnover of the undertaking; and
- b. the seriousness of the infringement and the need for general deterrence¹¹⁰⁸

Relevant turnover

- 8.27** The 'relevant turnover' is the turnover of the undertaking in the relevant product and geographic market affected by the infringement in the undertaking's 'last business year'. As set out in the Penalties Guidance, an undertaking's 'last business year' is the financial year preceding the date when the infringement ended.¹¹⁰⁹

- 8.28** As set out in Chapter 6, the PSR has found that, in relation to the Network market sharing agreement and the End of contract agreement:

- a. the relevant market in which the Network PMs operate is the supply of prepaid card services for welfare disbursements to Public bodies in GB
- b. the relevant market in which Mastercard operates is the supply of network services for prepaid cards in the UK; and
- c. the relevant market in which Sulion operates is the market for the provision of consultancy services to the Network in GB¹¹¹⁰

- 8.29** As noted in paragraph 6.3 above, the PSR recognises that Mastercard and Sulion are not active in the same relevant market as the Network PMs. In relation to these two parties the PSR considers it is appropriate to use, as the starting point for the calculation of their penalty, the turnover in the markets in which their conduct, in relation to the infringement, occurred.

- 8.30** The PSR has set out the duration of each Infringement, and each Party's participation in the Infringement(s), in paragraphs 7.219 to 7.224 above.

¹¹⁰⁸ Penalties Guidance, paragraphs 2.3 to 2.15.

¹¹⁰⁹ Penalties Guidance, paragraph 2.11.

¹¹¹⁰ As regards the relevant market, the PSR notes the observation of the Court of Appeal in *Argos Ltd and Littlewoods Ltd v Office of Fair Trading and JJB Sports plc v Office of Fair Trading* that: '*... neither at the stage of the OFT investigation, nor on appeal to the Tribunal, is a formal analysis of the relevant product market necessary in order that regard can properly be had to step 1 of the Guidance in determining the appropriate penalty.*' The Court of Appeal considered that it was sufficient for the OFT to '*be satisfied, on a reasonable and properly reasoned basis, of what is the relevant product market affected by the infringement.*' *Argos Limited and Littlewoods Limited v OFT and JJB Sports plc v OFT* [2006] EWCA Civ 1318, at paragraphs 169 and 170.

8.31 Taking this into account, in respect of the Network market sharing agreement, the Parties provided their relevant turnover in the respective last business year as follows:¹¹¹¹

- a. **allpay**: £109,475 for the financial year ending June 2017
- b. **APS**: £963,944 for the financial year ending March 2016
- c. **Mastercard**: £31,763,349 for the financial year ending December 2017
- d. **PFS**: £2,002,572 for the financial year ending December 2017
- e. **Sulion**: £150,715 for the financial year ending April 2017

8.32 In respect of the End of contract agreement, the Parties provided their relevant turnover in the respective last business year as follows:

- a. **APS**: £963,944 for the financial year ending March 2016
- b. **PFS**: £428,274 for the financial year ending December 2015

Seriousness of the Infringements and need for general deterrence

8.33 The PSR will apply a starting point of up to 30% of an undertaking's relevant turnover in order to reflect adequately the seriousness of the particular infringement (and ultimately the extent and likelihood of actual or potential harm to competition and consumers). In applying the starting point, the PSR will also reflect the need to deter the infringing undertaking and other undertakings generally from engaging in that type of infringement in the future.

8.34 In making this case-specific assessment, the Penalties Guidance provides that it is appropriate to consider:

- a. First, how likely it is for the type of infringement at issue, by its nature, to harm competition.¹¹¹² Following the Penalties Guidance, the PSR will generally use a starting point between 21% and 30% of relevant turnover for the most serious types of infringement. In relation to infringements of the Chapter I prohibition, this includes cartel activities, such as price fixing and market sharing, and other, non-cartel 'by object' infringements which are inherently likely to cause significant harm to competition.¹¹¹³
- b. Second, whether it is appropriate to adjust the starting point upwards or downwards to take account of the specific circumstances of the case that might be relevant to the extent and likelihood of harm to competition and, ultimately, consumers.¹¹¹⁴
- c. Finally, whether the starting point is sufficient for the purpose of general deterrence.¹¹¹⁵

¹¹¹¹ The end of the financial year for each Party differs: Mastercard and PFS have a financial year ending 31 December, APS has a financial year ending 31 March, Sulion has a financial year ending 30 April and allpay has a financial year ending 30 June.

¹¹¹² Penalties Guidance, paragraph 2.5.

¹¹¹³ Penalties Guidance, paragraph 2.6.

¹¹¹⁴ Penalties Guidance, paragraph 2.8.

¹¹¹⁵ Penalties Guidance, paragraph 2.9.

Application to the present case

8.35 In this case, the PSR has decided to apply a starting point percentage of 23% for the Network market sharing agreement and 25% for the End of contract agreement. This is based on the considerations set out below in relation to the nature of the infringement, the specific circumstances relevant to the extent and likelihood of harm to competition in this case, and the requirements of general deterrence.

Nature of the Infringements

8.36 The two Infringements at issue in this case concern market sharing (see paragraphs 7.202 and 7.212 above). Market sharing is a serious ‘by object’ infringement of the Chapter I prohibition. Therefore, the PSR has considered that for each Infringement the starting point should fall within the 21% to 30% range.

8.37 The End of contract agreement is more egregious in nature than the Network market sharing agreement, and therefore merits a higher starting point, since:

- a. APS and PFS were already participants in the Network market sharing agreement at the time they entered into the End of contract agreement. The End of contract agreement extended the customer allocation conduct to cover situations that were excluded from the Network market sharing agreement (see paragraph 7.81 above). As a result, the competitive constraints PFS and APS faced were further reduced (see paragraph 7.207 above). This resulted in a greater distortion effect on competition, with worse outcomes for APS and PFS’s customers through less choice, and potentially higher prices and/or lower quality of service.
- b. In doing so, the End of contract agreement targeted the procurement process in public sector tendering – a framework designed to ensure a competitive process for the benefit of Public bodies.

Specific circumstances relevant to the extent and likelihood of harm to competition in this case

8.38 In reaching the decision to set the starting points at 23% and 25% respectively, the PSR has taken into account the following relevant specific circumstances which apply to both Infringements in this case:

- a. **The nature of the product/services:** The PSR has concluded that the relevant market in which Network PMs operate, in relation to the Infringement(s), is that for the supply of prepaid card services for welfare disbursements to Public bodies in GB (see paragraphs 6.60 and 6.71 above). The prepaid cards were to be mainly used by recipients of welfare disbursements. Alternative means of transferring funds to such recipients (for example, cheques or cash payments to welfare recipients) were not sufficiently close substitutes to be included in the relevant market (see paragraph 6.24 above).
- b. **The structure of the market and the Network PMs’ market shares:** The market was concentrated, and the Network PMs participating in the Infringements had high market shares. Until the end of 2016 the Network market sharing agreement involved three of the four main suppliers in the market (with high combined market shares, as set out in Table 1 at paragraph 3.87); after 2016, all Network PMs active in the market (PFS and allpay) were parties to the Network market sharing agreement; the End of contract agreement involved

two of the four main suppliers in the market (PFS and APS, who together had the largest market shares in the market).

- c. **The market coverage of the Infringements:** Both Infringements covered public sector bodies that distributed welfare payments to recipients, across the entirety of GB. The potential customer base, through the Network, included approximately 150 local authorities in England (and others in Scotland and Wales), NHS Clinical Commissioning Groups and Housing Associations across GB as well as certain central government departments (for example, the DWP) (see paragraphs 4.6 and 4.45 above). As three of the four main suppliers supplied prepaid cards on the Mastercard brand, a significant majority of prepaid cards circulated in the marketplace through GB Public bodies were Mastercard cards.
- d. **The actual or potential harm caused to customers (and consumers):** The PSR has concluded that as a result of the Infringements, Public bodies were deprived of the benefits of unrestricted competition between suppliers, which resulted in less choice and potentially higher prices and lower quality of services. As set out above in this Decision (see, for example, paragraphs 3.124 to 3.129, 7.200 and 7.209), the Public bodies could and did indeed switch prepaid card providers both during and at the end of a contract. The Infringements restricted competition between suppliers that were clearly capable of competing for customers and would otherwise have competed were it not for the Infringements. This is evidenced by the fact that the Network PMs competed vigorously against any supplier that was not a party to the anti-competitive arrangements (see, for example, paragraphs 5.88a), 5.92b), 5.116d) and 7.38 above).

General deterrence

- 8.39** In setting the starting point at 23% for the Network market sharing agreement and at 25% for the End of contract agreement, the PSR has also taken into account the need to deter other undertakings from engaging in similar infringements in the future. The PSR has concluded that the relevant starting points were appropriate for the purposes of general deterrence in this case. Lower starting points would undermine the clear message for other businesses that they should not engage in similar conduct.

Step 2: Adjustment for duration

- 8.40** The starting point under Step 1 may be increased or, in particular circumstances, decreased to take into account the duration of an infringement.¹¹¹⁶ Where the total duration of an infringement is more than one year, the PSR will round up part years to the nearest quarter year, although the PSR may in exceptional cases decide to round up the part year to a full year.¹¹¹⁷
- 8.41** In this case, to reflect the duration of each Party's participation in the Infringement(s) (which has been set out in paragraphs 7.219 to 7.224 above), the PSR has applied the following multipliers to the respective starting points:

¹¹¹⁶ Penalties Guidance, paragraph 2.16.

¹¹¹⁷ Penalties Guidance, paragraph 2.16.

Network market sharing agreement

- a. **allpay:** A multiplier of 3.5 years, reflecting its participation in the Network market sharing agreement from (i) 2 May 2012 to 1 November 2013 and (ii) from 1 March 2016 to 6 February 2018 (in total, 3 years, 5 months and 5 days).
- b. **APS:** A multiplier of 4.5 years, reflecting its participation in the Network market sharing agreement from 2 May 2012 to 12 October 2016 (4 years, 5 months and 10 days).
- c. **Mastercard:** A multiplier of 6 years, reflecting its participation in the Network market sharing agreement from 2 May 2012 to 6 February 2018 (5 years, 9 months and 4 days).
- d. **PFS:** A multiplier of 6 years, reflecting its participation in the Network market sharing agreement from 2 May 2012 to 6 February 2018 (5 years, 9 months and 4 days).
- e. **Sulion:** A multiplier of 6 years, reflecting its participation in the Network market sharing agreement from 2 May 2012 to 6 February 2018 (5 years, 9 months and 4 days).

End of contract agreement

- a. **APS:** A multiplier of 2 years, reflecting its participation in the End of contract agreement from 19 August 2014 to 18 July 2016 (1 year and 11 months).
- b. **PFS:** A multiplier of 2 years, reflecting its participation in the End of contract agreement from 19 August 2014 to 18 July 2016 (1 year and 11 months).

Step 3: Adjustment for aggravating and mitigating factors

- 8.42** The amount of the penalty, adjusted as appropriate at Step 2, may be increased where there are aggravating factors, or decreased where there are mitigating factors.¹¹¹⁸ A non-exhaustive list of aggravating and mitigating factors is set out in paragraphs 2.18 and 2.19 of the Penalties Guidance. In the circumstances of this case, the PSR considers it appropriate to adjust the penalties at Step 3 to take account of the factors set out below.

Aggravating factor: intentionality

- 8.43** The fact that an infringement was committed intentionally rather than negligently can be an aggravating factor.¹¹¹⁹ As referred to in paragraph 8.13 above, the CAT has determined that an infringement is committed 'intentionally' for the purposes of section 36(3) of the Act if the undertaking must have been aware, or could not have been unaware, that its conduct had the object or would have the effect of restricting competition.¹¹²⁰

¹¹¹⁸ Penalties Guidance, paragraph 2.17.

¹¹¹⁹ Penalties Guidance, paragraph 2.18 and footnote 31.

¹¹²⁰ *Argos Limited and Littlewoods Limited v OFT* [2005] CAT 13, paragraph 221. See also: *Napp Pharmaceutical Holdings Limited and Subsidiaries v Director General of Fair Trading* [2002] CAT 1 paragraph 456: '... an infringement is committed intentionally for the purposes of the Act if the undertaking must have been aware that its conduct was of such a nature as to encourage a restriction or distortion of competition ... It is sufficient that the undertaking could not have been unaware that its conduct had the object or would have the effect of restricting competition, without it being necessary to show that the undertaking also knew that it was infringing the Chapter I or Chapter II prohibition.'

8.44 In relation to both the Network market sharing agreement and End of contract agreement, as set out in paragraphs 8.18 and 8.20 above, there is strong evidence indicating that each of the Parties must have been aware or could not have been unaware that their conduct had the object or would have had the effect of restricting competition.

8.45 The PSR has therefore applied a 10% uplift in penalty to each of allpay, APS, Mastercard, PFS and Sulion in relation to the Network market sharing agreement, and a 10% uplift to APS and PFS in relation to the End of contract agreement for intentionality.

Aggravating factor: role of the undertaking instigator of the infringement

8.46 The PSR may increase a party's penalty if that party was the instigator in an infringement.¹¹²¹

8.47 In the present case, the PSR considers that PFS and Sulion acted as instigators as follows:

- a. Sulion acted as instigator in relation to the Network market sharing agreement. In particular the PSR notes that, as detailed at paragraph 5.7 above, [Sulion director 1] (Sulion) stated at interview that the Network non-targeting arrangement was [Sulion director 1]'s "idea", which was adopted with the awareness of Mastercard, and that [Sulion director 1] discussed it with the Network PMs regarding the introduction of the Network 'basic rules'.
- b. PFS acted as instigator in relation to the End of contract agreement. In particular the PSR notes that, as detailed at paragraphs 5.113 to 5.117 above, PFS initiated all contacts with APS to confirm which Public bodies were contracted with APS so that they would know whether to submit a bid in relation to a particular tender. Further, after APS had left the market, PFS invited allpay to take part in this infringement (see paragraph 5.116 above).

8.48 In these circumstances, the PSR considers it is appropriate to apply:

- a. a 10% uplift in penalty to Sulion for its role as instigator in relation to the Network market sharing agreement; and
- b. a 10% uplift in penalty to PFS for its role as instigator in relation to the End of contract agreement

Aggravating factor: involvement of directors or senior management

8.49 The involvement of directors or senior management in an infringement can be an aggravating factor.¹¹²² Company directors have an additional responsibility, beyond that of other employees, not to infringe the law, and this is true even if an undertaking is relatively small.¹¹²³

¹¹²¹ Penalties Guidance, paragraph 2.18.

¹¹²² Penalties Guidance, paragraph 2.18.

¹¹²³ *Ping Europe Limited v CMA*, [2018] CAT 13, at paragraphs 244 and 246.

8.50 In the present case, directors of PFS and Sulion were closely involved in the Infringement(s) as detailed in Chapter 5. In particular:

- a. [PFS director 1] and [PFS director 2] (both directors of PFS¹¹²⁴) were directly involved in the Network market sharing agreement and in the End of contract agreement. For example, both directors were aware of, and directly involved in, communications with Mastercard and Network PMs that related to the operation of the two agreements (see, for example, paragraphs 5.21, 5.32, 5.85 and 5.86 above on the Network market sharing agreement and paragraph 5.116 above on the End of contract agreement).
- b. [Sulion director 1] ([Sulion director 1] director of Sulion¹¹²⁵), in [Sulion director 1]'s role as the Chair of the Network, was directly involved in the design and implementation of the Network market sharing agreement throughout its duration (see the various references in paragraphs 5.4 to 5.100).

8.51 Given the nature and impact of the direct involvement of directors in the Infringements, the PSR has applied a 10% uplift in penalty for director involvement to:

- a. PFS in relation to each of the Network market sharing agreement and the End of contract agreement; and
- b. Sulion in relation to the Network market sharing agreement.

Mitigating factor: cooperation

8.52 The PSR may decrease the penalty at Step 3 for cooperation that enables the enforcement process to be concluded more effectively and/or speedily. The Penalties Guidance provides that, for these purposes, what is expected is cooperation over and above respecting time limits specified or otherwise agreed (which will be a necessary but not sufficient criterion to merit a reduction).¹¹²⁶

8.53 Given the cooperation provided by the Parties as summarised below, the PSR considers that it is appropriate to apply the following penalty reductions:

- a. allpay brought a complaint to the PSR's attention and cooperated by providing information that assisted the PSR in obtaining court warrants to search the business premises of some of the Parties to the Infringement(s). The PSR has reduced allpay's penalty by 10%.
- b. APS made two of its staff available for interview by the PSR on a voluntary basis and, before APS became a settling party, it agreed in principle to follow a streamlined access to file procedure. For each one of the two infringements APS participated in, the PSR has reduced APS's penalty by 10%.
- c. Mastercard voluntarily disclosed communications concerning potential anti-competitive conduct outside the scope of the Infringement(s) and facilitated the voluntary interview of a staff member, which assisted the case team. The PSR has reduced Mastercard's penalty by 10%.

1124 See Annex C.

1125 See Annex C.

1126 Penalties Guidance, paragraph 2.19 and footnote 33.

- d. PFS's cooperation with the investigation in relation to conduct for which it has leniency (that is, the Network market sharing agreement and End of contract agreement) has already been reflected in the leniency discount. However, PFS also facilitated voluntary interviews of its staff in relation to conduct that was outside its leniency marker and which was subsequently de-prioritised.¹¹²⁷ For this purpose, for each one of the two infringements PFS participated in, the PSR has decided to reduce PFS's penalty by 1.5%.
- e. Sulion's cooperation with the investigation was of great assistance to the PSR. In particular, before the investigation was extended to include Sulion, [Sulion director 1] voluntarily provided the PSR with the hard drive of [Sulion director 1]'s computer in response to a formal request for information, and allowed the PSR to take an image of the hard drive and apply search terms to it. [Sulion director 1] also made [Sulion director 1] available for voluntary interviews on several occasions. Given this level of cooperation, the PSR has reduced Sulion's penalty by 15%.

Mitigating factor: compliance

- 8.54** The PSR may decrease the penalty at Step 3 where an undertaking can show that adequate steps have been taken to ensure future compliance with competition law.¹¹²⁸ To qualify, an undertaking has to provide evidence of adequate steps taken to achieve a clear and unambiguous commitment to competition law compliance throughout the organisation, from the top down, together with appropriate steps relating to competition compliance risk identification, risk assessment, risk mitigation and review activities. The PSR will consider carefully whether evidence presented of an undertaking's compliance activities in a particular case merits a discount to the penalty of up to 10%.
- 8.55** Each of allpay, APS, Mastercard and PFS provided the PSR with details of their compliance activities undertaken after the start of the PSR's investigation. The PSR considers that allpay, APS, Mastercard and PFS have now demonstrated that adequate steps (appropriate for each undertaking's size) have been taken to achieve a clear and unambiguous commitment to compliance throughout the undertaking, and have implemented appropriate steps relating to risk identification, assessment, mitigation and review prior to this Decision, so as to justify a discount.
- 8.56** The PSR considers it is appropriate to grant each of allpay, APS and Mastercard a 10% discount. Submissions from allpay, APS and Mastercard show that these Parties reacted in a timely way to design and implement a comprehensive compliance programme or to review existing compliance activities and change them in the light of the events following the start of the PSR's investigation. Most of the activities were implemented before the beginning of settlement discussions with the PSR.
- 8.57** The PSR notes that steps taken by PFS to ensure future compliance with competition law were initially limited following the start of the investigation in 2018. Only after the settlement discussions with the PSR had started in late 2020, three years after the start of the investigation, did PFS commit to the PSR to implement a number of additional compliance measures, including devising a competition law policy. The PSR concludes that the comparatively late implementation of PFS's compliance programme (finalised in March 2021) warrants a smaller

¹¹²⁷ The PSR notes that continuous and complete cooperation is a condition of leniency and that PFS' cooperation in this respect has been reflected in the leniency discount applied at Step 6.

¹¹²⁸ Penalties Guidance, paragraph 2.19 and footnote 33.

reduction in penalty compared with the other three Parties. As a result, the PSR considers it is appropriate to grant PFS a discount of 2.5%.

8.58 In terms of public commitment, each of these four Parties has also published a statement on its website regarding its commitment to competition law compliance, and all four Parties have committed to submitting a report to the PSR on their compliance activities every year, for the next three years following this Decision.

Step 4: Adjustment for specific deterrence and proportionality

8.59 At Step 4, the PSR will assess whether, in its view, the overall penalty is appropriate in the round.¹¹²⁹ The penalty may be adjusted either to:

- a. increase it to achieve specific deterrence (namely, ensuring that the penalty imposed on the infringing undertaking will deter it from engaging in anti-competitive practices in the future); or
- b. reduce it to ensure that it is proportionate, having regard to appropriate indicators of the size and financial position of the undertaking at the time the penalty is imposed as well as any other relevant circumstances of the case¹¹³⁰

8.60 In considering whether any adjustments should be made at this step, for specific deterrence or for proportionality, the PSR has had regard to appropriate indicators of the size and financial position of the relevant undertakings at the time the penalty is being imposed,¹¹³¹ the nature of the infringements, the role of each undertaking in the infringements, and the impact of each undertaking's infringing activity on competition, as well as any other relevant circumstances of the case.¹¹³²

allpay

8.61 *allpay*'s penalty after Step 3 is £79,314. The PSR has assessed whether this figure should be adjusted for specific deterrence or proportionality, having regard to the factors listed above at paragraph 8.60. In this regard, the PSR notes specifically the role *allpay* had in the Infringement and the fact that it was involved in fewer contacts than other participants (see paragraph 7.53 above).

8.62 Considering all relevant factors in the round, including the relevant financial indicators, the PSR concludes that in the specific circumstances of the case a reduction to the figure set out at Step 3 should be applied (for proportionality reasons), and that a penalty of £35,691 is appropriate.

¹¹²⁹ Penalties Guidance, paragraph 2.24.

¹¹³⁰ Penalties Guidance, paragraph 2.24. The PSR will generally consider averages for profits and turnover over three years and may consider indicators of size and financial position from the time of the infringement (see the Penalties Guidance, paragraph 2.20).

¹¹³¹ Regarding indicators of the size and financial position of the Parties, the PSR has taken into account the following main factors for the last three financial years: total turnover, operating profits, profits after tax, net assets, and dividends.

¹¹³² In this regard, the PSR has also considered how the penalty compares to the relevant turnover (for considerations of both proportionality and specific deterrence). For APS and PFS, this is in each case the combined relevant turnover regarding both Infringements.

APS

8.63 APS's combined penalty (for participating in both infringements) after Step 3 is £1,341,689. The PSR has assessed whether this figure should be adjusted for specific deterrence or proportionality, having regard to the factors listed above at paragraph 8.60. In this regard, the PSR specifically notes the following:

- a. APS committed two infringements: the Network market sharing agreement and the End of contract agreement. While applying a separate penalty for the End of contract agreement is appropriate, the PSR considers that regard should be had to the fact that both infringements overlapped in duration and related to the same market and therefore the same turnover.
- b. The PSR has also considered APS's size and financial position with reference to the relevant indicators. In this regard, the PSR notes that APS made a loss in 2019 and 2020, and it had not been paying dividends and had negative net assets in each year from 2018 to 2020. However, APS' financial accounts show that the undertaking was making investments to target growth. In the 2020 financial accounts APS's management also considered the performance of the business satisfactory, and the accounts reveal that the business had continued to grow in its key markets.

8.64 Considering all relevant factors in the round, including the relevant financial indicators, the PSR concludes that in the specific circumstances of the case a reduction (for proportionality reasons) to the figures set out at Step 3 should be applied, and that a penalty of £839,354 is appropriate.

Mastercard

8.65 Mastercard's penalty after Step 3 is £39,450,078. The PSR considers that this figure is appropriate in this case to act as a specific deterrent, without being disproportionate or excessive. In reaching this view, the PSR has had regard to the factors listed above at paragraph 8.60. In this regard, the PSR notes specifically that a significant proportion of Mastercard's turnover was outside the relevant market, which is one of the situations where the penalty might be increased at Step 4 for specific deterrence.¹¹³³ However, Mastercard's relevant turnover for the starting point at Step 1 already includes revenues not generated from the use of prepaid cards by the public sector for welfare disbursement purposes.

8.66 Considering all relevant factors in the round, including the relevant financial indicators, the PSR considers it is not necessary to adjust Mastercard's penalty at Step 4 for proportionality or specific deterrence.

PFS

8.67 PFS's combined penalty (for participating in both infringements) after Step 3 is £3,475,528. The PSR has assessed whether this figure should be adjusted for specific deterrence or proportionality, having regard to the factors listed above at paragraph 8.60. In this regard, the PSR notes specifically that PFS committed two infringements: the Network market sharing agreement and the End of contract agreement. While applying a separate penalty for the End of contract agreement is appropriate, the PSR considers that regard should be had to the fact

¹¹³³ Penalties Guidance, paragraph 2.21.

that both infringements overlapped in duration and related to the same market and therefore the same turnover.

- 8.68** Considering all relevant factors in the round, including the relevant financial indicators, the PSR concluded that in the specific circumstances of the case a reduction (for proportionality reasons) to the figures set out at Step 3 should be applied, and that a penalty of £1,637,047 is appropriate.

Sulion

- 8.69** Sulion's penalty after Step 3 is £239,185. The PSR has assessed whether this figure should be adjusted for specific deterrence or proportionality, having regard to the factors listed above at paragraph 8.60. In this regard, the PSR notes specifically Sulion's size and financial position. Sulion's turnover and profitability [§<]. The unadjusted penalty would also represent a relatively high proportion of Sulion's profits after tax, global turnover, and dividends. Further, it would represent a significant proportion of the relevant turnover.
- 8.70** Considering all relevant factors in the round, including the relevant financial indicators, the PSR concludes that in the specific circumstances of the case a reduction (for proportionality reasons) to the figures set out at Step 3 should be applied, and that a penalty of £59,796 is appropriate.

Step 5: Adjustment to prevent the maximum penalty from being exceeded

- 8.71** The PSR may not impose a penalty for an infringement that exceeds 10% of an undertaking's 'applicable turnover' – that is, the worldwide turnover of the undertaking in the business year preceding the date of the PSR's decision or, if figures are not available for that business year, the one immediately preceding it.¹¹³⁴
- 8.72** The PSR has assessed the Parties' penalties after Step 4 against this threshold and concluded that an adjustment at Step 5 is necessary only in relation to Sulion's penalty.
- 8.73** The applicable turnover for Sulion is its turnover in the financial year ending 30 April 2021, namely £6,350. Accordingly, Sulion's penalty at the end of Step 5 is £635.

¹¹³⁴ Section 36(8) of the Competition Act, the 2000 Order, as amended, and the Penalties Guidance, paragraph 2.25.

Step 6: Application of reductions for leniency and settlement

- 8.74** The PSR will reduce an undertaking's penalty at Step 6 where the undertaking has a leniency agreement with the PSR or agrees to settle the case with the PSR.¹¹³⁵
- 8.75** As set out in paragraph 2.19, the PSR signed a leniency agreement with PFS on 7 December 2020. Provided PFS continues to cooperate and comply with the conditions of the leniency agreement, PFS will benefit from a 30% leniency discount for the combined penalty for the Network market sharing agreement and the End of contract agreement.
- 8.76** The PSR will apply a penalty reduction where an undertaking agrees to settle with the PSR, which will involve, among other things, the undertaking admitting its participation in the infringement.¹¹³⁶
- 8.77** As set out in paragraph 2.17, the Parties have each admitted their involvement in, and liability for, the Infringement(s) and cooperated with the PSR, thereby expediting the process for concluding the investigation. For this reason, the PSR considers it appropriate to grant:
- a. a 20% settlement discount to each of allpay, Mastercard and PFS to reflect the savings achieved as a result of entering into settlement before the PSR issued the SO
 - b. a 10% settlement to each of APS and Sulion to reflect the savings achieved as a result of entering into settlement shortly after the PSR issued the SO
- 8.78** In particular, the PSR notes that the Parties agreed to a streamlined access to file procedure whereby each Party only had access to the documents on the case file referred to in the SO, and was limited to identifying manifest factual inaccuracies in the SO (which are reflected in this Decision where these were accepted by the PSR).
- 8.79** The respective settlement discounts are provided under the condition that each respective Party continues to comply with the continuing requirements of settlement as set out in their respective settlement agreements with the PSR.
- 8.80** At the end of Step 6, the penalties are as follows:
- a. **allpay:** £28,553
 - b. **APS:** £755,419
 - c. **Mastercard:** £31,560,062
 - d. **PFS:** £916,746
 - e. **Sulion:** £572

¹¹³⁵ Penalties Guidance, paragraphs 2.29 and 2.30.

¹¹³⁶ Penalties Guidance, paragraph 2.30.

Penalty

8.81 The following tables set out a summary of the penalty calculations and penalties the PSR requires each Party to pay in relation to the Network market sharing agreement and, in the case of APS and PFS, the End of contract agreement:

a. allpay

Step	Description	allpay (Network market sharing agreement)
	Relevant turnover	£109,475
1	Starting point	23%
2	Duration multiplier	x 3.5
3	Adjustment for aggravating or mitigating factors	Aggravating: intentionality
		Aggravating: involvement in infringement
		Aggravating: director/senior manager involvement
		Mitigating: cooperation
		Mitigating: compliance programmes
	Total Step 3 adjustment	-10%
4	Adjustment for specific deterrence and proportionality	YES
	Penalty after Step 4	£35,691
5	Adjustment to take account of the statutory maximum penalty	N/A
	Penalty after Step 5	£35,691
6	Leniency discount	N/A
	Pre-SO settlement discount	-20%
	Penalty payable	£28,553

b. APS

Step	Description	APS (Network market sharing agreement)	APS (End of contract agreement)
	Relevant turnover	£963,944	£963,944
1	Starting point	23%	25%
2	Duration multiplier	x 4.5	x 2
3	Adjustment for aggravating or mitigating factors	Aggravating: intentionality	+10%
		Aggravating: involvement in infringement	–
		Aggravating: director/senior manager involvement	–
		Mitigating: cooperation	-10%
		Mitigating: compliance programmes	-10%

Step	Description	APS (Network market sharing agreement)	APS (End of contract agreement)
	Total Step 3 adjustment	-10%	-10%
4	Adjustment for specific deterrence and proportionality	YES	
	Penalty after Step 4	£839,354	
5	Adjustment to take account of the statutory maximum penalty	N/A	
	Penalty after Step 5	£839,354	
6	Leniency discount	N/A	
	Post-SO settlement discount	-10%	
	Penalty payable	£755,419	

c. Mastercard

Step	Description	Mastercard (Network market sharing agreement)
	Relevant turnover	£31,763,349
1	Starting point	23%
2	Duration multiplier	x 6
3	Adjustment for aggravating or mitigating factors	Aggravating: intentionality
		Aggravating: involvement in infringement
		Aggravating: director/senior manager involvement
		Mitigating: cooperation
		Mitigating: compliance programmes
	Total Step 3 adjustment	-10%
4	Adjustment for specific deterrence and proportionality	N/A
	Penalty after Step 4	£39,450,078
5	Adjustment to take account of the statutory maximum penalty	N/A
	Penalty after Step 5	£39,450,078
6	Leniency discount	N/A
	Pre-SO settlement discount	-20%
	Penalty payable	£31,560,062

d. PFS

Step	Description	PFS (Network market sharing agreement)	PFS (End of contract agreement)
	Relevant turnover	£2,002,572	£428,274
1	Starting point	23%	25%
2	Duration multiplier	x 6	x 2
3	Adjustment for aggravating or mitigating factors	Aggravating: intentionality	+10%
		Aggravating: involvement in infringement	–
		Aggravating: director/ senior manager involvement	+10%
		Mitigating: cooperation	-1.5%
		Mitigating: compliance programmes	-2.5%
	Total Step 3 adjustment	+16%	+26%
4	Adjustment for specific deterrence and proportionality	YES	
	Penalty after Step 4	£1,637,047	
5	Adjustment to take account of the statutory maximum penalty	N/A	
	Penalty after Step 5	£1,637,047	
6	Leniency discount	-30%	
	Pre-SO settlement discount	-20%	
	Penalty payable	£916,746	

e. Sulion

Step	Description	Sulion (Network market sharing agreement)	
	Relevant turnover	£150,715	
1	Starting point	23%	
2	Duration multiplier	x 6	
3	Adjustment for aggravating or mitigating factors	Aggravating: intentionality	+10%
		Aggravating: involvement in infringement	+10%
		Aggravating: director/ senior manager involvement	+10%
		Mitigating: cooperation	-15%
		Mitigating: compliance programmes	–
	Total Step 3 adjustment	+15%	
4	Adjustment for specific deterrence and proportionality	YES	
	Penalty after Step 4	£59,796	
5	Adjustment to take account of the statutory maximum penalty	YES	
	Penalty after Step 5	£635	
6	Leniency discount	N/A	
	Post-SO settlement discount	-10%	
	Penalty payable	£572	

E Payment of penalty

8.82 The PSR requires:

- a. allpay to pay a penalty of £28,553
- b. APS to pay a penalty of £755,419
- c. Mastercard to pay a penalty of £31,560,062
- d. PFS to pay a penalty of £916,746
- e. Sulion to pay a penalty of £572

8.83 The penalty will become due to the PSR on 21 March 2022¹¹³⁷ and must be paid to the PSR by close of banking business on that date.¹¹³⁸

¹¹³⁷ The next working day two calendar months from the expected date of receipt of the Decision.

¹¹³⁸ Details on how to pay are set out in the letter accompanying this Decision.

8.84 If that date has passed and:

- a. the period during which an appeal against the imposition, or amount, of that penalty may be made has expired without an appeal having been made, or
- b. such an appeal has been made and determined,

the PSR may commence proceedings to recover from any of the Parties any amount payable under the penalty notice which remains outstanding from the Party, as a civil debt due to the PSR.¹¹³⁹

8.85 This decision has been approved by the PSR's Settlement Decision Makers, Lesley Ainsworth and Alasdair Smith, who have determined the penalties and authorised the Case Sponsor to sign and issue the decision on behalf of the PSR.

SIGNED:

[✂]

**Carole Begent, Case Sponsor, General Counsel
for and on behalf of the Payment Systems Regulator**

18 January 2022

1139 Section 37(1) of the Act.

Annex A

List of defined terms

the Act	The Competition Act 1998.
allpay	allpay Limited, a private limited company with Companies House company number 02933191.
APS	Advanced Payment Solutions Limited, a private limited company with Companies House company number 04947027.
[Programme Manager 1]	[Programme Manager 1], a private limited company with Companies House company number [REDACTED]
BIN	Bank Identification Number.
CAT	The Competition Appeal Tribunal.
CA98 Guidance	The PSR's guidance on the Enforcement of the Competition Act 1998: A guide to the PSR's powers and procedures (PSR PS15/2.1).
the Chapter I prohibition	the prohibition in section 2(1) of the Competition Act 1998.
CMA	the Competition and Markets Authority.
CJEU	Court of Justice of the European Union.
CCG	Clinical Commissioning Groups.
CMA Rules	The Competition Act 1998 (Competition and Markets Authority's Rules) Order 2014, SI 2014/458.
[Programme Manager 2]	[Programme Manager 2] Limited (now called [REDACTED]), a private limited company with Companies House registration number [REDACTED].
Decision	This decision including Annexes.
EA02	the Enterprise Act 2002.
EMI	Institutions authorised or registered by the FCA to issue e-money and undertake payment services under the Electronic Money Regulations 2011, including to provide card accounts, store the monetary value of the e-money on their system or other electronic carrier and use that monetary value to make onward payments. Card accounts provided by Electronic Money Institutions cannot go into overdraft; EMIs therefore issue e-money through prepaid cards, which cannot go into overdraft.

End of contract agreement	The agreement between PFS and APS described in paragraph 7.80.
EU Commission	The European Commission.
European Courts	The General Court of the European Union and the Court of Justice of the European Union.
Exclusive allocation of leads arrangement	The arrangement described in paragraph 7.39.
FCA	The Financial Conduct Authority.
GB	Great Britain.
General Court/ GC	The General Court of the European Union.
Framework Agreement	An umbrella contract that usually covers a number of suppliers.
Infringements	Together the Network market sharing agreement and the End of contract agreement.
Leniency Guidance	<i>Applications for leniency and no-action in cartel cases</i> (OFT1495), adopted by the CMA Board.
NEPO1	The North East Procurement Organisation Framework Agreement that applied from 20 February 2012 to 19 February 2016.
NEPO2	The North East Procurement Organisation Framework Agreement that applied from 9 January 2017 to 8 January 2021.
Mastercard	Mastercard UK Management Services Limited, Mastercard Europe SA (formerly Mastercard Europe SPRL), Mastercard Europe Services Limited and their ultimate parent Mastercard Incorporated.
Network	The National Prepaid Cards Network (formerly the Steering Group or the National Prepaid Cards Steering Group).
Network market sharing agreement	Together the Network non-targeting arrangement and the Exclusive allocation of leads arrangement.
Network non-targeting arrangement	The arrangement described in paragraph 7.39.
Network PMs	PMs who were members of the Network: APS, PFS and allpay (during the periods July 2011 to November 2013 and March 2016 to April 2019) (also referred to, where appropriate, as 'Mastercard PMs').
OFT	The Office of Fair Trading.

Parties	allpay APS Mastercard PFS Sulion
Payment Systems Regulator/PSR	The Payment Systems Regulator Limited.
Penalties Guidance	<i>Guidance as to the appropriate amount of a penalty</i> (CMA73, 18 April 2018).
PFS	Prepaid Financial Services Limited, a private limited company with Companies House company number 06337638 and its parent Prepaid Financial Services (Ireland) Limited with company number IE503639.
PMs	Programme manager(s). (Programme managers provide a package of services which allows customers to access payment systems, including the Mastercard and/or [Card scheme 1] card networks, and may also include access to BACS and Faster Payments, if the prepaid card offers a 'banking-lite' solution. See paragraph 3.45.)
Public body	A public sector organisation, including local authorities, housing associations and CCGs.
Relevant Market/s	<p>The relevant market in which Network PMs operate is the supply of prepaid card services for welfare disbursements to Public bodies in GB.</p> <p>The relevant market in which Mastercard operates is the supply in the UK of network services for prepaid cards.</p> <p>The relevant market in which Sulion operates is the provision of consultancy services to the Network in GB.</p>
Relevant Period 1	2 May 2012 to 6 February 2018.
Relevant Period 2	19 August 2014 to 18 July 2016.
Relevant Periods	Relevant Period 1 and Relevant Period 2.
RFI	Letters requesting documents and information without recourse to the PSR's formal powers (that is, a request for information).
Section 26 Notice	Notices requiring the production of documents and information relevant to the investigation under Section 26 of the Act.
SO	The Statement of Objections including annexes dated 31 March 2021.

Statements of Work/SoW	The statements of work entered into between Mastercard and Sulion under the Framework Services Agreement.
supply of prepaid card services to Public bodies	The provision of prepaid card services for welfare disbursements to Public bodies in GB, which includes arranging for the provision of prepaid cards for distribution to end users and may also include other ancillary services such as the provision of contact centres, management information, transaction processing, banking-lite services and supply of card account information to clients and end users.
Sulion	Sulion Limited, a private limited company with Companies House company number 05437252.
Surrey Framework	The Surrey County Council Framework Agreement that applied from February 2015 to February 2019.
Transition Period	The period which ended at 11pm UK time on 31 December 2020.
TFEU	Treaty on the Functioning of the European Union.
UK	The United Kingdom.

References to legislation in the above list of defined terms refer equally to any amendments to that legislation.

Annex B

Section 26 Notices and RFIs

allpay

Date	Section 26/RFI
22 June 2018 ¹¹⁴⁰	Section 26
10 July 2019 ¹¹⁴¹	Section 26
25 March 2020 ¹¹⁴²	Section 26

APS

Date	Section 26/RFI
11 April 2018 ¹¹⁴³	Section 26
10 July 2019 ¹¹⁴⁴	Section 26
25 March 2020 ¹¹⁴⁵	Section 26

1140 UUID 186480002.

1141 UUID 181870029.

1142 UUID 243500024.

1143 UUID 186510003.

1144 UUID 182100012.

1145 UUID 243530020.

Mastercard

Date	Section 26/RFI
29 March 2018 ¹¹⁴⁶	Section 26
10 August 2018 ¹¹⁴⁷	Section 26
13 August 2019 ¹¹⁴⁸	Section 26
25 March 2020 ¹¹⁴⁹	Section 26

PFS

Date	Section 26/RFI
03 April 2018 ¹¹⁵⁰	RFI
03 May 2018 ¹¹⁵¹	RFI
10 July 2019 ¹¹⁵²	RFI
25 March 2020 ¹¹⁵³	RFI

Sulion/[Sulion director 1]

Date	Section 26/RFI
24 April 2018 ¹¹⁵⁴	Section 26
25 March 2020 ¹¹⁵⁵	Section 26

[Programme Manager 1]

Date	Section 26/RFI
11 April 2018 ¹¹⁵⁶	Section 26

1146 UUID 186540006.

1147 UUID 182230199.

1148 UUID 197130009.

1149 UUID 243560060.

1150 UUID 182280080.

1151 UUID 186570002.

1152 UUID 182270139.

1153 UUID 243600030.

1154 UUID 186420008.

1155 UUID 243270033.

1156 UUID 186520003.

Third Parties

Date	Third Party	Section 26/RFI
13 June 2019 ¹¹⁵⁷	[Public body 2]	Section 26
13 June 2019 ¹¹⁵⁸	[Public body 3]	Section 26
13 June 2019 ¹¹⁵⁹	[Public body 12]	Section 26
13 June 2019 ¹¹⁶⁰	[Public body 3]	Section 26
13 June 2019 ¹¹⁶¹	[Public body 37]	Section 26
13 June 2019 ¹¹⁶²	[Public body 36]	Section 26
13 June 2019 ¹¹⁶³	[Public body 27]	Section 26
13 June 2019 ¹¹⁶⁴	[Public body 5]	Section 26
13 June 2019 ¹¹⁶⁵	[Public body 42]	Section 26
13 June 2019 ¹¹⁶⁶	[Public body 41]	Section 26
13 June 2019 ¹¹⁶⁷	[Public body 34]	Section 26
13 June 2019 ¹¹⁶⁸	[Public body 44]	Section 26
13 June 2019 ¹¹⁶⁹	[Public body 40]	Section 26

1157 UUID 243950061.

1158 UUID 243920018.

1159 UUID 243660023.

1160 UUID 243760042.

1161 UUID 243620007.

1162 UUID 243640003.

1163 UUID 244020051.

1164 UUID 244030020.

1165 UUID 243740076.

1166 UUID 243980013.

1167 UUID 244000072.

1168 UUID 243690027.

1169 UUID 243710011.

Annex C

[X]

Annex D

UK Prepaid Steering Group/ Network Meetings 2011 – 2018

	Date	Location	Title of meeting	Attendees	Key agenda items
1	26 May 2011 11.00– 13.45 ¹¹⁷⁰	Mastercard 10 Upper Bank St. Canary Wharf London E14 5NP	Prepaid Cards in Local Government – Working Group Meeting – London	Sulion/ [Sulion director 1] Mastercard Public bodies	<ul style="list-style-type: none"> • Welcome from Mastercard • Introductions and the aims of the Working Group
2	6 July 2011 11.00– 13.45 ¹¹⁷¹	Mastercard 10 Upper Bank St. Canary Wharf London E14 5NP	Prepaid Cards in Local Government – Steering Group Meeting – London	Sulion/ [Sulion director 1] Mastercard allpay APS PFS Public bodies	<ul style="list-style-type: none"> • Welcome from Mastercard • PMs panel <ul style="list-style-type: none"> ○ PMs will offer insights into their experiences to date and the major issues they encounter when working with local authorities ○ General discussion • Issues arising and design of subsequent, in phases <ul style="list-style-type: none"> ○ What should be included in the guidance document? ○ What's the best way of generating the content? ○ Outline of generation and dissemination steps

1170 UUID PSR0001-93180-000732.

1171 UUID PSR0001-93052-000993.

	Date	Location	Title of meeting	Attendees	Key agenda items
3	13 October 2011 11.00–13.45 ¹¹⁷²	Mastercard 10 Upper Bank St. Canary Wharf London E14 5NP	Prepaid Cards in Local Government – Steering Group Meeting – London	Sulion/ [Sulion director 1] Mastercard allpay APS PFS [Programme Manager 2] Public bodies	<ul style="list-style-type: none"> • Welcome from Mastercard • Guidance Resource <ul style="list-style-type: none"> ○ An overview of what will be included in the guidance resource ○ Strategy for completion ○ Targeted round table discussions on service areas / benefits
Total number of meetings for 2011: 3					
4	30 January 2012 11.00–13.30 ¹¹⁷³	Mastercard 10 Upper Bank St. Canary Wharf London E14 5NP	Prepaid Cards in Local Government – Steering Group Meeting – London	Sulion/ [Sulion director 1] Mastercard allpay APS PFS [Programme Manager 2] Public bodies	<ul style="list-style-type: none"> • Welcome from Mastercard • Updates on progress since last meeting – State of the market <ul style="list-style-type: none"> ○ allpay, APS, [Programme Manager 2], PFS • Review of guidance document
5	19 July 2012 11.00–13.30 ¹¹⁷⁴	Mastercard 10 Upper Bank St. Canary Wharf London E14 5NP	Prepaid Cards in Local Government – Steering Group Meeting – London	Mastercard Sulion/ [Sulion director 1] PFS allpay Public bodies	<ul style="list-style-type: none"> • Guidance resource launch events feedback: Events – Manchester, London, Wakefield, Gateshead • State of the market: Mastercard, allpay, APS, PFS
6	27 November 2012 11.00–13.30 ¹¹⁷⁵	Mastercard 10 Upper Bank St. Canary Wharf London E14 5NP	Prepaid Cards in Local Government – Steering Group Meeting – London	No attendance list	<ul style="list-style-type: none"> • PM's perspectives

1172 UUID PSR0001-95290-003014.

1173 UUID PSR0001-95087-000882.

1174 UUID PSR0001-93051-001794.

1175 UUID PSR0001-95087-000951 NB: the agenda states that this meeting was held on 27 December 2012. It is clear from the covering letter that it was held on 27 November 2012. UUID PSR0001-95087-000440.

	Date	Location	Title of meeting	Attendees	Key agenda items
7	4 December 2012 10.30–13.00 ¹¹⁷⁶	Mansion House St. Helens Square York YO1 9QL	Prepaid Cards in Local Government – Steering Group Meeting – York	No attendance list	<ul style="list-style-type: none"> PM's perspectives
Total number of meetings for 2012: 4					
8	21 May 2013 10.30–13.00 ¹¹⁷⁷	Mastercard 10 Upper Bank St. Canary Wharf London E14 5NP	Prepaid Cards in Local Government – Steering Group Meeting – London	Sulion/ [Sulion director 1] Mastercard Public bodies	<ul style="list-style-type: none"> [Public body 45] – progress towards tender [Public body 53] – procurement / selection Responses to Ask the PM questions Programme progress, new functionality and extended areas of use <ul style="list-style-type: none"> Prepaid Financial Services Advanced Payment Solutions
9	12 June 2013 10.00–13.00 ¹¹⁷⁸	State Room Mansion House St. Helens Square York YO1 9QL	Prepaid Cards in Local Government – Steering Group Meeting – York	Mastercard Sulion/ [Sulion director 1] PFS Public bodies	<ul style="list-style-type: none"> Responses to Ask the PM questions Programme progress, new functionality and extended areas of use <ul style="list-style-type: none"> Prepaid Financial Services Advanced Payment Solutions
10	15 October 2013 10.30–13.00 ¹¹⁷⁹	Dining Room Mansion House St. Helens Square York YO1 9QL	Prepaid Cards in Local Government – October Network Meeting – York	Mastercard Sulion/ [Sulion director 1] Public bodies	<ul style="list-style-type: none"> General update from PMs Update on Universal Credit special interest group – pilots <ul style="list-style-type: none"> Update on Universal Credit from DWP Discussion on future shape of the network/AOB

¹¹⁷⁶ UUID PSR0001-95290-002997.

¹¹⁷⁷ UUID PSR0001-93180-000685.

¹¹⁷⁸ UUID PSR0001-93052-001035.

¹¹⁷⁹ UUID PSR0001-93050-002573.

	Date	Location	Title of meeting	Attendees	Key agenda items
11	22 October 2013 10.30–13.30 ¹¹⁸⁰	Mastercard 10 Upper Bank St. Canary Wharf London E14 5NP	Prepaid Cards in Local Government – October Network Meeting – London	Mastercard Sulion/ [Sulion director 1] PFS APS DWP Public bodies	<ul style="list-style-type: none"> General update from PMs Update on Universal Credit special interest group – pilots <ul style="list-style-type: none"> Update on Universal Credit from DWP Discussion on future shape of the network/AOB
Total number of meetings for 2013: 4					
12	27 March 2014 10.00–12.30 ¹¹⁸¹	Mastercard 10 Upper Bank St. Canary Wharf London E14 5NP	Prepaid Cards in Local Government – Network Meeting – London	Mastercard Sulion/ [Sulion director 1] PFS APS DWP Public bodies	<ul style="list-style-type: none"> PM updates Update on Universal credit from DWP
13	1 April 2014 10.00–12.30 ¹¹⁸²	Millennium Room The Carriageworks The Electric Press Millennium Square Leeds LS2 3AD	Prepaid Cards in Local Government – Network Meeting – Leeds	Mastercard Sulion/ [Sulion director 1] PFS APS DWP Public bodies	<ul style="list-style-type: none"> PM updates Update on Universal credit from DWP
14	8 July 2014 10.00–12.30 ¹¹⁸³	The Studio Birmingham	National Prepaid Cards Network Meeting – Birmingham	Mastercard Sulion/ [Sulion director 1] PFS APS Public bodies	<ul style="list-style-type: none"> PM Updates/Questions

1180 UUID PSR0001-93180-000657.

1181 UUID PSR0001-95087-000935.

1182 UUID PSR0001-93050-004601.

1183 UUID PSR0001-95290-004462.

	Date	Location	Title of meeting	Attendees	Key agenda items
15	14 July 2014 10.0– 13.00 ¹¹⁸⁴	Mastercard 10 Upper Bank St. Canary Wharf London E14 5NP	National Prepaid Cards Network Meeting – London	Mastercard Sulion/ [Sulion director 1] PFS APS Public bodies	<ul style="list-style-type: none"> PM Updates/Questions
17	17 July 2014 10.00– 12.30 ¹¹⁸⁵	The Carriageworks Millennium Square Leeds LS2 3AD	National Prepaid Cards Network Meeting – Leeds	Mastercard Sulion/ [Sulion director 1] PFS APS Public bodies	<ul style="list-style-type: none"> PM Updates/Questions
18	5 November 2014 10.00– 13.00 ¹¹⁸⁶	Mastercard 10 Upper Bank St. Canary Wharf London E14 5NP	National Prepaid Cards Network Meeting – London	Mastercard Sulion/ [Sulion director 1] PFS APS DWP Public bodies	Update from PFS <ul style="list-style-type: none"> New customer update Using prepaid cards as smartcards Potential new card features Update from APS <ul style="list-style-type: none"> New customer update Dealing with customer contacts Customer communications DWP update
19	10 November 2014 10.00–12.30 ¹¹⁸⁷	The Studio 7 Cannon St. Birmingham B2 5EP	National Prepaid Cards Network Meeting – Birmingham	Mastercard Sulion/ [Sulion director 1] PFS DWP Public bodies	Update from PFS <ul style="list-style-type: none"> New customer update Using prepaid cards as smartcards Potential new card features Update from APS <ul style="list-style-type: none"> New customer update Dealing with customer contacts Customer communications DWP update

1184 UUID PSR0001-93051-002237.

1185 UUID PSR0001-93051-001521.

1186 UUID PSR0001-93180-000580.

1187 UUID PSR0001-93052-000384.

	Date	Location	Title of meeting	Attendees	Key agenda items
20	17 November 2014 10.00–12.30 ¹¹⁸⁸	The Studio 51 Lever St. Manchester M1 1FN	National Prepaid Cards Network Meeting – Manchester	Mastercard Sulion/ [Sulion director 1] PFS APS Public bodies	Update from PFS <ul style="list-style-type: none"> • New customer update • Using prepaid cards as smartcards • Potential new card features Update from APS <ul style="list-style-type: none"> • New customer update • Dealing with customer contacts • Customer communications DWP Update

Total number of meetings for 2014: 8

21	24 February 2015 10.00–13.00 ¹¹⁸⁹	Leeds Town Hall The Headrow Leeds LS1 3AD	National Prepaid Cards Network Meeting – Leeds	Mastercard Sulion/ [Sulion director 1] PFS APS DWP Public bodies	Update from APS <ul style="list-style-type: none"> • Market update • Product functionality and developments Update from PFS <ul style="list-style-type: none"> • Market information • InControl software demonstration Mastercard <ul style="list-style-type: none"> • Update on card use in the public sector DWP update
22	3 March 2015 10.00–13.00 ¹¹⁹⁰	Mastercard 10 Upper Bank St. Canary Wharf London E14 5NP	National Prepaid Cards Network Meeting – London	Mastercard Sulion/ [Sulion director 1] PFS APS DWP Public bodies	Update from APS <ul style="list-style-type: none"> • Market update • Product functionality and developments Update from PFS <ul style="list-style-type: none"> • Market information • InControl software demonstration Mastercard <ul style="list-style-type: none"> • Update on card use in the public sector DWP update

¹¹⁸⁸ UUID PSR0001-93051-001409.

¹¹⁸⁹ UUID PSR0001-93051-002067.

¹¹⁹⁰ NB: the agenda states that the date of the meeting was 3rd February 2015, however, the covering email from [Sulion director 1] dated 25 February 2015, refers to the date as 3rd March, UUID PSR0001-95290-002825, UUID PSR0001-95290-002822.

	Date	Location	Title of meeting	Attendees	Key agenda items
23	9 March 2015 10.00–13.00 ¹¹⁹¹	The Studio 7 Cannon Street Birmingham B2 5EP	National Prepaid Cards Network Meeting – Birmingham	Mastercard Sulion/ [Sulion director 1] PFS APS ¹¹⁹² Public bodies	Update from APS <ul style="list-style-type: none"> Market update Product functionality and developments Update from PFS <ul style="list-style-type: none"> Market information InControl software demonstration Mastercard <ul style="list-style-type: none"> Update on card use in the public sector DWP update
24	30 June 2015 10.00–13.00 ¹¹⁹³	The Studio 7 Cannon Street Birmingham B2 5EP	National Prepaid Cards Network Meeting – Birmingham	No attendance list	Issues raised by members <ul style="list-style-type: none"> Surrey framework contract – access options
25	2 July 2015 10.00–13.00 ¹¹⁹⁴	Mastercard 10 Upper Bank St. Canary Wharf London E14 5NP	National Prepaid Cards Network Meeting – London	No attendance list	Issues raised by members <ul style="list-style-type: none"> Surrey framework contract – access options
26	7 July 2015 10.00–13.00 ¹¹⁹⁵	Cohen Room Leeds Town Hall The Headrow Leeds LS1 3AD	National Prepaid Cards Network Meeting – Leeds	Mastercard Sulion/ [Sulion director 1] PFS APS DWP Public bodies	Issues raised by members <ul style="list-style-type: none"> Surrey framework contract – access options
27	1 December 2015 10.00–13.00 ¹¹⁹⁶	Mastercard 10 Upper Bank St. Canary Wharf London E14 5NP	National Prepaid Cards Network Meeting – London	Mastercard Sulion/ [Sulion director 1] PFS APS ¹¹⁹⁷ Public bodies	PMs' updates <ul style="list-style-type: none"> PFS – latest on changes to 'Safe Harbor' APS – upgrades and improvements

1191 UUID PSR0001-93050-000188.

1192 UUID PSR0001-95290-002819.

1193 UUID PSR0001-95290-002737.

1194 UUID PSR0001-93052-000166.

1195 UUID PSR0001-93051-002705.

1196 UUID PSR0001-93050-001338.

1197 UUID PSR0001-93050-001327.

	Date	Location	Title of meeting	Attendees	Key agenda items
28	4 December 2015 10.00–13.00 ¹¹⁹⁸	[X] York [X]	National Prepaid Cards Network Meeting – York	Mastercard Sulion/ [Sulion director 1] PFS APS Public bodies ¹¹⁹⁹	PMS' updates <ul style="list-style-type: none"> • PFS – latest on changes to 'Safe Harbor' • APS – upgrades and improvements
29	9 December 2015 10.00–13.00 ¹²⁰⁰	The Studio 7 Cannon St. Birmingham B2 5EP	National Prepaid Cards Network Meeting – Birmingham	Mastercard Sulion/ [Sulion director 1] PFS APS Public bodies ¹²⁰¹	PMS' updates <ul style="list-style-type: none"> • PFS – latest on changes to 'Safe Harbor' • APS – upgrades and improvements
Total number of meetings for 2015: 9					
30	16 March 2016 10.00–13.00 ¹²⁰²	Room 2 [X] York [X]	National Prepaid Cards Network Meeting – York	Mastercard Sulion/ [Sulion director 1] PFS APS allpay Public bodies	PMS' updates <ul style="list-style-type: none"> • PFS – latest on changes to 'Safe Harbor', Current Account switching, 2015 figures • APS – upgrades and improvements, 2015 figures • allpay – new Direct Payments system
31	18 March 2016 10.00–13.00 ¹²⁰³	Mastercard 10 Upper Bank St. Canary Wharf London E14 5NP	National Prepaid Cards Network Meeting – London	Mastercard Sulion/ [Sulion director 1] PFS APS allpay Public bodies ¹²⁰⁴	PMS' updates <ul style="list-style-type: none"> • PFS – latest on changes to 'Safe Harbor', Current Account switching, 2015 figures • APS – upgrades and improvements, 2015 figures • allpay – new Direct Payments system

1198 UUID PSR0001-93052-000219.

1199 UUID PSR0001-93050-001329.

1200 UUID PSR0001-93050-000347.

1201 UUID PSR0001-95290-002989.

1202 UUID PSR0001-95087-000709.

1203 UUID 101211915.

1204 UUID 101210446.

	Date	Location	Title of meeting	Attendees	Key agenda items
32	22 March 2016 10.00–13.00 ¹²⁰⁵	The Studio 7 Cannon St. Birmingham B2 5EP	National Prepaid Cards Network Meeting – Birmingham	Mastercard Sulion/ [Sulion director 1] PFS APS allpay Public bodies	PMS' updates <ul style="list-style-type: none"> • PFS – latest on changes to 'Safe Harbor', Current Account switching, 2015 figures • APS – upgrades and improvements, 2015 figures • allpay – new Direct Payments system
33	13 April 2016 10.00–13.00 ¹²⁰⁶	Exchange House 12–14 The Crescent Taunton TA1 4EB	National Prepaid Cards Network Meeting – Taunton	Mastercard Sulion/ [Sulion director 1] PFS APS allpay Public bodies ¹²⁰⁷	PMS' updates <ul style="list-style-type: none"> • PFS – latest on changes to 'Safe Harbor', Current Account switching, 2015 figures • APS – upgrades and improvements, 2015 figures • allpay – new Direct Payments system
34	23 June 2016 10.00–13.00 ¹²⁰⁸	Mastercard 10 Upper Bank St. Canary Wharf London E14 5NP	National Prepaid Cards Network Meeting – London	Mastercard Sulion/ [Sulion director 1] PFS APS allpay Public bodies	<ul style="list-style-type: none"> • Network update • Universal Credit
35	5 July 2016 10.00–13.00 ¹²⁰⁹	Room 2 [<] York [<]	National Prepaid Cards Network Meeting – York	Mastercard Sulion/ [Sulion director 1] PFS APS allpay Public bodies	<ul style="list-style-type: none"> • Network update • Universal Credit

1205 UUID PSR0001-93052-000271.

1206 UUID PSR0001-93052-000275.

1207 UUID PSR0001-93050-001455.

1208 UUID PSR0001-95290-004631.

1209 UUID PSR0001-95087-000613.

	Date	Location	Title of meeting	Attendees	Key agenda items
36	13 July 2016 10.00– 13.00 ¹²¹⁰	Exchange House 12–14 The Crescent Taunton TA1 4EB	National Prepaid Cards Network Meeting – Taunton	Mastercard Sulion/ [Sulion director 1] PFS APS allpay Public bodies	<ul style="list-style-type: none"> • Network update • Universal Credit
37	6 October 2016 10.00– 13.00 ¹²¹¹	Edinburgh Training and Conference Venue 16 St. Mary's St. Edinburgh EH1 1SU	Using Prepaid Cards for Direct Payments: 5 Years On	Public bodies Mastercard Sulion/ [Sulion director 1] APS PFS allpay	<ul style="list-style-type: none"> • Prepaid cards suppliers and the Surrey County Council framework contract
38	22 November 2016 10.00– 13.00 ¹²¹²	Mastercard 10 Upper Bank St. Canary Wharf London E14 5NP	National Prepaid Cards Network Meeting – London	Mastercard Sulion/ [Sulion director 1] PFS allpay Public bodies	<ul style="list-style-type: none"> • Prepaid cards & Universal Credit
38	29 November 2016 10.00– 13.00 ¹²¹³	The Studio 7 Cannon St Birmingham B2 5EP	National Prepaid Cards Network Meeting – Birmingham	Mastercard Sulion/ [Sulion director 1] PFS allpay Public bodies	<ul style="list-style-type: none"> • Prepaid cards & Universal Credit
40	2 December 2016 10.00– 13.00 ¹²¹⁴	Room 2 [<] York [<]	National Prepaid Cards Network Meeting – York	Mastercard Sulion/ [Sulion director 1] PFS allpay Public bodies	<ul style="list-style-type: none"> • Prepaid cards & Universal Credit

1210 UUID PSR0001-93052-000094.

1211 UUID PSR0001-95290-005462.

1212 UUID PSR0001-93053-000092.

1213 UUID PSR0001-95087-000651.

1214 UUID PSR0001-95290-005560.

	Date	Location	Title of meeting	Attendees	Key agenda items
41	8 December 2016 10.00–13.00 ¹²¹⁵	Exchange House 12–14 The Crescent Taunton TA1 4EB	National Prepaid Cards Network Meeting – Taunton	Mastercard Sulion/ [Sulion director 1] PFS allpay Public bodies	<ul style="list-style-type: none"> Prepaid cards & Universal Credit
Total number of meetings for 2016: 12					
42	15 March 2017 10.00–13.00 ¹²¹⁶	Mastercard 10 Upper Bank St. Canary Wharf London E14 5NP	National Prepaid Cards Network Meeting – London	Mastercard Sulion/ [Sulion director 1] PFS allpay DWP Public bodies	Market & suppliers <ul style="list-style-type: none"> [Programme Manager 1] withdrawal allpay, PFS & Mastercard – short updates and questions Transitioning suppliers NEPO framework contract
43	22 March 2017 10.00–13.00 ¹²¹⁷	The Studio 7 Cannon St. Birmingham B2 5EP	National Prepaid Cards Network Meeting – Birmingham	Mastercard Sulion/ [Sulion director 1] PFS allpay Public bodies	Market & suppliers <ul style="list-style-type: none"> [Programme Manager 1] withdrawal allpay, PFS & Mastercard – short updates and questions Transitioning suppliers NEPO framework contract
44	30 March 2017 10.00–13.00 ¹²¹⁸	Edinburgh Training and Conference Venue 16 St Mary's Street Edinburgh EH1 1SU	National Prepaid Cards Network Meeting – Edinburgh	Mastercard Sulion/ [Sulion director 1] PFS allpay Public bodies	Market & suppliers <ul style="list-style-type: none"> [Programme Manager 1] withdrawal allpay, PFS & Mastercard – short updates and questions NEPO framework contract <ul style="list-style-type: none"> How NEPO's new framework contract operates Questions

1215 UUID PSR0001-93053-000107.

1216 UUID PSR0001-95290-005490.

1217 UUID PSR0001-95502-001013.

1218 UUID PSR0001-93053-000113.

	Date	Location	Title of meeting	Attendees	Key agenda items
45	5 April 2017 10.00– 13.00 ¹²¹⁹	[X] York [X]	National Prepaid Cards Network Meeting – York	Mastercard Sulion/ [Sulion director 1] PFS allpay DWP Public bodies	Market & suppliers <ul style="list-style-type: none"> • [Programme Manager 1] withdrawal • allpay, PFS & Mastercard – short updates and questions • Transitioning suppliers • NEPO framework contract
46	29 June 2017 10.00– 13.00 ¹²²⁰	Edinburgh Training and Conference Venue 16 St Mary's Street Edinburgh EH1 1SU	National Prepaid Cards Network Meeting – Edinburgh	Mastercard Sulion/ [Sulion director 1] PFS allpay Public bodies	Market update and ask the suppliers <ul style="list-style-type: none"> • allpay, PFS & Mastercard – short updates and specific questions on card functionality and operations • Latest on NEPO and Surrey frameworks • Questions
47	5 July 2017 10.00– 13.00 ¹²²¹	Mastercard 10 Upper Bank St. Canary Wharf London E14 5NP	National Prepaid Cards Network Meeting – London	Mastercard Sulion/ [Sulion director 1] PFS allpay Public bodies	Market update and ask the suppliers <ul style="list-style-type: none"> • allpay, PFS & Mastercard – short updates and specific questions on card functionality and operations • Latest on NEPO and Surrey frameworks • Questions
48	7 July 2017 10.00– 13.00 ¹²²²	[X] York [X]	National Prepaid Cards Network Meeting – York	Mastercard Sulion/ [Sulion director 1] PFS allpay Public bodies	Market update and ask the suppliers <ul style="list-style-type: none"> • allpay, PFS & Mastercard – short updates and specific questions on card functionality and operations • Latest on NEPO and Surrey frameworks • Questions

1219 UUID 94580331.

1220 UUID 94580323.

1221 UUID 94580333.

1222 UUID 94580334.

	Date	Location	Title of meeting	Attendees	Key agenda items
49	13 July 2017 10.00– 13.00 ¹²²³	The Studio 7 Cannon St. Birmingham B2 5EP	National Prepaid Cards Network Meeting – Birmingham	Mastercard Sulion/ [Sulion director 1] PFS allpay Public bodies	Market update and ask the suppliers <ul style="list-style-type: none"> • allpay, PFS & Mastercard – short updates and specific questions on card functionality and operations • Latest on NEPO and Surrey frameworks • Questions
50	2 November 2017 10.00– 14.00 ¹²²⁴	Mastercard 10 Upper Bank St. Canary Wharf London E14 5NP	National Prepaid Cards Network Meeting – London	Mastercard Sulion/ [Sulion director 1] PFS allpay Public bodies	Market update & ask the suppliers <ul style="list-style-type: none"> • Mastercard – Universal Credit, using cards in Link and Cashzone, growing programmes • allpay update • PFS update • Questions
51	9 November 2017 10.00– 14.00 ¹²²⁵	Edinburgh Training and Conference Venue 16 St Mary's Street Edinburgh EH1 1SU	National Prepaid Cards Network Meeting – Edinburgh	Mastercard Sulion/ [Sulion director 1] PFS allpay Public bodies	Market update & ask the suppliers <ul style="list-style-type: none"> • Mastercard – Universal Credit, using cards in Link and Cashzone, growing programmes • allpay update • PFS update • Questions
52	17 November 2017 10.00– 14.00 ¹²²⁶	The Studio 7 Cannon St. Birmingham B2 5EP	National Prepaid Cards Network Meeting – Birmingham	Mastercard Sulion/ [Sulion director 1] PFS allpay Public bodies	Market update & ask the suppliers <ul style="list-style-type: none"> • Mastercard – Universal Credit, using cards in Link and Cashzone, growing programmes • allpay update • PFS update • Questions

1223 UUID PSR0001-95502-000385.

1224 UUID 101211946.

1225 UUID PSR0001-95502-000532.

1226 UUID PSR0001-95502-000397.

	Date	Location	Title of meeting	Attendees	Key agenda items
53	30 November 2017 10.00–14.00 ¹²²⁷	[X] York [X]	National Prepaid Cards Network Meeting – York	Mastercard Sulion/ [Sulion director 1] PFS allpay Public bodies	Market update & ask the suppliers <ul style="list-style-type: none"> • Mastercard – Universal Credit, using cards in Link and Cashzone, growing programmes • allpay update • PFS update • Questions

Total number of meetings for 2017 – 12

54	1 May 2018 10.00–14.00 ¹²²⁸	Mastercard 10 Upper Bank St. Canary Wharf London E14 5NP	National Prepaid Cards Network Meeting – London	Mastercard Sulion/ [Sulion director 1] allpay Public bodies	Market update & ask the suppliers <ul style="list-style-type: none"> • allpay update (5 mins verbal) <ul style="list-style-type: none"> ○ Market overview – what's happening ○ Product developments • PFS update (5 mins verbal) <ul style="list-style-type: none"> ○ Market overview – what's happening ○ Product developments • Mastercard update (5 mins verbal) <ul style="list-style-type: none"> ○ Outturn figures for 2017 – cards and financials ○ Extra charges for contactless cards/limits ○ Services at ATMs – balances and PINs
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¹²²⁷ UUID PSR0001-95290-001130.

¹²²⁸ UUID PSR0001-93050-001064.

	Date	Location	Title of meeting	Attendees	Key agenda items
55	3 May 2018 10.00– 14.00 ¹²²⁹	The Studio 7 Cannon St. Birmingham B2 5EP	National Prepaid Cards Network Meeting – Birmingham	Mastercard Sulion/ [Sulion director 1] allpay Public bodies	Market update & ask the suppliers <ul style="list-style-type: none"> • allpay update (5 mins verbal) <ul style="list-style-type: none"> ○ Market overview – what’s happening ○ Product developments • PFS update (5 mins verbal) <ul style="list-style-type: none"> ○ Market overview – what’s happening ○ Product developments • Mastercard update (5 mins verbal) <ul style="list-style-type: none"> ○ Outturn figures for 2017 – cards and financials ○ Extra charges for contactless cards/limits ○ Services at ATMs – balances and PINs

1229 UUID PSR0001-93050-000152.

	Date	Location	Title of meeting	Attendees	Key agenda items
56	15 May 2018 10.00– 14.00 ¹²³⁰	Edinburgh Training and Conference Venue 16 St Mary's Street Edinburgh EH1 1SU	National Prepaid Cards Network Meeting - Edinburgh	Mastercard Sulion/ [Sulion director 1] PFS allpay Public bodies	Market update & ask the suppliers <ul style="list-style-type: none"> • allpay update (5 mins verbal) <ul style="list-style-type: none"> ○ Market overview – what's happening ○ Product developments • PFS update (5 mins verbal) <ul style="list-style-type: none"> ○ Market overview – what's happening ○ Product developments • Mastercard update (5 mins verbal) <ul style="list-style-type: none"> ○ Outturn figures for 2017 – cards and financials ○ Extra charges for contactless cards/limits ○ Services at ATMs – balances and PINs

1230 UUID 101211903.

	Date	Location	Title of meeting	Attendees	Key agenda items
57	31 May 2018 [X] 10.00– 14.00 ¹²³¹	York [X]	National Prepaid Cards Network Meeting – York	Mastercard Sulion/ [Sulion director 1] PFS allpay Public bodies	Market update & ask the suppliers <ul style="list-style-type: none"> allpay update (5 mins verbal) <ul style="list-style-type: none"> Market overview – what’s happening Product developments PFS update (5 mins verbal) <ul style="list-style-type: none"> Market overview – what’s happening Product developments Mastercard update (5 mins verbal) <ul style="list-style-type: none"> Outturn figures for 2017 – cards and financials Extra charges for contactless cards/limits Services at ATMs – balances and PINs
Total number of meetings to June 2018 – 4					

1231 UUID 101211973.

Annex E

Examples of other Network events

	Date	Location	Title	Attendees
1	2 May 2012 ¹²³² 09.30–14.00	Manchester Cathedral Visitor Centre 10 Cateaton St. Manchester M3 1SQ	Pre-Paid Cards & The Personalisation Agenda Including launch of the user Guide	Public bodies Sulion/ [Sulion director 1] APS Mastercard NEPO
2	11 June 2012 11.00–13.30 ¹²³³	Mastercard 10 Upper Bank St. Canary Wharf London E14 5NP	Using Prepaid Cards in Local Authorities – findings from the National Prepaid Cards Steering Group Including launch of the user Guide London/South east	Public bodies Sulion/ [Sulion director 1] PFS Mastercard
3	21 June 2012 ^{1234,1235}	Wakefield	YPO Pre-Paid Cards Open Day – Agenda 'Using Pre-paid Cards for Payments and Personal Budgets' Including launch of the user guide	Public bodies Sulion/ [Sulion director 1] Mastercard allpay
4	12 July 2012 ¹²³⁶ 10.00–12.30	Newcastle	Prepaid Event Using Prepaid Cards in Local Government Includes launch of the user guide	Public bodies Sulion/ [Sulion director 1] allpay
5	23 January 2013 ¹²³⁷	Mastercard 10 Upper Bank St. Canary Wharf London E14 5NP	South East event Prepaid Cards event – How to drive efficiencies through using Prepaid Cards	Public bodies Sulion/ [Sulion director 1] PFS

1232 UUID: PSR0001-93050-005804.

1233 UUID: PSR0001-93050-005744 Using Prepaid Cards in Local Authorities – findings from the National Prepaid Cards Steering Group, 11th June 2012.

1234 UUID: PSR0001-93050-005711.

1235 UUID: PSR0001-93050-005710.

1236 UUID: 94580383.

1237 UUID: PSR0001-95290-003953.

	Date	Location	Title	Attendees
6	25 April 2013 09.30–15.30 ¹²³⁸	Duncan Room, British Royal Literary & Scientific Institution (BRSLI) Queen Square Bath BA1 2HN	Bath and North-East Somerset event Prepaid Cards event (BANES) – Driving efficiencies through using Prepaid Cards	Public bodies APS PFS allpay Sulion/ [Sulion director 1]
7	23 June 2013 ¹²³⁹ 14.00–16.00	Mastercard 10 Upper Bank St. Canary Wharf London E14 5NP	Special Interest Group meeting: Universal Credit meeting	Mastercard Sulion/ [Sulion director 1] APS ¹²⁴⁰ PFS Public bodies
8	3 September 2013 ¹²⁴¹ 14.00–16.00	Mastercard 10 Upper Bank St. Canary Wharf London E14 5NP	Special Interest Group meeting: Use of prepaid cards in a Personal Health Budgets context	Mastercard Sulion/ [Sulion director 1] APS PFS ¹²⁴² Public bodies
9	11 September 2013 10.30–12.30 ¹²⁴³ and 14.00–16.00 ¹²⁴⁴	Mansion House York	Special Interest Group meetings (i) Universal Credit meeting (ii) personal health budgets – York	Mastercard Sulion/ [Sulion director 1] APS PFS Public bodies
10	1 October 2013 10.00–13.00 ¹²⁴⁵	Board Room 4th Floor Rear Kingston House 438–450 High Street West Bromwich B70 9LD	Prepaid Cards and their role in Personal Health Budgets	Local Public bodies APS PFS Sulion/ [Sulion director 1]
11	15 September 2014 14.00–16.30 ¹²⁴⁶	Mastercard 10 Upper Bank St. Canary Wharf London E14 5NP	Prepaid Cards & Personal Health Budgets	

1238 UUID: PSR0001-93051-002484.

1239 UUID: PSR0001-93180-000677.

1240 UUID: PSR0001-93180-000675.

1241 UUID: PSR0001-93180-000665.

1242 UUID: PSR0001-93180-000665.

1243 UUID: PSR0001-95087-000963.

1244 UUID: PSR0001-95087-000962.

1245 UUID: 94581656.

1246 UUID: PSR0001-95290-001934.

	Date	Location	Title	Attendees
12	23 September 2014 14.00–16.30 ¹²⁴⁷	[§<] Taunton Somerset [§<]	Prepaid Cards & Personal Health Budgets	Local Public bodies APS PFS Sulion/ [Sulion director 1]
13	1 October 2014 ¹²⁴⁸ 10.00–12.30	Central Cambridge	Prepaid Cards & Personal Health Budgets	Local Public bodies APS PFS Sulion/ [Sulion director 1]
14	24 October 2014 10.30–13.00 ¹²⁴⁹	Mastercard 10 Upper Bank St. Canary Wharf London E14 5NP	Prepaid Cards & Personal Health Budgets: Follow up London event	Local Public bodies APS Sulion/ [Sulion director 1]

1247 UUID: PSR0001-93051-001447.

1248 UUID: 191410003.

1249 UUID: PSR0001-95290-001933.

Annex F

Summary table of local authority responses (2011–2019)

Local authority (LA)	PMs the LA had contracts with & dates	Type of tender/contract	Term of contract(s)	Possibility of indefinite renewal?	Termination without cause?
[Public body 1] ¹²⁵⁰	PFS: January 2019 (pilot)	Direct award under Surrey Framework	2 year fixed term pilot	No	
[Public body 2] ¹²⁵¹	1. allpay: 2011 to 2016 (pilot)	Contract	5 year pilot		
	2. [Programme Manager 1]: 2016 to 2017	Draw down (call-off) from Surrey Framework	3 years plus 1 year possible extension	No	Yes
	3. PFS: transferred to PFS in 2017 when [Programme Manager 1] withdrew from the market	Draw down (call-off) from Surrey Framework	3 years plus 2 year possible extension	No	Yes
[Public body 12] ¹²⁵²	1. allpay	NEPO1 Direct award			
	2. APS: March 2014 to May 2017	Tender using quotation process			
	3. PFS: March 2017 to March 2022	NEPO2 direct award	5 year term	No	Yes, under NEPO2 call-off contract

¹²⁵⁰ [Public body 2] Council Section 26 response of 23 July 2019: UUID 179620002.

¹²⁵¹ [Public body 3] Section 26 response of 24 June 2019, 179590009, and response of 23 December 2019: UUID 207360001.

¹²⁵² [Public body 12] Section 26 response of 4 July 2019: UUID190190002.

Local authority (LA)	PMs the LA had contracts with & dates	Type of tender/contract	Term of contract(s)	Possibility of indefinite renewal?	Termination without cause?
[Public body 3] ¹²⁵³	1. PFS: 2013	Contract – direct approach by PFS	1 year plus 1 year extension at option of [Public body 3]. The contract was then extended until 12 June 2015 and then rolled forward on a monthly basis until 31 January 2018	Yes	
	2. allpay: February 2018 NB: the contract was extended on several occasions to cover additional service areas –e.g. young people, emergency payment, etc.	Surrey Framework – mini-competition	2 years	No	Yes
[Public body 37] ¹²⁵⁴	allpay: June 2018 (pilot)	Direct approach by [Public body 37] to allpay – value fell under threshold	8 month pilot	No	No

1253 [Public body 3] Section 26 response of 09 July 2019, 179610001, and further response of 20 September 2019: UUID 185620001.

1254 [Public body 37] Section 26 response of 28 August 2019: UUID 179530005.

Local authority (LA)	PMs the LA had contracts with & dates	Type of tender/contract	Term of contract(s)	Possibility of indefinite renewal?	Termination without cause?
[Public body 36] ¹²⁵⁵	1. APS: March 2015 – with [Public body 36] (novated to PFS with effect from 1 June 2017 when APS left the market)	Contract (waiver obtained)	Initial terms of 12 months	Yes, possibility of indefinite renewal	3 months' notice
	2. allpay: July 2016 – with [Public body 36]	Contract (value under £10,000)	Initial term of 12 months plus 1 year possible extension	No	No
	3. PFS – with [Public body 36] – commencement date unknown				
[Public body 27] ¹²⁵⁶	1. allpay: July 2011 – March 2013	Direct contract	1 year rolling	Yes	1 month's notice
	2. APS: March 2013 – June 2017	Direct contract – discussions held with APS and PFS and costs compared	3 year initial term plus possibility of 1 year extension		12 months' notice
	3. PFS: July 2017	Draw down (call-off) from NEPO2	3 year initial term plus possibility of 1 year extension		Yes

¹²⁵⁵ [Public body 36] was formed on [redacted]. It previously consisted of [Public body 36] and [Public body 36]. Each had contracts for prepaid cards with PMs. [Public body 36] Section 26 response of 12 July 2019: UUID190200001.

¹²⁵⁶ [Public body 27] Section 26 response of 11 July 2019: UUID 234730001.

Local authority (LA)	PMs the LA had contracts with & dates	Type of tender/contract	Term of contract(s)	Possibility of indefinite renewal?	Termination without cause?
[Public body 5] ¹²⁵⁷	1. APS: July 2013 – October 2017	Direct contract	2 years plus 1 year extension	No	
	2. PFS: November 2017 to date	Direct contract; waiver obtained from [Public body 5]'s Procurement Regulations to allow the direct award of a contract to PFS ¹²⁵⁸	18 months plus 1 year extension	No	
[Public body 42] ¹²⁵⁹	1. [Public body 42] used 2 providers for different departments: [Programme Manager 3]: 2005 to 2014, and [Programme Manager 4]: 2008 to 2014 ¹²⁶⁰	Not stated	5 years and automatic renewal	Yes	
	2. PFS: 2014 to March 2017	Full open tender There were two bidders – PFS and APS.	24 months plus extension of 12 months	No	3 months' notice
	3. PFS: April 2017 to 31 March 2020	Full open tender	36 months plus extension of 12 months	No	3 months' notice
[Public body 41] ¹²⁶¹	1. PFS: July 2015 to March 2018	Tender			
	2. allpay: September 2017	Tender – open procedure	3 years with possible extension of 2 years	No	3 months' notice

1257 [Public body 5] Section 26 response submitted on 10/07/2019: UUID 179660006.

1258 Pre-Paid Card and Associated Services Adult Social Services & Housing and Regeneration Directorates, Waiver Report: UUID 179660027.

1259 [Public body 42] Section 26 response of 11.08.2019: UUID 179600015.

1260 [Public body 42] Section 26 response of 11.08.2019: UUID 179600015.

1261 [Public body 41] Section 26 response of 19/08/2019: UUID 179940001.

Local authority (LA)	PMs the LA had contracts with & dates	Type of tender/contract	Term of contract(s)	Possibility of indefinite renewal?	Termination without cause?
[Public body 34] ¹²⁶²	PFS: November 2016 to date	Draw down (call-off) from Surrey Framework	2 year initial term with 2 year extension (extension exercised)	No	Yes, 30 days' notice by [Public body 34]
[Public body 44] ¹²⁶³	[Programme Manager 1]: May 2016 – June 2017	Draw down (call-off) from Surrey Framework	3 year initial term with two 1 year extension periods available. Contract terminated early by [Programme Manager 1] when it left the market. [Public body 44] did not appoint an alternative supplier.		30 working days
[Public body 40] ¹²⁶⁴	1. [Programme Manager 1]: September 2015 to July 2017	Tender	1 year with option to extend for a further year		
	2. PFS: July 2017 to date	Below procurement thresholds – therefore a quotation procedure was used in line with section 4.6.13 of [Public body 40]'s Contract Procedure Rules. Three bids were received.			

1262 [Public body 34] Section 26 response of 18 July 2019: UUID 179670005.

1263 [Public body 43] Section 26 response of 26 July 2019: UUID 179560003.

1264 [Public body 40] Section 26 response of 1 August 2019: UUID 179570002.

Annex G

Development phases of the Network and its activities

1.1 Chapter 4 of this Decision covers the formation, operation and termination of the Network, and specifies that the Network and its objectives were implemented in five distinct phases:

1. **Phase 1:** Establish a Steering Group with representatives of the supply side (Network PMs) and local authorities
2. **Phase 2:** Generate a Guidance Document
3. **Phase 3:** Marketing activities (these included various regional launch events to boost awareness of the Steering Group)
4. **Phase 4:** Further marketing activities to build on those held through Phase 3
5. **Phase 5:** Develop awareness of prepaid cards across the public sector (that is, beyond local authorities and CCGs)

This annex discusses these phases in greater detail than is outlined in Chapter 4.

Phase 1: Establish a Steering Group with representatives of the supply side (Network PMs) and councils

1.2 The objectives and deliverables of this phase are reflected in a number of documents reviewed by the PSR, including the Service Agreement executed between Mastercard and Sulion in April 2011 (see paragraph 4.23 onwards), certain Statements of Work agreed between Mastercard and Sulion, and a report drafted by [Sulion director 1] when Phase 1 concluded.¹²⁶⁵

In summary, the objectives of Phase 1 were as follows:

- a. *“Put in place an operational structure capable of delivering the [objective of the Network]”*
- b. *Establish a steering group with representatives from the supply side and councils*
- c. *Establish the key issues councils face when implementing prepaid solutions and [e]nsure that programme managers are feeding this into their product development activity*

¹²⁶⁵ Report titled “Prepaid Cards in Local Government – report on Phase 1 activity”: UUID 94580502.

- d. *Establish MasterCard and Programme Managers as credible players to the steering group*
- e. *Have a number of pilot councils willing to contribute to a guidance document to be used to promote the use of prepaid cards and the successes of MasterCard's Programme Managers clients across the country.*¹²⁶⁶

1.3 The activities [Sulion director 1] carried out in conjunction with Mastercard in pursuance of the Phase 1 objectives were as follows:

- a. *"Held meetings with four programme managers to explain the concepts of the strategy and seek their involvement"*
- b. *Created an anonymised table of Programme Managers' Local Government activity in order to better inform everyone of the scope of activity nationally and identify current strengths and weaknesses*
- c. *Contacted existing pilot councils and others who have expressed interest and invited them to form a steering group: scoped to share ideas and experiences, establish the need for the creation of a guidance resource and promote enthusiasm for participation in its creation*
- d. *Carried out a survey of Councils to better establish their needs, priorities, concerns and issues*
- e. *Promoted the activity with the leadership of national groups such as the Society of Procurement Managers and the National eProcurement Project as a precursor to further activity*
- f. *Designed, managed and chaired the two steering group meetings*
- g. *Acted as a sector based critical friend of MasterCard and Programme Managers to assist in clarifying their understanding of how best to approach the market and improve the development and targeting of their products and services"*

1.4 Mastercard identified the PMs it wanted to take part in the Network. [Sulion director 1] explained the value of having PMs as members of the Network as follows:

*"It was felt that prepaid cards at that time were largely unfit for the purposes for which local authorities wanted to use them. By having Programme Managers at network meetings, they would learn about the true requirements of their potential customers and this would drive competitive product development."*¹²⁶⁷

1266 Annex 1 to the Statement of Work dated 29 August 2012 – UUID PSR0001-93050-005586; Report titled *"Prepaid Cards in Local Government – report on Phase 1 activity"* – UUID 94580947.

1267 [Sulion director 1] response to Q1. Section 26 Notice dated 24 April 2018; UUID 93510039.

- 1.5** In late July 2011, at the conclusion of Phase 1, [Sulion director 1] (Sulion) drafted a report on the activities carried on in this phase. In relation to the meetings with the PMs, [Sulion director 1] stated in [Sulion director 1]'s report that:

"Meetings were held with each of the Programme Managers (Allpay, APS, [Programme Manager 2] and Prepaid Financial Services) identified by MasterCard as potential participants in the steering group work. A proforma question template was produced to ensure that the relevant points were covered and is included in Appendix A.

*Each [PM] was asked if they would be willing to provide basic anonymised details showing the major contacts they currently have together with some basic financial details, the purpose being to create a more comprehensive view of what's happening across the country. Despite some initial uncertainty everyone agreed to submit details and the amalgamated details were circulated to all participants and are attached in Appendix B."*¹²⁶⁸

Phase 2: Generate a Guidance Document

- 1.6** During the Network's first 'Steering Group' meeting in May 2011 (not attended by the PMs), [Sulion director 1] received support from local authority members in attendance to develop a "sector led" Guidance document which would be "based on their own experiences and what they consider they themselves would have found most useful in their journeys [of adopting prepaid cards]".¹²⁶⁹
- 1.7** "Members concluded that there is [a] clear need for practical, experienced based advice and guidance which will assist Councils in adopting prepaid cards for the first time or move them beyond the stalled pilot phase. This was seen as being of benefit to the Councils, Programme Managers and MasterCard as the guidance could be used to promote the use of prepaid cards across the country and used to generate word of mouth support, the benefits of which were considered to be under appreciated by Programme Managers at the moment. As someone remarked, 'do they really think we don't talk to one another all the time?'"¹²⁷⁰
- 1.8** As further explained by Mastercard:

*"One of the key objectives of the Steering Group (and subsequently the Network) was to share best practices and recommendations to any local authority wishing to adopt and implement prepaid card programmes. It became apparent during discussions with local authorities that many of them were seeking, by reference to practical examples, guidance and advice on the use of prepaid cards and their benefits to groups such as asylum seekers, and individuals without a home. As a result, a decision was taken by the Steering Group to draft a guide for the local authorities incorporating these practical examples and prior experiences of local authorities with a view to presenting factual information which could assist any local authorities considering the adoption and implementation of a prepaid card scheme."*¹²⁷¹

1268 UUID 94580947.

1269 Appendix 1, Project Brief, Statement of Work dated 29 August 2012, UUID PSR0001-93050-005586.

1270 Notes of the first Steering Group meeting held on 26 May 2011 written by [Sulion director 1]; UUID PSR0001-95087-000369.

1271 Mastercard response to Question 4 of the PSR's Section 26 Notice dated 10 May 2019; UUID 182690016.

- 1.9** The Guidance was “formed of a number of discrete sections written to answer a series of common questions designed to inform a decision to implement a Prepaid cards programme”.^{1272,1273}

Phase 3: Marketing activities (these included various regional launch events to boost awareness of the Steering Group)

- 1.10** In interview, [Mastercard employee 3] explained [Mastercard employee 3]’s involvement in Phase 3:

“I remember going to regional events with the PMs. I remember having conversations with [Company K]. That didn’t go anywhere, unfortunately. I remember having a conversation – I think we did some work with [Company J] as well where we pushed it out via [Company J]. [...] What would we discuss? Well maybe we’d got some – typically, so, as I said, [first name of Sulsion director 1] would open it up but primarily we would always look for the – if it was a regional event for a regional local authority who’d deployed Mastercard prepaid solution with a third-party programme manager to talk about their positive experiences and to help convince the other people in the room who perhaps hadn’t issued an RFP that they should.”¹²⁷⁴

- 1.11** In interview, [PFS employee 1], former [Public body 42] and PFS employee, said:

“[first name of Sulsion director 1] had asked us [Local Authorities] to complete a questionnaire about our experiences with our programme managers so [Sulsion director 1] could get a flavour because [Sulsion director 1] said [Sulsion director 1] felt that whilst it was, you know, Chatham House Rules and if a particular provider wasn’t in the room we certainly wouldn’t speak ill of them in their absence or anything like that but... the programme managers would not get to look at [the questionnaire]... so [as a local authority you would be] quite brutally honest about the service”.¹²⁷⁵

1272 PSR0001-93050-005586.

1273 The Guidance covered the following:
 What are prepaid cards and how do they work?
 What typical business benefits can Prepaid cards deliver?
 How would our clients benefit from using Prepaid cards?
 How much do Prepaid cards cost to operate? This section contained a table with a range of prices for different items of a prepaid card offer (the ‘Pricing Table’).
 Where would Prepaid cards be used?
 Case studies from Local Authorities
 In which other service areas might Prepaid cards be used?
 How do I create an online business case for Prepaid cards?
 How do I arrive at current costs?
 Frequently Asked Questions
 PM Profiles
 Steering Group membership and Contacts.

1274 Interview of [Mastercard employee 3] on 24 October 2019; disc 1, at lines 1709-1724 UUID 242590001.

1275 Interview of [PFS employee 1] on 6 August 2019; disc 1, at lines 1600-1627: UUID 238550001.

- 1.12** As part of the overall engagement strategy formulated by Mastercard and [Sulion director 1], regular Network meetings continued to take place in conjunction with the Phase 3 marketing activities *“to ensure that the [Local Authority] members acted as peer to peer ambassadors to other Councils. This is fundamental to the overall success of the initiative as the members will provide their expertise and knowledge for the guidance document and can act as evangelists to other Councils. Evidence shows strongly that Councils are more likely to implement solutions which have been proven by, and are enthusiastically supported by, other Councils.”*¹²⁷⁶

Phase 4: Further marketing activities to build on those held through Phase 3

- 1.13** The August 2012 SoW outlined the deliverables [Sulion director 1] needed to achieve to deliver Phase 4 of the engagement strategy. The August 2012 SoW states that *“the services will commence on 1st October 2012 and continue for 3 months through to 31st December 2012.”*¹²⁷⁷
- 1.14** The purpose of this Phase was to *“[c]onsolidate Steering Group membership, [e]xtend [the Network’s] profile and availability of guidance resource.”*¹²⁷⁸ In particular, the main aims of Phase 4 were as follows:
- a. *“Investigate and capture emerging evidence of real savings based on experiences of Steering Group members with established programmes*
 - b. *Consolidate the use of the high-quality guidance produced in Phase 2*
 - c. *Extend the successful engagement strategy employed in the Phase 3 events*
 - d. *Build on the growing national reputation of the Steering Group*
 - e. *Further promote the use of prepaid cards via market shaping*
 - f. *Continue to establish MasterCard and Programme Managers as credible leaders in the field*
 - g. *Add more Councils to the growing numbers already using MasterCard Prepaid programmes”*¹²⁷⁹

1276 See page 4 of *“Prepaid Cards in Local Government initiative – progress to date and proposed next stage”*; UUID PSR0001-93050-005956.

1277 Page 1, statement of Work executed by Mastercard and Sulion Limited on 29 August 2012: UUID PSR0001-93050-005586.

1278 Presentation by [Sulion director 1] titled *“Designing a new engagement strategy – the work of the National Prepaid Cards Steering Group”* [date unknown] – provided by MC in response to s.26 Notice of 29 March 2018: UUID 93230169.

1279 Page 7 of the Statement of Work executed by Mastercard and Sulion Limited on 29 August 2012: UUID PSR0001-93050-005586.

1.15 The August 2012 SoW outlined a number of deliverables for Phase 4 of the engagement strategy.¹²⁸⁰ These deliverables included:

- a. Further promotion of the use of prepaid cards “*via market shaping*”
- b. “*Continue to establish MasterCard and Programme Managers as credible leaders in the field*”
- c. “*Add more Councils to the growing numbers already using MasterCard Prepaid programmes*”
- d. “*Four further regional events to stimulate demand, based on the use of the guidance resource*”
 - *Target areas are West Midlands, South East, East of England, London*
 - *Includes liaison with regional bodies, event organisation, programme development, on-the-day offer development speaker liaison, chairing of event*

Phase 5: Develop awareness of prepaid cards across the public sector (that is, beyond local authorities and CCGs)

1.16 In interview, [Mastercard employee 3] was asked to explain the difference between Phases 4 and 5. [Mastercard employee 3] answered as follows:

“up until phase 4 it was very London based. So, if you look at the three councils who have put their name on the guidance documents, [Public body 6], [Public body 9], [Public body 3], they’re all London. There’s more local authorities than just London and it was looking to move that beyond. So, for instance, a steering group in the North to reflect the success of the South. I mentioned before the immediate paying point was adult social care so it was then a case of, ‘Okay, can we widen this to children’s services, homeless people, asylum seekers, with our T shape’, as we called it, ‘by reference to management information and reporting earlier as the way the feedback from the local authorities?’ So how they can use that rather than just replacing cheques and cash, the management information they get back and ultimately continue the marketing push to establish Mastercard as the thought leaders and the programme managers and win more tenders.”¹²⁸¹

“[first name of Sulion director 1] visiting the local authorities to work out how much they overspent, so how much they were spending for the cost of cash and deploying cheques but when overtime that they’d deployed prepaid solutions what those cost savings were. And also the hidden cost, if you like, of people’s time and effort being freed up to focus on their day jobs rather than just copying lots of receipts.”¹²⁸²

¹²⁸⁰ Clause 3, Statement of Work dated 29 August 2012: UUID PSR0001-93050-005586.

¹²⁸¹ Interview of [Mastercard employee 3] on 24 October 2019; disc 1, at lines 1955-1970: UUID 242590001.

¹²⁸² Interview of [Mastercard employee 3] on 24 October 2019; disc 1, at lines 1978-1984: UUID 242590001.

1.17 The main objectives of Phase 5 of the engagement strategy were to:

- a. *“Extend applicability of prepaid by creating Special Interest Groups to examine areas of new interest for members [for example, Universal Credit and Personal Health Budgets]*
- b. *Extend membership of groups to wider public sector*
- c. *Develop more guidance material based on second level experiences of early adopters*¹²⁸³
- d. *“Further position the Network as a useful resource for DWP”*¹²⁸⁴ (the Department for Work and Pensions)

1283 See slide 7 Presentation by [Sulion director 1] titled *“Designing a new engagement strategy – the work of the National Prepaid Cards Steering Group”* [date unknown] – provided by MC in response to s.26 Notice of 29 March 2018; UUID 93230169; See slide 5 of presentation by [Sulion director 1] called *“Prepaid Cards – Improve Services: Reduce Cost; The work of the National Prepaid Cards Steering Group”* [undated]; UUID PSR0001-93050-005032.

1284 Statement of Work for period of September-December 2014: UUID 94581190.

Annex H

Statements of Work between Mastercard and Sulion

1 April – 30 September 2012¹²⁸⁵

1 October – 31 December 2012¹²⁸⁶

16 April 2013 – 24 October 2013

25 October 2013 – 24 December 2013¹²⁸⁷

January 2014 – June 2014 [unsigned copy]¹²⁸⁸

September – December 2014 [unsigned copy]¹²⁸⁹

January – July 2015 [unsigned]¹²⁹⁰

July – December 2015¹²⁹¹

January – June 2016¹²⁹²

July – December 2016¹²⁹³

1 January – 31 December 2017¹²⁹⁴

1 January – 31 December 2018¹²⁹⁵

1285 UUID PSR0001-93050-003940.

1286 UUID PSR0001-93050-005586.

1287 UUID PSR0001-93050-002456.

1288 UUID 94581183.

1289 UUID 94581190.

1290 UUID PSR0001-93050-002011.

1291 UUID 93260007.

1292 UUID 93510008.

1293 UUID 93260010.

1294 UUID PSR0001-93050-004046.

1295 UUID PSR0001-93050-004044.

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