



Proposed acquisition of Visa Europe Limited
by Visa Inc Services
Case M1192J

Decision

Document No: CICRA 16/01

21 January 2016

Jersey Competition Regulatory Authority
2nd Floor Salisbury House, 1-9 Union Street, St Helier, Jersey, JE2 3RF
Tel 01534 514990, Web: www.cicra.je

CONTENTS

Summary.....	2
The Notified Transaction	2
The Parties	2
Requirement for JCRA Approval	3
Market definition	3
Effect on Competition.....	5
Third Party Views	6
Conclusion	6

Summary

1. Visa Inc (“VI”) intends to acquire 100% of the share capital and outstanding voting rights in Visa Europe (“VE”). As a result, VE will become a wholly owned subsidiary of VI. The transaction has been notified to the Jersey Competition Regulatory Authority (the “JCRA”) for approval pursuant to Article 21 of the Competition (Jersey) Law 2005 (the “Law”).
2. The JCRA has determined that the proposed acquisition will not lead to a substantial lessening of competition in any relevant market and hereby approves the acquisition.

The Notified Transaction

3. On 21 December 2015, pursuant to Article 21 of the Law, the JCRA received an application for approval of VI’s acquisition of 100% of the share capital and outstanding voting rights in VE.
4. The JCRA registered its receipt of the application by posting a notification on its website on 21 December 2015. It invited comments by 5pm on Wednesday 13 January 2016. No submissions were received.

The Parties

5. VI is a global payments technology company, incorporated in the State of Delaware, U.S.A. It operates a payment system under the VISA trademark worldwide, with the exception of the VE Territory¹ as explained below.
6. VE is a company incorporated in England and Wales. VE currently operates as a membership association, which, pursuant to a framework agreement with VI, provides payment system services in the VE Territory to its members under the VISA trademark. Those members, who own VE, are a large number of banks and payment service providers. Each member holds one €10 share in VE.

¹ The VE Territory comprises: Andorra, Austria, Bear Island, Belgium, Bulgaria, the Channel Islands, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, the Faeroe Islands, Finland, France, Germany, Gibraltar, Greece, Greenland, Hungary, Iceland, Ireland, the Isle of Man, Israel, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, Norway, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the Vatican City.

Requirement for JCRA Approval

7. Under Article 2(1)(b) of the Law, a merger occurs where a person who controls an undertaking acquires direct or indirect control of the whole or part of another one.
8. On completion of the notified transaction, VI will acquire 100% of the shares in, and as a result direct control over the whole of, VE. The transaction therefore constitutes a merger as defined by the Law.
9. Under Article 20(1) of the Law, certain mergers must be notified to, and approved by, the JCRA before they can be put into effect. Article 4 of the Competition (Mergers and Acquisitions) (Jersey) Order 2010 (the "Order") provides that if one or more of the parties to a proposed merger or acquisition has an existing share of 40% or more of the supply or purchase of goods or services of any description supplied to or purchased from persons in Jersey, then that merger must be notified to the JCRA under Article 20(1) of the Law².
10. The parties to this transaction are of the opinion that VE may have [~~3~~]³ of the share of supply of the provision of payment card network services to financial institutions in Jersey and have notified the transaction to the JCRA on that basis.
11. The JCRA therefore considers that its approval for this transaction is required.

Market Definition

12. Payment cards, such as VISA cards, can be used to pay merchants for goods or services. When a card is used to pay for goods or services, four parties are usually involved: the cardholder; the bank which has issued a payment card to the cardholder; the merchant and the so-called "acquiring" bank (which has "acquired" the merchant for acceptance of that particular brand of payment card). In order to issue cards of a particular brand and acquire merchants for acceptance of cards of that brand, issuing and acquiring banks have to be members of that brand's payment card network (in this case, VISA).
13. Under Article 60 of the Law, the JCRA must attempt to ensure that, as far as possible, it interprets Jersey competition law consistently with the interpretation given to corresponding issues by the European Commission. According to previous decisions of

² Subject to two limited exceptions, neither of which apply in this case.

³ [Confidential]

the European Commission⁴, which were also referred to by the parties in their merger application, within a payment card system, the following distinct markets can be identified:

- a. The market for services provided by a payment card network to financial institutions (typically members of that network)⁵. At this “upstream” or “system” level, payment card schemes compete with one another;
 - b. The market for services provided by the issuing banks to cardholders;
 - c. The market for services provided by the acquiring banks to merchants. On this “downstream” market, financial institutions compete for cardholders’ and merchants’ business.
14. The notifying parties state that both VI and VE are active on the upstream market where payment card schemes compete with one another. Neither is active on the issuing nor on the acquiring markets. They also indicate that it may be possible to define narrower sub-markets within the system market. However, for the purposes of the present decision the precise market definition can be left open, since the transaction does not raise concerns on either a wide “system market” or any narrower sub-market basis.
15. In previous decisions, the European Commission has concluded that the relevant geographic market for the provision of payment systems services is likely to be national. In line with these decisions, the parties to this transaction submit that the relevant market is (at least) Jersey wide. For the purposes of the present decision, the precise geographic market definition can be left open, since the transaction does not raise concerns on the basis of any geographic market considered.

⁴ For example, Commission Decision of 3.10.2007 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement in case *COMP/D1/37860 Morgan Stanley / Visa International / Visa Europe*, at paragraphs 39 - 40. The JCRA notes that these were not decisions made under the EU Merger Regulation, but nevertheless considers them to be a useful starting point for considering the relevant market in this case.

⁵ According to the European Commission’s decision in the Morgan Stanley/Visa International/Visa Europe case: “those services include authorisation routing, currency conversion, clearing, risk management and settlement enablement, as well as the creation and maintenance of the network brand and associated marks, the development of products, and the establishment of network rules covering the different aspects of operating the network, including those governing membership of the network.” (footnote 50).

Effect on Competition

16. Under Article 22(4) of the Law, the JCRA must determine if the Acquisition would substantially lessen competition in Jersey or in any part of Jersey.
17. The JCRA notes that, as part of a reorganisation of Visa in 2007, VE and VI demerged. Under the terms of a Framework Agreement between them, VI granted to VE exclusive, perpetual, irrevocable licences under which VE operates the VISA payment system in the VE Territory, which includes Jersey⁶. As a result, VI does not operate the VISA payment system in the VE Territory (and VE does not operate the VISA payment system outside of the VE Territory).
18. Outside of its relationship with VE, VI is only active in the EEA through its subsidiaries CyberSource and TrialPay. According to the notifying parties, neither CyberSource nor TrialPay competes with VE. Neither is active in a market upstream or downstream of that in which VE is active. Finally, neither CyberSource nor TrialPay has any customers in Jersey.
19. On the basis of the above, the JCRA concludes that the transaction would not result in a substantial lessening of competition in Jersey (or any part of it) since:
 - a. The terms of the Framework Agreement between VI and VE mean that VI does not and cannot provide VISA payment system services in Jersey (or elsewhere in the EEA). Since VE and VI are not actual or potential competitors on the market for the provision of payment system services in Jersey, it follows that the merger cannot lessen competition substantially between them on that market;
 - b. Where VI is active in the EEA through subsidiary companies, the activities of these subsidiaries do not overlap with those of VE. This means that the merger will not lessen competition substantially between the VI subsidiaries and VE. The VI subsidiaries are not active up or downstream of the market on which VE is active, which means that the merger is unlikely to lead to anti-competitive foreclosure on any market. Furthermore, since neither subsidiary has customers in Jersey, it is in any event unlikely that the merger could give rise to a substantial lessening of competition in Jersey or any part of it.

⁶ Visa Inc Annual Report to the SEC for the financial year ending 30 September 2014:
<https://www.sec.gov/Archives/edgar/data/1403161/000140316114000017/v09301410-k.htm> .

Third Party Views

20. No third party concerns were raised about this merger.

Conclusion

21. Based on the preceding analysis, the JCRA hereby approves the proposed acquisition under Article 22(1) of the Law.

21 January 2016

By order of the JCRA Board