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12 April 2022

Dear Tom

Re: EMA response to PSR Card-acquiring market review initial remedies consultation CP 22/1 (“Consultation”)

We welcome the opportunity to provide input to the PSR Consultation on remedies regarding the market review into card-acquiring services.

The EMA is the European trade body representing electronic money issuers and alternative payment service providers. Our members include leading payments and e-commerce businesses worldwide, providing online payments, card-based products, electronic vouchers, and mobile payment instruments. Most members operate across the EU, most frequently on a cross-border basis. A list of current EMA members is provided at the end of this document.

I would be grateful for your consideration of our comments and proposals.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Thaer Sabri', with a long horizontal flourish underneath.

Dr Thaer Sabri
Chief Executive Officer
Electronic Money Association

EMA Response

Initial EMA comments

Evidence-based and proportionate remedies

The remedies contemplated in the Consultation are focused on enhancing merchants' ability to search for a better deal and switch or negotiate with their existing acquiring service provider. However, the EMA notes that the evidence presented in the PSR Market review into card-acquiring services: Final Report of November 2021 ('**Final Report**') does not fully support the proposition that merchants find it difficult to switch or are prevented from switching because of a lack of available information or lack of resources. More specifically;

(a) evidence on merchants' ability to switch

- merchant survey showed that 76% of merchants who recently switched found it easy;
- over 50% of merchants that recently switched, and 65% of merchants that recently considered switching and searched for providers, reported that searching was easy;
- of the merchants who switched their provider in the last two years, 46% said there was nothing that would make them more confident about deciding which provider to switch to, and around 23% cited factors to do with better quality information (including access to more comparable pricing information, knowing more about the provider, better quality or more accessible information). [Final Report paragraphs 6.30, 6.31 and 6.33]

(b) evidence on the reasons for merchants not switching

- in the merchant survey, 64% of merchants that had not considered switching in the last two years reported satisfaction with their provider as a reason for this;
- from those merchants that considered switching in the last two years but didn't switch, only 10% said they lacked time or were too busy was the reason (whereas 35% of merchants said they stayed with their provider because they thought their provider was still the best option and 25% of merchants said their current provider gave them a discount or a better deal). [Final Report paragraphs 6.38-6.39]

The EMA considers the remedies proposed should provide evidence-based and proportionate solutions to specific problems in the acquiring market. EMA considers that the causal link between the PSR's findings (merchants do not shop around) and the proposed remedies should be more fully substantiated to ensure the remedies address the root of the problem and minimise unintended consequences. The EMA would welcome further analysis in this regard.

The value of merchant savings should be clear

The EMA does not believe that it has been shown that the savings made by a merchant on total price are proportionate to the time and resources employed by the merchant to compare options and switch providers. The PSR's evidence in the Final Report indicates that small and medium-sized merchants who signed up with their acquirer recently pay less compared to merchants who have been with their acquirer for several years; and that merchants who joined their acquirer after the IFR caps came into force pay less than those that joined before. However, the PSR was not able to estimate the benefits from switching as its analysis did not differentiate between merchants that are new to card payments and those that are switching provider. [Final Report paragraph 5.57] In the merchant survey, nearly 90% of those merchants who negotiated with their providers "were successful in negotiation better price or non-price terms" [Final Report paragraph

6.50]. However, the Final Report and the Consultation do not present solid evidence around the amount of savings made by merchants who renegotiated or switched, nor how such savings compare to the time and recourses employed in doing so. The value of savings for merchants, should the remedies proposed by the PSR be introduced, remains unclear.

The EMA believes the proposed remedies have the potential to introduce significant unintended consequences and distortions in the acquiring market, which could ultimately result in higher prices for merchants. It is essential to carry out a robust cost-benefit analysis and test the various proposed remedy scenarios against the value savings to be made by merchants.

Consumer markets-based remedies

The remedies the PSR is exploring (summary boxes, trigger messages, development of digital comparison tools) have been explored and applied in consumer markets with simpler product/service propositions. Typically, there is no price negotiation in these markets and the products are more standardised across buyers. The market for card-acquiring services, on the other hand, is a more complex business-to-business market, with merchant-bespoke propositions where the price is frequently negotiated. The EMA believes that these characteristics of the card-acquiring services market mean that not all of the remedies contemplated in the Consultation are appropriate or will be effective.

Market developments

Aspects of the card-acquiring market have changed since the PSR initially conducted their research, and we note the research focussed on established market participants. The PSR's thinking on the proposed remedies has also evolved significantly from, for example, that explored in its interim report. It would be useful for the PSR to revisit their research by collecting further data and feedback from new entrants in order to update their findings and to test the proposed remedies against the current market conditions.

For example, the EMA believes the PSR may find that the market has already moved significantly to address some of its concerns, such as for example, in terms of technological innovation improving the uptake and popularity of software or mobile based POS terminal solutions, which means that it may not be appropriate to pursue the proposed remedies concerning POS terminals at this time. Another example is innovative merchant solutions such as payment orchestration platforms that enable merchants to have more than one acquirer therefore giving merchants more leverage to negotiate favourable pricing, as well as the freedom to direct payment processing volumes to multiple acquirers at a time, in effect enabling merchants to 'shop around' seamlessly. The EMA believe the market has already moved to address the PSR's concerns and it may not be appropriate to introduce the remedies at this time, at the risk of slowing down the pace of innovation and market development in this area or steering their course towards less convenient or competitive solutions for merchants.

Need for differentiation between merchants

The proposed remedies do not differentiate between merchants of different size by card-turnover or type (e.g. e-commerce/online vs traditional physical stores/point-of-sale). The PSR's research focused on small and medium-sized merchants (i.e. those with annual card turnover up to £10 million), but its findings have been extrapolated to large merchants (with annual card turnover between £10 million and £50 million) on the basis that they are likely to face similar issues. This

may be so, but large merchants are more likely to have better bargaining power, the resources and incentives (due to their card volume) to search for a better deal. The small, medium and large merchant pool is a heterogeneous group with different needs including on price, payment environment (e.g. e-commerce or point-of-sale), types of payment methods accepted (e.g. Visa, Mastercard, other non-card based methods), support services as well as the pool of acquirers to choose from (certain acquirers not be offering their services to merchants below a certain turnover level and/or in certain sectors). The EMA believes there should be further differentiation, in considering the remedies proposed, between the different categories of merchants by type (e.g. e-commerce vs point-of-sale) and by size. Without such differentiation, it is difficult to assess or predict how effective the proposed remedies are, nor how any unintended consequences of the proposed remedies will affect a specific group of merchants, and how any savings to be made by them will compare as against their costs.

Questions for stakeholders on summary boxes

QUESTION 1: Do you agree that summary boxes would improve merchant ability to search and switch between acquirers?

Evidence-based and proportionate remedy

As stated under Initial EMA Comments above, the EMA believes the proposed remedies should provide evidence-based and proportionate solutions to specific problems in the acquiring market. The EMA would welcome further analysis on how the summary boxes remedy will address the PSR's finding (merchants do not shop around), considering the lack of strong evidence that merchants are prevented from doing so due to lack of information or resource in finding the acquiring service information.

Effectiveness of summary boxes

As a principle, the EMA supports price transparency. The EMA has previously supported regulatory information requirements giving effect to greater transparency of pricing at both a UK and European level. The EMA is of the view that price transparency can improve competition in the market. However, we consider that the benefits of price transparency can be more limited in relation to services for business customers where the services are bundled or bespoke to the customer(s) in question.

The EMA does have reservations as to whether summary boxes would be effective in improving the merchants' ability to search and switch between providers, see further reasons below. The PSR acknowledges this in its Consultation, "*[e]vidence on the effectiveness of summary boxes is mixed.*" [Consultation paragraph 2.15]. We note that such evidence and thinking is based on competition remedies in consumer markets, not highly complex business markets comprised of a heterogeneous group of merchants of varying sizes and needs, for whom services are often offered on a bespoke or bundled basis.

Comparisons will be misleading and not meaningful to merchants

The price of acquiring services is variable and depends on many factors such as the merchant's transaction volume, type of cards supported, total turnover, location of the transaction, the merchant's sector and other factors. The available offering of non-price service elements such as

billing, settlement times, and merchant support services also often vary depending on the factors listed above, and may have an impact on price payable (e.g. higher fees for higher risk transactions or better customer service). As factors differ significantly between merchants, and the actual final price and service offering is tailored to the merchant (i.e. is bespoke), EMA believes that it would be very difficult to disclose generic information in a standardised format in a way that remains specific enough to the specific merchant's circumstances and so enables meaningful comparison.

Any generic summary box information would have to be expressed as a broad summary or a range (e.g. a range of prices available). Alternatively, or in addition, any published information that was not tailored to a specific set of factors would also have to be heavily caveated to avoid the risk of being considered misleading. If more tailored generic summary boxes were preferred, the information would likely have to be represented as multiple summary boxes, at the expense of quick and easy comparisons.

In summary, standardised form summary boxes do not lend themselves easily to presenting the full array of relevant information necessary for meaningful comparisons without bogging down merchants in too much detail. Further, high level detail summary boxes could potentially become misleading to merchants (for example, if they get an impression they would be able to get a better deal as advertised, when it is not available due to merchant's specific factors). Consequently, the EMA has reservations over the effectiveness of summary boxes to enable quick and easy like-for-like comparisons in a way that does not potentially mislead merchants into false impressions about the deals available.

Reducing competition on pricing and freedom to negotiate

Publishing acquiring service information as summary boxes could have significant unintended consequences, ultimately hindering competition.

Any published acquiring service price information will be available not only to merchants, but also to competitor providers. Providers with the lowest price could increase their prices accordingly. In time, this could lead to alignment in pricing across different acquiring service providers, reducing the competition on price. Those providers whose prices are at the lower end of the market would feel even less competitive pressure to renegotiate or offer better deals to merchants.

Fully transparent pricing is also likely to take away the advantages arising from acquirers' and merchants' commercial freedoms to agree their own contractual terms. The specific circumstances of microenterprises with limited ability to negotiate the terms of their payment services contracts are already adequately addressed in the Payment Services Regulations 2017 by affording microenterprises equivalent rights to that of consumers. The proposed remedy covers merchants with a turnover of up to £50 million. Merchants who are not microenterprises with a turnover of £50 million or more, are capable of negotiating their own commercial terms. Acquirers may feel little pressure or in fact be prevented from deviating from the terms published in their summary boxes when negotiating with merchants, thus hindering their ability or incentives to offer better terms to merchants. Acquirers may also be prevented or disincentivised from offering incentives to merchants for switching (unless such incentives are also published, in which case they would have to be offered to everyone).

The PSR may also wish to consider whether acquirers publishing pricing may have unintended and negative effects on payment facilitators. The buy rate or margin a payment facilitator has agreed with their acquirer can be easily calculated by comparing the acquirer's price with the payment facilitator's price, revealing the payment facilitator's commercial arrangements with its acquirer to its competitors. This may have the effect of reducing the payment facilitator's (already small) margin and making it impossible for them to compete, thereby reducing competition in the market for acquiring services.

For these reasons, the EMA believes the summary box remedy could hinder and reduce competition on price, thus resulting in worse outcomes to merchants. We would welcome a further analysis in this regard.

QUESTION 2: Do you think bespoke merchant summary boxes provided individually to merchants by their provider, and generic summary boxes provided to all customers and potential customers on provider websites, would both be helpful to improve merchant engagement?

The EMA, in principle, supports transparency. However, the EMA has concerns over the effectiveness of summary boxes, see response to Question 1 above.

In particular, the EMA does not believe generic summary boxes, due to their generic nature, will be helpful or meaningful to merchants. In fact, we believe there is a risk of merchants, having seen other acquirers' generic summary boxes, feeling disappointed or misled, where the specific (e.g. lowest price) offer is not available to them due to merchant's specific factors or circumstances, thus eroding the overall confidence in the generic summary boxes. Consequently, we do not believe generic summary boxes will improve merchant engagement.

QUESTION 3: Please provide views on information which should be included in summary boxes, and how it should be presented to support like-for-like comparison of services by merchants. Respondents may include indicative mock summary boxes with their responses, in bespoke or generic formats or both.

Varied pricing structures and bundled pricing

The EMA notes that the structure of acquirer pricing varies significantly. The pricing structure may or may not involve per-transaction fees, additional fees per type of transaction (e.g. e-commerce) or per specific event (e.g. chargeback or refund) and fees for value added services such as PCI DSS compliance, payment gateway services, POS terminal hire charges. The cost of ancillary services may or may not be bundled with and/or subsidised by the price of the core acquiring services. Therefore, the difficulty of providing information which enables like-for-like comparisons should not be underestimated.

Inclusion of non-price service elements

The EMA supports the PSR's proposal that non-price service elements should be included in summary boxes. Factors like billing, settlement times, merchant support services and ancillary services like payment gateway and POS terminal leasing arrangements are as important considerations for merchants as the pricing for core acquiring services. As some firms might

subsidise their acquiring costs with higher costs for other ancillary services or vice versa, the EMA would support, to ensure transparency and enable comparisons, a summary box format which allows acquirers to include their most important ancillary/ad-on services.

Bespoke Summary box: Consultation examples

The EMA's views on the content proposed to be contained in bespoke summary boxes are set out below.

- ***Pricing information for the merchant, including prices per transaction, service consumption data broken down by different types of cards, the amount paid by the merchant for their card-acquiring services in the previous 12 months, and how this has changed since the start of the contract.***

The EMA supports including pricing information for all service elements, including ancillary services that are provided and charged for by the acquirer. Acquirers must not be required to provide pricing information for ancillary services where those services are sourced by merchants from third parties, e.g. gateway or POS terminal services, because acquirers would often not have this information.

Information on how the total amount has changed since the start of the contract should however not be included – such increases are likely to result from increases in the merchant transaction acquiring volume/composition and so may create a misleading impression that the acquirer has increased their charges.

- ***Non-price elements of the service to enable the merchant to understand the full package of their card-acquiring service.***

The EMA supports including non-price service elements that are provided by the acquirer (but not sourced from a third party), even where such elements do not attract a separate charge.

- ***The end date (if any) of the minimum term for the merchant's contract.***

The EMA agrees this should be included.

- ***Where there is no minimum term, or the minimum term has passed, an indication that the merchant is free to change card-acquirer without penalty.***

The EMA agrees this information should be included.

- ***Information on how switching works and what merchants should do if they want to switch.***

The EMA would welcome clarification regarding what information about switching acquirers would be expected to provide. Acquirers should not be expected to advise on where to find alternative acquiring service providers, nor can they provide information on the on-boarding and/or set up requirements that would apply with the new acquirer (as these are determined by the new acquirer). Therefore, there is little information on switching that a merchant's current acquirer can actually provide, other than explaining how and the consequences of the merchant terminating their contract with the current acquirer (for example, the minimum termination notice period and how quickly would all of the current acquirer's services stop following termination). The PSR

should ensure that acquirers are only expected to provide information that is within the acquirer's knowledge/sphere of competence.

- **Arrangements for POS terminal switching if the merchant opts to switch their card-acquiring service, including POS terminal lease minimum-term end dates if applicable.**

Acquirers should only be required to provide such information when POS terminals are part of the services provided directly by the acquirer to the merchant (and not, for example, sourced from a third party).

- **Information on potential savings to the merchant from switching.**

The EMA disagrees that such information should be provided in the bespoke summary boxes. It would be impossible for an acquirer to estimate the merchant's potential savings from moving to another provider. There is no standard acquirer price and service offering against which any meaningful comparisons could be made; any generic estimations are likely to be misleading because they would not reflect the price or the services that the switching merchant would actually receive.

If the expectation is that the comparison is to be made against the lower-priced option offered by the same provider, the comparison is likely to obscure other highly important non-price factors as the lowest-price option may not include other ancillary services or come with other disadvantageous terms such as longer settlement times or higher reserve requirements. Further, some members report that systematically calculating potential savings across the acquirer's own tariffs would require significant bespoke system builds, the cost of which should not be underestimated.

Generic Summary Box: Consultation examples

The EMA's views on the Consultation examples of information proposed to be contained in generic summary boxes are set out below.

- **Presentation of pricing information in a comparable format which would assist quick and easy comparisons by merchants that want to compare summaries across a number of acquirers.**

The EMA does not support disclosing acquirer pricing information in generic summary boxes, due to concerns that publication of such information could have significant unintended consequences, ultimately hindering competition, see further our response to Question 1.

Further, the EMA believes that designing a comparable format for presenting the pricing information will be challenging, considering the varying pricing structures and the fact that acquiring services are often bundled with ancillary services. The comparable format should allow for presenting where appropriate non-price service elements/ancillary services are offered for free (and so likely subsidised by the per transaction fees).

- **Transaction charges for the largest types of card purchase. For example, Visa and MasterCard account for a high proportion of transactions between them across both their debit card and credit card products.**

As above, the EMA does not support disclosing acquirer pricing information in generic summary boxes, due to concerns that publication of such information could have significant unintended consequences, ultimately hindering competition, see further our response to Question 1.

The EMA notes that transaction charges agreed with a specific merchant may depend on many factors such as the merchant's transaction volume, type of cards supported, total turnover, location of the transaction, the sector in which the merchant is in, and other factors. Consequently, acquirers and ISOs may only be able to disclose their transaction charges in the generic summary box as a range. Alternatively or in addition, such generic transaction information may have to be heavily caveated so as not to constitute misleading information. The EMA believes that, for these reasons, generic summary boxes may be of little use to merchants.

- ***Non-price service elements – for example, billing, settlement times, merchant support services, POS terminal lease arrangements, security, fraud prevention, currency conversion. This information would improve the capability of merchants to understand and compare prices and overall value by making other service elements more transparent.***

The EMA agrees the disclosure of non-price service elements is important, to aid transparency.

- ***Information on how switching works and what merchants should do if they wish to switch.***

The EMA would welcome clarity on the information on switching that acquirers may be expected to provide. The PSR should ensure that acquirers are only expected to provide information that is within the acquirers' knowledge/sphere of competence, e.g. how to apply for their services and perhaps their on-boarding process. Acquirers would not be able to nor should be expected to provide information on terminating the outgoing acquirer's services.

QUESTION 4: Which merchants would benefit most from the implementation of summary boxes? Should summary boxes be designed and targeted to support any particular group of merchants? Please provide evidence to support your response.

The Final Report appears to assert that all small and medium-sized merchants (i.e. those with annual card turnover up to £10 million) and large merchants (with annual card turnover between £10 million and £50 million) experience the same impediments to shopping around. As merchants' size, type (e.g. traditional physical store and e-commerce/online merchants), industry and therefore needs for acquiring services are so varied, this is unlikely to be the case. New merchant entrants are also likely to have different information needs from those who already use acquiring services.

In particular, the EMA notes that large merchants with annual card turnover between £10 million and £50 million are assumed to suffer from similar impediments that restrict their searching and switching behaviour as the smaller merchants, even though the large merchants were not represented in the merchant survey. The EMA believes that large merchants are much more likely to already have the right incentives for shopping around (due to the value of their transactions and so potential savings) as well as internal resources and the ability to absorb the costs of searching. The larger merchants are therefore less likely to benefit significantly from summary

boxes, as they are not impacted to the same degree by the same impediments to searching and switching.

As regards merchants of any size or type, the EMA is concerned that the unintended consequences from publicly available competitor pricing information will erode the competition on pricing and hinder their ability to negotiate better terms. See further our response to Question 1 above. Due to their size and lower bargaining power, smaller merchants may be disproportionately affected by these factors.

It would be helpful if the PSR were to assess, in more detail, whether the same issues affect all merchants by category (e.g. traditional versus e-commerce, new entrants versus existing merchants) and size, and then to tailor the summary boxes remedy to the particular type of merchant that would benefit the most.

Questions for stakeholders on stimulation of DCTs in the card-acquiring market

QUESTION 5: Please provide any comments you have on the potential for DCTs to help merchants search and switch between providers of card-acquiring services where they want to. Please provide evidence to support your answer.

Eroding competition and/or benefits to merchants

The EMA believes that publicly available acquiring service pricing information will have unintended consequences that could eventually lead to alignment on pricing across different providers, disincentivise acquirers to offer lower prices, incentives or otherwise better deals, and erode merchant benefits and overall competition. See further our response to Question 1. The availability of such information on artificially stimulated DCTs, assuming broad coverage of the acquiring service provider pricing information, is likely to exacerbate such unintended consequences. In other words, it would also be easier for acquirers to compare their offerings against those of its competitors via DCTs, making it easier to adjust their prices in line with the market and having less pressure to offer better deals to merchants where the price is relatively low. Consequently, the EMA does not support the provision of acquiring service price information on DCTs because we believe this would lead to worse outcomes for merchants and lessen rather than enhance competitiveness of the market overall.

Varied pricing structures and bundled pricing

The EMA notes that the structure of acquirer pricing varies significantly. Acquirer transaction fees are complex, often consisting of interchange fees, scheme fees and the acquirer's margins where the underlying price elements can vary per transaction, merchant and card scheme. The pricing structure may also involve additional fees per type of transaction (e.g. e-commerce) or per specific event (e.g. chargeback or refund) and fees for value added services such as PCI DSS compliance, payment gateway services, POS terminal hire charges. The cost of ancillary services may or may not be bundled with and/or subsidised by the price of the core acquiring services. Given there are so many factors on which the acquirer pricing depends, the EMA does not believe it would be possible to compare acquirer pricing via DCTs effectively.

Little evidence of effectiveness of DCT remedies in non-consumer markets

Most of the thinking and lessons learnt on the effectiveness of DCTs in positively affecting completion (including the studies cited in the Consultation) concern consumer markets. It should not be assumed that the same considerations and evidence can be applied to complex card-acquiring service markets servicing business customers (merchants) of varying sizes, needs and degree of sophistication, where services and their price tend to be tailored to specific merchant's needs and circumstances.

The EMA would welcome further analysis on the effectiveness of DCTs as a remedy in relation to business (merchant) markets. For example, the EMA considers it may be helpful to examine the effectiveness of the comparison tools developed for SME business current account services (via CMA-supported Nesta challenge price) as a remedy following the CMA's Retail Banking Market Investigation.¹

The use of DCTs may result in increased focus on price and merchants being sold services which do not meet their needs

The FCA's 2020 supervisory strategy for price comparison websites² offers valuable insights into problems associated with the DCT sector covered by the FCA's supervision, which include consumers being sold products that do not meet their demands and needs. More specifically, in the Market Study into home and motor insurance markets the FCA found:

"While PCWs [Price Comparison Websites] do not set the price, they do influence the dynamics of competition and pricing outcomes for consumers. PCWs are an important distribution channel and can affect the market by:

- 1) intensifying price competition at new business*
- 2) creating additional costs to providers (e.g., through the cost of customer acquisition)*

The rapid penetration of PCWs into the market has encouraged consumers to shop around, but has also caused an increased focus on price, potentially driving consumers to purchase products that may not always meet their needs."

Depending on the commercial model developed for the DCTs for the acquiring services (which is at the moment unclear) and regulatory constraints (which do not currently seem to apply – see below), there is a significant risk that the use of DCTs may lead to merchants becoming overly fixated on price, or being driven towards search results which earn the DCTs the highest commission, consequently resulting in merchants switching to products which do not best meet their needs.

If the data on DCT platforms is not up-to-date, merchants may similarly suffer poor outcomes by relying on such information in e.g. deciding to switch.

Regulation of DCT conduct in relation to acquiring services

¹ CMA, Retail Market Investigation: Final Report, August 2016:
<https://assets.publishing.service.gov.uk/media/57ac9667e5274a0f6c00007a/retail-banking-market-investigation-full-final-report.pdf>

² See FCA letter to price comparison website CEOs
<https://www.fca.org.uk/publication/correspondence/portfolio-letter-price-comparison-website.pdf>

General consumer protection regulations which impact the conduct of DCTs, including via potential enforcement actions (e.g. Consumer Protection from Unfair Trading Regulations 2008, Consumer Rights Act 2015) apply as regards consumers, i.e. individuals that are acting outside their business, and so do not generally apply to services provided to merchants.

There are currently no voluntary accreditation schemes for DCT providers providing information on acquiring services (like, for example, those administered by Ofcom and Ofgem in the telecoms and energy sectors respectively).

The high-level principles identified by the CMA on how DCTs should behave, i.e. that DCTs **should treat people fairly**, by being **Clear, Accurate, Responsible** and **Easy to use (CARE)**³ are focused on behaviour as regards consumers and so their applicability/enforcement concerning DCT services offered to merchants, is at the very least uncertain.

In summary, there appears to be limited regulation by way of legal requirements or voluntary standards (and potential enforcement action in case of failure to meet such requirements/standards) that apply to DCTs for acquiring services.

The EMA believes that, should DCT for acquiring services be stimulated, it is important to ensure that such DCTs are appropriately regulated. Without appropriate rules of conduct, merchants and acquirers cannot be confident that DCT for the acquiring services market will develop in a responsible manner and in a way that does not erode rather than enhance merchant benefits such as savings. The EMA would welcome clarity on the PSR's plans in this regard.

Evidence-based and proportionate remedy

As stated under Initial EMA Comments above, the EMA believes the proposed remedies should provide evidence-based and proportionate solutions to specific problems in the acquiring market. The EMA would welcome further analysis on how the remedy of stimulating DCTs will address the PSR's finding (merchants do not shop around), considering (a) the lack of strong evidence that merchants are prevented from doing so due to lack of information or resource in finding the acquiring service information; (b) there are already DCT providers in the market which allow merchants to compare and obtain quotes for card-acquiring services (Cardswitcher, Approved Index, Companeo); and (c) additional overall costs to merchants which would result from measures aimed at stimulating DCT market (e.g. DCT build and service costs or commission fees which could be ultimately passed onto merchants).

QUESTION 6: What do you think are the main obstacles to development of DCTs in the card-acquiring market, and how could these be overcome?

Lack of demand

³ CMA, Digital comparison tools – market study: Final report, September 2017: <https://assets.publishing.service.gov.uk/media/59c93546e5274a77468120d6/digital-comparison-tools-marketstudy-final-report.pdf>

The EMA considers the limited number of existing DCTs in the acquiring market is likely indicative of the limited demand for such services.

Commercial model & incentives

The DCTs need to have incentives to build DCT platforms and offer their services, acquiring payment service providers to share their information with DCTs (where such sharing is needed) and the merchants to use the DCT services. A lot of the incentives are likely to be driven by the DCT commercial model.

The commercial model for DCT services needs to be viable and sustainable, and one that does not adversely affect the acquirer's ability to drive their business or compete effectively.

A lot of successful DCT solutions in the consumer market rely on commission payments from providers when a customer signs up for their services. Such commission-based models may not be attractive to acquirers unless they have the appropriate incentives, for example, if: (i) the volume of new customers justifies the additional cost; in a market where there is limited appetite for merchants to switch (because, for example, they are satisfied with their current provider) the volume of new customers may be limited; or (ii) the acquirer is offered some form of exclusivity or preferential treatment to drive the number of customers signing up (which would impact the impartiality of the DCT provider). In a market where acquiring service margins are tight (for example, for the services provided by payment facilitators who use the services of other acquirers), the additional cost of commission payments may be prohibitive. Such additional costs are also likely to be passed on to merchants, thus reducing any savings made from searching and renegotiating and/or switching.

An alternative commercial model could be charging merchants for the use of the DCT. In order to recoup the costs of development and keeping the information on the DCT sites up-to-date, a subscription-based model is more likely. However, such a model is unlikely to be popular with merchants who can access information about acquiring services at no cost (e. g. directly from an acquirer), and only need to use the DCT service occasionally e.g. when looking for an acquiring provider for the first time.

Development costs and keeping information up-to-date

There are costs and technical barriers to developing DCT solutions for acquiring information. The investment is only justified where there is a demand for the service and a commercial model that will enable the recouping of such costs.

The information on DCT sites needs to be accurate and kept up-to-date. Building technical solutions to achieve this, e.g. such an API integrated with acquirer sites, can also be challenging and requires investment.

Regulation/standards

Both acquiring providers and merchants are likely to have more confidence in DCT services if they are appropriately regulated. Understanding the responsibilities if the data on DCTs is not kept-up-to date and the merchant complains is also important. What happens if the data has not been updated, and the merchant complained?

QUESTION 7: What information do you think should be provided to merchants by DCTs?

The EMA does not support the provision of acquiring service price information because we believe this could lead to alignment on pricing across different providers, disincentivise acquirers to offer lower prices, incentives or otherwise better deals, thus eroding merchant benefits and overall competition. See further our response to Questions 1 and 5.

The EMA would support the provision of general acquirer and their acquiring service information to merchants by DCTs, for example, information about the acquirer and their contact details, the scope of their target merchant market (such as e-commerce/physical point-of-sale, minimum card volume requirements or sectors acquirers do not deal with) and the general list of services offered (e.g. payment facilitation, etc).

QUESTION 8: Do you agree that provision of pricing and other comparable service information to DCTs by providers of card-acquiring services would help stimulate the development of DCTs in the card-acquiring market?

There would have to be appropriate incentives for acquirers to provide information to DCTs, including to incur costs on implementing solutions to enable such information sharing. We do not believe that such incentives are easily found, without potentially adversely impacting the overall benefits to merchants (who may ultimately suffer a reduction in competition and/or higher costs).

The EMA does not support the provision of acquiring service price information to DCTs due to its potentially anti-competitive effects, see further our response to Questions 1 and 5.

Further, it is not clear how acquirers, ISO and merchants would be able to share the information relating to acquiring services and prices with DCTs, considering that such information is typically subject to contractual confidentiality obligations in for example, merchant acquiring services contracts or contracts between an acquirer and an ISO. If this proposed remedy is adopted, would merchant acquirers be prevented from including confidentiality obligations as regards their pricing in their contracts? The EMA would welcome further clarity from the PSR in this regard.

QUESTION 9: Would merchants feel comfortable and confident enough to share their card-acquirer transaction data with DCTs? Are there barriers to this, and how should they be addressed?

Without fully understanding the purpose. for which card acquirer-acquirer transaction data is collected and can be further used by DCTs (e.g. whether it can be sold etc.) merchants are unlikely to be nor should be confident about sharing such data with DCTs. A robust regulatory oversight framework is also likely to be necessary in order to increase confidence in use of such data by DCTs.

As highlighted in our responses above, the EMA believes the remedies should be evidence-based and proportionate to address specific problems. The EMA does not consider developing a framework and infrastructure for the sharing of merchant card-acquiring data, upon the merchant's consent, would be a proportionate response. This is particularly so where the summary box remedies are aimed at enabling merchants to make it easier to search for

alternative acquiring service providers and/or would equip merchants on the card acquiring service consumption in order to run comparisons on DCTs.

QUESTION 10: Please provide your views on whether merchants are likely to have confidence in DCTs in the card-acquiring sector, and what could be done to improve this.

No comment.

QUESTION 11: Which merchants would benefit most from DCTs? Should DCTs be designed and targeted to support any particular group of merchants? Please provide evidence to support your response.

It would be helpful if the PSR were to assess, in more detail, whether the same issues affect all merchants by category (e.g. traditional versus e-commerce, new entrants versus existing merchants) and size, to fully understand how and whether DCTs would be beneficial to any particular category of merchants the most (considering the overall costs and unintended consequences of implementing the DCT remedies as regards those types of merchants).

Our response to Question 4 equally applies here.

Questions for stakeholders on contract trigger messages

QUESTION 12: Do you agree that provision of information by providers of card-acquiring services to prompt merchants as the ending of their initial term approaches, and annually thereafter, could improve merchant engagement?

Potentially, but the EMA considers further analysis and testing would be needed in this regard. As per EMA's Initial Comments, the characteristics of a business market for card-acquiring services means that consumer market-based remedies such as trigger messages may not be effective or achieve the intended results.

QUESTION 13: Do you agree that the PSR should concentrate on investigation of information trigger remedies, rather than fixed-term contracts?

Yes, the EMA strongly agrees information trigger remedies are preferable when compared to imposing fixed-term contracts. The EMA has previously (in its response to PSR Market review into the supply of card-acquiring services – Interim report) flagged the significant unintended consequences of imposing an end date on merchants' contracts for acquiring services, including that such remedy would:

- (i) create uncertainty for merchants over continuity of service and potentially put them at risk of being unable to trade;
- (ii) put merchants in a weaker position to negotiate their current acquiring service terms or procure new terms, or to procure such contracts on more favourable terms other than/in addition to acquiring service price terms (for example, renegotiation may lead

to higher implementation (POS terminal, etc) costs or requirement to establish a higher reserve account).

These unintended consequences would, ultimately, hinder the competition in the acquiring services market.

The EMA notes that the PSR is not at this stage exploring acquiring contract remedies, but that fixed-term contracts remain within the scope of the PSR's work, particularly if it considers the other remedies prove ineffective. Should the PSR decide to explore the fixed-term contract remedies at a later stage, the EMA would urge the PSR to carefully consider the appropriateness of such remedy given its significant downsides highlighted above.

QUESTION 14: What is the best time to deliver trigger messages to merchants in relation to the ending of their contract minimum term, and thereafter? Please provide evidence to support your view.

The EMA agrees it would be appropriate to deliver trigger messages to merchants before the end of their initial term and annually thereafter or, where there is no initial minimum term, annually.

QUESTION 15: Please comment on the content of potential merchant prompt messages. Please provide any views you have on the following categories of information and others you think would be helpful:

Parity with bespoke summary boxes

Should the PSR choose to proceed with both the trigger message and the bespoke summary box remedies, the EMA believes the content of the trigger messages should be as closely aligned with the content of bespoke summary boxes (e.g. as regards the services provided and their cost) as possible. This should avoid any confusion arising from any differences between the two (e.g. due to timing or the format) and avoid the duplication of costs in extracting and preparing the information for the merchant.

In particular, the EMA believes that trigger messages should equally highlight the range of non-price factors/ancillary services provided under the contract as such services/factors are likely to be equally as important to merchants as the price paid for the acquiring services. If merchants are only reminded of the price paid, there is a risk they will unduly focus on price elements in searching for a better deal at the expense of finding a deal which best suits their needs and circumstances.

Prompt message content

The EMA's views on the proposed prompt message content are set out below.

- ***Information on the purpose of the communication***

The EMA agrees it may be helpful to include this information.

- ***How much the merchant paid for their card-acquiring services in the previous 12 months***

The EMA agrees it would be helpful to include this information.

- ***The amount that the merchant would save by switching to the lowest-priced option***

The EMA would welcome further clarity on what acquirers would be expected to disclose under this heading and how they would be expected to determine the savings to be made by merchants from switching. In particular, the EMA would welcome a clarification that this information is only to be included when the same acquirer has lower-priced options which are available to a specific merchant (and not, for example, when one exists with other acquirers or is not available to the merchant due to e.g. the merchants' card acquiring volumes or other specific circumstances).

The EMA considers that including the amount of savings to be made by switching to the lowest-price option is likely to be highly problematic. If the expectation is that the comparison is to be made against the lowest-priced option offered by the same provider, the comparison is likely to obscure other highly important non-price factors as the lowest-price option may not include other ancillary services or come with other disadvantageous terms such as longer settlement times or higher reserve requirements. Some members also report that the development costs of automating merchant savings calculations, taking into account the different merchant circumstances and factors affecting the availability of services and their prices, will be significant.

The EMA disagrees that acquirers should be expected to include an amount of savings to be made by switching to other acquirers. It would be impossible for an acquirer to accurately determine the merchant's savings from moving to another provider. There is no standard acquirer price or service offering meaningful comparisons could be made against. It is unclear how acquirers would be expected to determine what constitutes a lowest-price option in the market. If acquirers were expected to make their own determinations on lowest-price by surveying the market, the cost of such ongoing investigations would be disproportionate, especially considering that prompt messages containing this information are to be delivered to merchants on an ongoing basis (i.e. at different time to different merchants) so that the lowest-priced option to be compared against today may not be the lowest-priced option tomorrow. If the comparisons are to be made against any generic statements on price of another provider (e.g. expressed as a range), they are likely to be misleading because they would not necessarily reflect the price or the services the merchant who decides to switch would actually get.

- ***Information on non-price benefits of switching***

The EMA would welcome further clarity on what information acquirers would be expected to disclose under this heading, and how acquirers would be expected to determine and include this within the non-price benefits of switching. As in our comment above, the EMA believes it would be highly problematic to include such information in prompt messages. Switching to the lowest-priced option of the current or alternative provider is likely to be at the expense of the non-price benefits, i.e. such benefits are likely to be removed rather than added. If the comparisons are to be made against the non-price benefits of other providers, the costs of ongoing surveying of the market would be disproportionate. Providing general information of non-price benefits available on the market would likely be misleading, as it would not necessarily reflect the benefits which would be offered to/obtainable by a particular merchant who decides to switch.

- ***Information on POS terminal switching***

Acquirers should only be required to provide such information when POS terminals are part of the acquirer's services provided to the merchant (and not, for example, sourced from a third party).

- **Information on how switching works, and what merchants should do if they wish to switch**

In principle, the EMA agrees that information can be included, that acquirers are only expected to provide information that is within the acquirer's knowledge/sphere of competence. Acquirers should not be expected to advise where to find alternative acquiring service providers, nor can they provide information on what on-boarding and/or set up requirements would apply with the new acquirer (as these are determined by the new acquirer). Therefore, there is little information on switching that merchants' current acquirers could actually provide, other than explaining how and the consequences of the merchant terminating their contract with the acquirer (for example, the minimum termination notice period and how quickly would all of the current acquirer's services stop following termination).

- **A call to action**

No comment.

QUESTION 16: What is the best method of delivering trigger messages to merchants? Please provide evidence to support your view.

The EMA would support a notification via the communication channels commonly used and agreed between the merchant and their acquirer. This could be in the form of an email or by way of a notification in the merchant's online account, however, we would not support a requirement to submit a notification in the form of a physical letter sent in the post, where this is not the usual communication channel.

QUESTION 17: Which merchants would benefit most from trigger messages? Should trigger messages be designed and targeted to support any particular group of merchants? Please provide evidence to support your response.

Our response to Question 4 equally applies.

Questions on POS terminals and POS terminal lease contracts

QUESTION 18: To what extent could the feature of concern we identified resulting from POS terminal leases be addressed by (a) replacement of terminals by POS terminal lease providers to support merchants switching between acquiring services (b) POS terminal portability (c) a combination of these (d) another solution? Please provide evidence to support your answer.

Acquiring and POS terminal market developments

Aspects of the card-acquiring market, including POS solution offerings have changed since the PSR initially conducted their research, which also focussed on established market participants. The PSR's thinking on the POS solution remedies has also changed from that explored in its

interim report. The market has now moved on, and technical innovation has been able to deliver lower cost and simplified mobile/software-based POS terminal solutions such as those delivered via tablets or phones, which are increasingly popular. It is important to ensure the proposed remedies do not stifle innovation. The EMA believes the PSR's concerns (POS terminals and POS terminal leases discourage merchant switching) are already starting to be addressed by the market and the market should be given time to develop, rather than introducing POS terminal remedies at the risk slowing down the pace of innovation and market development in this area or steering their course towards less competitive solutions for merchants.

Proportionality of remedies in comparison to time and cost

As stated under Initial EMA Comments above, the EMA believes the proposed remedies should provide evidence-based and proportionate solutions to specific problems in the acquiring market. Implementing each of the proposed remedies, i.e. (a) POS replacement; and/or (b) POS terminal portability will likely have an impact in the market, which needs to be assessed in terms of increase in overall costs to merchants and consequent erosion of merchant savings from switching to other providers. Implementing either solutions will require time and cost to develop POS terminals that are configured to/certified by and compatible with every acquirer in the market. The scale of such an exercise should not be underestimated. As regards POS terminal portability, merchants are quite likely to want their terminal replaced (due to wear and tear of the existing terminal or improved functionality/features of new terminals) when they switch acquirers. This significantly weakens the case for the time and costs necessary to implement technical solutions for POS terminal portability. From the merchant's perspective, the operational costs of having to adapt either solution may far outweigh the benefits. The EMA would welcome further analysis in this regard.

Impact on POS terminal ancillary services and costs

POS terminal contracts that are hire (rather than hire purchase) contracts often have costs associated with ancillary services such as technical support costs, or terminal firmware upgrades. POS replacement/portability remedies must also be considered in terms of their impact on the continued availability and cost of such services (for example, whether this would likely shift the responsibility for such ancillary services onto merchants).

Linking the contracts for POS with the contracts for the acquiring service

In comparison to the above proposed remedies, the EMA considers that linking contracts for POS with the contract for acquiring when POS and acquiring are sold together as a package, so that each contract can be terminated concurrently, would be a simpler and more effective remedy to address the PSR's concerns (to the extent they are not alleviated by the market developments, as stated above). This could be aided by a legal doctrine of frustration. Frustration enables the discharging of a contract when something occurs after the formation of the contract that renders it physically or commercially impossible to fulfil the contract, or transforms the obligation to perform into a radically different obligation from that undertaken at the moment of entry into the contract.

We note, however, that some further analysis and thinking would be required on how such contract "linking" remedy should or could be achieved, particularly where the contracts for acquiring and POS are offered by different parties i.e. the acquirer and the ISO respectively. Most importantly, however, should the PSR decide to pursue this remedy, it must be implemented on

an evidence-based and proportionate basis, considering the market changes which have occurred since the PSR's research into it.

QUESTION 19: Please explain whether you think POS terminal portability would be technically possible, and explain your response. What other technical remedies are available to address the feature of concern?

Ultimately, yes, it is a technical possibility but the EMA does not consider it to be an effective solution in terms of time, cost or impact on merchant benefits to address the PSR's concerns. See further our response to Question 18.

QUESTION 20: Do you think reform of POS terminal lease contracts is needed to address POS terminals and POS terminal contracts that prevent or discourage merchants from searching and switching provider of card-acquiring services?

The EMA believes the proposed remedies should provide evidence-based and proportionate solutions to specific problems, in light of the current market conditions. The reform of POS terminal lease contracts may no longer be needed; the technical innovation and new entrant offerings in the market of lower-cost convenient POS solutions have increased since the PSR conducted its initial research. In other words, the market is already moving to address the PSR's concerns – see further our response to Question 18.

If POS terminal lease contract reform is to be considered further, we would welcome further clarity on the measures that such 'reform' would consist of. We would also urge the PSR to carry out further analysis on the merchant benefits to be achieved by these merchants, taking into account any additional costs and unintended consequences.

QUESTION 21: What impact will new technology and/or changes in merchant and customer behaviour or expectations have on this feature of concern, and what are the likely timescales of these impacts?

Please refer to our response to Question 18.

QUESTION 22: Would the introduction of POS terminal portability have commercial impacts on POS terminal lease providers, or in other parts of the value chain? Please provide evidence to support your answer.

No comment.

QUESTION 23: Please give us your views on monitoring merchant and consumer outcomes in the card-acquiring market. Also, the methods we should use to assess the effectiveness of remedies put in place to address the features of concern identified in the market review. What metrics should we measure and track to do this, how should the information be collected (for example, via merchant surveys and/or data collection from providers), and how frequently?

The metrics used to track the effectiveness of the PSR's remedies should include not only the number of merchants who have switched acquiring service providers, but also metrics to track the overall benefits/savings to merchants as well as additional costs incurred in switching. The metrics should enable a viable comparison on whether the merchants were, overall, better off after switching their provider as compared to position they would have been in without switching.

Questions on the approach to CBA for remedies

QUESTION 24: Please comment on our approach to the CBA for remedies to address the features of concern in the card-acquiring market.

The CBA should also take account of the benefits to merchants, such as reduced prices arising from the proposed remedies, as well as the costs incurred in searching, switching or the increase of costs of other ancillary services, so as to estimate the total net benefits to merchants.

QUESTION 25: What categories of benefits and costs should be included in the CBA? Please provide evidence to support your ideas.

Our response to Question 24 above equally applies.

QUESTION 26: Over what period do you think we should assess benefits and costs for the CBA? Please provide evidence to support your view.

No comment

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