Republic of Austria
Data protection

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CJ: [redacted]

Case officer: [redacted]

[redacted] (IMI No: A56ID 90371)

by e-mail "email address"

Subject: "Sui generis" Final Decision;

DPC Complaint Reference: [redacted]

IMI Number: A56ID 90371

Final Decision

Decision on the official investigation procedure against the interested party < [redacted] > (originally referred to as < [redacted] >).

A. Proceedings

1. On 13 November 2019, the Slovenian supervisory authority informed, via the Internal Market Information System (IMI), that it had received complaints concerning three Slovenian complainants who received invoices from their telecommunications providers.

In the course of the investigations carried out by the Slovenian supervisory authority, it turned out that the company [redacted] - hereinafter referred to as the party involved - had commissioned the invoices. The complainants claimed that they did not subscribe to it. The interested party then informed them that they were entitled to a refund because the services were obviously not used. However, the party involved needs their personal data (surname, first name and address of the account holder, name of the bank, account number, BIC) in order to be able to carry out refunds. The question of where she got the data from the data subjects remained unanswered.

2. Since the party involved is a company that has its head office in Austria with the postal address < [redacted] >, the Austrian Data Protection Authority has declared itself as the lead supervisory authority.

3. The Austrian Data Protection Authority has created a case register under number [redacted] and

requested the responsible party to submit its observations on [redacted] of 16 July 2020.

4. In its observations of 4 August 2020, the interested party claimed that it had received the resolution of 16 July 2020 and that it would reply to the request for comments as soon as possible.

5. In its observations of 5 August 2020, received on 12 August 2020, the interested party claimed that it was a duly licensed payment institution supervised by the Austrian Financial Market Supervisory Authority.

The business-to-business business model it operates ('B2B business model') is referred to as carrier billing and is an alternative payment method to credit cards or PayPal and is aimed exclusively at merchants, which are referred to as 'merchants'.

Consumers in the sense of end-users are not among the customers of the party involved, but are the contractual partners of the dealers or merchants. The party involved provides only the payment model. The end consumers and merchants would thus be in a business-to-customer (B2C) relationship with each other. The interested party offers only the technical and contractual conditions for the billing of the services offered by the dealers. Their role is directly comparable to that of an Acquires.

For example, if an end user wants to buy a digital good, such as game credits for a game (e.g. on Facebook for Clash of Clans) or order a video or music streaming service (e.g. via HBO, Netflix, Spotify), they would be offered a number of payment options when paying. In addition to the more common payment methods such as credit card, PayPal, etc., the carrier-billing payment method of the party involved gives the end consumer the opportunity to pay for the corresponding service via his mobile phone bill or credit card balance.

In order to carry out the carrier-billing payment method, the party involved only needs the MSISDN (= mobile phone number) of the end consumer in order to be able to initiate a debit.

MSISDN is the only dataset that the interested party would receive that would qualify as 'personal data'. Although a natural person is identifiable by MSISDN, it cannot be identified by the party concerned because further information (such as the name of the final consumer) is not disclosed to it. Billing is then carried out via the respective mobile network operator (hereinafter referred to as 'MNO'); Long form: Mobile Network Operator), with which the respective end user has concluded his contract or registered.

From the point of view of the party concerned, the trader in question is the controller and she herself is only the processor, because she processes the data obtained through the trader for its services only for the purpose of billing. In principle, the dealer only provides the party involved with the data that is necessary for the billing, such as MSISDN of the end user, price, debit frequency, etc.

An in-depth analysis of the speed dial or value-added number 6655 mentioned in the letter from the Slovenian supervisory authority of 13 November 2019 shows that in 2019 a total of thirteen merchant traffic in Slovenia generated these services, i.e. offered digital goods there. The monitoring showed that there were no abnormalities in traffic behavior. Nor could any anomalies on the part of the customer support for end users have been detected. Further analyses are unfortunately not possible on the basis of the information disclosed to date.

A precise search is only possible for the party concerned by announcing the MSISDNs concerned, because only with them is the party able to identify the relevant transactions (not the end user). After successful identification, a detailed statement could be made. On the other hand, what can already be mentioned now is the probable reason why the enduser requested the disclosure of his/her bank details, a request for reimbursement. If it is not possible to arrange for the refund via the technical interface of the MNOs, the refund can only be made by bank transfer.

However, the party involved is not the party responsible for the data processing complained of. The legal basis for the processing of the data is the consent between the end user and the respective merchant, which is also the respective controller. There is a contractual relationship between the respective controller and [redacted] as a processor.

6. On 31 August 2020, the Austrian Data Protection Authority uploaded the observations of 12 August 2020 of the interested party to the IMI system under number 147264 and requested the Slovenian supervisory authority to provide further information in order to be able to carry out further investigations into the alleged facts.

7. On 23 November 2020, the Slovenian supervisory authority informed the Austrian Data Protection Authority under IMInumber 165070 that it had received another complaint concerning the party involved.

8. Following receipt of the three telephone numbers < [redacted] >, < [redacted] > and < [redacted] >, the Austrian Data Protection Authority, by communication of 15 July 2022, again invited the interested party to submit its observations on 8 September 2022.

9. The interested party did not react to the comments of 8 September 2022 and therefore oest. Data Protection Authority on 1. December 2022, 28 March 2023 and 31 May 2023. Due to the non-participation of the party involved, administrative criminal proceedings were initiated on 19 July 2023.

10. An official search in the context of a company register extract of 31 May 2023 has shown that the party involved has merged with [redacted]. Subsequently, there was a further merger with [redacted] (FN [redacted]). [redacted] (FN [redacted]) is the universal legal successor of [redacted] (hereinafter referred to as the party involved).

11. The interested party submitted an opinion in the administrative criminal procedure on 9 August 2023

and, by communication of 30 October 2023, received on 6 November 2023, announced that that opinion could also be used in the administrative procedure.

The interested party explained that it had responded to the requests of the Austrian Data Protection Authority, but that there had been transmission errors.

In its observations of 9 September 2022, the interested party argued, to the extent relevant to the proceedings, that the transmission of MSISDN could have been attributed to the corresponding merchant in the cases at issue in the proceedings. Without this notification, this would not have been possible because the suppliers in Slovenia would not have indicated them directly on the invoice.

The interested party further explained that for the number [redacted] the merchant was the company [redacted]. with the address < [redacted] >, for the number [redacted] the company [redacted] with the address < [redacted] > and for the number [redacted] the company [redacted] with the address < [redacted] >.

12. The Austrian supervisory authority has issued the IMI communication of 4. By number 583849 of December 2023, the Slovene Supervisory Authority receives all the comments from the party concerned and informs the Slovene Supervisory Authority that, if an individual decision is issued for each complaining party, the name of the party concerned must be disclosed.

13. By communication of 30 January 2024, the Slovenian supervisory authority informed the Austrian supervisory authority that the names of the individual complainants cannot be disclosed in the proceedings because this is an official investigation procedure.

14. By resolution of 20 February 2025 on [redacted], the Austrian Data Protection Authority requested the interested party to submit additional comments and to set out the contractual relationship with the three dealers or companies designated by it as ‘merchants’ ([redacted].) and to submit the underlying order processing contracts.

15. In its submission of 18 March 2025, the interested party first confirmed that it was true that such merchants included, inter alia, the payment service [redacted] (also referred to as: [redacted] > would offer. The interested party would only process the personal data of the final customers provided by the merchants for the purpose of payment processing and billing and would only act as a processor.

As regards the underlying order processing contracts, the interested party submits that the merchant contractual relationships for the provision of the payment service are based on the general terms and

conditions which would uniformly govern the contractual relationships between that merchant and its merchants. The General Terms and Conditions (GTCs) are the basis of the contractual agreement between the dealers and the party involved and also contain the necessary data protection regulations. It is apparent from Section 11 of the ABG's and Annex 1 that it is the processor.

In response to the request to explain to the Austrian data protection authority how the controller's instruction is documented, the party concerned refers to point II of the preamble to the AGB's. The general instruction of the trader to process payment transactions using the data provided by the trader is thus apparent from the contract. The additional technical details and procedures would be provided by the agreed specifications of the technical connection of the merchant's e-commerce pages to the payment hub (payment infrastructure) of the party concerned via the [redacted] (application programming interface) and from there again by the technical interface description of the mobile operator concerned (MNO), to which the data would be forwarded for the release of the transaction and settlement via the mobile bill.

It is contractually defined that the trader is to provide the party concerned with the data necessary for the execution of the payment transaction via its [redacted] and to use it in accordance with the order for the execution of the payment service. If an end customer of the merchant initiates a payment transaction on the payment side, the payment side transmits the specific instruction to their systems to carry out the specific payment transaction to the participating party via the APP, together with the data provided by the end customer for this purpose, which are necessary for this purpose. The payment transaction instructed by the merchant in this way and carried out for this purpose is kept and documented by the party involved for the statutory duration on the basis of the legal obligation of § 21 (1) no. 2 FM-GWG and is subject to banking secrecy. Due to the specific technical definition of the processes, additional individual instructions from the merchants in the course of payment transaction processing are not necessary. As soon as the merchant (due to a payment transaction initiated by the end customer) transmits a payment transaction to the involved party via the interface '[redacted]" for execution, the transaction processing is initiated via the respective clearly (technically) defined interfaces and is carried out automatically and without manual intervention.

In this context, it is added to point 11 (data protection part of the GTC) that the party involved must comply with these (contractual) instructions of the merchant accordingly, in particular does not exercise its own control over the personal data and does not use them for any other purposes (own or third-party) (see point 11 A.a of the GTC).

The subject-matter of the proceedings is [redacted] (formerly [redacted] which is the mobile telephony provider of end customers in Slovenia.

The personal data received from the merchants for the execution of payments would only be processed as a processor for the respective merchant in the event of an event - as in the GTC (as an annex. /1)

agreed - to be processed. The data would not be used for their own purposes or those of third parties (apart from relevant traders). The party involved would also only have the necessary data to process the payment transaction in the form of the MSISDN (i.e. mobile phone number of the end customer), the date and price, the billing frequency,

Provide a speed dial or value-added number (if applicable) and a transaction ID.

The only personal identification feature contained therein, the MSISDN, is not personally attributable to any end customer by the party concerned. Only the respective MNO (as a contractual partner of the end customer in the mobile phone contract relationship) can assign the mobile phone number to a person.

As attachments, the General Terms and Conditions of Mobile Payment Digital Goods of the party involved as well as a sample of an order have been transmitted to the input.

16. By resolution of 24 March 2025 on [redacted], the Austrian Data Protection Authority requested the interested party to submit additional comments and supporting evidence concerning the award of the contract by the three 'merchants': [redacted]., [redacted] and [redacted].

17. In its submission of 2 April 2025, the interested party stated that the General Terms and Conditions, as amended on 15 October 2021, would form the basis of the contractual relationships with the three dealers [redacted]., [redacted] and [redacted]. In addition, the interested party points out that the earlier version of the ABG's of 25 June 2018 already contained identical provisions with regard to data protection provisions. The two dealers [redacted] and [redacted]. signed the order to the interested party on 26 February 2019 and 14 February 2019 respectively. As regards the trader [redacted]., the situation was different because the contractual relationship had already been concluded in 2010 and terminated in 2023. In addition, the interested party states that both the AGB's in the version of 25 June 2018 and 15 October 2021 are the basis of the contractual relationship and that, in addition, all contractual relationships were already converted to the new ABG system, which has been in force since then, in 2016.

As supplements are the input

- the General Terms and Conditions in the version dated 15 October 2021;
- a template for the entrustment of the party concerned;
- the General Terms and Conditions in the version dated 25 June 2018,
- the orders placed by the three dealers; and
- the notifications sent to traders concerning the modification of the ABG's were connected.

18. The Austrian Data Protection Authority sent all the findings of the investigation to the Slovenian supervisory authority via IMI communication number 761960 and also informed it of the preliminary legal assessment. The Slovenian authority subsequently informed the Austrian Data Protection Authority on 8 May 2025 that it did not raise any objections to the legal view of the Austrian supervisory authority.

19. The Austrian Data Protection Authority has uploaded the draft decision under the number A60DD 799644 to the Internal Market Information System (IMI) and no objections have been raised against it.

B. Subject of the test

On the basis of the arguments of the Slovenian supervisory authority, the subject matter of the proceedings is whether the party concerned, as data protection controller, has infringed the principles of data processing pursuant to Article 5 of the GDPR, the lawfulness of data processing pursuant to Article 6 of the GDPR and the right to information by charging Slovenian data subjects for paid SMS services without their consent.

C. Factual findings

1. The Data Protection Authority bases its findings of fact on the arguments set out in point A.

2. The party involved is a limited liability company (GmbH) with the company register number < [redacted] > and the postal address < [redacted] >. The business of the party involved is the processing of payment services and thus enables merchants to accept payments for digital and non-digitalservices and goods from their customers.

Evidence assessment: These findings are based on the observations of the interested party of 5 August 2020, the official search on 23 January 2025 of the homepage of the interested party at the URL < [redacted] > and the official extract from the commercial register of 23 January 2025.

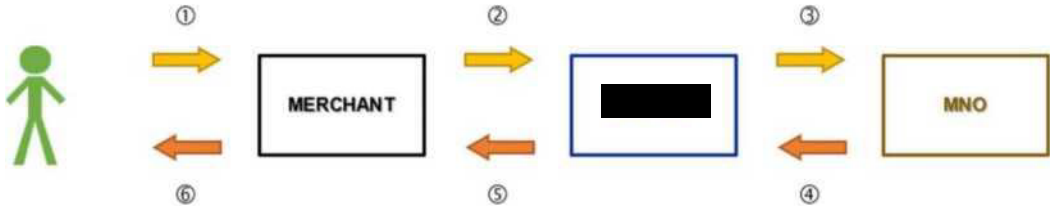
3. The Participating Party is a licensed payment institution that operates a business-to-business ("B2B") business model addressed exclusively to merchants, providing them with the technical and contractual infrastructure for billing for digital and non-digital services and goods. The business-to-business (B2B) business model it operates is known as carrier billing and is an alternative payment method to credit cards or PayPal and is aimed exclusively at merchants known as merchants.

The party involved is a contractual partner of the relevant trader, but not of the end user. For the execution of the respective payment method, the

party involved needs the MSISDN (mobile phone number) of the end customer in order to initiate a booking (e.g. for Clash of Clans, streaming services such as HBO, Netflix, Spotify). The billing itself is carried out via the respective mobile network operator (MNO). The merchant(s) provide the involved party with the data that it needs for billing, such as MSISDN of the end user, price or debit frequency.

4. The payment process starts with the end customer placing an order with the retailer. The retailer transmits the respective mobile number of the end customer to the involved party so that it processes the data for the purpose of billing. The data is forwarded to the responsible mobile network operator, who informs whether a debit is possible with the end customer or not. The result is forwarded to the retailer by the party involved and the retailer either delivers the product to the end customer or informs the latter that a debit is not possible.

Graphically, the process of the payment process is as follows (formatting is not shown 1:1):



® End User orders service from Merchant.

® [redacted] forwards data to MNO for debiting purposes.

® [redacted] conducts positive/negative Debit message to Merchant.

@ Merchant forwards data about the service to [redacted] for debiting.

® MNO gives positive/negative debit message to [redacted]

® Merchant delivers the service to end users or informs that a debit was not possible.

5. On 26 February 2019, the merchant named < [redacted] > instructed the Participating Party to implement the alternative payment method [redacted]' (or '[redacted]') for digital and non-digital services and goods.

The award of the order of 26 February 2019 is illustrated as follows (formatting not shown 1:1):

Beilage ./4

[redacted]

By e-mail to: [redacted]

ORDER TO [redacted]

Dear DIMOCO,

We herewith instruct [redacted] with the provision of the [redacted] Mobile Payment services, this on the following terms, which shall form an integral part of the contractual relationship with [redacted]

Annex 1 The signed price list/lists for the Service Country/Service Countries in which we would initially like to provide our Good & Services.

Annex 2 The general terms and conditions of [redacted].

Annex 3 The duly completed and signed Customer Data Sheet (including all relevant documents).

We expressly recognise, acknowledge and agree that

- the contractual relationship with [redacted] shall only be established upon our receipt of the Order Confirmation duly signed by [redacted]
- in the event of the provision of Goods & Services in the Service Countries of Greece and/or Cyprus, that our contractual partner for these Service Countries shall be [redacted] (and not [redacted], whose general terms and conditions can be found here: [redacted]

Kind regards,

[redacted]

14th Feb 2019

Date

[redacted]

Print full name of the duly authorized representative(s)

ORDER CONFIRMATION (TO BE COMPLETED BY [redacted])

The Order is herewith accepted and confirmed. Your personal login credentials to [redacted] will be provided to you separately.

[redacted]

26 February 2019

Date

20190214_Order [redacted]CollectCent_NEW.docx

5.1. On 14 February 2019, the merchant named <[redacted].> instructed the Participating Party to implement the alternative payment method '[redacted]' (or '[redacted]') for digital and non-digital services and goods.

The award of the order of 14 February 2019 is illustrated as follows (formatting not shown 1:1):

Supplement.*15*

[redacted]

By e-mail to: [redacted]

ORDER TO [redacted]

Dear [redacted], We herewith instruct [redacted] with the Provision of the [redacted] Mobile Payment Services, this on the following terms, which shall form an integral pari of the contractual relationship with [redacted]:

Annex 1 The signed price list/lists for the Service Country/Service Countries in which we would initially like to provide our Good & Services.

Annex 2 The general terms and conditions of [redacted] ([redacted]/).

Annex 3 The duly completed and signed Customer Data Sheet (including all relevant documents). We thoroughly recognise, acknowledge and agree that

<• the contractual relationship with [redacted] shall only be established upon our receipt of the Order Confirmation duly signed by [redacted].

❖ in the event of the Provision of Goods & Services in the Service Countries of Greece and/or Cyprus, that our contractual partner for these Service Countries shall be [redacted] (and not [redacted]), whose general terms and conditions can be found here: [redacted].

child regards, _____ 0^2 2^ [redacted] Date

_____ Print fill name of the duly authorized representative(s)

ORDER CONFIRMATION (TO BE COMPLETED BY [redacted]

The Order is herewith accepted and confirmed. Your personal login credentials to [redacted] will be provided to you separately.

[redacted] [redacted] 14/12/2019 Date

5.2. On 4 March 2010, the merchant (“Merchant”) named < [redacted] >commissioned the interested party to carry out the alternative payment method [redacted]” (or “[redacted]”) for digital and non-digital services and services. The contractual relationship was terminated in 2023.

Page 1 of the ten-page order of 4 March 2010 is illustrated as follows (formatting not shown 1:1):

Supplement 76

[redacted]

and

[redacted]

[redacted]

(hereinafter referred to as "Service Provider").

collectively requested to as the “Contracting Parties”.

have agreed to enter into the following

Connection Agreement on the Provision of Payment Services

(hereinafter referred to as ‘CA Payment’, ‘CA-P’):

AT'B'd £S:ß 010Z I TSbT20Z998T£t'+:°l : WOJJ Sf = TT 0102-^0-^1*1 suejdug

5.3. In 2010, the contractual design of the dealer-contractual relationships has not yet been based on the general terms and conditions as a comprehensive contractual basis, but on a specific contract with supplementary general terms and conditions. In 2016, all dealer contractual relationships, including those with < [redacted] . >, were converted to the new valid GTC system of the involved party. The respective GTC version has then become the contractual basis for all existing dealer contractual relationships from the respective date of entry into force. The Participating Party amended the ABGs of the version of 25 June 2018 with the version of 15 October 2021. Merchants were informed of this separately by means of a notification on 24 May 2018 regarding the GTC version of 25 June 2018 and on 14 September 2021 about the GTC version of 15 October 2021.

Those information letters list the specific amendments to the T&Cs and give traders the right to object before the new T&Cs apply.

Page 1 of the notification of 24 May 2018 is graphically excerpted as follows (formatting not shown 1:1):

Supplement 77

'rom: customercare
ient: Thursday, 24 May 2018 14:18
jubject: Attention! Important [redacted] Information: Amendment of AGB/GTC effective as of 25 June 2018
Attachments: 20180525 COMPARISON [redacted].PDF; 20180525 COMPARED Terms and Conditions [redacted]; 20180525 GTC Mobile Payment [redacted].PDF; 20180525 GTC Mobile Payment [redacted].PDF



ATTENTIONI Important [redacted] Information: Amendment of AGB/GTC effective as of 25 June 2018

Dear Sir or Madam,

As a licensed payment institution and your international direct carrier billing partner, we always strive to improve our service to you.

As you are already aware, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (also known as the 'GDPR') will enter into force on 25 May 2018. As a direct consequence of this, we have amended or updated our General Terms and Conditions (GTC).

The new Terms and Conditions for [redacted]s Mobile Payment Service will enter into force on June 25, 2018, replacing all previous versions of [redacted]'s Terms and Conditions, in particular those of July 15, 2017.

What has changed?

The main change that was made was that the entire point 11 on data protection was changed to ensure compliance with the GDPR as customer-friendly as possible. The new point

Dear Sir or Madam,

As licensed payment Institute and your international direct carrier billing partner, we strive to improve our service towards you.

As you most assuredly already know, an 25 May 2018, Regulation (EU) 2016/679 of the European Parliament and of the Council of 17 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (also known as "GDPR") will come into force. As a direct consequence of this, we have modified and amended our general terms and conditions (GTC)

[redacted]'s new GTC for the Mobile Payment Service will come into effect on 25 June 2018 and shall replace any previous versions of the general terms and conditions of [redacted], in particular those dated 15 July 2017.

What has changed?

The primary amendment that took place is that the entire Section 11 relating to data protection was modified to ensure GDPR compliance in the most Customer-friendly men possible. The new Section 11 (plus annex) sets out our

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Page 1 of the notification of 14 September 2021 is graphically excerpted as follows (formatting not shown 1:1):

From: customercare
Sent: Tuesday, 14 September 2021 14:26
To: customercare
Subject: Attention! Important [redacted] Information: Amendment of General Terms & Conditions effective as of 15 October 2021
Attachments: 20211015 DGB AGB Digital Goods_FINAL.pdf; 20211015 DCB GTC Physical Goods_FINAL.pdf; 20211015 DCB GTC Digital Goods_FINAL.pdf; 20211015 DCB GTC Physical Goods_FINAL.pdf; Comparison GTC DIGITAL Goods.pdf; Comparison GTC PHYSICAL Goods.pdf; Comparison GTC DIGITALE Goods.pdf; Comparison GTC PHYSICAL Goods.pdf



Attention! Important [redacted] Information: Amendment of General Terms & Conditions effective as of 15 October 2021

Dear Sir or Madam,

As a licensed payment institution and your international Mobile Transaction Partner, [redacted] always strives to improve its service to you; This includes the **modification or update ours General Terms and Conditions (GTC):**

With 15 October 2021

> the revised **GTC for DIGITALE goods** come into force and replace the GTC in the version of 25 June 2018.

> the revised **General Terms and Conditions for PHYSICAL Goods** come into force and replace the General Terms and Conditions in the version of 2. December 2019.

What has changed?

Dear Sir or Madam,

As licensed payment Institute and your international mobile transaction partner, [redacted] always strives to improve its Service towards you; This also includes the **modification and update of our general terms and conditions (GTC):**

On 15 October 2021,

> the revised **GTC for DIGITAL goods** will come into effect and shall replace the GTC Version of 25 June 2018.

> the revised **GTC for PHYSICAL goods** will come into effect and shall replace the GTC Version of 2 December 2019.

What has changed?

5.4. Point 11 of the GTC version of 25 June 2018 states that the party involved assumes the role of processor and the customer (merchant) the role of controller in the implementation of mobile payment.

11. DATA PROTECTION & DATA PROCESSING

11.1. General .

a. [redacted] takes data protection very seriously and will therefore process the information provided by the Customer (including personal data) with the utmost care and confidentiality in accordance with the provisions of this point 11 as well as the applicable data protection law. Within the framework of the contractual relationship, it is expressly agreed between the parties that

I. the customer of the controller, and

II. [redacted] the Processor

the information provided by the Customer to [redacted]

5.5. Point 11 of the version of the GTC of 15 October 2021 states that the party involved assumes the role of processor and the customer (merchant) the role of controller in the implementation of mobile payment.

11. DATA PROTECTION & DATA PROCESSING

11.1. General .

a. [redacted] takes data protection very seriously and will therefore process the information provided by the Merchant (including personal data) with the utmost care and confidentiality in accordance with the provisions of this point 11 as well as the applicable data protection law. Within the framework of the contractual relationship, it is expressly agreed between the parties that

I. the merchant of the person responsible, and

II. [redacted] the Processor

the information provided by the Merchant to [redacted].

b. For the purposes of this point 11:

i. *'Privacy law'* means data protection laws and regulations applicable in each country and jurisdiction relevant to the provision of Mobile Payment Services under the contractual relationship.

ii. 'DSG Regulation' means Regulation 2016/679 of the European Padament and of the Council on the protection of natural persons on the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

iii. *'sub-processor'* means a natural or legal person, public authority, agency or other body mandated by the processor to process personal data in accordance with point 11.5.

iv. a term not expressly defined in these T&Cs has the meaning attributed to it under the GDPR (such as, but not limited to, *'controller', 'data subject', 'personal data', 'personal data breach', 'processing', 'processor', 'supervisory authority', 'third party',* etc.).

11.2. Data processing. The processing of personal data by [redacted] (and any sub-processors accordingly) is carried out exclusively in accordance with the provisions of this point 11 and the instructions of the Merchant, taking into account:

6. The Participating Party carried out a total of thirteen digital goods payment transactions in Slovenia in 2019. The three end customers with the mobile phone numbers < [redacted] >, < [redacted] > and < [redacted] > have booked a service with a retailer.

6.1. For the end customer with the telephone number < [redacted] >, the party involved has carried out the payment transaction with the merchant named < [redacted]. > and the postal

address < [redacted] >.

6.2. For the end customer with the telephone number < [redacted] >, the party involved has carried out the payment transaction with the merchant named < [redacted] > and the postal address < [redacted] >.

6.3. For the end customer with the telephone number < [redacted] >, the party involved has carried out the payment process with the merchant named < [redacted] > and the postal address < [redacted] >.

Evidence assessment for points 2 to 6.3: These findings are based on the comments of the interested party of 5 August 2020, 18. December 2022, 14 March 2025, dated 13 March 2025, and 2 April 2025 and the annexes therein, in particular the ABG's in the version of 25 June 2018 and the version of 15 October 2021.

D. Legal assessment

D.1. General

On the basis of the submissions of the Slovenian supervisory authority, the Austrian data protection authority has initiated an official investigation against the party concerned in order to clarify whether, as data protection controller, it has infringed the principles of data processing pursuant to Article 5 of the GDPR, the lawfulness of data processing pursuant to Article 6 of the GDPR and the right to information by charging Slovenian data subjects for paid SMS services without their consent.

Pursuant to Article 4(1) of the GDPR, 'personal data' means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more specific characteristics that express the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

In accordance with the case law of the European Court of Justice (ECJ), the concept of personal data must also be interpreted broadly and also collects information about the person in question. This condition is met if the information is linked to a specific person by reason of its content, purpose or effects (cf. ECJ 20). 1 December 2017, C-434/16, para 34 et seq.).

Processing means any operation or set of operations performed on personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction (see Article 4(2) of the GDPR).

According to the established case-law of the Court of Justice of the European Union, data processing must at all times, in order to be lawful within the meaning of the GDPR, comply with all the principles set out in Article 5(1) and, in addition, must be capable of being based at least on a factual basis under Article 6(1) of the GDPR (see the judgment of the Court of Justice of the European Union). December 2019 C-708/17 and judgment of 4 May 2023, C-60/22, paragraphs 56 and 57). The controller bears the burden of proof in accordance with Article 5(2) of the GDPR (ibid. paragraphs 53 and 54).

D.2. Responsible status according to Art. 4 No. 7 GDPR

The definition of the data protection role distribution is of crucial importance for the data protection examination procedure, as it determines who is responsible for compliance with the respective data protection regulations, how the data subject can exercise his or her rights and ultimately also against whom (i.e. which controller) the data protection complaint must be directed.

The definition of the controller is composed of four aspects, namely the form of the controller, the decision-making competence, the definition of the purpose and means of the processing and the independent or joint decision-making. Unless all decisions are taken by the same person or organisation, there may also be several controllers for a processing operation who agree their responsibility among themselves (cf. *Klabunde/Horvath* in *Ehmann/Selmayr* General Data Protection Regulation 3rd edition, Art. 4 para. 37).

Pursuant to Article 4(7) of the GDPR, the natural or legal person or other body is the controller of processing which, alone or jointly with others, determines the purposes and means of the processing of personal data.

The main criterion is the decision component. The role of the controller therefore stems primarily from the fact that a particular body has decided to process personal data for its own purposes. This means that for a specific processing operation, the controller is the actor that determines the essential aspects of the processing, why the processing takes place (i.e. *'for what purpose') and how this purpose is to be achieved (see again Klabunde/Horvath* in *Ehmann/Selmayr* General Data Protection Regulation 3rd edition, Art. 4 para. 39). The 'purpose' describes an expected result, while the 'means' define the way in which the expected result is to be achieved (see the EDPB Guidelines of 2 September 2020 07/2020 on the concept of controller and processor, paragraph 15 et seq.).

The determination of the purposes and means amounts to deciding in each case 'why' and 'how' the processing takes place: In the case of a specific processing operation, the controller is the actor who has decided why the processing is carried out (i.e. 'with what objective' or 'for what purpose') and how this objective is to be achieved (i.e. what means are used to achieve the objective). A natural or legal person having such an influence on the processing of personal data is therefore involved in determining the purposes and means of such processing, as defined in Article 4(7) GDPR (see EDPB Guidelines of 2 September 2020 07/2020 on the concept of controller and processor, paragraph 35).

By contrast, under Article 4(8) of the GDPR, the processor is a natural or legal person, public authority, agency or other body which processes personal data only on behalf of the controller. However, a processor relationship only exists if the controller at least makes the essential decisions about the purpose and means of data processing (see *Hartung* in *Kühling/Buchner* DS-GVO, BDSG Art 4 No. 8 DS-GVO Rz 7; on the individual demarcation criteria, see Article 29 Working Party, WP169 34 ff).

In each individual case, it depends on the extent to which the means ("the way in which a result or goal is achieved") are decided independently and independently. Decisive factors are the methodology of data processing and which body is responsible for deciding which personal data should be processed in concrete terms, as well as the associated possibilities of influence and powers of instruction.

D.3. In the matter

On the basis of the above considerations, the following should be noted for the cases under examination:

As can be seen from the findings under point 2, the interested party is a company operating a business-to-business (B2B) business model, which is exclusively aimed at merchants or business customers who make it available to their customers as an additional option in addition to the usual payment methods such as credit card payment or Paypal.

The three merchants responsible under data protection law, named < [redacted]. >, < [redacted] > and < [redacted].>, each issued an order to the party concerned to process the payment transactions for a (digital) good, as stated in points 5, 5.1 and 5.2 of the findings. This means that for the three merchants, the party involved only provides or implements the technical and contractual infrastructure for settlement. It is undisputed that it follows from the investigation carried out, inter alia, from the documents submitted by the party concerned that the purpose for the data processing at issue was specified by the dealers or business customers of the party concerned.

It follows from the EDPB Guidelines of 7 July, 07/2020 on the concept of controller and processor, paragraphs 29 and 30, that, as a rule, a contract agreement defines who is the determining party (controller) and who is the delegated party (processor). In the present case, the General Terms and Conditions underlying the order (see, in particular, point 11 of the General Terms and Conditions of 25 June 2018 and point 11 of the General Terms and Conditions of 15 October 2021) stipulated by the three dealers and the party concerned that the party concerned is the processor and that the respective trader is the controller. When placing the order, the dealers have agreed indisputably to the General Terms and Conditions of 25 June 2018 as well as the updated ones of 15 October 2021. As established, they have been informed in advance of any changes to the General Terms and Conditions and have not exercised their right to object.

Furthermore, it is apparent from the EDPB Guidelines mentioned above that, even if the processor offers

a service defined in advance in a certain way, it must provide the controller with a detailed description of the service. It is therefore the sole responsibility of the controller to make the final decision, to actively approve the method of processing and, if necessary, to request changes. For this purpose, the Austrian Data Protection Authority once again refers to the General Terms and Conditions, which contain a very detailed description of the service offered or the subject matter of the contract, which has been actively approved by the respective dealer by placing the order. It is clear from the investigation carried out and the documents made available that the decision as to why and how the customer's personal data subject to the complaint are processed is made solely by the respective trader and not by the party involved.

As a result, the party involved does not decide on the data processing, but only performs it on behalf of the respective dealer and only takes action on request. The involved party, as a payment processor, processes the data exclusively on behalf of and for the purposes of its customers.

The process is comparable to the example of the standardised cloud storage service provider described in the EDPB Guidelines of 2 September 2020 07/2020 on the concept of controller and processor paragraph 30. In this case, the participating party provides the infrastructure, but does not intervene in any form in the payment processing process, which is commissioned by the respective merchant. Payment is processed exclusively in accordance with the instructions given by the merchants, including the amount of the claims.

In its comments of 5 August 2022, 14 March 2025 and 2 April 2025, the Participating Party also sets out conclusively and stringently the course of the payment process. The end customer first places an order with the retailer. The latter then sends the respective mobile number of the end customer to the involved party so that it can process the data for the purpose of billing. The data is then forwarded to the responsible mobile network operator and the latter informs whether a debit can be made to the end customer or not. The result is forwarded to the retailer by the party involved and the retailer either delivers the product to the end customer or informs the latter that a debit is not possible. In any case, the party concerned does not exercise any influence over the specified purpose. In the payment processing process, even if the EDPB Guidelines of 2 September 2020 07/2020 on the concept of controller and processor are interpreted strictly, the party involved fulfils the function of processor, but not of controllers.

The DPA underlines that the interested party has also substantiated its written submission with evidence (signed orders, general terms and conditions, information on the amendment of the general terms and conditions).

In the present case, the party concerned does not fulfil the legal qualification of a controller pursuant to Article 4(7) GDPR. Although the means of data processing have been proposed by the party concerned or are made available by the party concerned, they serve only to achieve the specified goal (or purpose) of the respective merchants, who in this case assume the function of data protection controllers with regard to payment processing. The respective merchants have decided to integrate the offered payment

method into their existing system with the logical goal that more customers can buy their products if they do not have access to other payment methods (PayPal, credit card). For the purpose of payment processing for digital and non-digital services and goods, the merchants transmit the customer's data to the party involved. This then expressly carries out the specified payment processing on behalf of the respective merchant.

As a result, the party involved fulfils the function of a processor in accordance with Art. 4 No. 8 GDPR, but not that of a controller in accordance with Art. 4 No. 7 GDPR.

For the sake of completeness notes the Austrian The Data Protection Authority states that: the
As part of the audit process, the three controllers (< [redacted] . >, < [redacted] > and < [redacted] for the has mentioned the relevant payment processing and the individual data subjects remain free to assert their data subject rights against them or to lodge a data protection complaint with the relevant competent supervisory authority in accordance with Article 77 GDPR.

The official investigation procedure against the party concerned was therefore to be terminated pursuant to Article 4(7) of the GDPR in the absence of its status as controller.

8 August 2025

For the head of the data protection authority:

[redacted]