

European Commission  
DG Competition  
Registry  
rue Joseph II 70  
1000/Brussels  
BELGIUM

## COMPLAINT

### Re: Infringements of Articles 101 and 102 of the Treaty

#### 1. The complainant:

DataCell ehf. id.no. 460709-0160, Skúlagata 19, 101 Reykjavík, is a limited liability company incorporated under the laws of Iceland. (Hereinafter the complainant will alternatively be referred to as DataCell or as the “Complainant”)

DataCell offers data and software hosting services, ranging from the hosting of websites, physical and virtual servers to the operation of complete data centres.<sup>1</sup> DataCell has also operated payment gateways and acted as a payment facilitator enabling businesses, NGOs, humanitarian organisations and others which do and/or choose not to have their own merchant account to accept payment cards.

#### 1.1 Corporate Group:

DataCell is part of a group of 4 companies under common ownership, which together form an inter-supportive and a cohesive company group well equipped to serve and support international (as well as Icelandic) customers of variable needs:

1. Kerfisþróun ehf. id.no. 540409-0130, Skúlagötu 19, (“Kerfisþróun”), develops software and provides hosting of computer and software for the Icelandic market. Kerfisþróun has developed its own ERP software that are served either stand alone or on a SaaS model to

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<sup>1</sup> Cloud computing and hosting of data and computer application systems for businesses as well as individuals has seen rapid development in the past few years. Data centres are, however, very energy demanding. At the same time their users (customers), especially in Europe and North America, are becoming more and more conscious of the environmental impact /footprint left by these centres. Demand for data centres who run on “green energy” i.e. use sustainable energy resources is therefore also growing rapidly. Iceland and Switzerland (where DATACELL intends also to operate) offer “green energy” and especially Iceland has been sought after as a location for environment friendly data centres. A number of businesses and entrepreneurs have identified Iceland as a prime location for data centres as there they can be exclusively driven on non-fossil energy. (See for instance also Thor, DataCell and Verner Global.

over 3000 Icelandic customers, which constitutes a 25% market share for similar ERP applications in Iceland.

In addition, many of Kerfispróun's customers host their business applications at DATACELL's data centre facilities and pay my client for these services with the use of International payment cards.

2. Backbone ehf. id.no. 540710-1120, Skúlagötu 19, Reykjavík, ("Backbone"), is an Internet infrastructure company focusing operating physical lines necessary for local Internet connections in Iceland. Backbone has extensive plans to install fiber lines within Iceland to support my client's data centre facilities as well as lines to and from the country.
3. iCell ehf id.no. 540710-1200, Skúlagötu 19, Reykjavík ("iCell"), is a retail Internet and wireless and telephone service provider which builds on my client's DataCell's data centre facilities and Backbones fiber infrastructure to offer and provide its services in Iceland. DATACELL has three subsidiaries:

DataCell is under equal ownership of Mr. Andreas Fink of Geneva Switzerland and Mr. Ólafur Sigurvinsson of Reykjavík Iceland. Mr Fink has a controlling interest in a number of undertakings in Europe and the US. These are.

- (i) SMSRelay AG, Switzerland, a SMS Wholesale provider, (100%)
- (ii) Fink Consulting GmbH, Switzerland, Telecom and IT Consulting and Resale (100%)
- (iii) Alisanus GmbH, Switzerland, Management Company (100%)
- (iv) BebbiCell AG, Paging Operator, VoIP operator (40%)
- (v) Smart Telecom Ltd. UK company, (100%)
- (vi) IceCell Inc., US company, (100%)
- (vii) Global Networks Switzerland AG
- (viii) BebbiCell Inc. US company, (100%)

**1.2 Contact person:** Sveinn Andri Sveinsson, Attorney to the Supreme Court of Iceland, Partner in Reykjavík Law Firm. Borgartúni 25, 105 Reykjavík, Iceland ([sveinnandri@icelaw.is](mailto:sveinnandri@icelaw.is))

## **2. The undertakings whose conduct and actions is the subject of this complaint:**

This complaint relates to four undertakings, namely Visa Europe Ltd. (hereinafter "Visa Europe"), MasterCard Europe Sprl (hereinafter "MasterCard Europe", Teller A/S (hereinafter "Teller") and Kortafjónustan ehf. (hereinafter "Korta").

The complainant is a previous and potential customer of Teller and Korta. Teller is a member/customer of Visa Europe and MasterCard Europe. Korta operates as an agent of Teller.

**2.1 Visa Europe** is a limited liability company incorporated under the laws England and Wales with registered office at 1 Sheldon Square, London W2 6TT.

Visa Europe is owned and governed by its members/shareholders and operates as a licensee of Visa Inc USA under an exclusive, perpetual and irrevocable license. Only financial undertakings are eligible as owners/members of Visa Europe.

**2.2 MasterCard Europe Sprl.** develops and offers payment solutions and processing payments for financial institutions, banks, businesses, cardholders, and merchants. It also markets cards and guarantees payment through its systems, and tracks consumer behaviour and buying trends. Address: Chaussée de Tervuren, 198 A Waterloo, 1410, Belgium.

MasterCard Europe Sprl operates as a subsidiary of MasterCard Incorporated.

**2.3 Teller A/S** Lautrupbjerg 10 DK-2750 Ballerup Denmark.

Teller A/S is a part of the Nets Group in Scandinavia which was formed through the merger of PBS International A/S of Denmark with BBS and Teller A/S, which both were Norwegian companies. Teller is now a Nets' subsidiary focusing on acquiring of international payment cards. Teller is both a member of Visa Europe and MasterCard Europe as a licensed acquirer.

**2.4 Korta** (officially named Kortapjónustan ehf. id.no 430602-3650, Skipholt 50b, Reykjavík, Iceland operates as an agent under Teller offering businesses in Iceland access to the acquiring services of Teller.

### **3. The conduct which is subject of the complaint:**

On 18 October 2010, DataCell concluded a services agreement with Teller (previously known as PBS International A/S) and Korta which enabled DataCell to accept a number of international payment cards, namely Visa, Visa Electron, JCB and MasterCard (hereinafter "the Merchant Agreement"). The Merchant Agreement is enclosed as Annex 1.

On 7 December 2010, the payment card acceptance services provided by Teller and Korta to DATACELL under the Merchant Agreement were terminated without prior notice.

Subsequently, DataCell has made several requests to Teller and Korta asking them to either resume the services under the Merchant Agreement or enter into a new payment card acceptance agreement with DataCell.

Teller and Korta have, however, refused to resume the supply of payment card acceptance services to DataCell. In an e-mail dated 10 January 2011, enclosed as Annex 2, Teller has explained that the decisive reason for the termination of the services provided to DataCell was that Teller had been ordered to do so by Visa Europe and MasterCard.

On 9 June 2011 DataCell sent a letter to Teller, MC and Visa, demanding that the company's Merchant Agreement be reactivated otherwise my client would have no alternative but to

take the appropriate legal action. This has been to no avail , and according to Teller's explanations acquiring firms in Europe are not about to be allowed by MC and Visa to open merchant agreements with DataCell, irrespective of whether the company would service Sunshine press /Wikileaks as a payment facilitator or not. DataCell has also tried to get merchant agreements with the other two acquiring companies operating in Iceland (besides Teller/Korta), i.e. Valitor Ltd. and Borgun Ltd. (before the times of dual and multi acquiring, Valitor was the sole franchisee of Visa in Iceland and Borgun held the MC franchise). However, these channels have not been opened and, according to the information from Teller mentioned above, are not about to be opened.

Visa Europe manages, controls, monitors, enforces and lays down the rules for the Visa network within the EEA area and provides authorisations and clearing services to its members. Visa Europe can discipline its members for violations of its Membership Regulation and the of the Global Rules of Visa Inc. The complainant submits that Visa Europe has very wide discretionary powers to discipline members under threat of expulsion from the system<sup>2</sup>. The membership rules applicable to MasterCard member within the EEA area are structured in much the same way as those of Visa giving MasterCard extensive authority over its members/licensees as to how they shall conduct their businesses as issuers of MC cards or acquirers of MC card transactions.

Despite several attempts, DataCell has not been able to acquire payment card acceptance services from other acquirers in Europe either, a fact which supports the assumption that Visa Europe and MasterCard have both issued a general order to their respective member financial institutions inducing them to refuse to supply DataCell.

The picture emanating from the correspondence between DataCell's lawyer and Teller, ,see enclosed copies, is that Visa Europe and MasterCard have ordered Teller and others to refuse to supply payment card acceptance services to DataCell solely because DataCell has provided payment card processing services to WikiLeaks/Sunshine Press. Thus, DataCell has used its merchant account to accept donations for the WikiLeaks project and has passed these donations on to WikiLeaks minus a processing fee.

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<sup>2</sup> Article 7 of the Articles of Association for Visa Europe Ltd states:

"Membership of the Company shall be terminable upon the occurrence of any of the following events (each a "Termination Event"): ..... by a resolution of the Board ..... that a member be removed from the Company for good cause (which expression shall include, without limitation, any event, act or omission so described in paragraph 6 of Part A of the Membership Regulations)..... " (emphasised here).

The relevant provision in part A of the Membership Regulations in this context would be Article 6.2.4 which reads: "*the continuance by a Member (following notice from the Board) of acting in a manner that damages the VISA mark and/or the Blue, White and Gold Bands Design (or any other mark adopted by the Company from time to time); .....*"

The Complainant wants to emphasise that there are no structural or ownership connections between DataCell, or any companies owned directly or indirectly its owners, and Wikileaks and Sunshine Press. Nor are there any managerial, governance or board representation connections or links between DataCell, or companies owned directly or indirectly DataCell's's owners, and Wikileaks and Sunshine Press any other entity connected to Sunshine Press. DataCell undertook to to accept donations to the WikiLeaks project through its payment gateway as part of a general services agreement between DataCell and WikiLeaks/Sunshine Press which also comprises several hosting and soft ware development services.

At the time of conclusion of the Merchant Agreement between DataCell, Teller and Korta it was made fully clear that DataCell intended to accept donations for the WikiLeaks project. This was even reflected in the agreement which expressly mentions "Sunshine Press". After the termination of services to DataCell, namely in an e-mail dated 22 December 2010, enclosed as Annex xx, Teller informed DataCell of the wording of a press release which it intended to send out and in which it concludes as follows:

*"Teller had completed the examination of DataCell and Sunshine Press. Teller had concluded that DataCell had not acted contrary to Visa's rules, DataCell would sign a new agreement with Teller enabling it to accept Visa payments for its own services, but not facilitate donations to third parties.*

*Teller has found no signs indicating that Sunshine Press acts in contravention of Visa rules or national legislation in Iceland. Neither Teller nor Visa licence holders may enter into any agreement with Sunshine Press on the possessing of Visa payments, until this has been approved by Visa Europe. Teller now awaits Visa Europe's approval."*

As of today, neither any private organisations nor any public institutions such as police investigators, public prosecutors or any courts, in Iceland, Norway, Denmark, the United States of America or anywhere else have found any evidence that my clients, DataCell, SPP or WL have engaged in any illegal activity. Furthermore, no evidence or indication exists or has been suggested that the activities by my clients DataCell, SPP or WL, in particular with respect to the acceptance of WLs' donations, have in any way caused any risk or actual damage to the brand of either Teller, Korta, MasterCard, Visa Europe or any other organisation covered by the Merchant Agreement.

Nevertheless, DataCell is still not able to obtain payment card acceptance services and is therefore effectively prevented from carrying out its business. The markets (see the definition of the relevant markets below) on which DataCell operates are wholly dependent on being able to receive and accept payment cards and to mediate payments through / via the payment card systems. The nature of their products and services in question is such that

they are solely distributed online / over the internet and these services would be close to impossible to offer but for the services offered by the international payment card companies

As we shall explain further below, we believe that the conduct of Visa Europe, MasterCard and Teller infringes both Article 101 and Article 102 of the Treaty.

#### **4. The Relevant Market(s)**

##### **4.1 The relevant product markets**

We suggest that the relevant products markets may be defined as follows:

(a) the upstream market for payment card network services, i.e. services provided by the operators of payment card networks such as Visa and MasterCard to various financial institutions.

(b) the downstream market for acquiring services, i.e. services provided by financial institutions (acquiring firms) to merchants, enabling them to accept international payment cards.

(c) a further downstream market for payment card processing services, i.e. services provided by payment facilitators and payment gateway services such as offered by the Complainant which enables businesses, NGOs, humanitarian organisations and others which do and/or choose not to have their own merchant account to accept payments by payment cards .

(The complainant further suggests that Teller is a competitor (or at least a potential competitor) on this market. On its home page Teller describes its services inter alia in the following way:

*“Merchant solutions: “Payment and information services that make it easier and more efficient for companies to accept payment for their products and services.” Secure exchange of payments between merchants and customers. Delivering solutions for shops and payment modules for Internet shops.” “Efficient exchange of payments across borders between Nordic countries”. “Additional services and services that can help streamline payment processes and provide merchants more payment options.”*

*“Nets is a leading supplier of merchant solutions in all Nordic markets. Our solutions meet the needs of all categories of merchants; from small shops to pan-Nordic enterprises and retail chains. Nets’ merchant solutions consist of a wide range of products and services, e.g. payment terminals, e-commerce modules for web shops, gift cards, loyalty cards and other value adding services which can be integrated with our customers’ business processes. Nets offers multi-channel solutions for optimized customer processes. Our customers have full flexibility in choosing financial acquirer (Our emphasis) (Nets is the paternal company of Teller and is a Principal Member of Visa Europe)*

(d) a market for hosting services, i.e. services ranging from the hosting of services ranging from the hosting of websites, physical and virtual servers to the operation of complete data centres The complainant notes that Teller advertises: *“Products and services for acquirers: System solutions, data handling, terminal management, certificate and interchange management.”*

## 4.2 The relevant geographical market

Visa Europe's license from Visa Inc. covers the territory of all the contracting parties to the EEA Agreement. The Visa Europe and MasterCard Europe networks span the whole of the EEA and these franchises control through their respective membership rules what companies can have access to the services offered by their members/ licensees, in the case at hand, acquiring services. The acquiring services of Teller are available from all over Europe, DataCell offers its services all over the world. The geographical market relevant to this complaint is therefore at least EEA wide. EU/EEA regulations in the field of payment services and the SEPA framework seem to separate the EU/EEA payment card market in various respects from the rest of the world.

## 5. The market position of Visa Europe and MasterCard Europe

Visa Europe's share of the payment card market is 67,6% in the Europe for the year 2010, measured as share of purchase value of transaction with general purpose payment cards. The market share of MasterCard was 27.7%<sup>3</sup> in this category. (Figures for the EEA are not available to the Complainant but there is no reason to believe that this figure is lower for the EEA than Europe). Visa's market share in Europe has been stable over the past 10 years at least. The same applies to MC. Visa has an ownership structure where all the major financial undertakings in Europe are shareholders, all shareholders are also issuers and/or acquirers of Visa card transactions. Other members are exclusively financial undertakings who are also licensed acquiring firms and/or issuers of cards. The interlocked and intertwined interest of all these parties (some 4000 of them) to the interests of the Visa payment card schemes contributes to a position of unassailable market dominance of Visa Europe throughout the EEA area.

MasterCard Europe is a subsidiary of MasterCard Inc USA. Licensees to issue payment cards and to acquirers of payment card transactions are within the MasterCard franchise exclusively granted to financial institutions. The Complainant suggests that the conditions under the antitrust rules for a finding of collective dominance are present in the case of Visa Europe and MasterCard Europe, i.e. on the relevant geographical market. My client submits that the concerted action undertaken by VISA and MasterCard to exclude my client from obtaining services within their respective payment card systems is further evidence of that Visa and MasterCard hold a position of collective market dominance on the market for payment card network services within the EEA. The market share of VISA is around 68%. MasterCard holds approx. 28% of the same market. This makes the two organisations collectively super-dominant with a combined market share around 95%. This combined market share of close to 100% means that the collective dominance of Visa and MC in Europe is one of super-dominance and with that comes the special responsibility not to

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<sup>3</sup> Source: The Nilson Report, June 2011

distort competition on any market which is dependent on access to the respective payment card systems.

## **6. Infringements of Articles 101 and 102 of the Treaty**

It is my client's claim that Teller, Korta, VISA and MasterCard have each individually or together violated the Competition Rules of the EU and the EEA.

### **6.1 Abuse of dominant position**

There can be little doubt that VISA Europe and MasterCard Europe must be regarded as being collectively dominant on the market of payment card acceptance services in the EEA area. The refusal to deal is imputable to this dominant position of the card companies. In particular, the anti-competitive effects of the refusal consist in discrimination between customers.

#### **Discrimination between customers**

By refusing to supply DATACELL (through Teller and other Visa members and MasterCard members), Visa Europe and MasterCard Europe are discriminating between customers and distorting competition in the downstream market.

The discrimination towards DataCell places DataCell at a serious competitive disadvantage *vis-à-vis* its competitors, amongst who are, to an increasing extent, acquiring firms like Teller and others who are all members of one or both of the two dominant payment card organisations. In fact, DataCell is not only prevented from supplying payment card processing services to WikiLeaks/Sunshine Press and others who seek payment gateway services but is also effectively prevented from carrying out its core business, namely the provision of hosting services and software development services. The hosting and development services of DataCell are and can only be provided over the internet / on line to customers abroad and in practice it is close to impossible to carry out this kind of business if customers are not able to pay for the services rendered by means of an international payment card.

By denying the complainant access to the international payment card system(s) Visa and MasterCard seriously injure the complainant in his business and threatens its existence.

### **6.2 Other possible infringements of Article 102 of the Treaty**

It is submitted that the conduct described in section 3 above may also infringe Article 102 of the Treaty in several other ways:

As explained, MasterCard has reacted in exactly the same way and at exactly the same time as Visa Europe. This coordinated market behaviour gives reason to believe that Visa Europe and MasterCard hold a collective dominant position on the market. As a result, MasterCard



may also be held to have infringed Article 102(c) of the Treaty by discriminating against DATACELL.

The termination of a contract without prior notice and without any breach of contract on behalf of the other contracting party reflects the application of a contractual term which may be deemed unfair and exploitative and as such contrary to Article 102(a) of the Treaty.

We assume that Visa Europe and MasterCard have threatened – directly or indirectly – to exclude Teller and other acquiring firms from Visa/MasterCard membership if they were to supply DataCell. Such interference with the sales made by distributors/licensees by means of a refusal to supply or a threat to cease supplies may in itself constitute an infringement of Article 102 of the Treaty.

Also, the fact that Visa Europe and MasterCard prevent their members from supplying DataCell would seem to result in a limitation of production and markets to the prejudice of consumers which is contrary to Article 102(b) of the Treaty.

In conclusion, we submit that the conduct of Visa Europe and MasterCard Europe constitutes an infringement of Article 102 of the Treaty.

### **6.3 Agreements or concerted practices restrictive of competition**

The Complainant submits that by the conduct pursued by Teller, Korta, VISA and MasterCard as described above the companies have infringed Article 101(1) of the Treaty

He claims that the termination of the service under the merchant agreement as of 7 December 2007 and the subsequent de facto refusal by Teller and Korta to reactivate that agreement when such was demanded by my client reflects the existence of one or more anti-competitive agreements, decisions by associations of undertakings or concerted practices between Teller, Korta, Visa and MasterCard which are contrary to Art. 101(1) of the Treaty.

In fact, the identical and simultaneous application by Visa and MasterCard of their respective membership rules in order to prevent my client from obtaining payment card acceptance services not only reflect the existence of anti-competitive agreements or practices in the vertical relationship between Visa/MasterCard and their respective member financial institutions but also indicates the existence of a horizontal agreement or concerted practice between Visa and MasterCard as such. Also, the decisions not to supply my client may be regarded as anti-competitive decisions by Visa and MasterCard each operating as an association of undertakings.

The agreements, decisions or concerted practices in question have led to the foreclosure of DataCell from the markets it had operated on and where it intended to expand operations. Thus, they infringe Art. 101(1) and it is not necessary at this point to determine to what

extent each of the undertakings in question have played an active role in the infringement

#### **6.4 No objective justification**

We submit that the payment gateway services offered by DataCell to Sunshine Press / Wikileaks do not constitute a valid objective justification for the refusal to provide DataCell with acquiring services. We raise that submission, *inter alia*, on the following:

- (I) The provision of certain payment card processing services (payment gateways) whereby the holder of a merchant agreement uses its merchant account to accept donations/payments for non-profit organisations or companies, which do not have their own merchant account, and then pass these donations/payments on to the organization or company in question minus a processing fee, **constitutes an altogether normal business practice.**
- (II) The services provided by DataCell to Wikileaks/Sunshine Press are in no way different from those payment card processing services (payment gateways) which are provided by competitors of DataCell to organisations and companies around Europe and around the world.
- (III) When DATACELL entered into the Merchant Agreement with Teller and Korta it was made clear to Korta that DataCell would use its merchant account to receive donations for Wikileaks/Sunshine Press.
- (IV) Later, at the demand of DataCell, Teller carried out a compliance audit of DataCell's operations and found them to be 100 % compliant with Teller's requirements and the terms and conditions of the Merchant Agreement.
- (V) As far as we know, Wikileaks and the Sunshine Press Foundation have not anywhere or by anybody been found to be engaged in any illegal activity.
- (VI) There are no ownership or "board or management" connections between DataCell and the Sunshine Press Foundation, the corporate part of Wikileaks. The relationship between DataCell and Sunshine Press/Wikileaks is a pure business relationship.
- (VII) Finally, a mere survey of the internet suggests that Visa and MasterCard do not prevent their member firms or licensees from supplying payment card acceptance services to customers, among them other media, who by their actions openly support and cooperate with the Wikileaks /Sunshine Press media

#### **6.5 Causal link between the abuse and the competitive harm.**

DataCell competes on the international market of data hosting services where payment for the services bought are predominantly routed through the international payment cards networks and this means that in Europe that over 90% of payments received are processed through the respective networks of Visa and MasterCard. By denying my client access to their respective systems Visa and MasterCard restrict and distort competition on a market where access to payment card schemes is indispensable. Moreover, my client offers value added services to payment card processing which are directly linked to payment card acceptance services controlled by the international card companies. This service consists e.g. of operating a payment gateway using their own merchant account to accept donations for

non-profit organizations (which do not wish to apply and pay for a merchant account themselves). Competitors of my client i.e. other companies offering such services, (including acquirers like Teller, presently or potentially) to non-governmental organisations and humanitarian organisations have not been denied services by Visa Europe and MasterCard International.

## **7. “Effect on Trade between Member States”**

The Complainant submits the alleged infringements the addressee of this letter affect trade within the internal market in the meaning of Articles 101 and 102 of the Treaty

The infringements have prevented the Complainant as an undertaking incorporated and established in Iceland, from obtaining a merchant agreement with Teller A/S , a company incorporated in Denmark , and in fact will all undertakings within the EEA area which operate as Visa transaction acquires under licence agreements with Visa Europe and MasterCard Europe.

The By-laws and membership regulations of Visa Europe and MasterCard Europe, the application of which have in this case resulted in the foreclosure of my client from the relevant markets within the EEA area, extend to all membership companies of these organisations.

The abusive conduct and the competition restrictive actions undertaken by four companies implicated above have also prevented my client from selling his services throughout the world, (and hence the EEA area). By their actions Visa Europe, MasterCard Europe, Teller and Korta have disrupted the normal pattern of trade within the internal market, the EEA area, not only as concerns the services offered by the complainant but also as regards the services and operations which Visa Europe, MasterCard Europe and their member organisations engage in.

## **8. Actions which the Complainant urges DG IV to take in respect of the alleged infringements:**

### **8.1 Request for interim measures**

Article 8 of Regulation 1/2003 stipulates that “In cases of urgency due to the risk of serious and irreparable damage to competition, the Commission, acting on its own initiative may by decision, on the basis of a prima facie finding of infringement, order interim measures. The complainant submits that in the view of the facts as set out above, the market position of Visa Europe and MasterCard, the market power the respective organisations wield, individually and collectively, that a the complainant has established that there is a prima facie case for that Visa Europe (and MasterCard as collectively dominant with Visa) has infringed Article 102 of the Treaty as well as Article 101(1) of the Treaty though their machinations and the corresponding provisions of the EEA Agreement. The complainant further submits that the infringements “are causing serious and irreparable damage to [it] and which is intolerable for the public interest”

considering the blatant abuse of market power the Visa (and MasterCard) are guilty of as the facts of this case show. The complainant therefore urges the Commission of the European Union to order Korta, Teller A/S Visa Europe and MasterCard Europe to reinstate the Merchant Agreement with DataCell dated 18 October 2010. Alternatively, in the event that the European Commission is not satisfied that the termination of said merchant agreement was without objective justification the complainant submits that there are at least grounds for an interim measure ordering Korta, Teller A/S, Visa Europe and MasterCard of to enter into a merchant agreement with DataCell which may be subject to the condition on the part of Teller A/S / Visa Europe (MasterCard) that any party on behalf of which DataCell is offering payment card acceptance services in the basis of its merchant agreement with Teller or any other party licensed to acquire of Visa card transactions, may not in the opinion of Visa Europe endanger the reputation of the "Visa" brand nor that of MasterCard.

**8.2.** In addition, and independently of whether the European Commission deems that the conditions for ordering interim measures in this case are fulfilled, the complainant expects the Directorate General for Competition to investigate the alleged infringements and to confirm that Visa Europe, MasterCard Europe, Teller and Korta have by their conduct as described above, infringed the provisions of the Treaty on the Functioning of the European Union as well as the corresponding provisions of the EEA Agreement referred to above and to apply appropriate fines to these infringements.

**8.3** In the event that the Commission does not agree with the complainant that the facts as set out above implicate MasterCard as participating in the conduct alleged to be contrary to Articles 101 and 102 of the Treaty and/or does not deem MasterCard Europe to be collectively dominant with Visa Europe on the respective market(s), then the complainant submits that facts as set out above and the market position of Visa Europe as individually market dominant together with its conduct on its own or in concert with Teller and Korta, as the case may be, justifies a recourse to the interim measure requested above and/or the appropriate investigation and a finding of infringement of the antitrust rules of the Treaty.

## **9. Final remarks:**

There can be little doubt that market power that Visa Europe and MasterCard Europe wield on the European market is an overwhelming one, both on terms of market shares, economic power and the controlling reign they hold over their member firms and licensees. With such power comes the special responsibility not to distort competition by their actions and conduct. The activities of Visa and MC comprise all of Europe and as such they affect the pattern of competition, not only at the network level and on the relevant downstream markets but throughout all markets which depend on payment card services including that of our client. An arbitrary decision taken by Visa and MC whereby a firm is excluded in a discriminatory manner from competing and operating on an important IT and ICT market, which at the same time is capable of distorting the effective application of renewable energy resources within a territory of the EEA Agreement does, in the opinion of my client, justify and even make an intervention by the EU- Commission necessary

in this case.. The resources of the relevant authorities in Iceland as well as those of my client, would not match those of Visa Europe and MasterCard Europe.

While the advances in IT and ICT technology and the free flow of information which these advances have made possible and which in turn has led to better democratic procedures and increased transparency all over the world, only a handful, probably only two or three, international organisations which control, the payment card systems, hold the key to the utilization of the IT and ICT technologies as business tools and as platforms for new services and products. These organizations can therefore dictate who can do business over the internet /the World Wide Web. With that comes great responsibility which Visa and MC have abused in the case of my client.

#### **10. No proceedings before national competition authorities or national courts**

The complainant has neither formally nor informally approached any national competition authorities nor has he initiated legal proceedings in connection to the alleged infringements of antitrust rules.

**Reykjavík, 28 June 2011**

**On behalf of DataCell ehf.**

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#### **Attachments:**

**Power of Attorney.**