

COMPLETED ACQUISITION BY DIEBOLD, INCORPORATED OF WINCOR NIXDORF AG

Issues statement

27 September 2016

The reference

1. On 30 August 2016, the Competition and Markets Authority (CMA), in exercise of its duty under section 22(1) of the Enterprise Act 2002 (the Act), referred the completed acquisition by Diebold, Incorporated (Diebold) of Wincor Nixdorf AG (Wincor) (the Merger), for further investigation and report by a group of CMA panel members (the inquiry group).
2. In exercise of its duty under section 35(1) of the Act, the CMA must decide:
 - (a) whether a relevant merger situation has been created; and
 - (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (SLC) within any market or markets in the UK for goods or services.
3. In answering these two questions we will apply a ‘balance of probabilities’ threshold to our analysis, that is, we will decide whether it is more likely than not that an SLC will result from the Merger.¹
4. In this statement, we set out the main issues we are likely to consider in reaching our decision on the SLC question (paragraph 2(b) above), having had regard to the evidence available to us, including the evidence referred to in the CMA’s phase 1 decision to refer the Merger for further investigation (the Phase 1 Decision).² This does not preclude the consideration of any other issues which may be identified during the course of our investigation.
5. Throughout this document we refer to Diebold and Wincor collectively as ‘the Parties’ and to the combined entity as ‘the Merged Entity’ where appropriate.

¹ [Merger Assessment Guidelines](#) (CC2/OFT1254), paragraph 2.12. The *Merger Assessment Guidelines* have been adopted by the CMA board (see *Mergers: Guidance on the CMA’s jurisdiction and procedure* (CMA2), Annex D).

² See the full text of this decision on the [case page](#).

Background

6. On 15 August 2016, Diebold acquired Wincor. The Merger was initiated by way of a Business Combination Agreement dated 23 November 2015, followed by a takeover offer commenced on 5 February 2016. The acceptance period ended on 22 March 2016 and Diebold secured a number of tendered Wincor shares that was sufficient to proceed with the takeover offer.
7. Diebold is a US public company, headquartered in North Canton, Ohio. Diebold is a services-led, software-enabled provider of financial self-service (FSS) products and solutions. These solutions include (i) services, (ii) software, and (iii) hardware (ie Automated Teller Machines (ATMs)). Diebold's UK business is focused on customer-operated ATMs and maintenance. The turnover of Diebold in 2015 was approximately £1.6 billion worldwide.
8. Wincor is a German public company headquartered in Paderborn, Germany. Wincor serves customers in the financial and retail sectors and provides FSS products and solutions to ATM deployers, comprising: (i) hardware (including ATMs); (ii) software; and (iii) IT services. In addition, Wincor also offers 'point-of-sale' solutions and self-service solutions designed for retail customers. The turnover of Wincor in 2015 was approximately £1.8 billion worldwide.
9. A more detailed description of the Parties and their activities can be found in paragraphs 16 and 17 of the Phase 1 Decision.
10. The Parties' activities in the UK overlap in the supply of:
 - (a) ATMs: Both Diebold and Wincor produce (i) customer-operated ATMs such as ATM dispensers, ATMs with deposit automation and ATM recyclers, (ii) teller-assist ATMs (including teller cash dispensers (TCDs) and teller cash recyclers (TCRs)), and (iii) kiosks, each of which are sold to banks and/or independent ATM deployers (IADs);³
 - (b) FSS software;
 - (c) maintenance services for ATMs and FSS-software; and
 - (d) business services (ie varying ranges of co-called managed services and professional/advisory services).

³ IADs provide consumers with convenient access to cash in locations where there may be no financial services branches or ATMs.

11. For more details see paragraphs 30 to 33; 62 to 63 and 67 of the Phase 1 Decision).

Market definition

12. The purpose of market definition is to provide a framework for the analysis of the competitive effects of a merger. The relevant market contains the most significant competitive alternatives available to the customers of the merger firms and includes the most relevant constraints on the behaviour of the merger firms.⁴ However, the boundaries of the market do not determine the outcome of the CMA's analysis of the competitive effects of the merger in any mechanistic way. In assessing whether a merger may give rise to an SLC, the CMA may take into account constraints outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.⁵
13. As set out above, the Parties both supply FSS hardware, software and related services. We will consider market definition by reference to those products where the Parties' activities overlap. Specifically, we will consider the appropriate definition for the purposes of assessing the Merger by reference to the following categories of product:
- (a) the supply of customer-operated ATMs;
 - (b) the supply of TCDs and TCRs; and
 - (c) the supply of FSS kiosks.
14. For the supply of customer-operated ATMs (see paragraph 13(a) above), as part of our assessment we will consider the extent to which a distinction should be made between customer-operated ATMs according to their functionality, including the ability to accept cash deposits, the ability to recycle cash deposits, the ability to perform a broad range of transactions and design features that facilitate customer assistance by a teller.
15. For these products, we will consider the extent to which, in response to a price increase and/or deterioration in quality of customer-operated ATMs, customers would have switched to other types of ATM or FSS device, and

⁴ [Merger Assessment Guidelines](#), paragraph 5.2.1.

⁵ [Merger Assessment Guidelines](#), paragraph 5.2.2.

whether any resulting loss of profit would be sufficient to render any such price increase or quality deterioration unprofitable.⁶

16. We will also assess the extent to which production assets can be used by firms to supply different types of FSS hardware and whether firms have the ability and incentive quickly to shift capacity between these different types of products depending on demand for each; and the extent to which the same firms compete to supply these different products and whether the conditions of competition between firms are the same for each product.⁷
17. For the geographic market definition, we will consider whether it is national or broader, and whether the geographic market definition may vary by customer type, in particular distinguishing between banks and IADs.

Assessment of the competitive effects of the Merger

Counterfactual

18. We will assess the potential effects of the Merger on competition compared with the competitive conditions in the counterfactual situation (ie the competitive situation absent the Merger). We will therefore consider what would have been most likely to have happened if the Merger had not taken place.
19. In making our assessment, we will consider possible alternative scenarios and decide upon the appropriate counterfactual situation based on the facts available to us and the extent to which events or circumstances and their consequences are foreseeable.⁸

Theories of harm to be investigated

20. Theories of harm describe the possible ways in which an SLC may be expected to result from a merger, and provide the framework for our analysis of the competitive effects of a merger. We have set out below the theory of harm that we are currently minded to investigate. However, we may revise our theory or theories of harm as our inquiry progresses. The identification of a theory of harm does not preclude an SLC being identified on another basis following further work by us, or the receipt of additional evidence.

⁶ [Merger Assessment Guidelines](#), paragraphs 5.2.11–5.2.13.

⁷ [Merger Assessment Guidelines](#), paragraph 5.2.17.

⁸ [Merger Assessment Guidelines](#), paragraph 4.3.2

21. We are currently considering one horizontal theory of harm. The concern under a horizontal (unilateral) effects theory of harm is that the removal of one party as a competitor could allow the remaining suppliers, including the Merged Entity, to increase prices, lower quality, reduce the range of their services and/or reduce innovation, all relative to the counterfactual. This may also give rise to an SLC by removing a significant competitive constraint affecting competitive rivalry overall.

Theory of harm 1: unilateral horizontal effects arising from the loss of actual competition in the supply of customer-operated ATM hardware in the UK

22. We will examine whether the Merger results or may be expected to result in an SLC as a result of horizontal unilateral effects in the supply of customer-operated ATM hardware.
23. We will assess whether, as a result of the elimination of the competitive constraints posed by the Parties, remaining suppliers, including the Merged Entity, could increase the prices of their products, deteriorate the quality or range of its offering and/or reduce the level of innovation.
24. We will look at whether:
 - (a) Either or both of the Parties are significant competitive forces in the market, and/or the Parties are close competitors, in the supply of customer-operated ATM hardware. In particular, we will consider:
 - (i) the extent to which the Parties' offerings are perceived as close substitutes; and
 - (ii) the extent to which the Parties increase the average expected quality of customers' alternative offerings and, therefore, increase the pressure on suppliers (including the Parties) to offer lower prices or better non-price terms;
 - (b) There are no rivals likely to be able to replace the competitive constraint that the Parties exert on one another and on other current competitors in the supply of customer-operated ATM hardware; and
25. We will consider whether the assessment would vary by customer type, in particular distinguishing between banks and IADs.
26. We will also examine any evidence of any significant interactions between competitive conditions in the supply of FSS software and/or FSS-related maintenance or other services and incentives to compete in the supply of

ATM hardware. We will take evidence of any such interactions into account in our assessment of competitive effects in the supply of ATM hardware.

27. In order to assess the conditions set out above, we will consider a variety of sources of evidence, including evidence on the structure of bidding processes; evidence on the availability of information to suppliers when engaging in bidding processes; on margins, and in particular, what they indicate about how competition works and about the constraint posed by different suppliers; on the historical wins and rankings achieved by suppliers; and evidence from customers' and competitors' internal documents about their perception of suppliers' ability to win tenders.

Countervailing factors

28. We will consider whether there are countervailing factors which are likely to prevent or mitigate any SLC that we may find.

Entry and expansion

29. We intend to consider whether entry or expansion by effective competitors could be expected to be timely, likely and sufficient to prevent any SLC. To do this, we will in particular:
- (a) look at the history of actual entry, expansion and exit by the Parties and by their competitors and review any future plans. This will include considering both entry by suppliers currently active in customer-operated ATMs but not in the UK and entry by suppliers of other types of FSS hardware products into the supply of customer-operated ATMs;
 - (b) consider the costs and time necessary for suppliers with a limited presence in the UK, or new entrants to overcome certain barriers that several third parties have identified as important. This will include considering the costs and time necessary:
 - (i) to overcome customer-level and country-level certification requirements for suppliers' customer-operated ATM hardware models;
 - (ii) to develop a local presence in several key areas (maintenance services and sales); and
 - (iii) to modify a hardware offering in order to comply with the Disability Discrimination Act (DDA) and other UK-specific design requirements; and

- (c) examine other factors that might inhibit entry or the expansion of existing competitors, such as the requirement for UK earned reputation and switching costs faced by customers.

Buyer power

- 30. We will assess whether any customers of Diebold and Wincor have countervailing buyer power, and/or whether the buyer power of these given customers would be sufficient to protect customers from any effects of an SLC. In particular, we will assess:
 - (a) the extent to which it would be likely for customers to sponsor new entrants. This will include assessing:
 - (i) the availability of adequate candidate entrants that would be willing and able to meet the requirements of customers;
 - (ii) the prospective benefits, costs and risks associated with sponsoring a new entrant and therefore the incentive of customers to do so;
 - (iii) the likelihood that any such sponsored entry would occur in a timely fashion; and
 - (iv) each of the other considerations relating to entry as set out in the section on 'Entry and expansion' above.
 - (b) the availability of sources of buyer power other than by sponsoring entry;
 - (c) the extent to which buyer power of customers would protect customers other than themselves; and
 - (d) the likely impact of the Merger on any pre-existing countervailing buyer power.

Efficiencies

- 31. We will also examine any evidence available to us in relation to efficiencies arising from the Merger. In particular, we will examine whether there are Merger-specific rivalry enhancing efficiencies that can be expected to mean that the Merger would not result in an SLC.

Possible remedies and relevant customer benefits

32. Should we provisionally conclude that the Merger may be expected to result in an SLC in one or more markets, we will consider whether, and if so what, remedies might be appropriate, and will issue a further statement.
33. In any consideration of possible remedies, we may in particular have regard to their effect on any relevant customer benefits that might be expected to arise as a result of the Merger and, if so, what these benefits are likely to be and which customers would benefit.

Responses to the issues statement

34. Any party wishing to respond to this issues statement should do so in writing, by no later than **5pm on 11 October 2016**. Please email diebold.wincor@cma.gsi.gov.uk or write to:

Project Manager
Diebold/Wincor merger inquiry
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