

# Completed acquisition by Diebold, Incorporated of Wincor Nixdorf AG

## Decision on relevant merger situation and substantial lessening of competition

**ME/6613/16**

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 19 August 2016. Full text of the decision published on 27 September 2016.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges for reasons of commercial confidentiality.

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### SUMMARY

1. On 15 August 2016, Diebold, Incorporated (**Diebold**) acquired Wincor Nixdorf AG (**Wincor**) (the **Merger**). Diebold and Wincor are together referred to as the **Parties**.

2. The Competition and Markets Authority (**CMA**) believes that it has jurisdiction to review the Merger since it is or may be the case that the Parties' enterprises have ceased to be distinct and that the turnover test is met.
3. The Parties overlap in the supply of automated teller machines (**ATMs**); financial self-service (**FSS**) software; maintenance services for ATMs and FSS software; and business services (ie varying ranges of co-called managed services and professional/advisory services) in the UK. The CMA found that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) in relation to the latter three overlapping areas of the Parties' activities.
4. The Parties supply different types of ATM hardware. The CMA found, taking a cautious approach, distinct frames of reference for customer operated ATMs (including ATMs with dispensing, recycling and deposit functionality), teller-assist ATMs and kiosks, due to their different intended use and limited supply-side substitutability. Given that the Parties have no material overlap in the supply of teller-assist ATMs in the UK, the CMA has assessed the impact of the Merger within the frame of reference of the supply of customer-operated ATMs.
5. In relation to the geographic frame of reference, the CMA found that a number of factors supported an assessment of the Merger on a national basis, including that:
  - (a) the set of competitors varies across EEA countries;
  - (b) procurement by customers in the UK frequently occurs at a national level;
  - (c) there is a need to satisfy UK-specific requirements (including ensuring access to local operations including maintenance, sales and customer support, undergoing certification processes and making technical adjustments to comply with UK-specific regulatory requirements and to satisfy UK-specific compatibility requirements);
  - (d) country-specific reputation is valued by customers; and
  - (e) preferences for functionality vary across countries.
6. The CMA therefore assessed the impact of the Merger within the geographic frame of reference of the UK.
7. The CMA found that the Parties are competing closely in the supply of customer-operated ATMs in the UK and there is only one other strong competitor – NCR. The CMA's analysis of 13 recent instances of customer

tenders and purchases of ATM hardware, as well as other evidence including views from third parties and evidence from suppliers' internal documents shows that other competitors either have not been invited to bid, have declined to participate in tenders, or have failed to win bids and are not generally perceived by banks as credible suppliers in the current marketplace. The CMA therefore found that the Merger could result in a reduction from three to two in the number of credible competitors with a strong record of competing (especially for bank customers) in the UK.

8. The CMA assessed the likelihood of new entry or expansion to replace the competition lost as a result of the Merger. On the basis of the evidence available at phase 1, it considers that there are barriers to entry and expansion, including the need to establish a local presence in the UK, the importance of UK-specific reputation and scale, the need to acquire necessary certification and comply with UK-specific regulation and design requirements. Taking into account potential UK competitors' plans for entry or expansion in the UK, the CMA found that entry or expansion would not be timely, likely and/or sufficient to prevent a realistic prospect of an SLC as a result of the Merger.
9. The CMA believes, based on the evidence available to it at this stage, that customers do not have sufficient buyer power to mitigate the competition concerns arising from this Merger for two reasons. First, the Merger results in a loss of competition in the supply of customer-operated ATMs from three to two, and the CMA would expect to receive strong evidence at the first phase of its assessment that buyers would be able to switch to credible alternatives quickly. The CMA has assessed, in the time available, the likelihood of credible alternatives for buyers to switch to in order to mitigate the competition concerns identified. In relation to sponsored entry, the majority of customers stated that they would not sponsor entry. Even though some customers indicated that they would be willing to consider sponsoring new entry, they (i) were not confident that the benefits of sponsorship would outweigh the costs; and/or (ii) would expect the new entrant to take on its own costs which did not amount to sponsorship.
10. The CMA notes that the Parties could refrain from imposing any post-Merger price increase on (or may even offer a discount to) those customers that are likely to be able to sponsor entry in order to deter sponsorship of new entry while recouping additional profits through higher prices to other customers (who would not have the ability or incentive to sponsor entry). The CMA therefore believes that sponsorship will not provide an alternative route to switching for customers such as to provide a constraint on the merged entity.

11. The CMA therefore believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects through the loss of competition in the supply of customer-operated ATMs in the UK.
12. The CMA has also assessed whether the Merger could give rise to vertical effects on competition in the supply of maintenance services in the UK. The CMA found no competition concerns in relation to this vertical theory of harm.
13. Having found a realistic prospect of an SLC in relation to the supply of customer-operated ATMs in the UK, the CMA is considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (**the Act**). Diebold has until 26 August 2016 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 22(1) and 34ZA(2) of the Act.

## ASSESSMENT

### Parties

14. Diebold is a US public company, headquartered in North Canton, Ohio. Diebold is a services-led, software-enabled provider of FSS products and solutions. These solutions include (i) services, (ii) software, and (iii) hardware (ie ATMs). The turnover of Diebold in 2015 was approximately £1.6 billion worldwide and approximately [X] in the UK.
15. 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 and [X] in the UK.
16. Diebold's history in the UK comprises three distinct phases. Between 1991 and 1998, Diebold was in a joint venture with International Business Machines Corporation (**IBM**) called InterBold. InterBold sold Diebold hardware to four customers (HSBC Holdings plc (**HSBC**), The Co-operative Bank, The Dunfermline Building Society and The Coventry Building Society) and by the end of the joint venture in 1998 achieved an installed base of approximately 4,000 units (16% of the then-installed base). In 1999, the joint venture terminated and Diebold attempted to sell into the UK directly. This was not successful and the installed base of Diebold hardware eroded to below 500 units by 2002 (1% of the UK installed base at the time). Diebold had no sales<sup>i</sup> in the UK from [X] until [X]. Diebold then recruited new management and

sales staff, and made its hardware more suitable for the UK market by adopting standards more commonly used in the UK. In 2015, two major banks, [X], were among Diebold's customers in the UK.

17. In 2014 Diebold acquired Cryptera, a private Danish company headquartered in Glostrup (Denmark). Cryptera provides secure payment processing technology (mainly in the form of encryption PIN pads) for ATMs, self-service petrol pumps, ticket vending machines, and other self-service terminals. Cryptera's customers are the manufacturers of these machines, including Wincor, which purchases encryption PIN pads from Cryptera for testing in some of its ATMs.

## **Transaction**

18. 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.
19. The Parties submitted to the CMA that the Merger was the subject of review by competition authorities in Austria, Brazil, China, Colombia, Poland, Portugal, Russia, Slovakia, Spain, Turkey and the US. The Merger was cleared in Austria subject to certain behavioural remedies. The Merger was cleared unconditionally by all the remaining national competition authorities.

## **Jurisdiction**

20. As a result of the Merger, the enterprises of Diebold and Wincor have ceased to be distinct.
21. The UK turnover of Wincor exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.
22. The Merger completed on 15 August 2016, during the process of the CMA's phase 1 review of the Merger.<sup>1</sup>
23. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.

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<sup>1</sup> The four month deadline for a decision under section 24 of the Act is 15 December 2016.

24. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 27 June 2016 and the statutory 40 working day deadline for a decision is 19 August 2016.

## Counterfactual

25. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For completed mergers the CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.<sup>2</sup>
26. In this case, there is no evidence supporting a different counterfactual, and the Parties have not put forward arguments in this respect. The CMA believes the pre-Merger conditions of competition to be the relevant counterfactual.

## Frame of reference

27. The Parties' activities overlap in the supply of:
- (a) ATMs;
  - (b) FSS software;
  - (c) maintenance services for ATMs and FSS-software; and
  - (d) business services.
28. This section discusses the frame of reference against which the Merger is assessed. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more

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<sup>2</sup> [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, from paragraph 4.3.5. The [Merger Assessment Guidelines](#) have been adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, Annex D).

important than others. The CMA will take these factors into account in its competitive assessment.<sup>3</sup>

29. The CMA sets out its assessment of the appropriate frames of reference for the Parties' overlapping products and services below.

### ***Product scope***

#### *ATMs*

30. 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**).<sup>4</sup>
31. In relation to customer-operated ATMs, the Parties submitted that ATM dispensers are ATMs that only dispense banknotes, whereas ATM recyclers are ATMs with automated deposit functionality. The latter ATMs dispense banknotes and are also able to accept cheque and banknote deposits, an operation which involves checking, sorting, authenticating and storing banknotes. These are therefore ATMs that have the ability to dispense the banknotes deposited there by consumers, ie to 'recycle' cash. ATMs with deposit automation do not necessarily recycle the cash deposited by consumers, as they may only dispense bank-stocked cash.
32. The Parties submitted that teller-assist ATMs are mechanically similar to customer-operated ATMs but are installed in locations for teller access, for example under the teller's counter and can be subdivided into TCDs and TCRs.<sup>5</sup>
33. Finally, the Parties submitted that kiosks comprise stand-alone statement printers and non-cash dispensing transaction terminals with integrated statement printers. They are used by customers in bank branches to access their bank accounts, to check their balance and to make wire transfers.

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<sup>3</sup> [Merger Assessment Guidelines](#), paragraph 5.2.2.

<sup>4</sup> IADs provide consumers with convenient access to cash in locations where there may be no financial services branches or ATMs. IADs only purchase customer-operated ATMs.

<sup>5</sup> During its market investigation, the CMA received information that seems to indicate a distinction between teller-assist ATMs on the one hand and TCDs/TCRs on the other. The former seems to be a relatively new and advanced customer-operated ATM with multiple functions that can be used by customers, but – due to the machine's complexity – with the assistance of a teller. The latter seem to be the 'classic' under the tellers' counter cash dispensers.

### *Decisional practice*

34. In its *Glory/Talaris Topco*<sup>6</sup> decision, the European Commission (the **Commission**) considered a segmentation of the market for “financial workstations” into customer-operated ATMs and teller-assist ATMs, banknote handling machines and coin handling machines. The Commission noted that there were differences between these segments in terms of the users targeted (ie customers or tellers), the degree of software integration and design lifecycle. The Commission’s market investigation supported a segmentation by product based on evidence of customer preferences for specific cash handling products and evidence of considerable preparation time and investments required to switch production between the different types of product. The Commission noted that there was greater flexibility for substitution within the four main groups than across them. Ultimately, the product market definition was left open.
35. With regard to the Merger, the Spanish National Markets and Competition Commission (**CNMC**) found in its merger investigation that there were separate hardware markets for (i) ATM dispensers, (ii) ATM recyclers, (iii) ATM with deposit automation, (iv) TCDs and (v) TCRs. Following the reasoning of the *Glory/Talaris Topco* decision, the arguments for finding distinct markets were that there were different users, different functionalities, production methods and prices. Moreover, each type of ATM needed to undergo a separate certification process for each customer and certification processes differed between customers. The CNMC also noted that hardware producers specialised to some degree.
36. The Antimonopoly Office of the Slovak Republic (**AOSR**) evaluated the Merger with respect to the market of customer-operated ATMs encompassing ATM dispensers, ATM recyclers and ATMs with deposit automation.
37. The Portuguese Competition Authority left the product market definition as regards ATMs open when assessing the Merger, but cited the Commission’s reasoning from the *Glory/Talaris Topco* decision.

### *Customer-operated and teller-assist ATMs*

38. The Parties submitted that in Italy, Glory Global Solutions (**Glory**) has sold teller-assist ATMs which can also function as customer-operated ATMs. While one third party considered that it was possible to remove the additional functionality from a teller-assist ATM in order for them to be used as

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<sup>6</sup> COMP/M.6535, *Glory/Talaris Topco*, 2 July 2012.



customer-operated ATMs, a third party also submitted that such teller-assist ATMs are approximately 50% more expensive than standard customer-operated ATMs. A third party also explained that customers would not choose between teller-assist ATMs and customer-operated ATMs, or replace one with the other. Rather, it explained that the choice is driven by a bank's 'branch strategy'. Another third party submitted that customer-operated ATMs and teller-assist ATMs are expected to co-exist in the market and interact with each other complementarily. Moreover, the CMA has not received any evidence indicating that such machines are in operation in the UK (regardless of the manufacturer).

39. In relation to TCDs and TCRs, on the demand side, the CMA notes that customer preference and intended use for each of the hardware products differ (ie one is used by a customer and another by a teller). This, in itself, suggests that purchasers of teller-assist ATMs<sup>7</sup> (ie TCDs and TCRs) are unlikely to substitute for customer-operated ATMs and vice versa.
40. While the boundaries of the relevant product market are generally determined by reference to demand-side substitution alone,<sup>8</sup> the CMA may widen the scope of the market where there is evidence of supply-side substitution (ie where firms can quickly and easily shift capacity between different products depending on demand, the same firms compete to supply different products and the conditions of competition are the same for each product).
41. The Parties submitted that customer-operated and teller-assist ATMs form a single product market on the basis of supply-side substitutability. According to the Parties, the basic components and customers are the same, the components are frequently manufactured by third parties and are readily available, and companies that manufacture customer-operated ATMs will find it easy to manufacture teller-assist ATMs because they resemble each other.
42. The Parties referred to examples of expansion by Glory, Oki Electric Industry Co., Ltd. (**OKI**), Hitachi, Ltd. (**Hitachi**) and Nautilus Hyosung Inc. (**Hyosung**) from teller-assist ATMs into customer-operated ATMs. The CMA notes, however, that examples of entry alone do not *themselves* imply supply-side substitutability, which would only be considered where firms have the ability and incentive quickly (generally within a year) to shift capacity between these

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<sup>7</sup> Further in the text 'teller-assist ATMs' refer to TCDs and TCRs, and not teller-assist ATMs which can be used as customer-operated ATMs.

<sup>8</sup> [Merger Assessment Guidelines](#), paragraph 5.2.17.

different products depending on demand for each and where competitive conditions are the same for each product.<sup>9</sup>

43. With respect to supply-side considerations, the CMA notes that the conditions of competition are different between teller-assist ATMs and customer-operated ATMs. There is a different set of suppliers of teller-assist ATMs as compared to customer-operated ATMs and shares of supply differ significantly in each segment: Glory is the largest player in teller-assist ATMs in the UK by installed base, whereas the CMA's market investigation has not identified any material presence of Glory in the customer-operated ATM segment in the UK. Several third parties who responded to the CMA's market investigation indicated that Glory specialises in teller-assist ATMs, but is weak in the supply of customer-operated ATMs.
44. A third party submitted that the development of teller-assisted ATM is possible using similar technical assets, but that it is a more complicated process, taking into account (for example) banks' strategy, service improvements, and consulting customer care services. It submitted that the capacity of the production, development, marketing and sale of teller-assist ATMs is more focused compared to customer-operated ATMs and that any 'shift' of production, marketing and sales capacity is difficult to describe as a shift of capacity from one product to another. It submitted that any capacity shift from one product to another would, if realised, be due to the needs of clients and changes in the market rather than the price of the products.
45. Another third party explained that teller-assist ATMs have many more functionalities than customer-operated ATMs. It submitted that, although the skills and resources to market and sell teller-assist ATMs and customer-operated ATMs are transferable, a shift in price in one market would not generally result in a shift in production from one product line to another and that the costs associated with training, licensing and support for a customer-operated ATM were too high for [redacted]. The CMA could not identify any instance where a producer of teller-assist ATMs used its teller-assist ATM (nor a variant thereof) in order to compete for the same portion of a contract as customer-operated ATMs. One third party said that this approach was unlikely as the cost of a stripped back teller-assist unit could not compete on price with a customer-operated ATM and [redacted]. One third party said that to compete for customer-operated ATM contracts, a supplier would have to have a customer-operated ATM in its portfolio (or add one to its portfolio).

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<sup>9</sup> Ibid.

46. On the basis of the above evidence, the CMA has assessed the impact of the Merger on the supply of customer-operated ATMs and teller-assist ATMs separately.
47. Given that the Parties have no material overlap<sup>10</sup> in the supply of teller-assist ATMs in the UK, teller-assist ATMs are not considered further in this decision.

*Customer-operated ATMs with cash recycling or deposit functionality*

48. The CMA considered whether the product scope of customer-operated ATMs could be segmented by type of customer-operated ATMs, ie ATMs with cash dispensing, recycling and deposit functionality.
49. The Parties submitted that there is demand-side substitutability between ATM dispensers and recyclers. They submitted that this is supported by the observation that in locations with high customer footfall, financial institutions have replaced some dispensers with recyclers because of the greater impact on cash-in-transit costs. The Parties further submitted that the prevalent modular design of ATM dispensers and ATM recyclers allows manufacturers to switch production between the two at minimal cost and delay. Consequently, most manufacturers of ATMs that are active in Europe provide both types of ATMs.
50. ATMs with recycling and/or deposit functionality have additional functionality relative to standard ATMs, which the CMA considers implies differences in their intended use. Despite this additional functionality, the Parties submit that only two customers have purchased customer-operated ATMs with this type of additional functionality. Moreover, the benefit of ATMs with recycling and/or deposit functionality is dependent on the location where the customer seeks to deploy it and, in some areas, there will be little additional benefit to deploying an ATM with recycling and/or with deposit functionality.<sup>11</sup> The CMA believes, therefore, that there is insufficient evidence to suggest that in response to a 5 to 10% price increase by all suppliers of customer-operated ATMs, a sufficient number of customers would switch to either type of ATM with this additional functionality to render that price increase unprofitable.
51. The CMA notes that all suppliers of customer-operated ATMs in the UK also offer customer-operated ATMs with cash recycling or with deposit

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<sup>10</sup> The Parties submitted that in the UK, Diebold sells customer-operated ATMs almost exclusively. It has recently sold [X] teller-assist ATM pilot units to [X] but otherwise has no installed teller-assist ATMs in the UK.

<sup>11</sup> For example, the benefit of cash recycling is lower in areas that are easier (ie less costly) to reach for the deployer's cash in transit operations. The benefit of deposit automation will be lower in areas where cash deposits are made with relatively high frequency and/or in relatively large volumes.

functionality, and therefore the competitor set is the same. No third parties, in response to the CMA's market investigation, identified any of these different groups of customer-operated ATMs as an area in which the degree of competition between the Parties was especially close. In addition, no customer who responded to CMA's merger investigation raised concerns that related to one type of ATM specifically. In light of this evidence from third parties, the CMA believes that conditions of competition may be sufficiently similar.

52. On the basis of the above evidence relating to supply-side substitutability, the CMA believes that, for the purposes of the competitive assessment, ATM dispensers and ATMs with recycling and deposit functionality can be aggregated within the same product frame of reference.

### *Kiosks*

53. The Parties submitted that kiosks (see paragraph 33) have similar components, functionalities, and features, and are connected to the same deployer network as customer-operated ATMs. The Parties also noted that the supply of kiosks is very rare in the UK.
54. The CMA notes that kiosks are significantly different from customer-operated ATMs in terms of their intended primary use, as kiosks do not dispense cash. The CMA has therefore, on a cautious basis, not included kiosks in the same product frame of reference as customer-operated ATMs.

### *Encryption PIN pads*

55. The CMA notes that Diebold produces encryption PIN pads (through its subsidiary Cryptera) and sells them to the manufacturers of ATM hardware, including Wincor (see paragraph 17). The Parties submitted that, for the purposes of assessing the Merger, encryption PIN pads comprise a distinct relevant product market.
56. The Parties submitted that the merged entity will lack the ability to foreclose rival manufacturers of ATMs because Cryptera's market share was only just above [10-20]% in the merchant market for encryption PIN pads in the EEA, and it faces competition from several other suppliers in the EEA and worldwide, including Verifone, Ingenico, Justtide, SZTT and Idtech, all of which offer encryption PIN pads that can be substituted for Cryptera's encryption PIN pads.
57. In light of this evidence, the CMA did not conclude on the exact product frame of reference for encryption PIN pads, as no competition concerns arise in

relation to the supply of encryption PIN pads under any plausible frame of reference. Encryption PIN pads are therefore not considered further in this decision.

### *Customer segmentation*

58. The CMA considered whether the product scope of customer-operated ATMs could be segmented by customer. Customer requirements tend to differ between banks and IADs. IADs generally install ATMs in locations where the number of transactions per ATM is lower than average (eg in retail outlets, pubs, etc) and look to site owners (eg retailers) to replenish cash supplies in those machines. In contrast, banks expect their ATMs to be used by customers to carry out a wider range of ATM transactions than IADs (eg deposits, statement requests, and so on). Banks will therefore require a wider range of ATMs and functionality. Banks also use more extended tender processes and trials than IADs and tend to require certification on their own platform. It is apparent from the answers of third parties that banks consider a supplier's reputation among banks rather than among all ATM deployers. Moreover, banks tend to be more dependent on the ATM supplier or other third parties for installation and repair.
59. The Parties submitted that if there was previously a distinction to be made between banks and IADs, it has quickly fallen away in the past three to five years. While IADs and banks previously deployed ATMs in quite different locations, the Parties submitted that this is no longer the case, as IADs have purchased off-branch networks from Santander UK plc (**Santander**), HSBC, Lloyds Banking Group, Nationwide Building Society and The Co-operative Bank, and IADs are now even running in-branch ATMs for some banks (eg Metro Bank PLC). According to the Parties, the Link Network (**LINK**)<sup>12</sup> reports that over 450 in-branch ATMs are run by IADs in the UK. This compares to a total of at least 18,380 in-branch ATMs connected to the LINK network as at June 2016.<sup>13</sup> In light of the small proportion (2.4%) of in-branch ATMs currently run by IADs, the CMA believes that the purchase by IADs of banks' in-branch ATMs is not a significant trend in the UK and does not consider, on the basis of this alone, that it is sufficient to significantly diminish any distinction drawn between IADs and banks.

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<sup>12</sup> LINK is the UK's ATM network and covers all of Great Britain and Northern Ireland, as well as a small number of ATMs in Ireland, the Channel Islands, Gibraltar, the Isle of Man, and one ATM in each of Belgium and the Czech Republic.

<sup>13</sup> This is based on statistics published on the [LINK website](#). There may be additional in-branch ATMs that are not connected to the LINK network but this would result in a smaller proportion.

60. The Parties further submitted that in recent years, IADs have moved rapidly towards a free-to-use model (as per banks), demand the full spectrum of ATM products and are equally as likely to purchase Diebold's and Wincor's ATMs as banks, often for the exact same types of deployment.
61. In light of the above, the CMA has assessed the competitive effects of the Merger on the supply of customer-operated ATMs to banks and IADs together, but has taken relevant differences between customers' requirements into account in its competitive assessment.

### *FSS software*

62. The Parties submitted that they offer the basic software to run their hardware, which includes the basic operating system (**OS**) (ie Microsoft Windows), and middleware comprising so-called 'open platform software' (CEN/XFS). The basic OS and the CEN/XFS middleware are essential for the functioning of the ATM. These two software layers are not sold separately from the ATM hardware, but rather are provided as a package together with the ATM hardware.
63. In addition to the OS and middleware, the Parties offer:
- (a) application software, which is responsible for the core (transaction) functionalities of the ATM, the consumer interface and the integration with other systems, such as the deployer's network and the wider ATM network (such as LINK in the UK);
  - (b) remote monitoring/status and management software, which is supplied to customers as a stand-alone offering as well as in connection with the provision of co-called managed services;
  - (c) security software; and
  - (d) marketing software, which allows customers to place internal or external advertisement on the displays of the ATMs.
64. In terms of decisional practice, the CNMC did not conclude on the product market for ATM software, but noted that there could be a distinct market for each end use of that software,<sup>14</sup> which was also confirmed by its market investigation. The AOSR assessed the supply of operational system and

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<sup>14</sup> Ie basic software, application software, terminal driving software, remote monitoring/status management software, security software and marketing software.

middleware software together with the supply of ATMs, as these products are supplied together.

65. The nature of the above types of FSS software (ie their intended use whereby all are used for different purposes) suggests that the different types of software described above are all likely to constitute separate frames of reference in terms of demand- and supply-side substitution.
66. A Wincor document<sup>15</sup> indicates that there are a number of competitors in the FSS software sector, such as NCR, KAL and Auriga. The Merger results in a negligible increment of [0-5]% (on the installed base in 2014 and 2015) to the Parties' combined share of supply of FSS software. These share of supply estimates do not include the recent wins of a substantial contract by Auriga. While shares by volume of shipments are unavailable, each of Wincor, KAL, NCR and Auriga has expanded its installed base by a significant amount recently: Wincor's installed base grew by [X] units; KAL's by [X] units and NCR's by [X] units. In light of this evidence, the CMA did not conclude on the exact product frame of reference for FSS software, as no competition concerns arise in relation to the supply of FSS software under any plausible frame of reference. FSS software is therefore not considered further in this decision.

#### *Maintenance services for ATMs and FSS software and business services*

67. Both Parties offer maintenance services for ATM hardware and software, including so-called first line maintenance (**FLM**) services, second line maintenance (**SLM**) services, and business services. FLM comprises simple maintenance tasks, eg replenishing consumables and fixing bank card jams. SLM refers to the more sophisticated repair and maintenance of FSS hardware, including software repair. Business services comprise varying ranges of so-called managed services and professional/advisory services.
68. The Parties submitted that FSS services should be segmented into (i) FSS related maintenance services (ie including both FLM and SLM services) and (ii) business services.
69. The Parties submitted that Diebold only provides certain ATM related maintenance services but is not active in any other areas of business services provided to financial institutions or payment processing services. For this reason, business services are not discussed further in this decision.

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<sup>15</sup> [X]

70. The CMA found that there is no apparent demand-side substitution between FLM and SLM services in light of the different and specific intended customer uses of these services.
71. On the supply side, with respect to substitution between FLM and SLM services, the CMA notes that the conditions of competition between FLM and SLM services differ. FLM services are mostly carried out in-house by both banks and IADs.<sup>16</sup> In contrast, the Retail Banking Research (**RBR**) report<sup>17</sup> indicates that all UK banks outsource SLM services to third parties for both branch and remote ATMs.
72. In line with the market investigation of the CNMC, the CMA has treated the supply of FLM, SLM and business services as separate frames of reference.
73. In addition, the CMA considered whether it is appropriate to further divide the frame of reference for SLM services into separate frames of reference for each manufacturer/brand, based on demand- and/or supply-side substitution.
74. On the demand side, there is no apparent substitution between SLM services for a given manufacturer's machines and SLM services for those of another manufacturer, on the basis that only manufacturer-specific maintenance services are technically fit for the customer's intended use.<sup>18</sup>
75. With respect to supply-side substitution between SLM services for machines originally produced by different manufacturers, the CMA found evidence of several barriers that may prevent an SLM service provider from quickly and easily shifting its engineering and maintenance capacity from the supply of SLM services for machines it currently maintains to the supply of SLM services for machines produced by an Original Equipment Manufacturer (**OEM**) whose machines it does not currently maintain. In particular, several third parties indicated that SLM service providers may not necessarily gain quick and easy access to spare parts, especially if they cannot offer a reciprocal arrangement (eg because they do not have spare parts of their own to offer access to in return) or without access to diagnostic software. One third party said that to service other OEMs' ATMs, they would have to negotiate with the OEMs to get the necessary training, licencing and parts, and that the cost of supporting a third party's estate would therefore be quite high. Another third party said that it would have to negotiate to gain access to spare parts at prices that would allow it to be competitive in order to supply maintenance

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<sup>16</sup> See RBR-report, UK, p31.

<sup>17</sup> RBR published detailed, strategic market research reports, covering key issues relating to banking automation, cards and payments.

<sup>18</sup> For example, a customer requiring maintenance of Wincor machines could not use a provider that only had capacity to service NCR machines.



services for OEM machines that it currently does not maintain and that it was uncertain that it could achieve this. One other third party said that it would be able to support products where it could gain access to diagnostics, spare parts and training.

76. A third party that responded to the CMA's merger investigation also noted other costs associated with supply-side substitution between SLM services for machines originally produced by different manufacturers, such as (i) training qualified engineers; (ii) access to diagnostic software (or investing in own diagnostic software); (iii) building up a stock of spare parts; and (iv) fitting enough spare parts for different manufacturer's machines in vans.
77. The CMA also notes that the competitor set supplying maintenance services for machines produced by different OEMs varies. The Parties told the CMA that Diebold does not service the ATMs of other OEMs and does not permit other maintenance service providers to maintain certain of its own ATMs.
78. Based on the above, the CMA assessed the impact of the Merger on the supply of SLM services for the ATMs of each OEM separately. The Merger therefore does not result in a horizontal overlap between the Parties in relation to the provision of SLM services.

#### *Conclusion on product scope*

79. For the reasons set out above, the CMA assessed the impact of the Merger on the supply of customer-operated ATMs (including ATM dispensers and ATMs with recycling and deposit functionality). The CMA also assessed the impact of the Merger on the supply of SLM services for the ATMs of each OEM separately.

#### **Geographic scope**

80. The CMA did not find it necessary to conclude on the geographic frame of reference in relation to FSS software, since, as mentioned above (see paragraph 66), no competition concerns arise even on the narrowest plausible basis (ie national). The following section therefore only deals with the CMA's assessment of the geographic scope of the supply of customer-operated ATMs and SLM services for OEM ATMs.

#### *ATMs*

81. The Parties submitted that the geographic scope for all ATM hardware products is national for a number of reasons. In particular, they submitted that:

- (a) the set of competitors varies across countries;
  - (b) there are different preferences (for functionality) across countries;
  - (c) there are different technical standards<sup>19</sup> and profit margins across countries;
  - (d) the need to satisfy country-level requirements, including certification processes, and to provide local software engineering, servicing and maintenance operations varies across countries; and
  - (e) procurement frequently occurs at a national level.
82. Third party responses supported the view that the supply of customer-operated ATMs in the UK was national. Almost all customers, ie banks and IADs, recognised the importance of UK-based engineering and maintenance operations and frequently also considered UK-based sales, account management and/or helpdesk functions to be important to a supplier's credibility. Several third parties that responded to the CMA's merger investigation emphasised the importance of the supplier's proven ability to support and maintain its own devices in the UK and that the absence of this proven ability can contribute to a supplier failing to win contracts for ATM hardware.
83. A majority of customers responding to the CMA's market investigation told the CMA either that local operations (whether maintenance, engineering, sales, account management or helpdesk operations) were required to be a credible supplier or that, in response to a 5 to 10% price increase by all suppliers with the relevant operations located in the UK, they would not switch to a supplier without those operations located in the UK. In addition to this majority, other customers described local operations as important or very important. It therefore appears that demand-side substitution is not sufficient to widen the frame of reference beyond the UK.
84. Suppliers with the relevant operations in the UK may be aggregated with suppliers without such operations in the same geographic market if the latter firms have the ability and the incentive to quickly shift their operations or have the capability to serve the UK or establish relevant operations in the UK. The relevant considerations are set out at paragraphs 182-198 below. Based on the evidence set out in that section relating, inter alia, to country-specific certification and legal requirements, country-specific reputation and

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<sup>19</sup> The Parties noted that the main standards that vary pertain to ATM safes, electronic card readers, encrypted PIN pads, banknote acceptors and inking solutions (for banknote marking in case of theft).

customers' strong preference of having sufficient local support in the UK, the CMA does not consider that the relevant operations or capabilities can be shifted to or established in the UK quickly and easily such that the geographic frame of reference should be widened.

85. The CMA also found evidence supporting the Parties' submission that the set of competitors varies across countries. Moreover, the CMA notes that data provided in the RBR report shows not only that the competitor set varies across countries in terms of both the number and identity of competitors, but also that the shares of supply (by installed base) of competitors vary considerably across the different countries where they are present. Across the 15 EEA countries (other than the UK) examined in the RBR report, the CMA has identified only three suppliers (the Parties and NCR) that have shares of supply by installed base that exceeded [0-5]% in 2015 in at least three of EEA countries included in the report. Only one other supplier (KEBA) had a share exceeding [0-5]% in two of these EEA countries ([10-20]% in Austria and [5-10]% in Germany).<sup>20</sup> ii The Parties also submitted that margins for ATMs vary across countries. In light of this evidence, the CMA believes that competitive conditions vary considerably across countries in the EEA.

#### *SLM services for the ATMs of each OEM*

86. The Parties submitted that the geographic scope of the relevant frame of reference in relation to maintenance services for ATMs is national. The Parties submitted that in the FSS solutions industry, customers value a quick response time in the event of ATM hardware or software malfunctions. This necessitates a local presence by the service provider. The Parties further submitted that a preference for suppliers that are able to converse in the relevant local language also plays a significant role in the FSS-related services business.
87. The CMA found that almost all customers require maintenance operations that are based in the UK or have in-house solutions. In light of the importance customers attach to uninterrupted performance for their ATM estate, the CMA believes that short resolution times in maintenance are important. The CMA also found no evidence of trade flows between the UK and other countries. Therefore, the CMA believes that there is insufficient demand-side substitution for SLM services for the ATMs of each OEM to consider the frame of reference to be wider than national in scope.

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<sup>20</sup> Glory had a share of [50-60]% in Portugal, [0-5]% in Poland and Italy, and less than [0-5]% in Spain and Germany, as well as [10-20]% in Switzerland, which is not in the EEA.

88. On the supply side, the CMA found that the competitor set varies considerably across countries, based on the RBR report. For example, the CMA identified at least 10 competitors present in at least one of France, Spain, Ireland, or the Netherlands which were not present in the UK.<sup>21</sup> Similarly, either or both of IBM and G4S, which are present in the UK, are absent from each of these countries. In light of this evidence, the CMA believes that the relevant frame of reference is no wider than national in terms of geographic scope.

#### *Conclusion on geographic scope*

89. Based on the above evidence, the CMA assessed the impact of the merger on the supply of customer-operated ATMs on a UK-wide basis.
90. The CMA believes the market for SLM services for OEM ATMs to be no wider than national in scope. However, the CMA did not conclude on the exact product frame of reference for maintenance services for OEM ATMs, since, as set out below, no competition concerns arise under any plausible frame of reference.

#### **Conclusion on frame of reference**

91. For the reasons set out above, the CMA has assessed the impact of the Merger on:
- (a) the supply of customer-operated ATMs in the UK; and
  - (b) the supply of SLM services for the ATMs of each OEM in the UK.

## **Competitive assessment**

### ***Horizontal unilateral effects***

92. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or degrade quality on its own and without needing to coordinate with its rivals.<sup>22</sup> Horizontal unilateral effects are more likely when the merger parties are close competitors, where the merger eliminates a significant competitive force in the market, or where customers have little choice of alternative suppliers. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result,

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<sup>21</sup> These include Atem, Nit-Electronique, Items, SEMA BB, Blanche-Birger, Telefónica, T-Systems, Tecnocom, Prosegur and Insure ATM.

<sup>22</sup> [Merger Assessment Guidelines](#), from paragraph 5.4.1.

in an SLC in relation to unilateral horizontal effects through the loss of competition in the supply of customer-operated ATMs in the UK.

### *Background*

93. The Parties submitted that ATM hardware has undergone a commoditisation process in the sense that ATM models generally have the same principal functions and features. Moreover, they submitted that their modular nature allows for other functionality to be added or retrofitted. The Parties submitted that added features which achieve competitive differentiation for end customers are now predominantly achieved with software, not hardware, upgrades. As such, the Parties argue that ATMs have become ‘little more than PCs attached to safes’ and that quality differentiation and branding no longer play a significant part in purchase decisions.
94. Customer responses to the CMA’s merger investigation and customer request for proposal (**RFP**) documents (describing customers’ requirements and the strengths highlighted by bidders) provided to the CMA indicate that there are several dimensions along which customers differentiate between suppliers of ATM hardware products, including: ATMs’ robustness and reliability; ATM functionality; suppliers’ reputation and/or track records; global presence or footprint; the quality and availability of local servicing provided by the supplier or by a third party, as well as the local availability of other operations such as sales, support, or account management; compatibility with domestic regulatory requirements; physical dimensions; and aesthetics.
95. Some ATM components, while manufactured by third parties, are done so under licence from the Parties. The Parties provided to the CMA a breakdown of the proportion of components which are produced using the Parties’ intellectual property (**IP**) for three different ATMs. The proportion of total component costs covered by IP is significant and ranges from [20-30]% to [30-40]%.<sup>23</sup> The CMA considers that the use of IP to protect components is consistent with a degree of differentiation, even where suppliers use third parties to manufacture those components.
96. On the basis of this evidence, the CMA believes that, notwithstanding the Parties’ submission in relation to the commoditisation process of ATMs, customers do differentiate between suppliers, and the CMA has taken this into

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<sup>23</sup> The Parties submitted that the IP owned by Diebold and Wincor is provided to manufacturers only for use in manufacturing those components for Diebold and Wincor respectively. The Parties further submitted that there are no provisions in Diebold’s or Wincor’s agreements with these manufacturers preventing them from manufacturing equivalent components for the Parties’ competitors, and, according to the Parties, they have no ability to dictate market pricing for any such component.

account in its assessment of competitive effects arising from the Merger. The CMA has also taken into account that the procurement of ATM hardware in the UK is typically undertaken in the context of a formal bidding process.

97. In order to assess the likelihood of the Merger resulting in unilateral effects, the CMA assessed:
- (a) the Parties' shares of supply in the UK;
  - (b) closeness of competition between the Parties; and
  - (c) the competitive constraint posed on the Parties by each alternative (current and potential) supplier.

#### *Shares of supply*

98. The Parties provided the CMA with estimated shares of supply in customer-operated ATMs, based on their installed base and on numbers of units shipped.
99. Shares of supply by installed base are likely to reflect suppliers' cumulative historical performance in the market relative to competitors over a long period of time, while shares of supply by units shipped will tend to reflect providers' competitive strength during the particular period over which they are calculated (in this case, the years 2013 to 2015). In 2015, the number of units shipped (8,000 to 10,000) was around [10-20]% of the size of the installed base (70,000 to 80,000). At this replacement rate, it would take nine years for suppliers' shares by installed base to reflect their shares by volume shipped.<sup>24</sup>
100. Furthermore, customer-operated ATM hardware is typically procured through bidding processes. In this context, the strength of the competitive constraint exerted by a given competitor in respect of any given tender process depends on the likelihood that a supplier attaches to the competitor winning the contract (and the extent to which that probability would increase if the supplier were to bid less keenly). Shares of supply are not likely to represent good proxies for this likelihood in certain circumstances, for example, if the number of tender processes observed is limited, if different customers have different requirements, if significant switching costs exist, or if demand is lumpy in

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<sup>24</sup> To illustrate this point: if a new supplier won every single ATM unit shipped in 2015, and all of these ATMs replaced the ATMs of a competitor, that supplier's share by installed base would increase to only 11%, despite achieving a share by units shipped of 100%. If this pattern were repeated every year, with only competitors' ATMs being replaced, the new supplier's share of installed base would rise to 100% only after nine years.

nature.<sup>25</sup> The evidence set out below indicates that each of these characteristics is present in this case and the CMA has consequently attached limited weight to shares of supply.

101. Table 1 sets out shares of supply based on shares of installed base and shares of units shipped for the years 2013, 2014 and 2015. These data were collected in volume terms by RBR through a survey of market participants. This report did not include data on sales achieved by suppliers on a value basis. Table 2 sets out shares of supply based on the volume of customer-operated ATM hardware sales for 2014 and 2015,<sup>26</sup> including a breakdown by bank and IAD customers, based on confidential information provided by suppliers.<sup>27</sup>

**Table 1: Shares of supply of customer-operated ATMs in the UK**

Supplier	Share of installed base (volume) (%)			Supplier	Share by volume shipped (%)		
	Year	Year	Year		Year	Year	Year
	2013	2014	2015		2013	2014	2015
NCR	[50-60]%	[50-60]%	[50-60]%	NCR	[50-60]%	[60-70]%	[60-70]%
Wincor	[20-30]%	[20-30]%	[20-30]%	Wincor	[20-30]%	[20-30]%	[20-30]%
Triton	[10-20]%	[10-20]%	[10-20]%	Diebold	[5-10]%	[20-30]%	[10-20]%
Hyosung	[0-5]%	[0-5]%	[0-5]%	Others	[10-20]%	[0-5]%	[0-5]%
Diebold	[0-5]%	[0-5]%	[0-5]%				
Total	100	100	100	Total	100	100	100

Source: RBR data, Diebold actual shipment data

<sup>25</sup> Even where markets are not characterised by bidding processes, ‘lumpy’ demand affects the interpretation of shares of supply. When demand is lumpy, short-term fluctuations in values (particularly in shares by shipment) can be driven by success in a small number of contracts. In such cases, the assessment of shares of supply over a number of years can help to smooth the impact of individual contracts, while the assessment of the circumstances under which certain contracts were won can help to assess the extent to which specific ‘wins’ are context-specific or not and, therefore, the extent to which shares are useful to make inferences about competitive strength.

<sup>26</sup> While suppliers were able to provide data on the basis of value as well as volume, it was not in all cases possible to exclude from these data the value of sales of some types of FSS hardware that are not included in the frame of reference, nor was it possible to split these value data between IADs and banks.

<sup>27</sup> There is a slight difference between sales and shipments because there can be a lead time between the agreement of a sale and the actual transfer of the ATMs to the customer.

**Table 2: Shares of supply of customer-operated ATMs in the UK, by volume sold**

	<i>Share by volume of units sold</i>						%
	Volume (Total)		Volume (IADs)		Volume (Banks)		
	2014	2015	2014	2015	2014	2015	
<i>NCR</i>	[50-60]%	[60-70]%	[70-80]%	[70-80]%	[50-60]%	[60-70]%	
<i>Wincor</i>	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%	
<i>Diebold</i>	[10-20]%	[5-10]%	[0-5]%	[0-5]%	[20-30]%	[10-20]%	
<i>GRG</i>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	
<i>Hyosung</i>	[0-5]%	[0-5]%	[10-20]%	[0-5]%	[0-5]%	[0-5]%	
<i>Parties combined</i>	[40-50]%	[30-40]%	[20-30]%	[20-30]%	[40-50]%	[30-40]%	
<i>Total segment volume as proportion of total</i>			[10-20]%	[20-30]%	[80-90]%	[70-80]%	

Source: CMA analysis of information retrieved during the market investigation

102. Based on shares of supply, NCR is the largest competitor holding a share by installed base of almost [60-70]% since 2013 and a share of [50-60]% to [60-70]% by units shipped per annum since 2013.
103. Wincor is the second-largest competitor and has a significant share of supply by both installed base and units shipped based on the RBR estimates (ranging between [20-30]% and [20-30]% in terms of units shipped since 2013). While Diebold has a smaller installed base, its performance in recent competitions has been strong, winning a share of [10-20]% of units shipped in 2014 and 2015. The Parties' combined share of supply in 2015 was therefore [20-30]% by installed base (with an increment of [0-5]% and [30-40]% by units shipped (with an increment of [10-20]%).
104. The Parties' combined shares of supply by volume sold based on suppliers' data are broadly consistent with those based on RBR's research. For example, in 2014 and 2015, Diebold achieved shares of supply by volume sold of [10-20]% and [5-10]% respectively (and [10-20]% over both years combined). The Parties' combined shares on this basis were [30-40]% in 2014 and [40-50]% in 2015. Moreover, using this measure, Diebold's share of supply was higher among banks. In 2014 and 2015, Diebold had a share of supply among banks of [20-30]% and [10-20]%, respectively.
105. The Parties submitted that Diebold's recent strong performance is driven by orders from [X] and [X], placed under framework agreements whereby



neither customer is obliged to make further purchases from Diebold. In this respect, the CMA notes that Diebold's performance by share of units shipped has materially outperformed its historical share of installed base for three years in succession. Although [X] and [X] may not be obliged to purchase from Diebold, this does not diminish the evidence that two significant customers have chosen Diebold over other potential suppliers for their recent purchases. The CMA therefore believes that it can be inferred from these wins that Diebold would be a strong and credible competitor in the counterfactual.

106. The estimates of shares of recent shipments in Table 1 show that Triton, Hyosung and GRG together had a combined share of less than [0-5]% in 2014 and less than [0-5]% in 2015 (and therefore less than [0-5]% each on average). The sales achieved by each of these suppliers were therefore extremely limited in recent years.
107. The shares by installed base show that Triton had a share of the installed base of [10-20]% in 2015, reflecting contracts it had won in the past. However, according to the RBR report, Triton's installed base has declined in size by an average of [5-10]% each year (and by [20-30]% in total) since 2011, which reflects that Triton has won limited shipments and its ATMs are being replaced by other manufacturers' models. Hyosung's share by installed base in 2014 was [0-5]% (based on [X]) and this follows a decline of [5-10]% in 2015, again reflecting that Hyosung is now selling fewer ATMs than the number of Hyosung ATMs that are being replaced with machines produced by other manufacturers.
108. These figures show that both Parties have increased their share of supply significantly in recent times, that both Triton and Hyosung's shares of shipments are small and that both Triton's and Hyosung's shares by installed base have declined.
109. This analysis indicates that shares may differ markedly when considering shares of supply among banks customers on one hand and among IADs on the other: the Parties have won a large share of banks by value and a smaller share of IADs.

#### *Closeness of competition*

110. Both Parties present themselves as full-service product providers (end to end), offering a range of ATMs (see paragraphs 30-33 above), software solutions and maintenance services.
111. The Parties submitted that they are not each other's closest competitors but rather that NCR is the closest competitor of each of them. The Parties

submitted that Diebold's re-entry into the UK in 2012 (see paragraph 16) did not have a significant effect on Wincor's prices (discounts) or margins, which, according to the Parties, indicates, that the Parties do not compete 'head-to-head' with each other. However, the CMA believes that the relevant benchmark against which post-entry prices, discounts and margins should be compared is the level that would have been observed absent Diebold's entry rather than the level that prevailed prior to Diebold's entry. Stable prices, discounts and/or margins before and after Diebold's entry may be consistent with Diebold having a competitive impact if, due to other factors, prices and margins would have been expected to rise (or discounts expected to fall) in Diebold's absence. The potential for other factors<sup>28</sup> to have contributed to the evolution of prices, discounts and margins was not taken into account in the analysis submitted by the Parties.

112. Notwithstanding these doubts as to the probative value of this comparison (absent accounting for other factors), the CMA observed that Wincor's discounts [REDACTED] and that Wincor's margin [REDACTED]
113. The CMA has examined the closeness of competition between the Parties and in particular assessed:
  - (a) recent performance in tenders;
  - (b) the properties of bidding processes in the supply of ATM hardware;
  - (c) evidence from internal documents; and
  - (d) third party views.

#### *Recent performance in tenders*

114. The CMA received information from 13 customers on their most recent tenders or purchases of customer-operated ATMs and assessed how the Parties performed versus each other and versus other competitors in those tenders and for those purchases. Many of these tenders or purchases took place in the last three years, while some customers had not compared potential suppliers of customer-operated ATMs since as early as 2010. In some cases, contracts were split between different suppliers and therefore there were multiple winners. The CMA considered the extent to which the

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<sup>28</sup> For example, input costs, changes in exchange rates, improvements in non-price terms (eg increases in quality or incorporation of new innovations), or changes in the profile of purchases (for example, larger purchases warranting greater volume discounts or purchases of more sophisticated ATMs).

Parties won volumes in contracts or how well they ranked according to assessments made by customers.

115. Diebold won volumes or was ranked first by the relevant customer in [10-20]% of these cases. Among the remaining cases where Diebold did not win but the customer was able to provide a ranking beyond first-place, Diebold ranked second in [30-40]% of cases.
116. Wincor won volumes or was ranked first by the relevant customer in [30-40]% of cases. Where Wincor did not rank first and where the customer was able to provide a ranking beyond first-place, it ranked second in [50-60]% of cases.
117. NCR won volumes or was ranked first by the relevant customer in [40-50]% of cases. Where it did not win but a the customer was able to provide a ranking beyond first-place, it came second in [60-70]% of cases.
118. The Parties rarely ranked first and second on the same tender. They also rarely both won volumes from the same customer. In particular, out of the 13 customers considered, this occurred in [fewer than five] cases, namely [✂].
119. In a large majority of cases, at least one of the Parties either wins the tender or ranks in second place ([90-100]% of cases for which information is available).
120. The CMA has considered what, in practice, this performance indicates about the importance of the competitive constraint exerted by each of the Parties on each other and on other suppliers. When interpreting this recent performance, the CMA has taken into account that customer-operated ATMs is differentiated (see paragraphs 93-96) and that the value attached by different customers to different aspects of suppliers' competitive offerings varies; that there is a lack of transparency from the perspective of suppliers regarding the level of other suppliers' bids; and in light of these factors, that there is significant uncertainty among suppliers regarding the level of the bid necessary for them to win a contract.
121. The CMA believes that, in light of this uncertainty, each supplier's optimal bid depends on what it believes other suppliers will do. When a supplier considers increasing the price it bids (or otherwise worsening the quality of its bid), it faces a trade-off between the additional profit it will earn if it wins and the additional probability that another supplier will beat it as a result. It is this risk of losing that results in pressure on bidders to submit a stronger bid. Each additional bidder may add to this pressure by adding to the probability that a supplier's bid will be beaten by another bid. The extent of the additional pressure to bid keenly that each additional competitor adds, depends on the

extent to which the additional competitor is perceived as being willing and able to submit a strong bid and the existing number of other strong bidders.

122. In light of the evidence above relating to the Parties' recent performance in tenders, the CMA believes that, each of the Parties is a credible competitor with the ability to win tenders. The CMA believes that, each of the Parties therefore takes into account the likelihood that it will be beaten by the other Party, as well as by NCR, when setting the level of its bid. Likewise, the CMA expects that NCR takes into account the likelihood that it will be beaten by either or both of the Parties when setting the level of its bid. Therefore, the Merger can be expected to, first, lead to both the merged entity and NCR bidding higher prices than either party would have pre-Merger, because of the loss of an important competitive constraint. As a second-order effect, to the extent the Merger increases NCR's incentive to increase prices, this will increase the Parties' incentives to increase their own prices even further, and vice versa.
123. The Parties disagreed with the CMA's analysis and submitted that the appropriate assessment of unilateral effects in this case is similar to that in ordinary markets with differentiated products when bidding processes are first-price sealed bid auctions. They further submitted that any potential merger effects should be based on standard logic of 'upwards pricing pressure' (**UPP**) or the 'gross upwards pricing pressure index' (**GUPPI**), but where diversion of sales between firms needs to be interpreted as a 'probability diversion'.
124. GUPPI is a measure that takes into account diversion ratios<sup>29</sup> between the products of two merging firms and the margins earned by the merging firms on those products in order to provide an index measure that describes the value of sales that currently divert to the other merging party and would be recaptured post-merger (thereby representing a source of upward pricing pressure that would result from a merger). The Parties provided estimates (based on the shares of supply presented in Table 1 above) of a GUPPI for Diebold and Wincor, which used shares of supply to generate a proxy for diversion ratios. The Parties submitted that this was conservative on the basis that it assumed no diversion to products outside the frame of reference.
125. The values for the GUPPIs for Diebold and Wincor estimated by the Parties were [0-5]% and [0-5]% respectively. The Parties submitted that, given that the

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<sup>29</sup> The diversion ratio from product A to product B is the proportion of customers that, when switching away from product A in response to a price increase in product A, switch to product B.

GUPPI calculated on this basis is below 5%, the Merger should not be considered as being able to raise concerns in relation to unilateral effects.

126. The CMA considers that shares of supply have serious limitations in terms of their ability to proxy for the probability that a supplier attaches to a given competitor winning tenders, as well as how that probability would change if the supplier decided to bid less keenly. This is especially true in the supply of customer-operated ATMs in the UK, given the small number of tender process observed. Moreover, the constraint exerted by a competitor may vary across customers, depending on those customers' specific requirements and the extent to which (suppliers perceive that) the competitor is able to satisfy those requirements.<sup>30</sup> The CMA has therefore attached limited weight to this evidence.

#### *The properties of bidding processes in the supply of ATM hardware*

127. It is sometimes argued that the presence of a bidding process is sufficient to induce even just two bidders to set prices at a competitive level. However, there are several features of 'ideal' bidding markets that are important for fierce competition to be expected to emerge between just two competitors.<sup>31</sup> The CMA assessed whether such features are present in this case.
128. First, there should be no 'smooth trade-off' between prices and profits.<sup>32</sup> However, in the supply of ATM hardware, customers can and do split contracts, maintaining multiple ATM hardware suppliers' machines in their installed base. Moreover, the CMA believes that bidders cannot predict the precise price reduction that would be necessary to become the leading bidder and therefore to win the contract, because (i) responses by third parties to the CMA's merger investigation indicate that customers are heterogeneous and value, to different extents, a wide range of non-price factors, and (ii) the bidding processes used by customers (including post-tender negotiations) are generally not fully transparent in relation to price. The CMA considers that uncertainty around the price reduction necessary to win the contract will

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<sup>30</sup> In addition, the CMA notes that the Parties have used 'local gross margin' (ie the margin over cost of goods sold of the UK operations, which excludes the manufacturing margin implicit in the transfer price) to calculate the GUPPI they submitted to the CMA. The Parties submitted that the manufacturing margin is common across the EEA and is not impacted by country-specific competition dynamics. However, the CMA believes that a subsidiary company would be expected to take into account the profits of its parent company and therefore that the appropriate margin in a GUPPI calculation should take into account the full margin that is recaptured by the Parties.

<sup>31</sup> Klemperer P. (2012), *Bidding Markets*, Competition Commission.

<sup>32</sup> A smooth trade-off between prices and profits refers to the case where a small change in price gives rise to small, not large, changes in expected profitability.

dampen the incentives of suppliers to undercut each other to competitive prices in the manner that is associated with ideal bidding markets.

129. Second, individual contracts should be large relative to companies' own sales and therefore bidders should face an element of 'betting the company' in each individual contest. While the supply of ATM hardware is characterised by lumpy contracts, there are at least five or more large bank customers and one or more substantial IAD, and the merged entity would have several opportunities to win contracts that would avoid the need to re-incur otherwise sunk costs.
130. Third, competition should begin afresh for each contract. However, as discussed in paragraphs 182-198), certification, reputation and customer relationships all represent substantial barriers to switching which are amplified by uncertainty and transition risks, namely the costs that customers could incur if something were to go wrong during migration or transition.
131. Finally, the market should be readily contestable. However, as discussed in paragraphs 182-198), the CMA considers there to be substantial barriers to entry in the supply of ATM hardware in the UK.
132. The CMA therefore believes that in this case the above conditions of 'ideal' markets are not satisfied and, therefore, that the presence of bidding processes is not sufficient to ensure that there is no realistic prospect of an SLC.

#### *Evidence from internal documents*

133. The CMA considers that internal documents provided to it imply that the Parties would have an incentive to increase prices (and/or reduce quality, range, service and/or innovation) after the Merger. In particular, the internal documents reviewed by the CMA include evidence that the Parties each improve their competitive offering in response to each other; that the Parties each act as and are perceived as strong competitors in the supply of ATM hardware in the UK; that there exists a smooth trade-off between prices and profitability in bids; that there are limited alternative competitive constraints to the Parties and that there are high barriers to entry.
134. For example, some Wincor internal documents state: [REDACTED]
135. Some Diebold internal documents state: [REDACTED]

### *Third party views*

136. Several third parties told the CMA that Diebold and Wincor have similar products and ATM portfolios. Almost all customers who responded to the CMA's merger investigation view NCR, Wincor and Diebold as the top three customer-operated ATM suppliers.
137. The CMA has received evidence indicating that third parties often do not specifically identify any other suppliers apart from NCR, Diebold and Wincor, simply referring to those who comprise the residual supply of ATM hardware as 'others'.
138. The CMA has also received evidence indicating that Diebold is perceived as pricing its hardware very aggressively with the aim of increasing its footprint in the UK, and is often referred to by customers as a price leader. In addition, the CMA has received evidence indicating that the main ATM hardware providers (ie Diebold, NCR and Wincor) tend to offer lower prices when customers are comparing bids from all three (ie when all the main hardware providers are included in the tender).
139. This evidence supports the view that the Parties do compete closely and impose significant competitive constraints on each other and on NCR. This implies that post-Merger, when this significant competitive constraint is removed, there will be an incentive for the merged entity and NCR to increase prices (and/or reduce quality, range, service and/or innovation).

### *Competitive constraint posed on the Parties by each alternative (current and potential) supplier*

140. Unilateral effects are more likely where customers have little choice of alternative supplier. The CMA has considered whether there are alternative suppliers which would provide a sufficient competitive constraint on the merged entity.
141. The Parties named the following significant competitors to the Parties: NCR, Hyosung, Triton, GRG, Glory, OKI, KEBA and Fujitsu. With the exception of NCR, none of these competitors has ever sold a customer-operated ATM to a bank in the UK (some have won contracts with IADs). Moreover, Glory, OKI, KEBA and Fujitsu have not sold customer-operated ATMs to any type of customer in the UK so far. The Parties also mentioned the ability of IBM, who provides ATM maintenance services, to enter the ATM hardware market.

## *NCR*

142. Third parties who responded to the CMA's merger investigation indicated that NCR is a credible competitor to the Parties. The Parties' internal documents also indicate that the Parties consider NCR to be a close competitor. In the past, NCR has consistently won a substantial proportion of contracts by number and value for sophisticated bank customers. The CMA therefore believes that NCR will continue to impose a significant competitive constraint on the merged entity post-Merger.

## *Hyosung and Triton*

143. The Parties submitted that Hyosung is already present in the UK, is certified with the LINK network and has ATMs installed with Cardtronics, the largest ATM deployer in the UK. The Parties also submitted that Triton is active throughout Europe and has the third largest installed base in the UK. It is large in the US IAD market and is also active in central Europe and Africa.
144. The CMA notes that neither Hyosung nor Triton has a local presence in the UK, which has been mentioned by several bank customers as one of their main requirements. To the CMA's knowledge, Hyosung is trying to implement a partnership model in the UK. That is, Hyosung is currently searching for a third party sales and maintenance provider to market and maintain Hyosung's ATM hardware in the UK. The CMA has seen evidence that Hyosung is still in the early stages of searching for a third party partner
145. Several third parties who responded to the CMA's merger investigation indicated that [REDACTED] UK's Disability Discrimination Act 1995 (**DDA**). One third party explained that DDA compliance must be achieved individually for each model of machine. With respect to the relatively basic ATM models that [REDACTED] attempts to sell to IADs in the UK, [REDACTED]. With respect to more advanced models that a third party described as more suitable for banks, [REDACTED].
146. Several third parties indicated that Hyosung's and Triton's customer-operated ATMs are more basic and that Triton's ATMs are focused on shops and bars. Several third parties also submitted that Triton is only appropriate for IADs and, in some cases, third parties indicated that Triton is no longer active in the UK. One third party told the CMA that Triton does not sell its own customer-operated ATMs in the UK, but rather works in a reseller capacity.
147. Generally, the CMA's review of the Parties' internal documents showed that Hyosung and Triton are very rarely mentioned in the context of bid reviews, assessments of competitive conditions or in documents where the relevant



competitors are identified internally. In contrast, NCR, Wincor and Diebold are mentioned very frequently (see paragraphs 133-134).

148. One customer indicated that, although it sent RFIs to Hyosung and Triton, these declined to participate in the tender to which they were invited. The CMA has also seen from its analysis of recent tenders that neither Hyosung nor Triton were considered by the customer in [REDACTED] out of 14 cases, and at least one was considered but it/they ranked lower than both the Parties in a further [REDACTED] cases.
149. Finally, the CMA has not seen any written documentation of Hyosung or Triton that demonstrates the extent of their plans as regards to the UK.
150. Based on the above evidence, the CMA believes that Hyosung and Triton do not impose a significant competitive constraint on the Parties.

### *GRG*

151. The Parties submitted that GRG has participated in three major recent tenders for ATM hardware including RBS, Barclays and Santander and is in the process of certifying with the LINK network. The Parties also submitted that GRG is understood to be in discussions with an IAD to install ATMs in the UK.
152. Similarly to Hyosung and Triton, GRG does not have material local presence in the UK<sup>iii</sup>, [REDACTED]. Even though the CMA saw evidence that [REDACTED]. The tender data shows that customers rank [REDACTED].
153. One of the barriers GRG faces in the UK is the fact that its machines [REDACTED]. Therefore, [REDACTED], which limits its competitiveness in relation to locally well-established players, ie NCR, Wincor and Diebold. Based on [REDACTED], it is not clear [REDACTED].
154. Generally, internal documents showed that GRG is very rarely mentioned in the context of bid reviews, assessments of competitive conditions or in documents where the relevant competitors are identified internally.
155. Finally, the CMA has not seen any written documentation or evidence that demonstrates any concrete plans by GRG to enter the UK.
156. Based on the above evidence, the CMA believes that GRG does not impose a significant competitive constraint on the Parties.

*Glory, Fujitsu, OKI and KEBA*

157. The Parties submitted that Glory, OKI and Fujitsu have well-developed customer-operated ATM product portfolios and are actively involved in European markets, just not yet in the UK. According to the Parties, these companies have the necessary market knowledge and financial resources to rapidly enter the UK, thereby providing an additional constraint on pricing in the UK. The Parties also submitted that KEBA has a particularly strong profile in Austria and Germany with major financial institutions, and is also considered a major competitor in banking ATMs in Italy and Romania, as well as in Asia.
158. Before assessing each of the above-mentioned four suppliers and their ability to constrain the merged entity post-Merger, the CMA notes that suppliers' activities in other countries do not necessarily reflect those suppliers' competitive presence in or plans to enter the UK market.
159. Glory is currently active in the UK supplying teller-assist ATMs and has a significant share of supply in this segment. The Parties submitted that in Italy, Glory has sold teller-assist ATMs which can also function as customer-operated ATMs, indicating that Glory is moving into the customer-operated ATM segment. However, the CMA has not seen evidence of Glory being active in the supply of customer-operated ATMs in the UK – [REDACTED]. The CMA also has not seen any written documentation or other evidence to suggest that Glory is planning to start supplying customer-operated ATMs in the UK.
160. The Parties submitted that CaixaBank (in Spain) invested €500 million for Fujitsu to manufacture 8,500 ATMs in Spain, including maintenance services, and signed an R&D agreement to foster innovation in ATM technology. The CMA notes that a supplier's expansion in one country is not necessarily representative of its plans or possibilities of entry and expansion in the UK. The CMA has not seen any written documentation detailing Fujitsu's plans as regards the UK.
161. The CMA has also not seen any evidence to suggest that OKI or KEBA are planning to enter the UK market for customer-operated ATMs. One customer who responded to the CMA's merger investigation indicated that, although it sent a request for information (**RFI**) to OKI, this supplier declined to participate in the proposed tender.
162. Based on the above evidence, the CMA believes that Glory, Fujitsu, OKI and KEBA do not impose a competitive constraint on the Parties.

## *IBM*

163. The Parties submitted that IBM is an active player in the maintenance of ATMs, which could easily partner with a hardware manufacturer to provide hardware offerings in the UK. According to the Parties, IBM is one of the largest maintainers of ATMs in the UK and uses Hyosung to offer bundled products and services in France and Italy.
164. As mentioned above, the CMA does not consider suppliers' activities in other countries to be representative of their ability and/or incentives to enter the UK market. The CMA has not seen any evidence to indicate that IBM has plans to enter into the customer-operated ATM market in the UK. For these reasons, the CMA does not believe that IBM imposes or could impose a competitive constraint on the Parties in the supply of customer-operated ATMs in the UK.

### *Conclusion on horizontal unilateral effects*

165. As set out above, the CMA believes that the Parties are close competitors in the supply of customer-operated ATMs in the UK and impose a constraint on each other. There is only one other competitor that is active and competitive in the UK at the moment – NCR. Other competitors either (i) are not able or not planning to enter the UK in order to supply customer-operated ATMs, and/or (ii) are not perceived by customers, in particular banks, as credible alternatives to the Parties. The Merger therefore results in a reduction in the number of credible competitors from three to two for bank customers, and removes one of the three strongest competitors for IAD customers.
166. This suggests that the Merger removes a significant competitor to, and an important competitive constraint on, each of the merging Parties, with NCR being the only remaining significant competitor, and that the merged entity could be expected to raise its prices or degrade the quality of its offering as a result of the Merger.
167. Accordingly, the CMA believes that the Merger raises significant competition concerns as a result of horizontal unilateral effects in relation to the supply of customer-operated ATMs in the UK.

### *Vertical effects*

168. Vertical effects may arise when a merger involves firms at different levels of the supply chain, for example a merger between an upstream supplier and a downstream customer or a downstream competitor of the supplier's customers.

169. Vertical mergers may be competitively benign or even efficiency-enhancing, but in certain circumstances can weaken rivalry, for example when they result in foreclosure of the merged firm's competitors. The CMA only regards such foreclosure to be anticompetitive where it results in a substantial lessening of competition in the foreclosed market(s), not merely where it disadvantages one or more competitors.<sup>33</sup>
170. A third party submitted to the CMA that Diebold does not allow any other third party maintenance providers access to its diagnostic software. That third party was concerned that if this practice were extended to Wincor post-Merger, then the ability to have an ATM repair, maintenance and/or support business that is able to compete with the merged entity in relation to services provided to Diebold and Wincor machines would be reduced. This concern was shared by one more third party. Another third party indicated that having access to OEM spare parts is important, and some of the spare parts are brand specific and/or protected by IP rights and that these are difficult to obtain at prices that allow a maintenance provider to compete.
171. The CMA therefore considered whether the merged entity would have the ability and incentive to foreclose other ATM manufacturers and service providers from the supply of maintenance services for its machines by refusing access to certain technical information or inputs, eg spare parts, with the effect of reducing or eliminating competition in the supply of maintenance services on the machines supplied by the merged entity.
172. The CMA's approach to assessing vertical theories of harm is to analyse: (a) the ability of the merged entity to foreclose competitors; (b) the incentive of it to do so; and (c) the overall effect of the strategy on competition.<sup>34</sup> This is discussed below.

### *Ability*

173. The Parties have stated that Diebold's older ATM 'diagnostic software is installed in the multi-vendor application software layer. This diagnostics software is not locked down by the software vendor and can be made accessible at the ATM deployer's discretion to any ATM maintenance provider it chooses to use' and 'it is only Diebold's newer models of ATMs (which Diebold has not yet sold in the UK) that employ a dongle to provide additional diagnostic information to the maintenance engineer'. Wincor already has USB-based diagnostic software in place. The Parties further indicated that all

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<sup>33</sup> In relation to this theory of harm 'foreclosure' means either to totally foreclose a rival or to substantially competitively weaken a rival.

<sup>34</sup> [Merger Assessment Guidelines](#), paragraph 5.6.6.

technical hardware issues can be solved without using the diagnostic software, but that this takes more time.

174. The Parties submitted that hardware suppliers have supported and will continue to support the trend towards USB-based diagnostics, explaining that every service partner of Wincor has been provided with access to the Wincor USB-based diagnostics via contract, and once Diebold starts installing ATMs that require USB-based diagnostic software in the UK, it will provide access to its USB-based diagnostics software to third party maintenance providers via contract. The Parties also submitted that some independent service providers have developed their own diagnostic tools. The Parties submitted that a UK maintenance provider may be denied access to USB-based diagnostic software if they did not meet basic training and quality standards or, in the case of other ATM manufacturers (such as NCR), if they were not providing reciprocal access to their own diagnostic software. Moreover, one third party told the CMA that ATM deployers do not always permit the use of industry standard diagnostic tools. The CMA believes on the basis of the above that, pre-Merger, the Parties may have the technical ability to withhold these inputs with the result that third party providers of maintenance services would not have access to diagnostic software.
175. The CMA assessed whether withholding USB-based diagnostic software would be sufficient to soften the constraint posed by a third party maintenance service provider in the supply of SLM services for those customer-operated ATMs of Wincor and/or Diebold that currently use, or in future will use, USB-based diagnostic software, or eliminate it as a competitive constraint entirely. The Parties submitted that the USB-based software is used by the maintenance engineer to provide advanced diagnosis of faults and to facilitate quick repair and return to service. The Parties submit that this diagnostic software is not essential because for [30-50]% of hardware errors, a skilled engineer can locate the fault immediately and would not even use diagnostic software, while the remaining [50-70]% of errors can be repaired without diagnostic software but with greater delays. In light of the fact that withholding access to USB-based diagnostic software can induce delays in repairing errors, and because the Parties submitted that customers consider lead times for SLM services important, the CMA believes that the Parties may have the ability, by withholding USB-based diagnostic software, to soften the competitive constraint posed by any independent SLM provider or, in the extreme, eliminate independent SLM providers from the supply of SLM services for the merged entity's ATMs.
176. In light of the above, the CMA believes that pre-Merger, each of the Parties may have had some ability to foreclose competitors in the supply of SLM services for their own ATMs. The CMA also believes that post-Merger, the

merged entity may have some ability to foreclose competitors in the supply of SLM services for each of Diebold's and Wincor's ATMs.

### *Incentive*

177. The CMA assessed the incentive of the merged entity to foreclose third parties from the provision of maintenance services on their ATMs.
178. The Parties submit that they would incur losses from foreclosing competing maintenance service providers because customers of ATM hardware would not accept these impediments, no matter how small. According to the Parties, any hypothetical advantage gained by refusing to supply dongles or spare parts would be more than offset by the damage it would do to future sales of ATM hardware. The Parties submitted that they currently work cooperatively with third party maintenance service providers and the Merger does not change their incentives to do so.
179. The CMA has not been able to identify any instances of actual third party maintenance services providers' foreclosure, including during the period prior to Diebold's entry.
180. The Parties are each the only supplier of USB-based diagnostic software for their own ATMs prior to the Merger. Therefore, to the extent the Parties have the ability to foreclose competitors effectively in the supply of SLM services for their ATMs prior to the Merger, they would recapture all customers of their foreclosed rivals prior to the Merger. The Merger would not increase the proportion of customers recaptured in the event of the merged entity pursuing a foreclosure strategy. Therefore, the CMA believes that the incentive of the merged entity to engage in this behaviour does not increase as a result of the Merger as compared to the incentives on each party pre-Merger.

### *Conclusion on vertical effects*

181. As set out above, the CMA does not believe that the Merger will enhance the merged entity's incentive to foreclose third party maintenance service providers. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of vertical effects in relation to the supply of SLM services.

### ***Barriers to entry and expansion***

182. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no substantial lessening of competition. In assessing whether entry or expansion might

prevent a substantial lessening of competition, the CMA considers whether such entry or expansion would be timely, likely and sufficient.<sup>35</sup> In terms of timeliness, the CMA's guidelines indicate that it may consider entry or expansion within less than two years as timely, but this is assessed on a case-by-case basis, depending on the characteristics and dynamics of the market, as well as on the specific capabilities of potential entrants.<sup>36</sup>

183. The CMA first notes that entry into the UK as regards to the supply of customer-operated ATMs has been rare. The only recent and successful example is Diebold's re-entry in 2012, whereas the CMA has received no evidence of any imminent entry by any other customer-operated ATM supplier. In relation to Diebold's re-entry, the CMA also notes that a clear decision was made to invest in Diebold's UK business by building a more effective management and sales team and upgrading certain ATM hardware products, and Diebold's subsequent success may have also been helped by the relationship which it already had with [X] (see paragraph 16). The CMA has not seen any evidence of a commitment to entry/expansion into the UK similar to that of Diebold by the potential suppliers that were identified by the Parties. In addition, to the CMA's knowledge, most of these suppliers (see paragraphs 141-164), have no long-term relationships with any major bank customers in the UK.
184. Second, the Parties have submitted that sets of competitors are different in different EEA countries as there is a tendency of hardware suppliers to enter one market at a time. The Parties also submitted that demand as regards ATM functionality in each country is different, technical standards and security measures between countries vary, certification standards vary, local software engineering and hardware servicing is required, and only a limited number of customers operate on a pan-European presence and even these have national preferences.<sup>37</sup>
185. The CMA has considered a number of factors, which, taken together, it believes constitute significant barriers to entry into the market of customer-operated ATMs in the UK, including, but not limited to:
- (a) local presence;
  - (b) reputation and scale;
  - (c) certification; and

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<sup>35</sup> [Merger Assessment Guidelines](#), from paragraph 5.8.1.

<sup>36</sup> [Merger Assessment Guidelines](#), paragraph 5.8.11.

<sup>37</sup> Paragraph 159 of the Merger Notice.

(d) UK-specific regulation and design.

#### *Local presence*

186. The Parties submitted that establishing a local sales network and hardware maintenance capability is the only requirement before a new entrant can credibly bid in ATM tenders in the UK. According to the Parties' estimates, establishing sufficient local presence would cost approximately £200,000 to £300,000 per annum.
187. Several third parties indicated that they have a preference for bundling the purchase of customer-operated ATMs with software or maintenance services.<sup>38</sup> As was stated above, almost all third parties require national operations in place. Therefore, a potential entrant has to have a credible portfolio of not only hardware, but also software and maintenance.
188. Most customers indicated that operations based in the UK are a prerequisite. Several third parties stated that new entrants are required to support their own equipment in order to guarantee the functioning of that equipment.
189. The CMA also notes the limited success in winning bids for suppliers who do not have an established presence in the UK in terms of sales and maintenance, such as Hyosung and GRG (see paragraphs 143-156), especially among banks. The CMA therefore considers, on the basis of the evidence available to it, establishing a local presence as a significant barrier to entry into the customer-operated ATM market in the UK.

#### *Reputation and scale*

190. One third party who responded to the CMA's merger investigation noted the inertia and risk aversion of UK banks to switch to new market entrants and that even a track record in the supply of ATMs to IADs would not be regarded as sufficient. Other third parties indicated that some banks require a global or national footprint. The CMA has seen evidence of several customers ruling out suppliers that did not have a significant UK footprint as non-credible. While the CMA considers that customers could change their position, it is not clear what level of increase in price or diminution in quality would induce such a shift. The evidence the CMA currently has tends to indicate that customers are unlikely to shift in the near term.
191. One customer submitted that in order to consider a supplier credible, it must have a proven, established technology and a global footprint. It also said that

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<sup>38</sup> Several third parties indicated that a multi-vendor approach was not feasible for them.



an established footprint in the country of purchase is an important factor when choosing between credible suppliers. Several customers indicated that scale of operations is important for credibility and that having no scale in the EEA means that a supplier has no way of showing its reliability. Finally, one customer submitted that it would be highly unlikely to be a supplier's first UK customer.

192. The CMA believes reputation and scale together to constitute a significant barrier to entry into the UK market for the supply of customer-operated ATMs.

### *Certification*

193. The Parties submitted that certification with the LINK network in the UK would cost approximately £100,000 to £200,000, and that this is a cost faced by all manufacturers seeking to certify a new model of ATM in a country. This cost is the same for a new entrant and for an existing supplier launching a new model of ATM. The Parties submitted that these costs are insignificant and easily recovered by future sales and supported by volume commitments; that all potential entrants have financial resources and experience to go through this process; and that these fees are frequently shared between ATM manufacturer and deployer.
194. In response to the CMA's merger investigation, several third parties have indicated that in the past they have not chosen a supplier that was more competitive than their chosen supplier on the basis that certification costs alone were too substantial to warrant switching. One customer told the CMA that if LINK certification is required for a supplier's models, it could cause a delay in the deployment of hardware. Some third parties told the CMA that the cost of certification is the main reason for remaining with its incumbent (which could be considered a disadvantage to both new entrants and existing competitors), in at least one case specifying that the best bid was more competitive than the winner but that this was not sufficient to overcome the costs associated with certification.
195. Some certification costs are customer-specific and would be incurred by any supplier of customer-operated ATM hardware seeking to supply a customer with a new model of ATM for the first time. The CMA considers that where this is the case, it may extend the time it takes to win a reference customer in the UK and thus impact on the speed at which the entrant acquires a reputation in the UK and therefore its ability to bid credibly for other contracts. In light of comments from third parties highlighting the important of reference customers, the CMA considers that this may act as a barrier to entry that would reduce the likelihood of timely and sufficient entry by a supplier of customer-operated ATM hardware not currently active in the UK.

### *UK-specific regulation and design*

196. In response to the CMA's merger investigation, some customers of customer-operated ATMs have told the CMA that compliance with DDA is important to them when choosing their supplier. The CMA notes that Hyosung, one of the potential competitors identified by the Parties, is [REDACTED] whereas GRG's machines [REDACTED], limiting its competitiveness in relation to locally well-established players like NCR, Wincor and Diebold.
197. These factors relating to UK-specific design requirements create some difficulties relating to entry, particularly given that Hyosung and GRG, despite bidding in the UK market for a few years and despite some third parties identifying these design requirements as important factors in some customers' choice of supplier, still have not fully complied with these UK-specific requirements. The CMA believes that either these global players have not yet been able to address these barriers or that the economic incentives are presently insufficient to induce them to make these adjustments and to embark on a significant entry or expansion into the supply of bank and IAD customers in the UK.

### *Conclusion on barriers to entry*

198. For the reasons set out above, in particular the need to establish local presence in the UK, acquire necessary certification and comply with the UK-specific regulation and design, as well as the importance of reputation and scale, the CMA believes that entry barriers are high and therefore that the Parties are unlikely to be constrained by entry. In addition, the CMA has not seen any evidence of plans by third parties to enter the market or expand such that their entry or expansion would be timely, likely and/or sufficient to prevent a realistic prospect of an SLC as a result of the Merger.

### ***Countervailing buyer power***

199. In some circumstances, an individual customer may be able to use its negotiating strength to limit the ability of a merged firm to raise prices. The existence of countervailing buyer power will be a factor in making an SLC finding less likely. If all customers of the merged firm possess countervailing buyer power post-merger, then an SLC is unlikely to arise. However, often only some – not all – customers of the merged firm possess countervailing buyer power. In such cases, the CMA assesses the extent to which the

countervailing buyer power of these customers may be relied upon to protect all customers.<sup>39</sup>

200. The Parties submitted that four conditions indicating that a buyer's bargaining strength might be enhanced in a bidding market are met in the case of ATM hardware. In particular, the Parties submitted: that buyers are sophisticated and well-informed about alternatives and face low switching costs; that sponsored entry can be achieved quickly without substantial sunk costs; that individual buyers are important outlets for the seller; and that procurement auctions (tenders) can intensify competition.
201. Even where the market is characterised by customers who are larger than the suppliers, it does not necessarily follow that there will be countervailing buyer power. The CMA assessed whether and to what extent customers can easily switch their demand away from the supplier or constrain the behaviour of the supplier by sponsoring entry, vertically integrating (or self-supplying), or imposing costs on the supplier.<sup>40</sup> The Parties submitted that demand is concentrated among customers but have not explained how this concentrated demand might be expected to be linked to the power to constrain suppliers' prices.
202. Large customers may be able to bargain for better prices or terms if their contract will improve the supplier's reputation and therefore future profits. However, the CMA considers, based on the fact that the large reference customers already served by each of the Parties, that the merged entity would already have a well-established reputation within and outside the UK. The CMA notes that in cases where losing a large customer's contract would threaten a supplier's existence, future scale or profitability outside of the contract itself, the buyer may be able to leverage this fact to achieve a lower price or better terms. However, the CMA notes that, while the supply of ATM hardware is characterised by lumpy contracts, there are several large customers that the merged entity would have several opportunities to win contracts with and therefore the CMA has not found evidence that a supplier would face such risks in all or any individual contests. The CMA therefore considers that these strategies, even if effective, would protect only a subset of customers and therefore would not be sufficient to countervail an SLC.
203. The Parties submitted that customers procure through competitive bidding processes, keeping competitors in close competition for the cheapest price. In particular, the Parties referred to one instance of an e-auction and argued that this is a means for customers to maximise price competition. The CMA notes

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<sup>39</sup> [Merger Assessment Guidelines](#), paragraph 5.9.1.

<sup>40</sup> [Merger Assessment Guidelines](#), paragraph 5.9.4.

that generally having one fewer major competitor is likely to worsen the outcome of a tender process, regardless of the procurement method. The CMA also notes that ascending auctions have some limitations and have the risk of introducing their own problems, including by deterring entry or increasing the effectiveness of suppliers' entry deterrence strategies, including by making threatening statements.<sup>41</sup> The CMA notes possible evidence of attempts at such a strategy, in light of an internal document of Diebold<sup>42</sup> stating that [REDACTED]. In any event, the CMA believes that the likelihood of customers changing their procurement processes is not sufficiently high to ensure that a significant improvement could be achieved over existing procurement mechanisms, particularly given that the incentive to induce competitive behaviour among suppliers would already exist pre-Merger.

204. Generally, an individual customer's negotiating position will be stronger if it can easily switch its demand away from the supplier, and typically the ability to switch away from a supplier will be stronger if there are several alternative suppliers to which the customer can credibly switch. Given that the Merger could result in a reduction in the number of credible competitors from three to two, the CMA does not believe that this buyer power condition is satisfied.

#### *Sponsored entry*

205. Most of the third parties who replied to the CMA's merger investigation stated that they would not sponsor entry. Where a third party indicated it would consider it, the CMA believes that what was referred to by the third party constitutes only a limited form of sponsorship. In particular:
- (a) One third party indicated that it only would sponsor in a case where the entrant had sufficient local support in place. The CMA considers that this emphasises the barriers to entry mentioned above (see paragraphs 186-189). This third party also explained that sponsorship would be more likely if the new entrant could offer ATMs that current suppliers could not offer, ie more technologically advanced or innovative solutions. The CMA therefore does not consider that this third party would necessarily be willing to sponsor a new entrant solely because current suppliers increased their prices. Finally, this third party said that, as a result of sponsorship, it would incur a change in third party maintenance and internal technology costs (testing and certification), and that it is unlikely that benefits for sponsorship would outweigh such costs.

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<sup>41</sup> As described in Klemperer (2015), *Bidding Markets*, Section 4.3.

<sup>42</sup> [REDACTED]

- (b) Another third party indicated that, if the circumstances were right, it would sponsor an entrant, possibly an Asian firm. However, this third party said it did not expect to purchase any material number of ATMs for a number of years and, therefore, the CMA believes it would not be likely that this third party would have the incentive to incur the costs associated with sponsoring a new entrant. The CMA therefore considers that the incentive of this particular third party to sponsor entry is limited.
  - (c) One third party said that, although it would consider sponsoring entry, a key concern was the ability of the entrant to offer in-house servicing capability. The third party said that it would be difficult to sponsor an entrant and ensure that it would have the ability to offer in-house servicing capability. Moreover, the third party said that the candidate entrant would still have to 'pick up its own costs' and be willing to accept reduced prices and no volume commitment, which would create significant uncertainty and risk for any entrant pursuing this route.
  - (d) One third party said it would consider sponsoring a new entrant but that cost and effort to introduce a new supplier to the market could be extensive and that it was not confident that the benefits of sponsoring a new entrant would outweigh the costs or whether sponsorship is a credible option.
206. The CMA notes that the Parties could refrain from imposing any post-Merger price increase on those customers that are likely to be able to sponsor entry (or even apply a discount) in order to deter sponsorship of new entry while recouping additional profits through higher prices to other customers (who would not have the ability or incentive to sponsor entry). Moreover, to the extent any strategies are available to potential sponsors to assert buyer power, the CMA considers that this would reduce their incentive to sponsor entry, and thus smaller customers without recourse to these strategies would not be protected from an SLC.

#### *Conclusion on countervailing buyer power*

207. The CMA believes, based on the evidence it has obtained, that there is not sufficient buyer power conclusive to mitigate the competition concerns arising from the Merger. The CMA also believes that sponsorship will not provide an alternative route to switching for customers such as to provide a constraint on the merged entity.

## Third party views

208. The CMA contacted customers and competitors of the Parties. Some customers raised concerns regarding lessening of competition in the ATM hardware market, in particular when they next purchased customer-operated ATM hardware, as well as not being able to purchase Wincor's legacy hardware or software.
209. Third party comments have been taken into account where appropriate in the competitive assessment above.

## Decision

210. Consequently, the CMA believes that it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC within a market or markets in the UK.
211. The CMA therefore believes that it is under a duty to refer under section 22(1) of the Act. However, the duty to refer is not exercised<sup>43</sup> whilst the CMA is considering whether to accept undertakings<sup>44</sup> instead of making such a reference. Diebold has until 26 August 2016<sup>45</sup> to offer an undertaking to the CMA.<sup>46</sup> The CMA will refer the Merger for a phase 2 investigation<sup>47</sup> if: Diebold does not offer an undertaking by this date; if Diebold indicates before this date that it does not wish to offer an undertaking; or if the CMA decides<sup>48</sup> by 5 September 2016 that there are no reasonable grounds for believing that it might accept the undertaking offered by Diebold, or a modified version of it.

**Sheldon Mills**  
**Senior Director, Mergers**  
**Competition and Markets Authority**  
**19 August 2016**

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<sup>43</sup> Section 22(3)(b) of the Act.

<sup>44</sup> Section 73 of the Act.

<sup>45</sup> Section 73A(1) of the Act.

<sup>46</sup> Section 73(2) of the Act.

<sup>47</sup> Sections 22(1) and 34ZA(2) of the Act.

<sup>48</sup> Section 73A(2) of the Act.

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<sup>i</sup> Paragraph 16: Diebold subsequently submitted that Diebold had minimal sales in the UK from [✂] until [✂]

<sup>ii</sup> Footnote 20: RBR subsequently submitted to the CMA that Glory's range in the Netherlands is [0-5]% and in France [0-5]%.

<sup>iii</sup> Paragraph 153 stated that GRG does not have material local presence in the UK. This statement relates to GRG's lack of a material presence in maintenance services. GRG subsequently submitted to the CMA that it does have a local presence for support and sales.