

ME/6613/16
Diebold, Incorporated
Acquisition of
Wincor Nixdorf AG

**INITIAL SUBMISSION BY DIEBOLD AND WINCOR NIXDORF IN PHASE 2 TO THE
CMA**

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Introduction

1. As the review of the acquisition by Diebold, Inc. ("***Diebold***") of Wincor Nixdorf AG ("***Wincor Nixdorf***") (together, the "***Parties***") (the "***Transaction***") has moved into Phase 2, Diebold and Wincor Nixdorf summarise below the key reasons why the Transaction will not lead to an SLC in the UK.
2. The Parties hope that this submission will serve as a helpful introduction to their key arguments, which are laid out in detail in the documents submitted during Phase 1; in the Parties' response to Annexes B and C to the Phase 2 letter; and in the CMA's Market and Financial Questionnaires.
3. The Parties also intend to highlight aspects of the economic analysis set out in the Phase 1 decision (the "***Decision***") that the Parties and their economists consider to be questionable, and therefore, not a credible basis for the contention that the Transaction will lead to an SLC in the UK. The Parties will provide this analysis shortly.

The Transaction

4. The Transaction has been driven by the significant changes occurring in the payments arena. First, there is a movement away from cash in favour of digital/cashless payments throughout Europe. This is forcing ATM manufacturers to make significant investments in their offerings to keep them relevant to customers.
5. Second, as consumers move away from cash payments, they are now using ATMs for a broader range of services. For example, account management, bill payment, passbook printing, event ticket purchases and many more functions are being introduced into the next generation of ATMs. These features are achieved mainly through improvements to software, not hardware.
6. Finally, improvements to ATM hardware have become more incremental and with the expansion of computer processing power and manufacturing techniques, the basic components of ATMs are now manufactured by suppliers in lower cost centres and then assembled by manufacturers also in lower cost centres. ATM hardware has therefore become "commoditised" meaning that while it is a necessary component of a customer-operated ATM, there is no longer a competitively significant quality differentiation between hardware on the market.
7. These factors have caused traditional ATM manufacturers, such as Diebold and Wincor Nixdorf, to re-define their businesses and focus on software and services as the routes to differentiating their customer offerings. This emphasis is illustrated by Diebold's corporate strategy of being "services led and software enabled."

Key Points

8. There are seven key reasons why the CMA cannot credibly conclude that the Transaction gives rise to a substantial lessening of competition on the balance of probabilities (or at all):
 - a. **UK customers are overwhelmingly positive** about the Transaction. The only customer concern of which the Parties are aware is perplexity as to why integration of the Parties' businesses cannot proceed in the UK. The CMA did not present any negative customer feedback whatsoever from its Phase 1 market investigation in its issues letter and added only a vague, non-particularised reference in the Decision to "concerns regarding lessening of competition in the ATM hardware market;"¹
 - b. **Diebold is a small player in the UK.** In 2015 Diebold had just [0-5]% of installed ATMs and [10-20]% of shipped ATMs in the UK. Diebold's shares of supply of

¹ Paragraph 208.

software and services in the UK are negligible. Diebold's UK business comprises only [REDACTED] employees (included fixed term and part-time employees). In fact, Diebold had largely exited the UK and it was only in 2013 that Diebold re-emerged in the UK (by recruiting a small management and sales team from competitors);

- c. **NCR is, and will remain, by far the largest ATM manufacturer in the UK.** The Transaction leaves NCR with almost twice the share of supply in customer-operated ATMs as the Parties (64% for NCR compared to just 34% for the Parties combined). The combination of Diebold and Wincor Nixdorf will offer stronger and fair competition to NCR and is exactly what all customers require in the UK. In fact, [REDACTED] have said they hope the Transaction will create a better competitor to NCR in the UK;
- d. **Buyer power is a defining characteristic of the market.** The CMA's "Assessment of market power" guidance paper identifies four conditions which, if present, indicate a buyer's bargaining strength might be enhanced in a bidding market such as the market for ATM hardware. Every one of these conditions is clearly met in this industry and there has been clear evidence globally of customers sponsoring new entrants into the market;
- e. **It is inaccurate to distinguish banks from non-bank purchasers of ATMs.** The CMA's Phase 1 characterisation of the Transaction as a 3-2 merger proceeds from the premise that purchasers of customer-operated ATMs in the UK should be divided into two distinct customer groups, banks and independent (non-bank) ATM deployers ("*IADs*"), each of which is a separate frame of reference. It is only on that assumption that the CMA's theory of harm can proceed, but there is no credible basis to consider banks as a separate frame of reference from IADs. To the extent there historically have been differences between banks and IADs in the procurement of ATMs, those differences have almost entirely disappeared. IADs now operate many "offsite" ATMs that were formerly owned by banks, for example, in supermarkets and numerous service stations throughout the UK, and therefore operate and will purchase ATMs of exactly the same type as banks. The CMA's notion that banks buy one type of ATM and IADs buy a different type of ATM is conceptually flawed. This means that those players who supply (or, indeed, could supply) ATMs to any such customer in the UK should properly be considered to be a credible supplier to all customers in the UK;
- f. **Barriers to entry are low** for existing ATM manufacturers. The cost and time for a manufacturer to enter the UK are not substantial, and the introduction of multi-vendor software has provided new hardware suppliers with the ability to easily enter an existing ATM estate. Furthermore, as explained further below, there are multiple options for a hardware provider to ensure that a high quality and credible maintenance offering is also available in respect of its providers; and
- g. **The likelihood of entry and expansion is high.** The Parties made the point repeatedly during Phase 1 that Nautilus Hyosung and GRG are responding to tenders for ATMs in the UK – that is, they are already present in the UK. Nautilus Hyosung (a global ATM manufacturer) confirmed to the CMA that it was actively seeking to expand in the UK during the Phase 1 market survey.² The Decision claimed that there are technical reasons why GRG and Nautilus Hyosung's ATMs could not be deployed in the UK (referring to possible non-compliance with the UK Disability Discrimination Act, and potential issues with the sizes of their ATMs). The Parties

² This highly material statement was brought to the Parties' attention only after the Decision had been sent to the Parties, and was disclosed to the Parties only after they questioned certain excisions from the Decision.

have provided a detailed explanation in their response to the CMA's Market Questionnaire which sets out why neither of those reasons is credible. Put simply, no mainstream ATM, properly installed, should present concerns on either of these points. Furthermore, even for those players not already present and responding to tenders, the barriers to their entry (particularly for those with strong positions in other major markets in Europe, the US and Asia, which are of equal sophistication) are very low. Indeed, this is a market in which there is *actual evidence* of sponsored entry, and one in which multiple customers have told the CMA that they would be prepared to do so again in the future.

Characteristics of the UK Market

9. The UK is one of the largest ATM markets worldwide (based on the number of installed ATMs per person).³ There are already a range of different competitors in each of the UK hardware, software and services markets. Several of the following characteristics form the backdrop to the reasons set out above as to why there is no risk of an SLC.

(A) Commoditisation of hardware

10. A combination of factors has resulted in the "commoditisation" of ATM hardware. These factors include the prominence of multi-vendor software, the decreased importance of hardware to the improvement of ATM functionality and the outsourcing of manufacturing to third parties. This means the basic hardware in an ATM has not changed significantly in the past 10 years. Therefore, instead of new functionality being gained from improvements to hardware, new software is developed to improve the services offered to customers. Similarly, ATM hardware is being improved in its lifecycle, reliability and functionality by improvements in maintenance services and overall estate management.
11. The commoditisation of ATM hardware has meant that traditionally hardware-focused companies such as Diebold and Wincor Nixdorf, are having to re-calibrate their businesses in order to compete as there is no longer a competitively significant quality differentiation in hardware. This allows for smaller manufacturers to enter and expand in the market, either unilaterally or by partnering with suppliers of other parts of the combined offering. In particular, it means that the Parties have no appreciable quality, reputational or technological advantage over the plethora of competitors with similar hardware offerings, including Nautilus Hyosung, GRG and Fujitsu.

(B) Buyer power

12. As noted above, all purchasers of ATMs in the UK are large, sophisticated, organisations with specialised purchasing departments using tailor-made tender processes to achieve the most competitive terms of purchase. The demand for customer-operated ATMs is also extremely concentrated. In 2015 the five largest purchasers of customer operated ATMs in the UK accounted for 63% of total demand, whilst the three largest customers accounted for 47% of total demand. Consequently, these customers have significant buyer power, which they can deploy through their sophisticated and competitive bidding processes. The Parties refer the CMA to Paragraphs 285 – 314 of the Merger Notice for further information.

(C) Multi-vendor software

13. Multi-vendor software has become increasingly prominent in the market. Customers are able to deploy their software of choice with ATMs from different manufacturers, making ATM hardware even more interchangeable. So even though the sourcing of ATM hardware, software and services is typically separate, customers will expect their hardware to be compatible with

³ As of 2015, the UK has approximately 72,000 ATMs.

multi-vendor software and, hence, be part of whichever overall hardware/software/services solution the customer prefers.

14. This has created further opportunities for the entry of new low-cost hardware providers to participate in tenders and compete. There is already a range of current competitors in the UK software market, *e.g.* specialised software providers in the UK include Auriga and KAL, as well as other solutions providers such as NCR and large international software companies like IBM.

(D) Large number of service providers

15. Third party software and service providers now provide customers with options for improving the performance of their ATM estates and customers are not obliged to look to the original hardware suppliers.
16. Furthermore, outsourcing and managed services are also increasing for large deployers seeking alternative ways to manage operations on their self-service estates. The job of the outsourcer or managed service provider is to then make sure that the chosen ATMs are integrated into the estate and operate in the same way as existing ATMs.
17. There is also strong competition being faced from IT service providers, who are becoming increasingly active in the IT service landscape (*e.g.* First Data who managed the National Australia Group estate).
18. Many significant UK deployers of ATMs, such as Cardtronics, DC Payments and Notemachine, have their own in-house engineering teams and maintain a range of manufacturers' ATM hardware. There are also dedicated maintenance providers such as IBM/G4S and Cennox who have direct relationships with the major UK banks and who also partner with competitors seeking to enter the ATM hardware market (*e.g.* Cennox and Nautilus Hyosung). Any suggestion that these service offerings are less sophisticated than those of the Parties is misconceived, as is any suggestion that customers are resistant to a model in which servicing is provided by an entity other than the hardware provider. For example, RBS, one of the largest and most sophisticated deployers in the UK has its estate maintained by IBM.

(E) Certification

19. There are basic certification requirements ATMs must meet in order to be considered by UK deployers, namely the XFS/CEN standard (see Paragraphs 51-53 and 264-265 of the Merger Notice). The majority of ATMs sold by the large manufacturers worldwide are already XFS/CEN compliant, or could easily be made so. The costs of making ATMs compliant are not significant, nor is the period in which any such certification could take place. In any event, certification costs are a recurring element of the ATM hardware market and have never disincentivised new entrants.
20. In addition to the above points, it bears repeating that NCR is, and will remain, by far the largest supplier of ATM hardware in the UK (see Paragraph 8.c above) with approximately double the combined share of supply of the Parties. A number of the Parties' customers have expressed strong support for the transaction on the basis that the combined Diebold Nixdorf will be able to compete more effectively with NCR in the UK.

Conclusion

21. There is no credible basis for concern that the Transaction will significantly impede competition in the UK. The fact that in other jurisdictions the competition authorities have approved the transaction needs to be recognised. Although the Parties agree that markets are national in respect of the competitive position and the market players, the UK market is very similar to other European markets. The CMA's theory of harm alleging the 3-2 nature of the Transaction does

not stand up to scrutiny. It is telling that none of the Parties' UK customers has expressed any meaningful competitive concerns. On the contrary, they are unanimously supportive of the Transaction and want it to be implemented in the UK without delay.