ME/6613/16 – Diebold / Wincor Nixdorf

Response to Provisional Findings

A. Introduction

1. The parties welcome the opportunity to respond to the CMA's Provisional Findings. The parties will submit a separate response to the CMA's Notice of Possible Remedies.

2. The CMA's Provisional Findings contain a range of serious errors. These include errors of evidence, fact, economic analysis and law. They include, but are not limited to an undue reliance on bidding data that are incomplete and are based on a small number of observations[1]; wrongly dismissing economic evidence (for example, the GUPPI analysis) on the basis of mere speculation as to factors that may influence the results[2]; and a failure to attach sufficient weight to the lack of customer concerns, and customers' support for the transaction[3].

3. Notwithstanding the fact that the failings in the Provisional Findings are numerous, this response focuses principally on that part of the Provisional Findings that is the crux of the analysis: the section on expansion and entry. The most important error in the Provisional Findings is that the CMA has misdirected itself, by reference to its own guidance, as to the appropriate analysis of entry and expansion. This is a serious error which, of itself, means that the provisional finding of a substantial lessening of competition does not meet the standard of proof that, under the CMA's own Guidelines, it is required to meet in Phase 2 inquiries, namely that, on the evidence before it, the transaction is **more likely than not** to lead to a substantial lessening of competition.[4]

4. Specifically, the Provisional Findings take a fundamentally subjective approach to entry and expansion. Having concluded that there are no insurmountable barriers to entry and expansion, the CMA goes on to focus on whether two specific market participants have the intention to expand in the market (and on the nature of such expansion, on the basis of the evidence of their intention). In doing so, it ignores the fact that the CMA's guidance directs it to examine not just intention to enter or expand, but also, in the alternative, the ability and incentive to do so.

5. The Provisional Findings also attach insufficient weight to the balance of customers views. The Provisional Findings acknowledge that "customers have not expressed strong concerns about the merger"[5], and, indeed, the Provisional Findings recite the evidence from numerous customers who clearly welcome the merger. Nonetheless, it appears that

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1 See paragraph 6.14 and footnote 114 of the Provisional Findings.

2 See paragraph 6.96(d) of the Provisional Findings, in particular.

3 See paragraph 6.104 of the Provisional Findings.

4 Paragraph 2.12 of the CMA's Merger Assessment Guidelines.

5 Paragraph 6.104 of the Provisional Findings.

the Provisional Findings attach little or no weight to this. The parties' submit that, faced with the evidence it has reviewed in this case, when exercising the margin of discretion afforded to it by the Enterprise Act, the CMA must, in order to comply with duty of reasonableness under administrative law, attach significant weight to the views of customers – which must militate in favour of clearing the present transaction.

6. Taking these factors into account, the only conclusion open to the CMA is that the test for entry and expansion is met and that no substantial lessening of competition is liable to arise.

B. The CMA has misdirected itself as to the test for entry and expansion

7. The CMA's Guidance[6] explains that, in order to address a substantial lessening of competition that might otherwise arise, entry or expansion in the relevant market must be (a) likely, (b) timely, and (c) sufficient.

Likelihood

8. The CMA's guidance explains the appropriate approach to the analysis of the likelihood of entry and expansion as follows:

> *"The Authorities will consider not only the scale of any barriers to entry and/or expansion that may impact on the likelihood of entry or expansion but also whether firms have the ability and incentive to enter the market (or the intent to do so)."*[7]

9. In relation to the first part of this test (the scale of any barriers to entry and/or expansion), the Provisional Findings are clear that these are not high in this market. The Provisional Findings conclude that:

> *"In light of the evidence discussed above, we consider that barriers to entry and/or expansion in the market for customer-operated ATMs can be overcome, especially by a proactive and determined party, as the re-emergence of Diebold shows."*[8]

10. The Provisional Findings go on to conclude on the specific barriers considered by the CMA, stating:

> *"Reputation is certainly an important factor…but it is possible that this barrier could be overcome by a supplier in possession of a global footprint, or better still, some UK or European track-record* [which both of the expansion candidates discussed in the Provisional Findings possess]*."*[9]
>
> *"We further consider that entry costs…can be managed…We are also of the view that there are different models for entry and that costs vary, providing opportunities for different types of competitor."*[10]

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6 Paragraph 5.8.3 of the CMA's Merger Assessment Guidelines.

7 Paragraph 5.8.8 of the CMA's Merger Assessment Guidelines.

8 Paragraph 7.38 of the Provisional Findings.

9 Paragraph 7.39 of the Provisional Findings.

10 Paragraph 7.40 of the Provisional Findings.

11. While the Provisional Findings go on (at paragraph 7.41) to discuss further the requirements of bank customers in relation to reputation and maintenance and support services, these are all within the two categories of potential barriers discussed above, and in relation to which the CMA concludes that they "*can be overcome*". There is no indication anywhere in the Provisional Findings that, for any category of customer, it is not likely that they could be overcome.

12. The Provisional Findings thus do not base their conclusion on the notion that barriers to entry or expansion are high. The CMA's findings in relation to this part of the test of likelihood would be consistent with a finding of no substantial lessening of competition.

13. We therefore turn to the second part of the test of likelihood set out above – i.e. "*whether firms have the ability and incentive to enter the market (or the intent to do so)*".

14. It is in relation to this part of the test that the CMA fundamentally misdirects itself. In particular, the Provisional Findings focus almost exclusively on the question of whether the two identified candidates for expansion (Nautilus Hyosung and GRG) have the intent to enter the market (and on the nature of such expansion, on the basis of the evidence of their intention to expand). They fail to examine the other, alternative, part of the stated test – "*whether firms have the ability and incentive"* to enter or expand.

15. This approach is fundamentally wrong, as it focuses only on the subjective element of the test of likelihood (intent) and ignores the objective element (ability and incentive). In doing so, it ignores what must be the right question in a merger assessment – whether entry or expansion is sufficiently likely *were the merged entity to attempt to raise prices or degrade its offer*, which, as a hypothetical question, must be answered on the basis not just of current or historic plans but also objective evidence on ability and incentive.[11]

16. That the Provisional Findings focus only on the subjective element of the test is evident throughout paragraphs 7.45 to 7.76.

17. In particular:

    a) In relation to Nautilus Hyosung, the Provisional Findings conclude at paragraph 7.54 that: *"some level of expansion by Hyosung in the UK beyond its current presence may be expected at some point in the future"*.

       However, the Provisional Findings then immediately state (at paragraph 7.55) that *"Hyosung told us that it is at an early stage of its long-term plan to enter the UK and that its products are still to be tailored to satisfy UK demand. That, and the apparent lack of activity by Hyosung in the UK market currently, either in relation to finding potential maintenance partners, or addressing concerns raised by customers, does not point towards any expansion of Hyosung taking place within a time horizon of around two years"*.

[11] It is notable that this is exactly the question to which the CMA addresses itself in a number of other where it has cleared the merger on the basis of entry, including *McGill/Arriva* (paragraph 7.88) and *Omnicell/Surgichem* (para 9.126). The Provisional Findings do not appear to consider the issue in this way, instead taking a static analysis to entry.

This is a fundamentally subjective approach to the test, focusing only on what Nautilus Hyosung has told the CMA about its current intent and progress based on that intent; it does not address incentive or ability, in an objective sense, at all[12]. This same subjective approach is replicated in the summary of the CMA's conclusions at paragraph 7.79(a) and (b).

b) In relation to GRG, the Provisional Findings conclude at Paragraph 7.69 that *"there are number of areas in relation to which GRGI would need to improve its capabilities in order to be an entirely capable bidder, and we have not seen any plans on the part of GRGI to do so"*.

Once again, this is a fundamentally subjective approach, focusing only on GRG's current expressed intent and progress based on this intent; it does not address incentive or ability, in an objective sense, at all. This same subjective approach is replicated, once again, in the summary of the CMA's conclusions at paragraph 7.79(c).

18. In fact, the evidence in front of the CMA makes clear that the two identified expansion candidates (and others) would have both the incentive and the ability to grow (and grow sufficiently) in the UK. Specifically:

a) as to ability, the growth of Nautilus Hyosung and GRG in other comparable geographies shows that it is easily possible to expand significantly in a short period of time[13]. The evidence of Diebold's growth, as the Provisional Findings acknowledge, also makes clear that an entrant or expanding existing player would have the ability to reach scale; and

b) as to incentive, the Provisional Findings make clear that a new entrant – indeed, even one who bore all the costs of entry from scratch – could expect to reach profitability within a period of four years. The Provisional Findings present no evidence that, in these circumstances, a new entrant would not have the incentive to enter.

Timeliness

19. The Provisional Findings' approach to the assessment of timeliness displays the same failing. The Provisional Findings fold in consideration of timeliness with their assessment of likelihood (see in particular the paragraphs discussed above at paragraph 16 – paragraphs 7.55 and 7.69 of the Provisional Findings – upon which the issue of timeliness also appears to turn). Thus, the CMA takes the same subjective approach to the question of timeliness – considering only whether Nautilus Hyosung and GRG

[12] This failing also plays out in the specific consideration of the need for second line maintenance and sales capabilities. The Provisional Findings focus, subjectively, on the fact that the company's "progress has stalled" in relation to this issue (paragraph 7.53) and so appear to draw an adverse conclusion; rather, the appropriate analysis is that the (conditional) partnership negotiated with Cennox evidences that a candidate for entry or expansion is likely, objectively, to have the ability to address any issues on this point through partnership.

[13] See further paragraph 32 below.

would, on the basis of the evidence as to their current intent, be likely to reach scale within a two year period.

20. For example, the Provisional Findings focus on the fact that Nautilus Hyosung is *"at an early stage"*[14] of its plan to enter the UK market. It is far from clear to the parties what is meant by the ambiguous characterisation of being "at an early stage".

21. The Provisional Findings do not consider ability and incentive to reach scale within a two year period. Once again, the evidence in front of the CMA – both relating to the expansion of GRG and Nautilus Hyosung in other geographies and Diebold's re-emergence in the UK – indicates that this is entirely feasible. It is worth noting that in relation to none of the barriers to entry and expansion considered by the CMA do the Provisional Findings consider that they could not be addressed fully within this time horizon.

Sufficiency

22. The Provisional Findings' approach to the assessment of sufficiency displays the same failing.

23. In relation to Nautilus Hyosung, the Provisional Findings note the steps that the company would have to take but then conditions its conclusion on *"the apparent lack of any developed plans to address those issues"*[15], rather than considering whether it would have the ability and incentive to address those issues such that its entry could be sufficient.

24. Similarly, in relation to GRG, the Provisional Findings examine GRG's current strategy (much of which has been redacted), and goes on to condition its conclusion on the findings that *"we have no evidence that GRGI is planning to change its current strategy, either in terms of building its capabilities or specifically targeting bank customers"*[16]. This falls into the same trap of subjectivity.

25. Once again, the evidence in front of the CMA – both relating to the expansion of GRG and Nautilus Hyosung in other geographies and Diebold's re-emergence in the UK – indicates that entry could be achieved sufficiently to reach a scale to prevent a substantial lessening of competition.

C. The approach in the Provisional Findings departs from previous cases

26. The approach taken in the Provisional Findings also departs from the CMA's past practice. While there have, of course, been cases where an evidenced plan to enter or expand has been a material factor in the assessment by the CMA (or its predecessors) (consistent with the inclusion of "intent" as one basis for finding likelihood of entry), there are other cases where such intent has not been present.

[14] Paragraph 7.55 of the Provisional Findings.

[15] Paragraph 7.58 of the Provisional Findings.

[16] Paragraph 7.75 of the Provisional Findings.

27. In particular[17], relevant cases include:

    a) *Arquiva/British Telecom* (2007): in this case the OFT did not appear to identify specific entry plans for any of the candidates examined, but considered that they would have the capability to do so. The OFT concluded (consistent with the terms of the CMA's current guidance) that *"there are potential competitors with both the ability and the incentive to enter should Arqiva, post merger, increase prices higher (or its service quality decline further) than absent the merger"*; and

    b) *Greif/Blagden* (2007): in this case, the Competition Commission specifically found that "*Schütz Group [the identified entry candidate] told us that it had not actively approached the UK steel drum market and had no plans to market steel drums in the UK, but that, if requested, it would quote for supply to the UK in the future*". Notwithstanding this very equivocal evidence, the Competition Commission found that Schütz Group would have the ability and incentive to enter, such that the risk of a substantial lessening of competition did not arise[18].

    c) *McGill/Arriva* (2012): in this case, the Decision specifically notes that *"no operator told us that it had current plans to expand"*. Nonetheless (and quite appropriately), the Competition Commission went on to examine whether potential competitors could enter, and concluded that at least one *"could enter new flows in a timely way should a profitable opportunity arise"* (notably without even consideration as to whether such an opportunity was likely to arise in practice); and

    d) *Omnicell/Surgichem* (2014): in addition to one new entrant with clear plans to enter, the CMA appears to take into account in its conclusion that entry and expansion were likely the fact that *"We have also identified a number of firms that could enter the UK market, although we have not identified evidence that they plan to do so"*.

28. We are also aware of the CMA's decision in *Ballyclare/LHD* (2014). In this case the CMA cleared unconditionally (in phase 1) a merger which combined the number 2 and 3 players to create a symmetrical duopoly in the UK. The CMA considered the geographic frame of reference to be the UK and noted that customers attached high importance to suppliers having UK sales and service teams and warehouses.[19] The CMA's clearance

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[17] There are also a number of historic OFT decisions in which the prospect of entry was found to preclude a substantial lessening of competition concern without any specific new entrant being identified. These include *Tesco/T&S* (2002) and *Co-Op/Balfour* (2003). Taken together with the *Arquiva* case noted below, these indicate that, even at Phase I, the CMA might, in exceptional circumstances consider that, even in the absence of specific entry plans, consider that the test for entry is met. We acknowledge that the CMA typically requires evidence of specific entry plans at Phase 1 (see, for example, *Poundland/99p Stores*). Given the different statutory test, and consequent evidential threshold, that applies at Phase II, however, it is not the case that such evidence of actual intent to enter need be shown, as the CMA's own guidance makes clear.

[18] The Competition Commission also looked at other potential entry candidates, and, again, did not look for specific entry plans, but, instead for evidence of whether they had the "incentive" to enter – see paragraph 8.10.

[19] See paragraphs 39 and 41 of the CMA's Decision.

decision contains no analysis of any "3-2" concern. The CMA cleared the transaction solely on the basis that a third supplier (Hunter), which had never won a contract in the UK (or it seems, ever tendered for a contract in the UK), had no presence whatsoever in the UK (except Northern Ireland) and appeared unknown to UK customers, would enter the UK with sufficient timeliness, likelihood and sufficiency. The CMA came to that conclusion even though customers were uncertain of Hunter's capability to tender for UK business because they believed it lacked a UK presence. The CMA based its conclusion on entry almost entirely on the fact that Hunter had recently won a supply contract in Dublin. Although it is not completely clear from the published text of the decision whether or not the CMA also had the benefit of evidence on Hunter's subjective intent, the decision does certainly appear to focus on an objective analysis, which concluded that "Hunter's win of the Dublin contract shows that it has the capability to win reasonably-sized contracts tendered under EU procurement rules [redacted]." (emphasis added)[20]

D. Related evidential failings

29. We have explained above that the evidence in front of the CMA shows that both ability and incentive are present, such that the test of likelihood of expansion is unequivocally met.

30. It is worth noting, in addition, that, even on the terms of the mistaken test applied in the Provisional Findings, the CMA has failed to reach the necessary evidential threshold for a provisional finding of a substantial lessening of competition based on a conclusion that no entry or expansion is likely.

31. In particular, it is evident from the Provisional Findings that the CMA has not asked the two identified expansion candidates for any internal documents in relation to their plans for the UK. All evidence quoted in the Provisional Findings appears to be non-primary evidence (i.e. oral or written responses to CMA questions).

32. Given that the CMA's provisional finding of a substantial lessening of competition is based fundamentally on the conclusion that no entry or expansion is sufficiently likely - and all the more so given that it is based on an assessment of the two expansion candidates' intent to expand – the CMA cannot be said to have met its evidential burden if it has failed to ask for and obtain primary evidence as to their intent[21].

33. This is all the more important in circumstances where the notion that these two parties are unlikely to expand in the UK is inconsistent with public statements that the parties have brought to the CMA's attention[22], and also with the fact that both Nautilus Hyosung and GRG have shown very clearly that they can and will enter comparably mature and sophisticated markets (including France and Germany) in a short time frame.

[20] See paragraphs 100 and 101 of the CMA's Decision.

[21] Indeed, it appears that the CMA did not even hold a hearing at Phase 2 with Nautilus Hyosung.

[22] See, for example, Nautilus Hyosung's statement at the European ATMs trade fair in 2016, which clearly places its strategy in relation to the UK in the same category as its strategy in relation to France and Germany.

34. Indeed, the failure in the Provisional Findings properly to consider this evidence of expansion in comparable markets itself constitutes a significant failure to consider relevant evidence. Such entry/expansion has taken place in multiple territories. These include Nautilus Hyosung's expansion in other key European markets, including Austria in 2016 and France, Germany and Italy in 2015. Similarly, GRG is expanding in Europe and has been active in markets such as Germany since 2014, Austria since 2015 as well as Poland and Romania since 2014.

35. The parties have brought this evidence to the CMA's attention on many occasions[23], and have discussed it extensively with the CMA at the main party hearing. It is remarkable, then, that in an appraisal of the likelihood of entry (whether one takes a subjective or an objective approach), there is absolutely no consideration of what this evidence tells the CMA about the ability of these two candidates to expand rapidly (particularly in circumstances where the merged entity were to attempt to raise prices).[24] We are aware of at least one case in the past where the CMA's predecessors failed to request such evidence and subsequently found that their conclusion that no new entry was likely was contradicted within a matter of months.

F. Insufficient Regard to Customers' Views

36. The parties submit that the CMA's statutory remit in merger control requires it to exercise its margin of discretion with due regard to customers' views regarding the transaction under review. It is after all, customers' welfare that the CMA's remit empowers it to protect. In the present case, the Provisional Findings acknowledge that *"customers have not expressed strong concerns about the merger and…although they have recognised the loss of competition they believe this could be offset by the prospect of entry and/or synergies that arise from the merger*"[25]. Indeed, the Provisional Findings recite the positive response of a significant number of customers[26].

37. The detailed evidence of customer views also bears examination. The CMA cites evidence in the Provisional Findings from five customers expressing generalised concern about the merged Diebold/Wincor Nixdorf discontinuing certain products.[27] However, following the parties' submission regarding continuing to support legacy products, the CMA largely dismisses these concerns and this issue does not appear to form any part of the CMA's reasoning for its provisional finding of a substantial lessening of competition.[28] The parties note that one of the cited concerns (by NoteMachine) relates

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[23] See in particular, the parties' response to the Barriers to Entry Working Paper.

[24] This failing in the Provisional Findings contrasts markedly with, for example, the CMA's appraisal of a (single) contract win in a comparable geographic market (Dublin) in *Ballyclare/LHD Group.*

[25] Paragraph 6.104 of the Provisional Findings.

[26] Paragraphs 6.85 and 6.86 of the Provisional Findings.

[27] Paragraph 6.81 of the Provisional Findings.

[28] Paragraph 6.82 of the Provisional Findings..

only to software, which is not the frame of reference for the inquiry. For these reasons, we assume that the CMA has placed no weight on these comments[29].

38. The CMA also cites evidence from five customers on "potential loss of competition"[30]. However, all of these so-called concerns are, at most, generalised and speculative. Specifically:

    a) one customer (Cardtronics) is said to have commented that one fewer player might mean a worse tender result. It is notable, though, that Cardtronics also makes it clear that it could overcome inadequate competition by working with an "Asian supplier"[31];

    b) one customer (Barclays) is said to have commented that the *"possibility that the reduction to two suppliers could lead to problems"*[32]. Again, though, it is notable that the same customer has told the CMA that if such a problem arose, it "*could work with another supplier"*[33] and overall "*views the merger positively"*[34];

    c) one customer (name withheld) is said to have commented that, if there are only two viable ATM suppliers, "*there is a potential concern that competition will be reduced"*[35]. The parties note that there is no indication that the respondent considers that this alleged reduction would be significant or of concern. The same respondent notes that Diebold's re-emergence had been "a factor" in getting a good price in its most recent tender. The clear implication is that there must have been at least some other factors that led to that outcome; being "a factor" (among others) cannot be a sufficient basis for the CMA to conclude that this is good evidence of a substantial lessening of competition under the Enterprise Act;

    d) one customer (Tesco Bank) is said to have commented that if "*you have more suppliers competing for the customer, you generally get a better outcome*"[36]. It is notable that this customer specifically explains the extent of its concern in this respect, stating that the transaction may lead to "slightly less choice". The customer's own choice of words in this respect makes it clear that it is far from considering that a "substantial" lessening of competition may arise; and

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[29] If this is not the case, the Provisional Findings suffer from a serious failing, since no such theories of harm are otherwise reasoned out in the Provisional Findings.

[30] Paragraph 6.83 of the Provisional Findings.

[31] Paragraph 6.83(a) of the Provisional Findings.

[32] Paragraph 6.83(b) of the Provisional Findings.

[33] Paragraph 6.84(b) of the Provisional Findings.

[34] Paragraph 6.85(a) of the Provisional Findings.

[35] Paragraph 6.83© of the Provisional Findings.

[36] Paragraph 6.83(d) of the Provisional Findings.

e) one customer (Clydesdale/Yorkshire) is said to have commented that "*Diebold's entry drove NCR and Wincor to work harder*"[37]. Given the generality of this comment, the more important point is that the customer told the CMA quite clear that "it was not concerned by the prospect of the merger".

39. Furthermore, the Provisional findings cite ample evidence of no fewer than seven customers submitting that they will benefit from the transaction.[38] These seven ATM deployers account for 40% of the UK installed base. It is also noteworthy that Barclays and HSBC, the only UK banks with whom both Diebold and Wincor Nixdorf currently both have ATM supply agreements are among the customers who see benefits from the transaction.

40. Given the balance of this evidence, it is remarkable that the Provisional Findings attach so little weight to customers' views. The CMA cannot discharge its obligations to give appropriate weight to such evidence simply by reciting and "recognising"[39] those views. Rather, it is incumbent on the CMA to exercise its margin of discretion in a manner that attaches appropriate weight to the views of customers – which, in this case, point clearly in the direction that no substantial lessening of competition arises.

G. Conclusion

41. The CMA has fundamentally misdirected itself relative to its own guidance for expansion and entry by failing to take into account substantial objective evidence which clearly demonstrates that entry into the market is liable to be likely, timely and sufficient. Among other errors, this conflicts with the CMA and its predecessors' approach in prior merger inquiries.

42. The Provisional Findings instead incorrectly place emphasis on subjective evidence provided by third parties which, itself, has not been verified by a review of internal documents. The Provisional Findings' view is entirely backward-looking and static, and inconsistent with the CMA's own ambition to take an appropriately dynamic approach to market analysis.

43. The CMA has also failed to attach sufficient weight to the balance of customers' views about the transaction.

44. Consequently, the CMA has failed to meet its own evidential burden for determining whether the transaction will substantially lessen competition. The only conclusion open to the CMA is that there is insufficient evidence to establish that it is more likely than not that the transaction will lead to a substantial lessening of competition.

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[37] Paragraph 6.83(e) of the Provisional Findings.

[38] Paragraphs 6.85 and 6.86 of the Provisional Findings.

[39] Paragraph 6.104 of the Provisional Findings.

ME/6613/16

Diebold, Incorporated

Acquisition of
Wincor Nixdorf AG

DIEBOLD NIXDORF'S RESPONSE TO THE CMA'S NOTICE OF POSSIBLE REMEDIES

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13 January 2017

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I. Introduction

Background

1. In its Provisional Findings dated 20 December 2016 (the "***Provisional Findings***") the CMA provisionally found that the completed acquisition by Diebold, Incorporated[1] ("***Diebold***") of Wincor Nixdorf AG[2] ("***Wincor Nixdorf***") (creating the combined entity, "***Diebold Nixdorf***") (the "***Transaction***") may result in an SLC.[3]

2. Diebold Nixdorf strenuously refutes that conclusion. For the reasons set out in its response to the Provisional Findings dated 10 January 2017, Diebold Nixdorf believes that the CMA has made serious errors in the Provisional Findings, including, in particular, wrongly assessing the prospects for expansion by GRG and Nautilus Hyosung.

3. However, the CMA appears, in the Notice of Possible Remedies (the "***Remedies Notice***"), to accept that the SLC it has identified could be adequately remedied if a competitor to Diebold Nixdorf other than NCR were to enter or expand in the UK.

4. This is also consistent with the Provisional Findings' summary of customer evidence,[4] which notes that:

> *"Overall, customers do not appear to be concerned about the impact of the merger as long as:*
>
> *(a) they would be able to benefit from the merger…*[which is not a point requiring a remedy]
>
> *(b) <u>a new supplier was able to enter the market or an existing competitor was able to expand if market conditions had worsened</u>; or* [emphasis added]
>
> *(c) they received assurance that neither Diebold nor Wincor products were to be discontinued after the merger.* [This does not seem to be a theory of harm pursued by the CMA, and, in any event, Diebold Nixdorf does not propose any change to the pre-merger run-out arrangements for the legacy Diebold and Wincor Nixdorf product portfolios.]

Possible barriers to entry and expansion identified in the Provisional Findings

5. The Provisional Findings explain that the CMA does not consider barriers to entry and expansion in this market to be high:

> "*In light of the evidence discussed above, we consider that barriers to entry and/or expansion in the market for customer-operated ATM, can be overcome, especially by a proactive and determined party, as the re-emergence of Diebold shows."*[5]

6. Nonetheless, in coming to that conclusion, the Provisional Findings appear to identify, in various places, five elements that could constitute potential barriers to entry or expansion:[6]

   a. reputation and scale;

   b. local support and maintenance services;

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1 Diebold, Incorporated changed its name to Diebold Nixdorf, Incorporated on 9 December 2016.
2 Wincor Nixdorf AG changed its name to Diebold Nixdorf AG on 24 November 2016.
3 Provisional Findings, paragraph 6.105.
4 As the parties explain in their response to the Provisional Findings, it is clear that the balance of customer feedback is supportive of the Transaction.
5 Paragraph 7.38 of the Provisional Findings.
6 Provisional Findings, paragraphs 7.13-7.37.

c. certification and testing;

d. customer specific design requirements; and

e. cost of entry.

7. These potential barriers appear to be consistent with those discussed with specific application to one or more of GRG[7] or Nautilus Hyosung[8] in the Provisional Findings, although it is clear that not all such barriers apply to each of them[9].

A properly-specified set of undertakings addressing these specific issues would, on its own, be fully effective in remedying the alleged SLC

8. Diebold Nixdorf has submitted extensive evidence demonstrating that these potential barriers to entry and expansion could be easily overcome by a global competitor such as GRG or Nautilus Hyosung.[10]

9. Thus, while Diebold Nixdorf does not believe that any of these factors poses a material barrier for competitors such as GRG and Nautilus Hyosung, it appears that an appropriate package of assistance measures would be more than sufficient to overcome any residual or entrant-specific constraint they may impose and will therefore, on their own, be a fully effective remedy to the SLC identified in the Provisional Findings.

10. In that light, Diebold Nixdorf proposes below a comprehensive package of undertakings which go beyond being purely behavioural and, in effect are a quasi-structural "enabling" remedy that will overcome the limited barriers to entry/expansion identified by the CMA (the "***Undertakings***").

11. The proposed Undertakings are focused on providing [✂].

12. Diebold Nixdorf notes that while a full divestment of one of the Diebold or Wincor Nixdorf UK businesses potentially could also be an effective remedy, [✂]. Moreover, for the reasons set out below, in the specific circumstances of this case, the Undertakings provide a more comprehensive remedy than that that would be achieved by a divestment.

13. In the current circumstances, where <u>either</u> the quasi-structural and divestment remedy options would be fully effective, Diebold Nixdorf submits that the CMA should permit Diebold Nixdorf to elect which remedy option it wishes to pursue (subject, of course, to agreement on detailed terms with the CMA, in the usual manner).

14. Diebold Nixdorf describes below the proposed quasi-structural remedy and also provides general comments on a structural remedy in response to the questions thereon set out in the Remedies Notice.

II. Quasi-Structural Undertakings

A. Summary

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7 Paragraphs 7.45-7.59 of the Provisional Findings.

8 Paragraphs 7.60-7.76 of the Provisional Findings.

9 For example, the Provisional Findings note that Nautilus Hyosung has already engaged consultants in relation to DDA compliance.

10 Evidence on low barriers to entry has been provided in the Merger Notice, the Supplemental Submission on Entry, at the Phase 2 Main Party Hearings and in Diebold Nixdorf's response to the Provisional Findings. See, in particular, the parties' response to the Provisional Findings, which explains that the CMA must, consistent with its own Guidelines, consider this on an objective, as well as subjective, basis.

15. Diebold Nixdorf provides a detailed description of the Undertakings in **Annex 1**. The Undertakings are designed fully to eliminate the risk of the SLC identified by the CMA in the Provisional Findings.

16. The Undertakings provide for a "menu" of assistance options for entering or expanding competitors [✂]. While they are, of course, targeted at the specific points addressed in the Provisional Findings [✂], they are also of more general application.[11]

17. By way of summary, the Undertakings are as follows:

    a. **Undertaking 1**: to provide, at [✂] rate, up to [✂] hours of consulting services from a Diebold Nixdorf hardware engineer and/or design engineer (as required) to assist ATM manufacturers with meeting UK-specific regulation and design specifications (and to provide any further hours as requested at [✂] rates);

    b. **Undertaking 2**: to provide, at [✂] rate, a [✂] week testing slot and up to [✂] labour hours of assistance and testing in Diebold Nixdorf's global software facilities to pre-emptively test CEN/XFS-compliant ATMs that will be offered in the UK on Diebold Nixdorf, or legacy Diebold or Wincor Nixdorf, application software (and to provide any further hours as requested at [✂] rates);

    c. **Undertaking 3**: to provide, at [✂] rate, up to [✂] labour hours of assistance to enable a manufacturer's ATMs to achieve EMV compliance with any of the ATM deployers listed in **Annex 2** (the "***Deployers***") (and to provide any further hours as requested at [✂] rates); and

    d. **Undertaking 4**: to provide ATM installation services, maintenance services and associated support functionality in the UK to Deployers at the request of any or all of [✂].

18. The Undertakings have been proposed at rates which will incentivise [✂] to execute their UK expansion plans in a timely and sufficient manner so as to eliminate the SLC identified by the CMA. CMA guidance requires access remedies to be provided on fair, reasonable and non-discriminatory terms.[12] Diebold Nixdorf considers the proposed pricing offers for **Undertakings 1, 2** and **3** meet this test, as Diebold Nixdorf will be offering rates that would amount to less than would be ordinarily offered at arm's length negotiations.

19. The specific level of discount proposed ([✂]) should be understood in the context of the fact that the specific services to be provided under these Undertakings are already provided at low margins. A [✂], and one which the parties believe will provide an effective incentive to parties proposing to enter or expand in the market.

20. The pricing offer for **Undertaking 4** also meets this test as Diebold Nixdorf will be offering rates that are based on [✂].

21. Diebold Nixdorf offers these Undertakings for a period of [✂] years from the date of the CMA's decision approving the Transaction.

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11 The Undertakings provide that the menu of services contemplated will be made available to [✂].

12 For example, see Arriva plc / Wales and Borders Rail Franchise, OFT (2004). In Deutsche Borse / Euronext / London Stock Exchange (CC, 2006), "fair, reasonable and non-discriminatory terms" was defined as free negotiation at arm's length between the relevant companies (paragraph 1.8 of the published undertakings).

B. Nature of the Proposed Quasi-Structural Undertakings

22. The Undertakings amount to a quasi-structural access remedy designed to address the CMA's concerns as to the likelihood, timeliness and sufficiency of entry and expansion in the UK thereby eliminating the alleged SLC. Their effect will be to permanently change the structure of the UK market for the supply of customer-operated ATMs by supporting the entry and/or expansion of competitors [✂].

23. Furthermore, as noted above, the Undertakings are targeted not only at the potential barriers to entry identified as a matter of principle in the Provisional Findings,[13] [✂].

24. While the Undertakings have been offered for a period of [✂] years from the date of the CMA's decision approving the Transaction, Diebold Nixdorf anticipates that they are capable of giving (at least) [✂] all of the support required to expand in the UK within one year to the point that such entry could confidently be said to have met the threshold of sufficiency to replicate the pre-merger competitive constraint offered by Diebold.

25. The Parties note that the CC accepted undertakings with similar objectives, and which were constructed on a similar basis, in *Nufarm / AH Marks*.[14] This example is pertinent for a number of reasons:

    a. In this case, the CC accepted a number of undertakings intended to bring new competitors into the UK market for a certain type of herbicide. It is noteworthy that in *Nufarm / AH Marks*, neither of the two competitors identified to benefit from the assistance with entry had current plans to enter the UK market. This contrasts with the present case where both GRG and Nautilus Hyosung are already present, and have explicitly told the CMA they are working on expanding in the UK.[15]

    b. Furthermore, while the remedies in *Nufarm / AH Marks* targeted only two specific competitors, the Undertakings are drafted broadly in order to allow other potential entrants to make use of them to enter or expand in the UK.[16]

    c. Also in contrast to the *Nufarm / AH Marks* remedies, there will be no ongoing dependency on Diebold Nixdorf once the Undertakings have had the effect of facilitating the entry or expansion of one or more competitors. The Undertakings simply eradicate the already limited barriers to entering or expanding in the UK market for the supply of customer-operated ATMs.

C. Effectiveness of the Proposed Quasi-Structural Undertakings

26. The Undertakings clearly remedy each of the factors identified by the CMA in the Provisional Findings as potential barriers to entering the UK market for customer operated ATMs – both those discussed as barriers to entry in principle, and those discussed with specific reference to GRG and Nautilus Hyosung. These are:

    a. reputation and scale;

    b. local support and maintenance services;

    c. certification and testing;

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13 Provisional Findings, paragraphs 7.13-7.37.

14 Completed Acquisition by Nufarm Crop Products UK Limited of AH Marks Holdings Limited.

15 Provisional Findings, paragraphs 7.55, 7.69 and 7.78.

16 As noted above (and explained in detail at **Annex 1**) the Undertakings would apply to [✂].

d. customer specific design requirements; and

e. cost of entry.

27. **Undertaking 1** provides [✂] ATM manufacturer with [✂] hours of assistance in satisfying any UK-specific regulatory and design specifications at [✂] rates. **Undertaking 1** also ensures that all interested manufacturers will have access to consultation services from Diebold Nixdorf at [✂] rates.

28. The Parties have made extensive submissions to the CMA to demonstrate that such regulatory and design specifications are very minor.[17] Diebold Nixdorf nonetheless offers **Undertaking 1** in order to allay any remaining concern the CMA may have.

29. **Undertakings 2** and **3** provide [✂] hours assistance in ensuring that a CEN/XFS compliant ATM achieves full EMV certification on Diebold Nixdorf, or legacy Diebold or Wincor Nixdorf application software platforms.

30. Deployers running Diebold, Wincor Nixdorf, or Diebold Nixdorf application software would similarly be assured of assistance with achieving EMV certification for a new manufacturer's ATM, allowing integration into their existing estates. **Undertakings 2** and **3** ensure that both such certifications will be achieved quickly and at [✂] rates. **Undertakings 2** and **3** also ensure that other manufacturers and Deployers will have access to these services from Diebold Nixdorf at [✂] rates.

31. **Undertaking 4** provides deployers with guaranteed access to a UK-wide ATM installation and maintenance services network and a back office/support centre function for [✂] manufacturer's ATMs . The pricing proposal for **Undertaking 4** also ensures that any manufacturer that takes advantage of it will receive a [✂] rate, based on [✂].

The Undertakings are fully effective in addressing each of the alleged barriers to entry and expansion

32. Together, these undertakings are fully effective in addressing each of the alleged barriers to entry and expansion noted above. We explain this on an item by item basis below.

33. **Reputation and Scale**: The Provisional Findings state, in paragraphs 7.13-7.15, that the need for reputation and scale may constitute a barrier to entry. The Parties have submitted extensive evidence in the Merger Notice, at CMA hearings, and in the Supplemental Submission on Entry demonstrating that there are a number of credible competitors who would meet the requirement of "reputation and scale" on any reasonable view. These submissions have been supported by the responses to the CMA's market investigation:

a. GRG already has a large presence in Asia with major customers such as Bank of China, Citibank Guangzho and Standard Chartered Bank in Hong Kong, as well as providing ATMs to German savings banks. GRG has also recently won three tenders in Turkey with PTT, Finanzbank and İşbank. . GRG confirmed its presence and operations in the UK in its Phase 1 call with the CMA. In particular, GRG confirmed that it has two representatives in the UK, it has been operational in the UK for six years, and it has participated in a number of tenders by UK banks;[18]

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17 See, in particular, the Parties' response to the Barriers to Entry Working Paper.

18 *Summary of a call with GRGI International during the phase one inquiry on 2 August 2016*, Paragraphs 5-11; and *Summary of a hearing with GRG International on 7 October 2016*, Paragraphs 4-5.

b. Nautilus Hyosung is the number one ATM supplier in the United States with clients including Chase and Citibank. It has also shown a strong pattern of recent entry and growth in key European markets, including (but not limited to) Austria in 2016; France, Germany and Italy in 2015. Nautilus Hyosung confirmed its presence and operations in the UK in its Phase 1 call with the CMA;

c. Similarly, Fujitsu is the market leader in Japan where it supplies all major banks and is a strong competitor in Spain, having built a significant relationship with CaixaBank;

d. Glory has major customers in the United States, Australia, Japan, Germany, Spain as well as other EEA countries;

e. KEBA is the market leader in Austria. It is also the market leader for recycling systems in Germany and is active in several EEA states; and

f. Other competitors such as Oki and Triton, are active in a wide range of EEA states.

34. These track records appear amply to fulfil the requirement noted by the CMA, that such a barrier should be capable of being overcome "*by a supplier in possession of a global footprint, or better still, some UK or European track-record, which it could use as leverage to enter or expand in the market.*"[19]

35. Customer evidence, as well as evidence from other comparably sophisticated geographies which Nautilus Hyosung and GRG (in particular) have entered in the recent past, shows that international credentials of this sort provide the type of reputational reassurance that customers require. The parties therefore strongly contest any suggestion that these competitors do not have sufficient reputation, or EEA/global scale, to be considered seriously by UK deployers.

36. Nonetheless, the Undertakings will provide manufacturers with assistance in leveraging their global reputations to win tenders from UK deployers, and also assure UK deployers that there will not be any impediment to the manufacturers moving into the UK on a rapid and fully effective basis:

a. **Undertaking 1** provides [✂] ATM manufacturer with [✂]hours of assistance (at [✂] rates) with modifying their global portfolios to meet any UK-specific regulation and design specifications (although the Parties repeat their assertion that any concerns about the difficulty of such modifications are entirely misplaced);

b. **Undertakings 2** and **3** provide [✂] ATM manufacturer with [✂] hours of pre-emptive testing, and [✂] hours assistance with achieving EMV certification in the UK as quickly as possible at [✂] rates; and

c. **Undertaking 4** provides deployers with guaranteed access to a UK-wide ATM installation and maintenance services network and a back office/support centre function for [✂] manufacturer's ATMs, so addressing any possible concerns about scale and/or reputation in relation to support and maintenance services.

37. **<u>Local support and maintenance services</u>**: The Provisional Findings state, in paragraphs 7.16-7.21, that the need for local support services may constitute a barrier to entry. Local support services must be considered separately for the sales and servicing (and general

[19] Paragraph 7.39 of the Provisional Findings.

back office) function. A local presence for sales requires only a single "on the ground" salesperson in the UK. This would not be a significant investment for *any* party seeking to enter or expand in the UK market (to say nothing of the fact that a number of the entry or expansion candidates already have UK sales teams in place). It is also notable that the conclusions on the specific entry challenges identified for Nautilus Hyosung and GRG do not mention sales capacity.[20]

38. With reference to servicing, deployers want to ensure that a manufacturer has a credible maintenance service function in the UK (whether in-house or via a third party maintenance provider).

    a. **Undertaking 4** adds to the reputable third-party installation, maintenance and support services already available in the UK, including from IBM and Cennox. This Undertaking provides deployers with guaranteed access to a UK-wide ATM installation and maintenance services network and a back office/support centre function for [✂] manufacturer's ATMs.

39. The CMA should also note that many of the potential entrants already have a footprint in the UK, including Nautilus Hyosung and Triton, while others have a UK sales team like GRG.

40. **Certification and testing**: The CMA considered, in paragraphs 7.22-7.27 of the Provisional Findings, that the need for certification and testing may constitute barriers to entry.

41. **Undertakings 2 and 3** provide [✂] ATM manufacturer with a complete pathway to certification with Deployers running Diebold Nixdorf, or legacy Diebold or Wincor Nixdorf application software.

42. As set out in Annex 8 to the Merger Notice, deployers making up [✂] of the installed base of ATMs in the UK run their estates on the Parties' application software. An entrant that was facilitated in certifying on the Parties' application software would therefore be immediately able to deploy across a range of deployers' networks once this certification was achieved.

43. Specifically:

    a. **Undertaking 2** provides [✂] ATM manufacturer with [✂] hours of in-lab product testing with the multi-vendor software platform, and access to a comprehensive pre-emptive testing resource which they can use to perform early compatibility testing as part of their development of products for sale to deployers in the UK (pre-emptive EMV Level 2 testing); and

    b. **Undertaking 3** provides [✂] ATM manufacturer with [✂] hours of assistance in achieving EMV certification on Diebold Nixdorf, and legacy Diebold and Wincor Nixdorf, application software.

44. **Customer specific design requirements**: The Provisional Findings state, in paragraphs 7.28-7.31, that the need to meet customer specific design requirements may constitute a barrier to entry.

45. The competing ATM manufacturers identified by the Parties deploy ATMs worldwide and are able to satisfy market-specific and customer-specific requirements without difficulty.

[20] Paragraph 7.79 of the Provisional Findings.

The Parties find it difficult to understand why competitors who have met customer specific design requirements without difficulty in other comparable geographies that they have entered recently should find it difficult to do so in the UK in a manner that should give the UK any meaningful concern.

46. Nonetheless, in the event that [✂] ATM manufacturer required assistance with meeting UK-specific (or customer-specific) regulations or design requirements, **Undertaking 1** provides consultation services to this end at an [✂] rate. The Parties are confident that the [✂] hours of consultation envisaged by the remedy is more than sufficient to address any of the (limited) issues that may arise for a specific manufacturer under this heading.

47. **Cost of entry**: The Provisional Findings state, in paragraphs 7.32-7.37, that the cost of entry may constitute a barrier to entry. Once again, it is difficult to understand why costs that have been borne to enter comparable geographies should be considered problematic in the UK.

48. Nonetheless, **Undertakings 1, 2** and **3**, which support manufacturers in meeting design requirements and achieving certification on Diebold Nixdorf, or legacy Diebold or Wincor Nixdorf application software platforms, will be provided at [✂] rates. Among costs of entry and expansion that are generally low, these costs are, as the parties have acknowledged, commonly the most material. **Undertakings 1, 2** and **3** will therefore greatly assist in facilitating cost-effective entry, and so address any concerns about the cost of entry.

Conclusion on effectiveness

49. Given that the Undertakings address each of the issues identified by the CMA in its Provisional Findings, they will clearly be fully effective in eliminating any risk of the SLC identified by the CMA.

50. Alternative potential undertakings, including divestment of part or all of one of the UK businesses, would not be any more effective in avoiding the SLC identified by the CMA. In fact, the Undertakings will be more effective because they will provide support for [✂] manufacturer.

E. Implementation of the Proposed Quasi-Structural Undertakings

51. Diebold Nixdorf can implement the Undertakings immediately following acceptance by the CMA.

52. Given the high degree of sophistication of the intended beneficiaries of the Undertakings (UK banks and IADs, and global ATM manufacturers) Diebold submits that they are unquestionably capable of ensuring Diebold Nixdorf's compliance with them. There will be no need for the CMA to monitor compliance.

53. [✂].

F. Response to specific questions on non-divestment remedy

54. The Remedies Notice sets out a small number of specific questions in relation to a proposal for behavioural remedies.[21] The Undertakings set out in this response go materially beyond the proposal set out in the Remedies Notice, forming, as noted above, a quasi-structural solution to the concerns provisionally identified by the CMA.

[21] Paragraph 25 of the Remedies Notice.

55. Nonetheless, for completeness, responses are set out below.

Comments on the comprehensiveness of the services/facilities mentioned in paragraph 24

56. The Undertakings go materially beyond the proposal set out in the Remedies Notice, both in terms of comprehensively addressing each and every potential barrier to entry or expansion identified in the Provisional Findings and in terms of detail.

57. For completeness, the Remedies Notice contemplates at paragraph 24 that the services it identifies should be provided at "zero or reasonable cost". As noted above, the key elements of the Undertakings are provided [✂], very significantly reducing any financial burden on an entrant or expanding party. The only part of the Undertakings [✂].

58. There is no good reason to expect that the services contemplated by the Undertakings should be provided for [✂]. The costs implied by the barriers identified in the Provisional Findings (both those identified in principle and those specifically identified in relation to each of Nautilus Hyosung and GRG) are far from prohibitive, being only of the order of a few hundred thousand pounds. These will already be reduced significantly by the terms of the Undertakings. It is impossible to understand why costs that were apparently borne without difficulty by recent entrants in comparable geographies should be uniquely prohibitive in the UK, and the parties therefore submit that a [✂] approach is entirely proportionate and effective.

Comments on the time period over which this remedy would need to be in place

59. The Undertakings contemplate that they would apply for a period of [✂] years.

60. It is the parties' expectation that any entrant or expanding party wishing to avail itself of the services contemplated by the Undertakings could do so in such a way that entry or expansion would be fully effective (and sufficient) within a period of a year. There is no indication in any discussion of barriers to entry in the Provisional Findings that, with adequate measures to address them, they could not be surmounted in a timely way. For that reason, it is clear that a period of [✂] years is more than ample to give the CMA full comfort as to the effectiveness of this remedy.

III. Structural Remedy

61. Diebold Nixdorf strongly believes that the quasi-structural undertakings described above provide a fully effective remedy to all of the concerns identified in the Provisional Findings. However, as noted above, Diebold Nixdorf agrees that, at least in principle, the sale of one of Diebold or Wincor Nixdorf's UK businesses could also be an effective remedy, albeit [✂] to Diebold Nixdorf and no more effectively than the Undertakings.

62. Set out below are comments on the specific questions raised in the Remedies Notice with respect to the Structural Remedy identified by the CMA.[22]

(a) Is the scope of the remedy mentioned in paragraph 15 comprehensive? Should anything be added to or deleted from this list?

63. Diebold Nixdorf submits that the scope of the remedy set out in paragraphs 15(a)-15(f) of the Remedies Notice is comprehensive.

64. Indeed, there are elements of the package which demonstrably go further than is necessary in order to achieve an effective remedy. In particular, the use of the Diebold or Wincor

[22] See paragraph 17 of the Remedies Notice.

Nixdorf brands should be strictly limited to [✂]. The acquirer would not require unrestricted use of the Diebold or Wincor Nixdorf brands in order for the remedy to be effective.

(b) Should the parties be allowed to propose which of the two businesses should be covered by the remedy?

65. There should be no doubt whatsoever that Diebold Nixdorf should be allowed to choose which of the legacy UK businesses is divested. The reasons for this are manifold:

    a. First, the CMA has found both businesses to be effective competitors in the UK. The Provisional Findings state that:

    "*Our analysis of the evidence shows that each of NCR, Diebold and Wincor is a strong and credible competitor, representing viable alternatives for customers of ATM hardware*."[23]

    b. Second, each business has a strong customer base with the capability to win future business. With specific reference to the Diebold business, the Provisional Findings state:

    "Diebold established itself as a strong competitor to NCR and Wincor…It succeeded in winning contracts with two major banks (Barclays and HSBC) as well as other wins which provides it with a strong basis upon which to compete for future opportunities."[24]

    The same is, of course, true of the Wincor Nixdorf UK business.

    c. Third, each business has a full complement of staff required to serve those customers, and the resources required to operate successfully. With specific reference to the Diebold business, the Provisional Findings note the investments that have been made as follows:

    "[Diebold] recruited new management, sales staff and hardware maintenance/servicing teams. It also invested in infrastructure by creating a new UK and Ireland headquarters, helpdesk and UK-wide service/logistic organisation."

    The Wincor Nixdorf UK business, of course, has similar capabilities.

    d. Fourth, both businesses have been maintained as viable self-standing entities pursuant to the terms of the CMA's initial enforcement order.

(c) Should the purchaser be granted the right to be the sole user of the relevant brand name in the UK, i.e., Diebold or Wincor, which is transferred under the remedy?

66. As explained above, the use of any brand name in the UK should be appropriately limited, which would not detract from the effectiveness of this remedy.

67. In general, Diebold Nixdorf believes that interest in one of the UK businesses may come from an existing ATM manufacturer without a significant presence in the UK, a third-party maintainer seeking to act as a distributor of Diebold, Wincor Nixdorf, or another manufacturer's ATMs, or potentially an independent party seeking to act as a distributor. Given the diversity of potential purchasers, it would be advisable to leave open the scope

[23] Paragraph 6.101 of the Provisional Findings.
[24] Paragraph 7.73 of the Provisional Findings.

and form of the divestment in so far as possible in order to allow for a variety of possibilities. In particular, questions relating to the duration of any licensing or supply agreements, and usage of brand rights or intellectual property would be best left to commercial negotiations between Diebold Nixdorf and any potential purchaser, subject to the CMA's approval.

(d) What should be the duration of any licensing/distribution arrangement?

68. See the response above.

(e) For how long should the Parties be required to continue to supply the ATM models covered by the remedy, related software and parts to the purchaser?

69. See the response above.

(f) Comments on whether the parties should be required to appoint an independent monitoring trustee.

70. Diebold Nixdorf does not believe that an independent monitor would be required in order to ensure the divested business is maintained during the divestment process. The monitoring arrangement with [✂] has been functioning well and it is in Diebold Nixdorf's interest to ensure that the business being divested is maintained in a condition that will achieve the highest price. Any concerns relating to the preservation of the divested business can be addressed by way of undertakings.

(g) Comments on timescale for implementing a divestment remedy.

71. Given the necessity of negotiating complex licensing and supply agreements, the need for customer and CMA consents, and market testing of the potential purchaser, Diebold Nixdorf estimates that a divestment remedy could take anywhere up to six months.

Conclusion on effective remedies

72. Both the quasi-structural and structural remedies described above would be effective in addressing the SLC identified by the CMA. Given the complexity of establishing the cost and disruption to its UK business of each option, Diebold Nixdorf submits that it should be left to determine which of these effective remedies is [✂], taking into account all relevant considerations.

***

Annex 2

[✂]

[✂]	[✂]	[✂]
[✂]	[✂]	[✂]
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