

## **REFERENCE RELATING TO THE COMPLETED ACQUISITION BY DIEBOLD, INCORPORATED OF WINCOR NIXDORF AG**

### **Notice of proposal to accept final undertakings pursuant to Sections 41 and 82 of and Schedule 10 to the Enterprise Act 2002 and public consultation on the proposed final undertakings**

1. On 23 November 2015 Diebold, Incorporated (now Diebold Nixdorf, Incorporated) and Wincor Nixdorf AG (now Diebold Nixdorf AG) entered into a Business Combination Agreement. The merger between the Parties completed on 16 August 2016.
2. On 15 August 2016 the Competition and Markets Authority (the CMA) made an initial enforcement order pursuant to section 72 of the Enterprise Act 2002 (the Act) for the purpose of preventing pre-emptive action prior to the reference being finally determined.
3. On 30 August 2016, the CMA referred the completed acquisition by Diebold, Incorporated of Wincor Nixdorf AG for further investigation and report by a group of CMA panel members under section 22(1) of the Act.
4. On 24 November 2016 Wincor Nixdorf AG changed its name to Diebold Nixdorf AG and on 9 December 2016 Diebold, Incorporated changed its name to Diebold Nixdorf, Incorporated (Diebold Nixdorf).
5. On 16 March 2017 the CMA published its final report, concluding that the completed acquisition may be expected to result in a substantial lessening of competition (SLC) in the market for the supply of customer-operated ATMs in the UK.
6. The CMA has reached agreement with Diebold Nixdorf on the terms of proposed final undertakings to remedy the SLC identified in the final report and any adverse effects resulting from it and the proposed undertakings are annexed to this notice.

## Notice of proposal to accept undertakings

7. The CMA now hereby gives notice of the proposed undertakings under paragraph 2 of Schedule 10 to the Act and that:
  - (a) the CMA proposes to accept the annexed proposed undertakings; and
  - (b) the proposed undertakings seek to address the SLC identified in the final report and the adverse effects which may be expected to flow from it.
8. The CMA invites written representations on the proposed undertakings from any person or persons who wish to comment. Representations should reach the CMA by 5pm on 12 April 2017 (15 days starting with the date of the publication of this notice) and should be addressed to:

Remedies Manager  
Diebold/Wincor merger inquiry  
Competition and Markets Authority  
Victoria House  
Southampton Row  
London  
WC1B 4AD

Or by email to [diebold.wincor@cma.gsi.gov.uk](mailto:diebold.wincor@cma.gsi.gov.uk)
9. The CMA will consider any representations made in accordance with this notice and may make modifications to the proposed undertakings as a result. In the absence of any written representations, or in the event that the CMA decides, on consideration of representations made and not withdrawn, not to amend the proposed undertakings, the CMA proposes to accept the undertakings in their present form pursuant to section 82 of the Act. If the CMA considers that any representation necessitates any material change to the proposed undertakings, the CMA will give notice of the proposed modifications.
10. Once accepted, the final undertakings may be varied, superseded or released by the CMA under section 82(2) of the Act.
11. This notice and a non-confidential version of the proposed undertakings will be published on the CMA website.

Signed by authority of the CMA

MARTIN CAVE  
*Inquiry Chair*  
28 March 2017

# COMPLETED ACQUISITION BY DIEBOLD, INCORPORATED OF WINCOR NIXDORF AG

## Final Undertakings given by Diebold Nixdorf, Incorporated ("Diebold Nixdorf") to the Competition and Markets Authority pursuant to Section 82 of the Enterprise Act 2002

### 1. Background

- 1.1 On 23 November 2015 Diebold, Incorporated ("Diebold," now Diebold Nixdorf, Incorporated) and Wincor Nixdorf AG ("Wincor," now Diebold Nixdorf AG) (collectively - the Parties) entered into a Business Combination Agreement. The merger between the Parties completed on 16 August 2016.
- 1.2 On 15 August 2016 the CMA made an Initial Enforcement Order pursuant to section 72 of the Act for the purpose of preventing pre-emptive action prior to the reference being finally determined.
- 1.3 On 30 August 2016, the Competition and Markets Authority (the "CMA") made a reference (the "Reference") to its chair in accordance with section 22(1) of the Enterprise Act 2002 (the "Act") for the constitution of a Group under Schedule 4 of the Enterprise and Regulatory Reform Act 2013 to investigate and report on the completed acquisition by Diebold, Incorporated of Wincor Nixdorf AG.
- 1.4 On 24 November 2016 Wincor Nixdorf AG changed its name to Diebold Nixdorf AG and on 9 December 2016 Diebold, Incorporated changed its name to Diebold Nixdorf, Incorporated.
- 1.5 On 16 March 2017 the CMA published its final report on the *Completed acquisition of Wincor Nixdorf AG by Diebold, Incorporated* (the "Final Report"). In the Final Report, the CMA concluded that:
  - (i) the completed acquisition of Wincor Nixdorf AG by Diebold, Incorporated in the UK may be expected to result in the creation of a relevant merger situation;
  - (ii) the creation of that situation may be expected to result in a substantial lessening of competition ("SLC") in the market for the supply of customer-operated ATMs in the UK;
  - (iii) the CMA should take action to remedy the SLC and the adverse effects likely to arise from it; and

- (iv) undertakings should be given to the CMA or where undertakings are not agreed an order made to give effect to the remedies identified by the CMA in Chapter 9 of the Final Report.
- 1.6 The Final Report further concluded that Diebold Nixdorf must dispose of either Diebold's or Wincor's customer operated ATM business in the UK.
- 1.7 The implementation of the divestiture will be subject to the following safeguards:
- (a) The CMA will need to satisfy itself of the suitability of the potential purchaser of the Divestiture Package (see Annex 1);
  - (b) Provisions are included in these Final Undertakings for the CMA's ability to appoint a Divestiture Trustee should Diebold Nixdorf fail to achieve an effective disposal of the Divestiture Package by the end of the divestiture period; and
  - (c) Diebold Nixdorf will be required to sell the Divestiture Package and to use its best endeavours to include the benefit of all the contracts held by the Divested Business at the date of the Final Report.
- 1.8 The Initial Enforcement Order ceases to be in force on the date of acceptance by the CMA of these Final Undertakings pursuant to section 82 of the Act.
- 1.9 Now Diebold Nixdorf hereby gives to the CMA the following Final Undertakings pursuant to section 82 of the Act for the purpose of remedying the SLC identified in the Final Report and any adverse effects resulting from it.

## **2. Interpretation**

- 2.1 The Annexes form part of these Final Undertakings.
- 2.2 The purpose of these Final Undertakings is to give effect to the Final Report and they shall be construed accordingly.
- 2.3 Any word or expression used in these Final Undertakings or the recitals to these Final Undertakings shall, unless otherwise defined herein and/or the context otherwise requires, have the same meaning as in the Act or the Final Report (as appropriate).
- 2.4 In these Final Undertakings the word 'including' shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word, and the word 'include' and its derivatives shall be construed accordingly.

- 2.5 The headings used in these Final Undertakings are for convenience and shall have no legal effect.
- 2.6 References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise stated.
- 2.7 References to recitals, paragraphs, subparagraphs, annexes and schedules are references to the recitals to, paragraphs and subparagraphs of, annexes and schedules to these Final Undertakings unless otherwise stated.
- 2.8 Unless the context requires otherwise, the singular shall include the plural and vice versa and references to persons includes bodies of persons whether corporate or incorporate.
- 2.9 The Interpretation Act 1978 shall apply to these Final Undertakings as it does to Acts of Parliament.
- 2.10 Further, in these Final Undertakings:

**‘the Act’** means the Enterprise Act 2002;

**‘Affiliate’** means a person who is an affiliate of another person if they or their respective enterprises are to be regarded as being under common control for the purposes of section 26 of the Act;

**‘Approved Agreement’** means a binding agreement or agreements between Diebold Nixdorf and an Approved Purchaser as approved by the CMA, which brings about Final Disposal, and which provides for the transfer to the Approved Purchaser(s) of all relevant key assets and rights as specified in the Divestiture Package;

**‘Approved Purchaser’** means any purchaser or purchasers approved by the CMA pursuant to the Purchaser Approval Criteria set out in Annex 1;

**‘Approved Timetable’** has the meaning given in paragraph 9.1;

**‘Asset Maintenance Undertakings’** means those undertakings set out in paragraph 5;

**‘Associated Person’** means a person who is an associated person within the meaning of section 127 of the Act;

**‘ATM’** means automated teller machine;

**‘business’** has the meaning given by section 129(1) and (3) of the Act;

**‘the CMA’** means the Competition and Markets Authority;

**‘Commencement Date’** means the date on which these Final Undertakings are accepted by the CMA in accordance with section 82(2)(a) of the Act;

**‘confidential information’** means business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary and non-public nature relating to the business of Diebold Nixdorf or Diebold’s and Wincor’s customer operated ATM businesses in the UK;

**‘control’** includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise;

**‘Direction’** means written directions given to Diebold Nixdorf by the CMA as set out in paragraph 10.1;

**‘Divested Business’** means whichever of Diebold’s or Wincor’s customer operated ATM business in the UK, the divestiture of which constitutes the Divestiture Package;

**‘Divestiture Package’** means Diebold’s or Wincor’s customer operated ATM business in the UK, hitherto held separate under the Initial Enforcement Order and now held separate under the terms of paragraph 5 of these Final Undertakings. The Parties will be able to choose which one but in the event that the Divestiture Period ends without a sale, the Divestment Trustee will have the right to choose which one to sell. The precise scope of the Divestiture Package shall be agreed between Diebold Nixdorf and any Approved Purchaser and then subject to approval by the CMA. Depending on the identity of the Approved Purchaser, the CMA expects Diebold Nixdorf to offer to include in the Divestiture Package a number of core elements including the following:

- (a) transfer of all skilled staff, including sales and maintenance, software development and R&D team and senior management;
- (b) best endeavours to transfer all customer contracts and supply agreements, provide all information to carry on the business;
- (c) exclusive rights to sell the divested business’s customer-operated ATMs in the UK, for a period to be approved by the CMA;
- (d) use of the relevant brand in the UK, in connection with the sale of the relevant ATMs, for a period to be approved by the CMA;

- (e) access to relevant software and parts for at least the life of ATMs sold or the life of existing contracts;
- (f) relevant training, technical know-how and support, diagnostic tools and R&D information, for a period to be approved by the CMA;
- (g) rights to modify the relevant ATM software for a period to be approved by the CMA;
- (h) access to hardware and software upgrades and any related support required, for a period to be approved by the CMA; and
- (i) rights to introduce the purchaser's own ATMs or (if the purchaser is not an OEM), ATMs of other providers, without any restriction.

**'Divestiture Period'** means a period of [X] beginning on the Commencement Date or such longer period as the CMA may approve on request;

**'Divestiture Trustee'** means a person appointed in accordance with paragraph 12;

**'Divestiture Undertakings'** means those undertakings set out in paragraph 4;

**'Final Disposal'** means sale of the Divestiture Package under an Approved Agreement to an Approved Purchaser;

**'Final Undertakings'** means these final undertakings and the annexes;

**'Group of Interconnected Bodies Corporate'** means a group of interconnected bodies corporate within the meaning of section 129(2) of the Act, as constituted from time to time;

**'Heads of Terms'** means an agreement in principle to acquire the Divestiture Package and which sets out the terms of the disposal, and that is expressed by all parties to be final (1) subject to contract (2) on all the issues that in the reasonable opinion of the parties will form the basis of a subsequent binding agreement;

**'Initial Enforcement Order'** means the Initial Enforcement Order made by the CMA under section 72 of the Act on 15 August 2016;

**'key staff'** means staff who are in positions of executive or managerial responsibility and/or whose performance affect the viability of the business;

**'Monitoring Trustee'** means a person appointed in accordance with paragraph 8;

**'OEM'** means original equipment manufacturer;

**'ordinary course of business'** means a party's customary commercial transactions and practices in the day-to-day supply of customer operated ATMs;

**'Purchaser Approval Criteria'** means the criteria set out in Annex 1;

**'Related Person'** means any subsidiary, Affiliate or Associated Person;

**'SLC'** means a substantial lessening of competition pursuant to section 35 of the Act;

**'specified period'** means the period beginning on the date of the CMA's formal acceptance of these Final Undertakings and terminating with the completion of the sale of the Divestiture Package to a purchaser approved by the CMA in accordance with section 82 of the Act;

**'subsidiary'**, unless otherwise expressly stated, has the meaning given by section 1159 of the Companies Act 2006;

**'Trustee Divestiture Period'** means a period of up to three months for the Divestiture Trustee to meet the Trustee Obligation commencing from the date of appointment of the Divestiture Trustee;

**'Trustee Obligation'** means bringing about the Final Disposal, and includes the performance of all ancillary tasks as are necessary or desirable for the purpose of making the Final Disposal promptly and in any event within the Trustee Divestiture Period;

**'Working Day'** means a day other than a Saturday or Sunday or a public holiday in England, Wales or Scotland, and any reference in these Final Undertakings to 'days' means calendar days;

**'written consent'** shall include consent given by email.

### **3. Commencement**

- 3.1 These Final Undertakings will come into force on the Commencement Date in accordance with section 82(2) of the Act.

### **4. Divestiture Undertakings**

- 4.1 Diebold Nixdorf gives the following undertakings:



4.1.1 Diebold Nixdorf undertakes that it will complete the sale of the Divestiture Package to an Approved Purchaser, pursuant to an Approved Agreement such that Final Disposal of the Divestiture Package takes place within the Divestiture Period.

The final configuration of the Divestiture Package shall be subject to approval by the CMA (such approval not to be unreasonably withheld or delayed) and shall be agreed between Diebold Nixdorf and any Approved Purchaser(s).

4.1.2 Diebold Nixdorf undertakes to carry out the Divestiture Undertakings having due regard to the findings in the Final Report.

4.1.3 Diebold Nixdorf undertakes that it will procure that any Related Person or any member of any Group of Interconnected Bodies Corporate to which it belongs will not for a period of ten years from the date of the Final Disposal bring under common ownership or control (as defined in section 26 of the Act) in whole or in part the Divestiture Package or any asset of the Divestiture Package without the prior written consent of the CMA.

## **5. Asset Maintenance Undertakings**

5.1 Except with the prior written consent of the CMA, but subject to the derogations previously granted by the CMA to the Parties, Diebold Nixdorf shall not, during the specified period, take any action which might prejudice the divestment of the Divestiture Package, including any action which might:

- (a) lead to the integration of Diebold's or Wincor's customer operated ATM business in the UK with the Diebold Nixdorf business;
- (b) transfer the ownership or control of Diebold's or Wincor's customer operated ATM business in the UK or any of their subsidiaries; or
- (c) otherwise impair the ability of Diebold's or Wincor's customer operated ATM business in the UK to compete independently in any of the markets affected by the transaction.

5.2 Further and without prejudice to the generality of paragraph 5.1, Diebold Nixdorf shall at all times during the specified period procure that, except with the prior written consent of the CMA:

- (a) Diebold's and Wincor's customer operated ATM businesses in the UK are carried on separately and the businesses' separate sales or brand identities are maintained;

- (b) Diebold's and Wincor's customer operated ATM business in the UK are maintained as going concerns and sufficient resources are made available for their development, on the basis of their respective pre-merger business plans;
- (c) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within, Diebold's or Wincor's customer operated ATM business in the UK;
- (d) the nature, description, range and quality of goods and services supplied in the UK by each of the two businesses are maintained and preserved;
- (e) except in the ordinary course of business for the separate operation of the two businesses:
  - (i) all of the assets of Diebold's or Wincor's customer operated ATM businesses in the UK are maintained and preserved, including facilities and goodwill;
  - (ii) none of the assets of Diebold's or Wincor's customer operated ATM businesses in the UK are disposed of; and
  - (iii) no interest in the assets of Diebold's or Wincor's customer operated ATM businesses in the UK is created or disposed of;
- (f) there is no integration of the information technology of Diebold's or Wincor's customer operated ATM businesses in the UK, and the software and hardware platforms shall remain essentially unchanged, except for routine changes and maintenance;
- (g) the customer and supplier lists of the two businesses shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to Wincor's business will be carried out by the Wincor business alone and for the avoidance of doubt the Diebold business will not negotiate on behalf of the Wincor business (and vice versa) or enter into any joint agreements with the Wincor business (and vice versa);
- (h) all existing contracts of Diebold's and Wincor's customer operated ATM business in the UK continue to be serviced by the business to which they were awarded;
- (i) no changes are made by Diebold Nixdorf to key staff of Diebold's or Wincor's customer operated ATM businesses in the UK;

- (j) no key staff are transferred between Diebold's or Wincor's customer operated ATM business in the UK and Diebold Nixdorf;
- (k) all reasonable steps are taken to encourage all key staff to remain with Diebold's or Wincor's customer operated ATM business in the UK; and
- (l) no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses shall pass, directly or indirectly, from the Wincor business (or any of its employees, directors, agents or Affiliates) to the Diebold business (or any of its employees, directors, agents or Affiliates), or vice versa, or to Diebold Nixdorf, except where strictly necessary in the ordinary course of business (for example, where required for compliance with external regulatory and/or accounting obligations) and at the request of either of the two businesses, any records or copies (electronic or otherwise) of such information that have passed, wherever they may be held, will be returned to the business to which they relate and any copies destroyed.

5.3 Diebold Nixdorf shall, and shall procure that Diebold's and Wincor's customer operated ATM businesses in the UK shall actively inform their respective existing and potential customers that they are operating independently of each other, such notice to be given by means and in communications approved by the CMA.

5.4 Notwithstanding the provisions of paragraph 7 (Procedure for consent and notification), Diebold Nixdorf will ensure that:

5.4.1 it will continue to provide certain transitional support services to Diebold's and Wincor's customer operated ATM businesses in the UK for the specified period, as are provided to Diebold's and Wincor's customer operated ATM businesses in the UK by Diebold Nixdorf at the time that these Final Undertakings are formally accepted by the CMA, on the basis that:

5.4.2 any Diebold Nixdorf employees with access to confidential information shall execute non-disclosure agreements in respect of any confidential information received from Diebold's and Wincor's customer operated ATM businesses in the UK in connection with the provision of such services;

5.4.3 Diebold Nixdorf maintains sufficient working capital and any additional capital required to meet the pre-merger business plans of Diebold's and Wincor's customer operated ATM businesses in the UK and these

funds are held separately for the sole use of and access by Diebold's and Wincor's customer operated ATM businesses in the UK;

5.4.4 employees of Diebold Nixdorf and any of its subsidiaries are located in offices which are separate from the offices used by Diebold's and Wincor's customer operated ATM businesses in the UK;

5.4.5 Diebold's and Wincor's customer operated ATM businesses in the UK continue to operate under the same brand name as prior to the merger; and

5.4.6 Diebold's and Wincor's customer operated ATM businesses in the UK can use any other intellectual property which belongs to Diebold Nixdorf which they used prior to the merger.

5.5 Diebold Nixdorf undertakes that until the Final Disposal it will keep the CMA informed of any material developments (and with the consent of the CMA such updates may be provided through the Monitoring Trustee in accordance with paragraph 8.10 of these Final Undertakings) relating to Diebold's and Wincor's customer operated ATM business in the UK operations, including:

5.5.1 details of key staff who leave or join;

5.5.2 material changes in performance; and

5.5.3 any other substantial changes.

## **6. Divestiture Package**

6.1 Diebold Nixdorf undertakes that it will procure that, except with the prior written consent of the CMA:

6.1.1 the Divestiture Package shall be maintained as a going concern;

6.1.2 stock levels in the Divestiture Package shall be maintained at sufficient levels;

6.1.3 training schedules for staff at the Divestiture Package shall be maintained;

6.1.4 no action will be taken to solicit the transfer of customers from the Divestiture Package to other Diebold Nixdorf entities;

6.1.5 no action is taken which might otherwise impair the ability of the Divestiture Package to compete independently or that may significantly impact on the operation of the Divestiture Package; and

6.1.6 no action is taken which may lead to a change of location of the Divestiture Package.

6.2 Diebold Nixdorf undertakes that within a period of five Working Days from the Commencement Date, it will provide a written statement to the CMA confirming its compliance with the Asset Maintenance Undertakings and setting out any details of material developments for the purposes of paragraph 5.5 of these Final Undertakings. Thereafter, Diebold Nixdorf will provide similar compliance statements to the CMA on a monthly basis until Final Disposal of the Divestiture Package, with the first such monthly statement to be submitted to the CMA no later than [date to be inserted once commencement date is known].

## **7. Procedure for consent and notification**

7.1 Diebold Nixdorf undertakes that any application by it for the CMA's consent or approval shall make full disclosure of every material fact and matter within its knowledge that it believes is relevant to the CMA's decision.

7.2 Diebold Nixdorf recognises that where the CMA grants consent or approval on the basis of misleading or incomplete information and such information materially affects its consent or approval, the consent or approval is voidable at the election of the CMA.

7.3 In the event that Diebold Nixdorf discovers that an application for consent or approval has been made without full disclosure to the CMA in accordance with paragraph 7.1, Diebold Nixdorf undertakes to:

7.3.1 inform the CMA in writing identifying the information that it omitted to include in the application for consent within two Working Days of becoming aware that the relevant information is misleading or incomplete; and

7.3.2 at the same time or not later than two Working Days starting with the date on which it has informed the CMA of the omission in accordance with paragraph 7.3.1 above, provide to the CMA an application for consent that includes the missing information.

7.4 Diebold Nixdorf shall use all reasonable endeavours to make each application or to procure that each application for consent or approval is made so that it is received by the CMA at least five Working Days, or such lesser period as the CMA may allow, before the day on which the CMA's consent or approval is necessary to avoid a breach of the Final Undertakings.

7.5 The CMA will use all reasonable endeavours to grant or refuse any consent or approval within the five-Working-Day period referred to in paragraph 7.4 above. This provision is without prejudice to the CMA's duties under the Act.

## **8. Monitoring Trustee**

8.1 The CMA reserves the right to put in place an independent Monitoring Trustee (at the expense of Diebold Nixdorf) to oversee the implementation of the sale of the Divestiture Package.

8.2 In the event that the CMA exercises its right to appoint a Monitoring Trustee, Diebold Nixdorf undertakes that by no later than five Working Days after the CMA has confirmed its intention to put in place a Monitoring Trustee, it shall secure the appointment or retention of a Monitoring Trustee to perform the Monitoring Trustee Functions in paragraph 8.9 on behalf of the CMA.

8.3 The Monitoring Trustee must possess appropriate qualifications and experience to carry out his functions. The Monitoring Trustee must act on behalf of the CMA and be under an obligation to the CMA to carry out his functions to the best of his abilities. The Monitoring Trustee must neither have nor become exposed to a conflict of interest that impairs the Monitoring Trustee's objectivity and independence in discharging his duties under these Final Undertakings, unless it can be resolved in a manner and within a time frame acceptable to the CMA. Diebold Nixdorf shall remunerate and reimburse the Monitoring Trustee for all reasonable costs properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the Monitoring Trustee's independence or ability effectively and properly to carry out his functions.

8.4 The appointment of the Monitoring Trustee and their terms and conditions must be approved by the CMA. Diebold Nixdorf must inform the CMA as soon as is reasonably practicable and in any event by no later than two Working Days after the Commencement Date of the identity of the Monitoring Trustee that Diebold Nixdorf proposes to appoint and provide the CMA with draft terms and conditions of appointment. Once the Monitoring Trustee has been approved by the CMA and appointed, Diebold Nixdorf must provide the CMA with a copy of the agreed terms and conditions of appointment.

8.5 If the proposed Monitoring Trustee is rejected by the CMA, Diebold Nixdorf shall submit the names of at least two further persons within two Working Days starting with the date on which it was informed of the rejection, in accordance with the requirements and the procedures set out in paragraphs 8.2 and 8.3 above.

- 8.6 The provisions of paragraph 8.7 below shall apply if:
- 8.6.1 Diebold Nixdorf fails to nominate persons in accordance with paragraphs 8.3 or 8.4 above; or
  - 8.6.2 those further persons nominated by Diebold Nixdorf in accordance with paragraphs 8.3 or 8.5 above are rejected by the CMA; or
  - 8.6.3 Diebold Nixdorf are unable for any reason to conclude the appointment of the Monitoring Trustee within the time limit specified by the CMA.
- 8.7 The CMA shall nominate one or more persons to act as Monitoring Trustee, and Diebold Nixdorf shall appoint or cause to be appointed such Monitoring Trustee within two Working Days starting with the date of such nomination under the terms of a Monitoring Trustee mandate approved by the CMA.
- 8.8 The Monitoring Trustee must take such steps as he reasonably considers necessary in order to carry out his functions effectively. The Monitoring Trustee must comply with any reasonable requests made by the CMA for the purpose of carrying out his functions under the Final Undertakings. The Monitoring Trustee will carry out the functions set out below and will monitor the compliance of Diebold Nixdorf with its obligations under these Final Undertakings.
- 8.9 The Monitoring Trustee Functions set out in this paragraph are to monitor and review compliance with these Final Undertakings and progress towards the Final Disposal, including:
- 8.9.1 monitoring compliance by Diebold Nixdorf with the Asset Maintenance Undertakings set out in paragraph 5 above; and
  - 8.9.2 monitoring the progress made by Diebold Nixdorf against the timetable towards Final Disposal and the steps that have otherwise been taken to comply with the Final Undertakings including:
    - 8.9.2.1 the steps that have been taken towards the preparation of agreements for disposal of the Divestiture Package and the persons to whom such agreements have been distributed; and
    - 8.9.2.2 monitoring communications (including attending any meetings (save where those communications are subject to legal privilege) which the Monitoring Trustee reasonably deems necessary) between Diebold Nixdorf and their financial or other advisers and possible purchasers or their financial or other advisers in connection with the disposal process.

- 8.10 The Monitoring Trustee will promptly inform the CMA of any material developments arising from the operation of his functions and will provide to the CMA a written report every two weeks.

## **9. Divestment Reporting Obligations**

- 9.1 Diebold Nixdorf undertakes that within the period of five Working Days from the Commencement Date it will provide a written report to the CMA setting out the timetable that it proposes to adopt, subject to the CMA's approval, to ensure the Final Disposal of the Divestiture Package (the 'Approved Timetable'). The report will outline the progress that Diebold Nixdorf has made towards the Final Disposal of the Divestiture Package and the steps that have otherwise been taken to comply with the Final Undertakings, and shall in particular report on:

9.1.1 the status of any discussions that have been held with potential purchasers of the Divestiture Package;

9.1.2 the progress that has been made towards agreeing Heads of Terms (if applicable);

9.1.3 the steps that have been taken towards reaching an Approved Agreement and the persons to whom any agreement has been distributed; and

9.1.4 such other matters as may be directed by the CMA from time to time.

- 9.2 Thereafter, Diebold Nixdorf will provide similar reports to the CMA every two weeks, or on such other interval as agreed with the CMA, until Final Disposal of the Divestiture Package. The reports will include an update on the progress that has been made against the Approved Timetable and, with the consent of the CMA, such reports may be provided through the Monitoring Trustee in accordance with paragraph 8.10 of these Final Undertakings.

- 9.3 Diebold Nixdorf undertakes that in the report to the CMA pursuant to paragraph 9.1 it shall, among other things, provide to the CMA:

9.3.1 the total number of persons who have lodged a formal bid with Diebold Nixdorf for the acquisition of the Divestiture Package since the publication of the CMA's Final Report;

9.3.2 the name, address, email address, contact point and telephone number of each person who has lodged a formal bid with Diebold Nixdorf for the acquisition of the Divestiture Package since the publication of the



CMA's Final Report and subsequently been short-listed by Diebold Nixdorf as a preferred purchaser for the Divestiture Package; and

9.3.3 details of the efforts taken by each of Diebold Nixdorf and its financial advisers to solicit purchasers for the Divestiture Package.

9.4 In the event that Diebold Nixdorf does not meet a step as set out in the Approved Timetable, or is otherwise delayed in implementing the divestiture required pursuant to these Final Undertakings, Diebold Nixdorf undertakes to inform the CMA in writing of the occurrence and the reasons for the failure promptly, but not later than two Working Days from becoming aware that a step in the Approved Timetable has not been met.

## **10. Directions**

10.1 Diebold Nixdorf will comply with such reasonable written Directions as the CMA may from time to time issue and will take such steps as may be specified or described in such Directions for complying with these Final Undertakings.

10.2 Diebold Nixdorf acknowledges that the CMA may choose not to issue Directions immediately upon becoming entitled to do so, and recognises that any delay by the CMA in making a written Direction shall not affect the obligations of Diebold Nixdorf at such time as the CMA makes any written Direction under paragraph 10.1.

## **11. Conditions for the appointment of a Divestiture Trustee**

11.1 Without prejudice to the CMA's order-making power under section 83 of the Act, Diebold Nixdorf undertakes that it shall at the written Direction of the CMA appoint a Divestiture Trustee in accordance with paragraph 12 to give effect to the Trustee Obligation.

11.2 The Divestiture Trustee shall fulfil the Trustee Obligation and shall undertake such matters preparatory to giving effect to the Trustee Obligation or part thereof as the CMA may specify in the written Direction referred to in paragraph 11.1 above.

## **12. Divestiture Trustee – appointment procedure**

12.1 Diebold Nixdorf recognises and acknowledges that the CMA may direct the appointment of a Divestiture Trustee at any time after the expiry of the Divestiture Period, or prior to the expiry of the Divestiture Period where the CMA, upon reasonable grounds, considers that Diebold Nixdorf has not

complied with the Approved Timetable in such a way that Final Disposal may not be expected to take place within the Divestiture Period.

12.2 Diebold Nixdorf undertakes that on the Direction of the CMA, and in accordance with such Directions as are given by the CMA as to the timing for taking these steps, Diebold Nixdorf shall submit to the CMA for approval a list of two or more persons from which it proposes to appoint a Divestiture Trustee. The proposal shall contain sufficient information for the CMA to verify that each proposed person fulfils the requirement set out in paragraph 12.3 below and shall include among other things:

12.2.1 the full terms of the proposed mandate, which shall include all provisions necessary to enable the Divestiture Trustee to fulfil the Trustee Obligation; and

12.2.2 a schedule of the steps to be taken to give effect to the mandate.

12.3 Each person on the list referred to in paragraph 12.2 shall be independent of and unconnected to Diebold Nixdorf, possess the qualifications necessary for the performance of the mandate and shall on appointment and thereafter be free of any conflict of interest including any conflict of interest that might arise by virtue of the terms of remuneration.

12.4 The CMA may approve or reject any or all of the proposed Divestiture Trustees (such approval not to be unreasonably withheld) and may approve the proposed mandate subject to any modifications it deems necessary for the Divestiture Trustee to fulfil the Trustee Obligation. If only one name is approved, Diebold Nixdorf shall use its best endeavours to appoint, or cause to be appointed, the individual or institution concerned as Divestiture Trustee in accordance with the mandate approved by the CMA. If more than one name is approved, Diebold Nixdorf shall be free to choose the Divestiture Trustee to be appointed from among the names approved. Diebold Nixdorf undertakes to appoint the Divestiture Trustee within two Working Days from the CMA's approval and on the terms of the mandate approved by the CMA.

12.5 If all the proposed Divestiture Trustees are rejected by the CMA, Diebold Nixdorf shall submit the names of at least two further persons within two Working Days starting with the date on which it was informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 12.2 and 12.3 above.

12.6 The provisions of paragraph 12.7 below shall apply only if:

12.6.1 Diebold Nixdorf fails to nominate persons in accordance with paragraph 12.2 above; or

- 12.6.2 those further persons nominated by Diebold Nixdorf in accordance with paragraph 12.5 above are rejected by the CMA; or
  - 12.6.3 Diebold Nixdorf is unable for any reason to conclude the appointment of the Divestiture Trustee within the time limit specified by the CMA.
- 12.7 The CMA shall nominate one or more persons to act as a Divestiture Trustee, and Diebold Nixdorf shall appoint or cause to be appointed such Divestiture Trustee within two Working Days starting with the date of such nomination under the terms of a Divestiture Trustee mandate approved by the CMA.

### **13. Divestiture Trustee – functions**

- 13.1 Diebold Nixdorf undertakes to enable the Divestiture Trustee to carry out the Trustee Obligation.
- 13.2 Diebold Nixdorf recognises and acknowledges that:
- 13.2.1 the CMA may, on its own initiative or at the request of the Divestiture Trustee, give written Directions or instructions to the Divestiture Trustee in order to assist it in the discharge of the Trustee Obligation to bring about the Final Disposal of the Divestiture Package;
  - 13.2.2 the Divestiture Trustee may include in such agreements, deeds, instruments of transfer and other instruments and documents as are necessary for the performance of the Trustee Obligation such terms and conditions as the CMA considers appropriate; and
  - 13.2.3 the Divestiture Trustee shall protect the legitimate financial interests of Diebold Nixdorf subject to the Divestiture Trustee's overriding obligations to give effect to the Trustee Obligation.
- 13.3 Diebold Nixdorf recognises and acknowledges that the Divestiture Trustee shall take such steps and measures it considers necessary to discharge the Trustee Obligation and to that end the Divestiture Trustee may give written directions to Diebold Nixdorf, as applicable. Diebold Nixdorf undertakes to comply with such directions or to procure compliance with such directions as are within its powers and to take such steps within its competence as the Divestiture Trustee may specify.
- 13.4 Diebold Nixdorf recognises and acknowledges that in the performance of the Trustee Obligation the Divestiture Trustee shall act solely on the instructions of the CMA and shall not be bound by any instruction of Diebold Nixdorf. Diebold Nixdorf undertakes that it shall not seek to create or vary the

obligations and duties of the Divestiture Trustee except with the CMA's prior written consent.

#### **14. Divestiture Trustee – duties and obligations of Diebold Nixdorf**

- 14.1 Diebold Nixdorf undertakes to provide the Divestiture Trustee with such cooperation, assistance and information (including the production of financial or other information, whether or not such information is in existence at the time of the request, relevant to the Final Disposal of the Divestiture Package but excluding any material properly the subject of legal privilege) as the Divestiture Trustee may reasonably require in the discharge of the Trustee Obligation.
- 14.2 Diebold Nixdorf recognises and acknowledges that the Divestiture Trustee shall be entitled, subject to the duty of confidentiality, to full and complete access to the books, records, documents, management or other personnel, facilities, sites and technical information necessary for the fulfilment of the Trustee Obligations (save where material is properly the subject of legal privilege) and Diebold Nixdorf undertakes to provide the Divestiture Trustee upon reasonable request with copies of any such items. On the reasonable request of the Divestiture Trustee, Diebold Nixdorf undertakes to make available to the Divestiture Trustee one or more offices on its premises, and ensure personnel where necessary are available for meetings in order to provide the Divestiture Trustee with all information reasonably necessary for the performance of the Trustee Obligation, subject in each case to the Divestiture Trustee's compliance with Diebold Nixdorf's internal policies.
- 14.3 Diebold Nixdorf undertakes to grant reasonable comprehensive powers of attorney, duly executed, to the Divestiture Trustee to enable it to discharge the Trustee Obligation including by the appointment of advisers to assist with the disposal process. Diebold Nixdorf undertakes that upon the reasonable request of the Divestiture Trustee, Diebold Nixdorf shall execute the documents required to give effect to the Trustee Obligation.
- 14.4 Diebold Nixdorf undertakes to hold the Divestiture Trustee, its employees, agents or advisers harmless against any liabilities arising out of the proper performance of the Trustee Obligation and Diebold Nixdorf recognises and acknowledges that the Divestiture Trustee, its employees, agents or advisers shall have no liability to Diebold Nixdorf or any of its subsidiaries for any liabilities arising out of the proper performance of the Trustee Obligation, except to the extent that such liabilities result from the wilful default, recklessness, negligence or bad faith of the Divestiture Trustee, its employees, agents or advisers.

- 14.5 Diebold Nixdorf undertakes that at its expense the Divestiture Trustee may appoint advisers (in particular for corporate finance or legal advice) if the Divestiture Trustee reasonably considers the appointment of such advisers necessary or appropriate in the discharge of the Trustee Obligation, provided that any fees and other expenses incurred by the Divestiture Trustee are reasonably incurred. Before appointing any such advisers, the Divestiture Trustee will consider using the advisers already appointed by Diebold Nixdorf. Should Diebold Nixdorf refuse to approve the advisers proposed by the Divestiture Trustee, the CMA may, after consulting with Diebold Nixdorf, approve and direct the appointment of such advisers.
- 14.6 Diebold Nixdorf undertakes to make no objection to the Final Disposal of any Divestment business save on the grounds of either bad faith by the Divestiture Trustee or failure of the Divestiture Trustee reasonably to protect the legitimate financial and business interests of Diebold Nixdorf, subject to the Trustee Obligation. Where Diebold Nixdorf wishes to make an objection on the grounds of bad faith by the Divestiture Trustee or failure of the Divestiture Trustee reasonably to protect the legitimate financial and business interests of Diebold Nixdorf, it shall submit to the CMA a notice setting out its objections within two Working Days from the day on which it became aware of the fact or facts giving rise to its objection.

## **15. Divestiture Trustee – replacement, discharge and reappointment**

- 15.1 Diebold Nixdorf acknowledges that if the Divestiture Trustee ceases to perform the Trustee Obligation, or for any other good cause, including the exposure of the Divestiture Trustee to a conflict of interest, the CMA may, after consulting the Divestiture Trustee, require Diebold Nixdorf to replace the Divestiture Trustee.
- 15.2 If the Divestiture Trustee is removed under paragraph 15.1 above, the Divestiture Trustee may be required to continue in its post until a new Divestiture Trustee is in place to whom the Divestiture Trustee has effected a full handover of all relevant information. The new Divestiture Trustee shall be appointed in accordance with the procedure contained in paragraph 12 above.
- 15.3 Diebold Nixdorf recognises and acknowledges that, other than in accordance with paragraph 15.1 above, the Divestiture Trustee shall cease to act as Divestiture Trustee only after the CMA has discharged it from its duties at a time at which all the obligations with which the Divestiture Trustee has been entrusted have been met.

## **16. Additional Undertakings to protect the divestment of the Divestiture Package**

- 16.1 Diebold Nixdorf shall procure that all senior management who have been employed by the Divestiture Package and who have been or will be transferred to Diebold Nixdorf and who have knowledge of the Divestiture Package's operations and customer details sign non-disclosure agreements.
- 16.2 Diebold Nixdorf will be required to sell the Divestiture Package and to use its best endeavours to include the benefit of all the contracts held by the Divestiture Package at the date of the Final Report.

## **17. Variations to these Final Undertakings**

- 17.1 The terms of these Final Undertakings may be varied with the prior written consent of the CMA in accordance with sections 82(2) and 82(5) of the Act.
- 17.2 Where a request for consent to vary the Final Undertakings is made to the CMA, the CMA will consider any such request in light of the Final Report and will respond in writing as soon as is reasonably practicable having regard to the nature of the request and to its statutory duties.
- 17.3 The consent of the CMA shall not be unreasonably withheld.

## **18. General obligation to provide information to the CMA**

- 18.1 Diebold Nixdorf undertakes that it shall promptly provide to the CMA such information as the CMA may reasonably require for the purpose of performing any of its functions under the Final Undertakings or under sections 82, 83, 93(6) and 94 of the Act.
- 18.2 Diebold Nixdorf undertakes that should it at any time be in breach of any provision of the Final Undertakings, it will notify the CMA within two Working Days starting with the date it becomes aware of the breach to advise the CMA that there has been a breach and of all the circumstances of that breach.
- 18.3 Where any person, including a Monitoring Trustee or Divestiture Trustee must provide information in relation to Diebold Nixdorf to the CMA under or in connection with these Final Undertakings, whether in the form of any notice, application, report or otherwise, Diebold Nixdorf undertakes that it will take reasonable steps within its power to procure that that person shall hold all information provided to it as confidential and shall not disclose any business-sensitive information of Diebold Nixdorf to any person other than to the CMA, without the prior written consent of both the CMA and Diebold Nixdorf.

## **19. Acceptance of Service**

- 19.1 Diebold Nixdorf hereby authorises Sullivan & Cromwell LLP whose address for service is 1 New Fetter Lane, London, United Kingdom, EC4A 1AN to accept on its behalf service of all documents, orders, requests, notifications or other communications connected with the Final Undertakings (including any such document which falls to be served on or sent to Diebold Nixdorf in connection with proceedings in court in the United Kingdom).
- 19.2 Unless Diebold Nixdorf informs the CMA that Sullivan & Cromwell LLP has ceased to have authority and has informed the CMA of an alternative to accept and acknowledge service on its behalf, any document, order, request, notification or other communication connected with the Final Undertakings shall be deemed to have been validly served on Diebold Nixdorf if it is served on Sullivan & Cromwell LLP, and service or receipt shall be deemed to be acknowledged by Diebold Nixdorf if it is acknowledged by email from Sullivan & Cromwell LLP to the CMA.
- 19.3 Paragraph 19.1 has effect irrespective of whether, as between Diebold Nixdorf and Sullivan & Cromwell LLP, Sullivan & Cromwell LLP has or continues to have any authority to accept and acknowledge service on behalf of Diebold Nixdorf (unless Diebold Nixdorf informs the CMA that Sullivan & Cromwell LLP has ceased to have authority to accept and acknowledge service on its behalf), and no failure or mistake by Sullivan & Cromwell LLP (including a failure to notify Diebold Nixdorf of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these Final Undertakings, including any proceeding or judgment pursuant to these Final Undertakings.

## **20. Effect of invalidity**

- 20.1 Diebold Nixdorf undertakes that should any provision of the Final Undertakings be contrary to law or invalid for any reason, Diebold Nixdorf shall continue to observe the remaining provisions.

## **21. Extension of time**

- 21.1 Diebold Nixdorf recognises and acknowledges that the CMA may, where it considers appropriate, in response to a written request from Diebold Nixdorf showing good cause, or otherwise at its own discretion, grant an extension of any period specified in the Final Undertakings within which Diebold Nixdorf, the Monitoring Trustee and/or the Divestiture Trustee (as the case may be) must take action.

**22. Governing law**

22.1 These Final Undertakings shall be governed by and construed in all respects in accordance with English law.

22.2 Disputes arising concerning these Final Undertakings shall be subject to the jurisdiction of the courts of England and Wales.

**23. Termination and release**

23.1 These Final Undertakings shall remain in force until the date on which the obligation on Diebold Nixdorf under paragraph 4.1.3 expires.

23.2 The variation, release or supersession of these Final Undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

FOR AND ON BEHALF OF Diebold Nixdorf, Incorporated

..... Signature

..... Name

..... Title

..... Date



## **Purchaser Approval Criteria**

These Purchaser Approval Criteria are to be construed as consistent with and giving effect to paragraph 9.58 of the Final Report.

### **1. Independence**

At the time of the Final Disposal, the proposed purchaser should have no significant connection to Diebold Nixdorf or any Associated Person or Affiliate of Diebold Nixdorf or its Group of Interconnected Bodies Corporate that may compromise the purchaser's incentives to compete with the merged entity.

### **2. Capability**

The proposed purchaser must have access to appropriate financial resources, expertise and assets to enable the Divested Business to be an effective competitor in the market. This access should be sufficient to enable the Divestiture Package to continue to develop as an effective competitor. It must be able to show it has the necessary operational capability to provide customer operated ATM services in the UK. This should include but not be limited to:

- evidence of credible plans to sell new ATMs in the UK other than those provided by the Parties, whether manufactured by itself or supplied by another OEM or OEMs.

### **3. Commitment to the relevant market**

The proposed purchaser must have the intention demonstrated by (among other things) a suitable business plan (including managerial capability, operational capability and technical capability or such other evidence as the CMA considers appropriate) to maintain and operate the Divested Business as a viable and active business in competition with Diebold Nixdorf and other competitors in the relevant market so as to remedy the SLC and any adverse effect.

### **4. Absence of competitive or regulatory concern**

In considering whether to approve any agreement the CMA shall consider whether the terms of the agreement (and any other agreements or arrangements ancillary or connected to the agreement) would give rise to a material risk that the sale of the Divested Business would not remedy the SLC and any adverse effects likely to arise from it. In addition, the acquisition by the proposed purchaser must not raise competition concerns within any market or markets in the UK.

### **Obligations of Diebold Nixdorf**

1. Diebold Nixdorf and each of its subsidiaries and its employees, officers, directors, advisers and consultants must cooperate fully with the Monitoring Trustee, in particular by providing the Monitoring Trustee with all cooperation, assistance and information as the Monitoring Trustee may reasonably require in order to discharge his or her functions, including but not limited to:
  - (a) the provision of full and complete access to all personnel, books, records, documents, facilities and information of Diebold Nixdorf and the Divestiture Package as the Monitoring Trustee may reasonably require; and
  - (b) the provision of such office and supporting facilities as the Monitoring Trustee may reasonably require.
2. If Diebold Nixdorf or any of its subsidiaries is in any doubt, as to whether any action or communication would infringe these Monitoring Trustee Provisions, it is required to contact the Monitoring Trustee for clarification.
3. If Diebold Nixdorf or any of its subsidiaries has any reason to suspect that these Monitoring Trustee Provisions may have been breached, it must notify the Monitoring Trustee and the CMA immediately.

### ***Reporting functions***

4. The Monitoring Trustee is required to comply with such reporting obligations as may be specified in the Monitoring Trustee's mandate and with the requirements of paragraph 8.10 of the Final Undertakings.