

## COMPLETED ACQUISITION BY CARDTRONICS PLC OF DIRECTCASH PAYMENTS INC.

### Issues statement

**7 June 2017**

#### The reference

1. On 15 May 2017, the Competition and Markets Authority (CMA), in exercise of its duty under section 22(1) of the Enterprise Act 2002 (the Act), referred the completed acquisition by Cardtronics plc (Cardtronics) of DirectCash Payments Inc. (DCP) (the Merger) for further investigation and report by a group of CMA panel members (the Group).
2. In exercise of its duty under section 35(1) of the Act, the CMA must decide:
  - (a) whether a relevant merger situation has been created; and
  - (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (SLC) within any market or markets in the UK for goods or services.
3. In answering these two questions we will apply a 'balance of probabilities' threshold to our analysis. That is, we will decide whether it is more likely than not that an SLC has resulted, or may be expected to result, from the Merger.<sup>1</sup>
4. In this statement, we set out the main issues we are likely to consider in reaching our decision on the SLC question (paragraph 2(b) above), having had regard to the evidence available to us, including the evidence referred to in the CMA's phase 1 decision to refer the Merger for further investigation (the phase 1 decision).<sup>2</sup> This does not preclude the consideration of any other issues which may be identified during the course of our inquiry.
5. We are publishing this issues statement in order to assist parties submitting evidence to our inquiry. The issues statement sets out the issues we currently

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

<sup>2</sup> See the full text of the phase 1 decision on the [case page](#).

envisage being relevant to our inquiry and we invite parties to notify us if there are any additional relevant issues which they believe we should consider.

6. Throughout this document we refer to Cardtronics and DCP collectively as 'the Parties'.

## **Background**

7. On 6 January 2017, Cardtronics acquired the entire issued share capital of DCP.
8. Cardtronics is a fully integrated automated teller machine (ATM) deployer, offering all related ATM services (eg maintenance, transaction processing, reporting and settlement). Cardtronics trades under the brand names Cashzone and Bankmachine in the United Kingdom (UK). The ultimate parent company of Cardtronics is Cardtronics plc – a UK domiciled public limited company with operations in the USA, Puerto Rico, Germany, the UK, Poland, Canada and Mexico. The turnover of Cardtronics in 2016 was around £980 million worldwide and around £[~~9~~] million in the UK.
9. DCP is a Canadian listed company with operations in Canada, Australia, New Zealand, the UK and Mexico. In the UK, DCP's operations consist primarily of the deployment of ATMs. The bulk of its ATM deployment operations resulted from DCP's acquisition of InfoCash in 2012. DCP trades under the DCP brand name in the UK, although its ATMs are branded DCATM and all marketing uses the name DCPayments. The turnover of DCP in 2016 was around £167 million worldwide and around £27 million in the UK.
10. The Parties overlap in:
  - (a) the supply of ATMs to site owners (Cardtronics and DCP deploy approximately 16,000 and 6,000 ATMs in the UK, respectively); and
  - (b) the supply of ATM services to ATM users/consumers (referred to as the supply of ATMs to ATM users).

## **Market definition**

11. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of a merger, as it is recognised that there can be constraints on merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important

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

12. As set out above, the Parties overlap in (a) the supply of ATMs to site owners; and (b) the supply of ATM services to ATM users.
13. The phase 1 decision found that, in respect of the supply of ATMs to site owners, it was appropriate to assess the impact of the Merger within a product frame of reference that includes supply of all ATM types, to all site owner types, and a geographic frame of reference that was UK-wide. At present, we are minded to use the same frame of reference in any assessment we make of competition in the supply of ATMs to site owners.
14. In respect of the supply of ATM services to ATM users, we expect to consider the effects of the Merger using a local frame of reference.
15. In its phase 1 decision, the CMA used Cardtronics' submission and internal guidance (stating 0.2 miles and 500 metres as distances within which a free-to-use (FTU) ATM would constrain a pay-to-use (PTU) ATM) as a starting point for identifying local areas in which there were overlaps between the Parties' ATMs. The CMA examined alternative local geographic frames of reference as the evidence collected was mixed and the Parties explained that the distance within which ATMs competed was area-specific.
16. We will consider what approach is appropriate in identifying local overlaps on which to focus our assessment. We will consider over what geographic areas PTU ATMs compete with other PTU and FTU ATMs, and how this varies according to the type and location of the cash machines in question.

## **Assessment of the competitive effects of the Merger**

### ***Counterfactual***

17. The application of the SLC test (referred to in paragraph 2(b) above), involves a comparison of the prospects for competition with the Merger against the competitive situation without the Merger. The latter is called the 'counterfactual'. We will, therefore, assess the possible effects of the Merger on competition compared with the competitive conditions in the counterfactual situation (ie the competitive situation absent the Merger).
18. For completed mergers, the CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the competitive

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

effects of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than those conditions.<sup>4</sup>

19. The CMA found no evidence supporting a different counterfactual in its phase 1 decision. In our assessment of the competitive effects of the Merger, we expect to adopt pre-merger competitive conditions as the counterfactual.

### ***Theory of Harm to be investigated by the CMA***

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

### ***Horizontal effects in the supply of ATM services to ATM users on a local basis***

22. Horizontal unilateral effects may arise where one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm to profitably raise prices, degrade quality, reduce the range of services on its own and without needing to coordinate with rivals and/or to prevent/reduce the introduction of additional services.<sup>5</sup> Horizontal unilateral effects are more likely where the merger parties are close competitors.
23. We will examine whether the Merger has resulted, or may be expected to result, in an SLC from unilateral horizontal effects in relation to the supply of ATM services to ATM users on a local basis. In principle, this could occur through:
  - (a) reduced availability of FTU ATMs through conversion of FTU ATMs into PTU ATMs; and/or
  - (b) increased surcharge fees on existing PTU ATMs.

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<sup>4</sup> [Merger Assessment Guidelines](#), paragraph 4.3.5.

<sup>5</sup> [Merger Assessment Guidelines](#), paragraph 5.4.1.

24. The concern under this theory of harm is that, as a result of the Merger, the Parties would have a greater incentive to increase prices to end users – either by converting FTU ATMs to PTU ATMs or by increasing surcharge fees on existing PTU ATMs.
25. In relation to the first element of the theory of harm, ie that the Merger has resulted, or may be expected to result, in reduced availability of FTU ATMs through conversion of FTU ATMs into PTU ATMs, the phase 1 decision found that the Parties would have limited ability to convert their FTU ATMs into PTU ATMs at their discretion. In particular, the CMA found that the terms specified in the Parties' contracts with site owners generally only allow conversion from an FTU ATM to a PTU ATM when an FTU ATM becomes economically unviable. The CMA also obtained evidence from third party submissions and interviews with each of Cardtronics' and DCP's business development managers and examined conversion data provided by the Parties.
26. In addition, the phase 1 decision found that site owners would be unlikely to agree to such conversion due to the potential reduction in footfall to their site and that it would be costly, and likely unprofitable, to compensate a site owner sufficiently to agree to a conversion.
27. The CMA therefore found that the Merger did not give rise to a realistic prospect of an SLC in the supply of ATMs to ATM users on a local basis through the reduced availability of FTU ATMs (through conversion of FTU ATMs into PTU ATMs). Subject to any evidence submitted in response to this issues statement or in the course of the inquiry, we are not currently minded to investigate this theory of harm further. We do, however, welcome reasoned submissions third parties may wish to make in this regard.
28. We expect our inquiry to focus on the second element of the theory of harm, ie that the Merger has resulted, or may be expected to result, in increased surcharge fees on existing PTU ATMs.
29. For example, the surcharge fee of a DCP ATM in a particular local area may be currently constrained because if DCP were to increase the price, customers would be lost to Cardtronics ATMs and the price increase would therefore be unprofitable. However, post-Merger, a surcharge fee increase may be profitable because the Parties would recapture some revenues from those DCP ATM users switching to the Cardtronics ATM, as well as earning higher revenues per transaction for those ATM users who continue to use the DCP ATM.

30. We will also examine whether there are some PTU ATMs that do not compete with other PTU or FTU ATMs, eg due to their location where customers may be 'captive'. We welcome views in this regard.
31. In assessing the theory of harm, other areas that we expect to consider include:
- (a) the Parties' local market shares and increments to market share resulting from the Merger;
  - (b) whether there is evidence that price increases are more likely in areas where ATM providers have higher market shares;
  - (c) evidence from consumers on the extent to which they consider the available local alternatives before using a PTU ATM;
  - (d) the effect of current contract arrangements with site owners on the Parties' ability and incentive to increase prices as a result of the Merger; and
  - (e) the strength of out-of-market constraints (eg paying by card instead of cash, delaying cash withdrawals, obtaining cashback) for those customers that are currently using the Parties' PTU ATMs.
32. We will examine the rationale for site owners having an ATM at their site and their incentives (in particular whether a price increase would result in site owners receiving a higher income from their ATMs and therefore not objecting to a price increase or whether the loss of revenue from reduced footfall would counteract any such incentive). We will assess how site owners would respond to a proposed price change, including the ease of switching.
33. We will also examine whether the prospect of local entry would constrain price rises.
34. When analysing the competitive effects of mergers involving a very large number of local overlaps, the CMA (and its predecessors, the Office of Fair Trading and the Competition Commission) have applied relevant filters in order to focus analysis on those local markets that are most likely to give rise to competition concerns.
35. In practice, given the large number of local areas in which the Parties overlap, our local assessment is likely to include a combination of general UK-wide evidence – eg on site owners' likely response to price rises and consumers' awareness of local alternatives to the PTU ATMs they use – and filters based

on local data such as market shares, location type, distances and current surcharges.

***Theories of harm the CMA is not currently minded to investigate***

*Horizontal effects in the supply of ATMs to site owners*

36. The phase 1 investigation examined whether a reduction in competition from the Merger could allow the merged entity to offer worse contract terms to site owners (eg a lower share of transaction fees and/or lower fixed up-front or monthly payments), to reduce the quality of their offering (eg the maintenance and servicing of ATMs) and/or to reduce innovation.
37. The CMA found in its phase 1 decision that the Merger did not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of ATMs to large/premium site owners or smaller site owners.
38. For large/premium site owners, the phase 1 investigation found that the Parties' combined share of supply did not raise *prima facie* competition concerns, and the increment from the Merger was negligible. The CMA found that Barclays, RBS and NoteMachine are effective competitors for large/premium site owners and that the Parties are not each other's closest competitors. The CMA concluded in its phase 1 decision that a sufficient number of competitors would therefore remain post-Merger to constrain the Parties.
39. For smaller site owners, the phase 1 investigation found that even though the Parties compete with each other, they are not each other's closest competitors. The CMA found that NoteMachine is the closest competitor to Cardtronics, and that DCP is competing equally closely with Cardtronics and YourCash and, to a lesser extent, with PayPoint. The CMA therefore concluded in its phase 1 decision that there would remain sufficient competitors to effectively constrain the Parties post-Merger.
40. Subject to any further evidence submitted in response to this issues statement or in the course of the inquiry, we are not currently minded to investigate this theory of harm further. We do, however, welcome reasoned submissions third parties may wish to make in this regard.

*Impact on interchange fees paid by card issuers*

41. The phase 1 investigation examined whether the Merger could result in higher interchange fees as a result of the Parties having increased bargaining power

within the LINK network which may, in turn, lead to the possible collapse of the LINK network.<sup>6</sup> Although this concern was raised by some third parties on the basis that the Parties could have greater influence over the costs that are used to calculate interchange fees post-Merger, the majority of third parties did not foresee the Merger having an adverse impact within LINK.

42. The CMA concluded that there was no realistic prospect of the Merger resulting in a worsening of terms for banks or building societies through an increase in the Parties' ability and/or incentives to inflate or negotiate higher interchange fees. Accordingly, the phase 1 decision concluded that there was no realistic prospect of the Merger leading to the collapse of the LINK network.
43. Subject to any further evidence submitted in response to this issues statement or in the course of the inquiry, we are not currently minded to investigate this theory of harm further. We do, however, welcome reasoned submissions third parties may wish to make in this regard.

## **Countervailing factors**

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

## ***Entry and expansion***

45. We intend to consider how easy it is to enter and expand the supply and servicing of ATMs in the local areas of concern and whether entry and/or expansion could be expected to be timely, likely and sufficient to prevent any SLC. To do this we will:
  - (a) look at the history of actual entry, expansion and exit by the Parties and by their competitors and review any future plans for entry;
  - (b) examine the factors which might inhibit entry or the expansion of existing competitors; and
  - (c) consider the cost and likelihood of installing new ATMs in the local areas of concern.

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<sup>6</sup> LINK is the UK's cash machine network and allows banks and building societies to offer their customers access to cash at ATMs across the UK.



## ***Efficiencies***

46. We have not received any representations on efficiencies. Unless specific representations are made, we do not propose to examine in detail whether any efficiencies arise from the Merger.

## ***Buyer power***

47. Similarly, we do not propose to examine in detail whether any customers of Cardtronics and DCP have countervailing buyer power (ie a degree of power over and above normal negotiating power which could arise for specific unusual reasons or whether the buyer power of these customers would be sufficient to protect customers from any effects of an SLC).

## **Possible remedies and relevant customer benefits**

48. Should we decide that the Merger has resulted, or may be expected to result, in an SLC in any market(s), we will consider whether, and if so what, remedies might be appropriate, and will issue a further statement.
49. In any consideration of possible remedies, we may have regard to their effect on any relevant customer benefits in relation to the Merger and, if so, what these benefits are likely to be and which customers would benefit.

## **Responses to the issues statement**

50. Any party wishing to respond to this issues statement should do so in writing, by no later than **5pm on 21 June 2017**. Please email [cardtronics.directcash@cma.gsi.gov.uk](mailto:cardtronics.directcash@cma.gsi.gov.uk) or write to:

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