

Anticipated acquisition by Fiserv, Inc. of First Data Corporation

Decision on relevant merger situation and substantial lessening of competition

ME/6814/19

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 2 July 2019. Full text of the decision published on 12 July 2019.

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

SUMMARY

1. On 16 January 2019, Fiserv, Inc. (**Fiserv**) announced a public offer to acquire First Data Corporation (**First Data**) (the **Merger**). Fiserv and First Data are together referred to as the **Parties** (or **Party**, as appropriate), and the post-Merger entity is referred to as the **Merged Entity**.
2. The Competition and Markets Authority (CMA) believes that it is or may be the case that each of Fiserv and First Data is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the turnover test is met. Accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The CMA found that there are no horizontal overlaps between the Parties' offerings in the UK. The CMA also considered whether the Merger could lead to a loss of potential competition between the Parties but found that, based on the Parties' internal documents and taking into account the views of third parties, in the absence of the Merger, neither Party was likely to compete directly against the other Party.
4. While the Parties do not overlap in the supply of any goods or services in the UK, there are potential vertical relationships between the Parties in relation to

Fiserv's retail banking software as-a-service solution *Agiliti* and First Data's issuing processing activities; and between First Data's ATM-related services and Fiserv's activities in cash and logistics software solutions.

5. Accordingly, the CMA has assessed the impact of the Merger in the following product and geographic frames of reference:
 - a) Retail banking software as-a-service in the UK;
 - b) Cash and logistics software in the UK;
 - c) Issuing processing services and software in the UK; and
 - d) ATM-related services in the UK.
6. The CMA identified two vertical theories of harm:
 - a) the Merged Entity may harm rivals by foreclosing other issuing processors from its retail banking software as-a-service customers; and/or
 - b) the Merged Entity may harm rivals by foreclosing other cash and logistics software providers from its ATM-related services.
7. For each vertical theory of harm, the CMA found that the Merged Entity does not have the ability to engage in foreclosure given the very small increase in market power brought about by the Merger.
8. In relation to conglomerate effects, the CMA believes that the Merged Entity would not have the ability to foreclose its rivals using tying or bundling strategies post-Merger. This is mainly due to customers' tendency to procure solutions separately, which will remain post-Merger. For similar reasons and based on feedback from third parties as part of its merger investigation, the CMA also believes that the Merged Entity would not have the ability to foreclose its rivals by worsening or preventing compatibility or interoperability with third-party solutions.
9. The CMA therefore believes that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects, vertical effects or conglomerate effects.
10. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

11. **Fiserv** is a publicly traded company incorporated in Wisconsin, USA. Fiserv is a global provider of financial services technology, principally focusing on payment systems for financial institutions. Fiserv's global activities include: core account processing systems; electronic payments processing products and services, such as electronic bill payment and presentment services, account-to-account transfers, person-to-person payments, debit and credit card processing and services, and payments infrastructure services; internet and mobile banking systems; and related services, including card and print personalisation services, item processing and source capture services, loan origination and servicing products, and fraud and risk management products and services. The turnover of Fiserv for the financial year ending 31 December 2018 was approximately £4.93 billion worldwide and approximately £ [✂] million in the UK.
12. **First Data** is a publicly traded company incorporated in Delaware, USA and is currently solely controlled by New Omaha Holdings L.P. (**New Omaha**). New Omaha is an entity owned and controlled by investment funds and other entities affiliated with KKR & Co. Inc. (together with such affiliated funds and affiliated entities, **KKR**).
13. First Data is a provider of electronic commerce and payment solutions for businesses and financial institutions worldwide. First Data states that it provides value-added solutions from a suite of proprietary technology products, software, cloud-based applications, processing services, security offerings, and customer support programs that are configured to meet clients' individual needs. The turnover of First Data for the financial year ending 31 December 2018 was approximately £6,501 million worldwide and approximately £ [✂] million in the UK.

Transaction

14. On 16 January 2019, Fiserv announced a public offer to acquire First Data. Under the agreement, First Data will merge with and into 'Merger Sub' – a wholly-owned subsidiary of Fiserv – and First Data will become a wholly-owned subsidiary of Fiserv (the **Transaction**).
15. As consideration for the Transaction, First Data common stock will be converted to the right to receive Fiserv common stock. Post-Transaction, Fiserv will own 100% of the outstanding shares and voting rights in First Data.

Post-Transaction, New Omaha is expected to own approximately 16% of the outstanding common stock of Fiserv.

16. The Parties informed the CMA that the Merger is also the subject of review by competition authorities in Argentina, Austria, Canada, Colombia, Egypt, Poland, Mexico, and the United States.

Jurisdiction

17. Each of Fiserv and First Data is an enterprise. As a result of the Merger, these enterprises will cease to be distinct.
18. The UK turnover of First Data exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.
19. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
20. Each of Fiserv and New Omaha is an enterprise. The CMA has also considered whether New Omaha's shareholding of approximately 16% in Fiserv post-Merger confers on New Omaha material influence over Fiserv and therefore gives rise to a separate relevant merger situation.¹ While New Omaha will be the largest shareholder in Fiserv post-Merger, there is not a considerable margin of difference between its shareholding and that of the next largest shareholder, T. Rowe Price, with a stake of 11%. Based on patterns of attendance and voting at recent shareholders' meetings, New Omaha would not be able in practice to block special resolutions at Fiserv's shareholder meeting, no special voting or veto rights attach to New Omaha's shareholding, and New Omaha does not have any specific status or industry expertise that could influence other shareholders and/or affect policy formulation. Furthermore, New Omaha does not provide any important inputs to Fiserv and no provisions of Fiserv's constitution confer on New Omaha an ability to materially influence Fiserv's policy. On this basis, the CMA concludes that New Omaha's shareholding in Fiserv post-Merger does not confer on New Omaha material influence over Fiserv and therefore does not give rise to a separate relevant merger situation.

¹ The ability to exercise material influence constitutes the lowest level of control that may give rise to two or more enterprises ceasing to be distinct. Although there is no presumption of material influence below 25%, the CMA may examine any shareholding of 15% or more in order to see whether the holder might be able materially to influence the company's policy. In this case, given the level of shareholding acquired by New Omaha, the CMA considered whether New Omaha will acquire the lowest level of control; that is the ability, directly or indirectly to materially influence the policy of Fiserv. [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), paragraph 4.20.

21. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 14 May 2019 and the statutory 40 working day deadline for a decision is therefore 9 July 2019.

Counterfactual

22. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (i.e. the counterfactual). For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.²
23. In this case, there is no evidence supporting a different counterfactual, and the Parties and third parties have not put forward arguments for an alternative counterfactual. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

Frame of reference

24. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merging 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.³
25. In the UK, Fiserv is active in the provision of software, predominantly for consumer banking and financial institutions. Details about Fiserv's activities in the UK are set out in Table 1.

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

³ [Merger Assessment Guidelines](#), paragraph 5.2.2.

Table 1

<u>Fiserv activities</u>	<u>Description</u>
Core banking system software	Core banking system software products provide the main functions required by a retail bank to operate. Fiserv has a baseline product called <i>Signature</i> with a number of ancillary integrative software. These ancillary software solutions are not sold on a stand-alone basis, but customers can acquire third party software to extend Signature functionality.
Retail banking software as-a-service	This is a packaged software product including Signature and other software components developed by Fiserv and third parties and provided as an on-demand software service which offers a 'bank in a box' solution to retail banks. The product is called <i>Agiliti</i> . Certain components of the package are optional, such as the card issuing processing component from third party [X] or Fiserv's digital platform (<i>Digital Access</i>). This allows customers to customise the package according to their requirements.
Digital banking platforms	These software products enable financial institutions to offer digital banking to their customers. Fiserv's <i>Corillian</i> and <i>Digital Access</i> software allow web-based account access for consumers. <i>Monitise Enterprise Platform</i> , <i>Monitise Vantage Platform</i> and <i>Mobiliti</i> are mobile banking platforms while <i>CardValet</i> is a mobile application, or an add-on to a customer's existing mobile banking platform, that allows a customer to control and receive alerts on a credit or debit card, or "fleets" of cards. <i>FinKit</i> is a digital services platform for developing financial services that offers a build environment and cloud deployment; and <i>Open Banking</i> is a layer on top of <i>FinKit</i> which allows access by third parties to banks' payments infrastructure and customer data assets, so they can develop payments and information services for the banks' customers. Fiserv also offers <i>Source Capture Optimisation Solutions</i> that recognise cheque images and allows customers to pay-in cheque without physical presentation.
Payment gateway software	This software permits access to payment networks operated by banks, CHAPS and other clearance systems. Fiserv's <i>Dovetail</i> software serves as the interface between core banking and payment gateways.
Banking risk and financial control software	This software helps financial institutions address regulatory compliance, financial risk, and reduce transaction errors. Fiserv offers <i>AML (Anti-Money Laundering) Risk Manager</i> and <i>FATCA Manager</i> both of which are software products which enable compliance with anti-money laundering legislation, <i>Payment Fraud Manager</i> that identifies and prevents electronic payment fraud before the transaction leaves the financial institution and <i>Accurate</i> and <i>Frontier</i> which provide account reconciliation functions.
Cash and logistics software	This software facilitates cash management for financial institutions, e.g. cash forecasting across branches, ATMs and other outlets. Fiserv offers <i>Corpoint</i> a product for large retail customers that allows them to manage their cash through an automated cash counter and cash order manager. Fiserv's <i>Integrated Currency Manager</i> software automates the forecasting of the needs of ATMs, branches, vaults and self-service devices and <i>Device Manager</i> which monitors the health of ATMs and branch cash dispensers. It automates the complete cycle of problem detection, dispatching, escalation, resolution and enterprise reporting.

Source: Merger Notice, Annex 14.

26. In the UK, First Data is active in the provision of various card payment processing activities, card issuing software and ATM-related services. Details about First Data's activities in the UK are set out in Table 2.

Table 2

First Data activities	Description
Merchant acquiring	First Data conducts merchant acquiring i.e. it provides merchants with merchant accounts, enabling merchants to accept credit and debit card payments. Merchant acquirers credit merchants by transferring funds to the merchant's account after receiving the funds from an issuing bank as a consequence of a payment card transaction. Merchant acquirers equip merchants with payment terminals and provide other technical and financial services to the merchants. First Data also provides merchant acquiring services through joint ventures with other licensed financial institutions such as Lloyds Banking Group.
Acquiring processing	First Data provides outsourced acquiring processing to other merchant acquirers. After the customer presents the card for payment their card details are transmitted from the POS ⁴ to the merchant acquirer, or the merchant acquirer's processor, via an internet connection or a phone line. The merchant acquirer, or the merchant acquirer's processor, identifies the appropriate payment network affiliated with the card, such as Visa or MasterCard, and forwards the card details to the appropriate network. If the payment network approves the transaction, it notifies the merchant acquirer or the merchant acquirer processor which in turn will send the authorisation to the merchant's device. The acquiring processor reconciles all the approved transactions and transmits for final settlement.
Issuing processing	First Data provides outsourced issuing processing to issuer banks by way of its <i>First Vision</i> product. Issuing processing occurs on the payment card issuing side of a transaction, i.e. with the institution which issued the relevant payment card. After the payment card has been presented the payment network will notify the issuing bank or its issuing processor which will perform the necessary fraud and funds tests before approving or declining the transaction and sending the notification to the payment network.
Issuing processing software	First Data also licences the proprietary software at the core of its <i>First Vision</i> outsourced issuing processing service <i>VisionPlus</i> which enables issuing processors such as banks and private card label issuers to run the software in-house.
Retail POS terminals and related services	First Data also sells its own POS hardware and software system (<i>Cllover</i>) and leases third party POS terminals to merchants as part of its merchant acquiring activities.
ATM-related services	First Data provides ATM management and processing services in the UK. First Data's ATM-related services include: (i) the core processing platform; (ii) ATM security & fraud services; (iii) helpdesk; (iv) ATM cash reconciliation; (v) cardholder dispute management; (vi) scheme transaction reconciliation and reporting; (vii) data services; (viii) advertising services; and (ix) monitoring.

Source: Merger Notice, paragraphs 164-176.

No horizontal competitive overlap between the Parties

27. As shown in Table 1 and Table 2 above, Fiserv and First Data operate in different parts of the financial services technology sector and offer different

⁴ Point of sale.

products and services. Fiserv's activities are focused on providing software and related services to financial institutions, whereas First Data's focus is on the provision of electronic commerce and payment services. Currently, there is no horizontal overlap between the Parties' activities in the UK.

28. Notwithstanding the absence of any current horizontal overlap between the Parties, the CMA has considered whether, absent the Merger, either Party was likely to have entered the supply of products currently supplied by the other Party, potentially resulting in greater competition than would exist post-Merger (ie, the Merger would lead to a loss of potential competition).
29. The Parties submitted that they have not competed against each other in any market in the UK or the EEA in the last three years and the internal documents the CMA has reviewed support this submission. Furthermore, the Parties' internal documents do not indicate any current plans to introduce new products or services which might potentially compete directly with the other Party. Moreover, the CMA's investigation found customers did not consider either of the Parties as potential direct competitors.

Potential vertical relationships between the Parties post-Merger

30. Fiserv's retail banking software as-a-service solution includes the option of incorporating issuing processing services and software from third parties. First Data provides ATM-related services, including processing, which incorporates third-party cash and logistics software similar to the type Fiserv supplies.

Retail banking software as-a-service (offered by Fiserv) and cash and logistics software (offered by Fiserv)

Product market

31. The European Commission has previously considered that IT services markets can be segmented on the basis of (i) different functionalities of the software and the sector concerned, and (ii) the end uses offered by the particular software;⁵ and that furthermore, IT services can be sub-segmented into a number of areas including financial services.

⁵ COMP/M. 6237 – Computer Sciences Corporation/iSoft Group, paragraph 22 et seq; COMP/M.5763 – Dassault Systemes/IBM DS PLM Software Business, paragraph 19; COMP/M.5904 – SAP/Sybase, paragraph 28.

Geographic market

32. The European Commission has previously considered that IT services are provided on a national basis, mainly due to the fact that customized solutions are offered according to particular languages and local business particularities, but that the overall market may be at least EEA wide as major IT services providers operate on a worldwide basis responding to worldwide or EEA tenders.⁶

Issuing processing services and software (offered by First Data)

Product market

33. The European Commission has previously considered issuing processing to be a part of the market for payment card processing which also includes acquiring processing. Issuing processing is the issuer-oriented side of processing a card transaction, from handling technical requests for payment authorisation to verification of card limits and cardholder statements and invoicing.⁷ The payment card market has also been subdivided into national or international payment card schemes and physical POS or e-commerce platforms.⁸

Geographic market

34. The European Commission has previously considered that the geographic market for card processing activities can be divided according to payment platform; national for physical POS systems and probably EEA wide for web-based payment card processing.⁹

ATM-related services (offered by First Data)

Product market

35. The European Commission has previously considered that there may be a separate market for ATM services because transactions require several processing services, from the routing of the transaction to card identification

⁶ Op cit, Computer Sciences Corporation/iSoft Group, paragraph 17.

⁷ Case M.4316-Atos Origin/Banksys/BCC paragraph 17.

⁸ Case M.7241-Advent International/Bain Capital/Nets Holding, paragraph 25.

⁹ Case M.7241-Advent International/Bain Capital/Nets Holding.

and issuing bank authorisation; however, the exact product market definition with respect to ATM services could be left open.¹⁰

Geographic market

36. In the same case, the European Commission considered that the exact geographic market definition with respect to ATM services could be left open.¹¹

Product scope

37. Based on previous decisional practice, and considering the bespoke nature of the particular services supplied by the Parties (as described in Tables 1 and 2 above), the CMA considers it appropriate to assess the effects of the Merger by reference to the following product frames of reference:
- a) Retail banking software as-a-service;
 - b) Cash and logistics software;
 - c) Issuing processing services and software; and
 - d) ATM-related services.

Geographic scope

38. The CMA notes that the products and services of the Parties are either sold only in the UK (e.g., Fiserv's retail banking software '*Agility*') or are tailored to the UK market. The CMA also notes that specific national regulations are relevant to all of the product frames of reference referred to above. On this basis, and taking into account previous decisional practice, the CMA considers it appropriate to assess the effects of the Merger in the UK.

Conclusion on relevant frames of reference

39. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
- a) Retail banking software as-a-service in the UK;
 - b) Cash and logistics software in the UK;

¹⁰ Case M.8553 - Banco Santander/Banco Popular Group paragraphs 36-38.

¹¹ Op cit. paragraphs 39-40.

- c) Issuing processing services and software in the UK; and
 - d) ATM-related services in the UK.
40. However, it was not necessary to conclude on the precise product or geographic frames of reference as no competition concerns arise on any plausible basis.

Competitive assessment

Horizontal unilateral effects

41. As noted above (see paragraphs 27 to 29), there are no horizontal overlaps between the Parties' activities and the Parties are not potential competitors. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects.

Vertical effects

42. Vertical effects may arise when a merger involves firms at different levels of the supply chain, for example a merger between an upstream supplier and a downstream customer or a downstream competitor of the supplier's customers.
43. Vertical mergers may be competitively benign or even efficiency-enhancing, but in certain circumstances can weaken rivalry, for example when they result in foreclosure of the merged firm's competitors. The CMA only regards such foreclosure to be anticompetitive where it results in an SLC in the foreclosed market(s), not merely where it disadvantages one or more competitors.¹² In the present case, the CMA has considered whether:
- a. the Merged Entity may harm rivals by foreclosing other issuing processors from its retail banking software as-a-service customers; and/or
 - b. the Merged Entity may harm rivals by foreclosing other cash and logistics software providers from its ATM-related services customers.
44. The CMA's approach to assessing vertical theories of harm is to analyse (a) the ability of the Merged Entity to harm rivals, (b) the incentive of it to do so, and (c) the overall effect of the strategy on competition.¹³

¹² In relation to this theory of harm 'foreclosure' means either foreclosure of a rival or to substantially competitively weaken a rival.

¹³ [Merger Assessment Guidelines](#), paragraph 5.6.6.

Foreclosure of rival issuing processors

45. First Data is active in the provision of issuing processing services and software. Fiserv's retail 'bank-in-a-box' software solution *Agiliti* contains a package of proprietary Fiserv software as well as software and services offered by third parties. One of these third parties [redacted] which provides issuing processing software and is a competitor of First Data in issuing processing in the UK. The CMA considered whether the Merged Entity would have the ability to harm rivals, [redacted], by foreclosing them from its retail banking software as-a-service.
46. The Parties submitted that the third-party software and services included in its retail banking as-a-service software are mostly optional to customers, who are able to request integration of *Agiliti* with software and services they have already licensed from other third parties with the same functionality, or to purchase *Agiliti* simply without the issuing processing functionality at all.
47. The Parties told the CMA that Fiserv's *Agiliti* product has [redacted] UK customers.
48. [redacted] told the CMA it provides issuing processing services for [redacted] of these customers. It explained that this customer is a medium-tier customer and [redacted] in the UK. In response to the CMA's merger investigation, [redacted] [did not raise] concerns about the Merger and [redacted] stated that they did not consider that Fiserv is an important route to market for them.
49. On the basis of this evidence, the CMA believes that the Merged Entity would not have the ability to harm rivals by foreclosing them from providing issuing processing services. Accordingly, the CMA has not gone on to consider whether the Merged Entity would have an incentive to engage in such a strategy, or the effect of any such strategy on competition.

Foreclosure of rival cash and logistics software providers

50. First Data manages ATMs as an outsourced service for third parties and uses cash management software as a part of this offering. Fiserv is a provider of cash management optimisation software (*Fiserv iCom*). The CMA investigated whether the Merged Entity could harm rival cash and logistics software providers by foreclosing them from its provision of ATM-related services, particularly where the Merged Entity may benefit from the combination of customer data derived from First Data's outsourced ATM services with data from Fiserv's iCom product.
51. The Parties stated that First Data's ATM-related services in the UK generated revenues in 2018 of [redacted] which were derived from [redacted] customer ([redacted]) for the

management of [less than 1,000] [✂] ATMs.¹⁴ The Parties said that First Data's use or disclosure of data derived from ATM-related services is determined by contractual and statutory obligations; that it does not anticipate owning any data derived from ATM-related services; and that data is only used where there is a legitimate business purpose and applicable law and contract requirements have been met.

52. Given the relatively low share of ATMs supplied by [✂] customer (and that the increase in any data 'pooled' within the Merged Entity would not be large), the CMA believes that the Merged Entity would not have the ability to harm rivals by foreclosing them from providing cash and logistics software. Accordingly, the CMA has not gone on to consider whether the Merged Entity would have an incentive to engage in such a strategy, or the effect of any such strategy on competition.

Conclusion on vertical effects

53. For the reasons set out above, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of vertical effects in relation to the provision of issuing processing services and software or the provision of cash and logistics software, in the UK.

Conglomerate effects

54. Conglomerate effects may arise in mergers of firms that are active in the supply of goods or services that do not form part of the same markets but which are nevertheless related in some way, either because their products are complements (so that a fall in the price of one good increases the customer's demand for another) or because there are economies of scale in purchasing them (so that customers buy them together).¹⁵
55. Most non-horizontal mergers are considered to be benign or even efficiency-enhancing (when they involve complementary products) and do not raise competition concerns. However, in certain circumstances, a conglomerate merger can result in the merged entity foreclosing rivals, including through a tying or bundling strategy.
56. Similar to its analysis of vertical theories of harm, the CMA's usual approach to assessing conglomerate theories of harm is to analyse (a) the ability of the

¹⁴ This represents less than [2] % of all ATMs in the UK (<https://www.statista.com/statistics/291638/number-of-cash-machines-in-the-united-kingdom/>).

¹⁵ *Merger Assessment Guidelines*, paragraph 5.6.2.

merged entity to foreclose competitors, (b) the incentive of it to do so, and (c) the overall effect of the strategy on competition.¹⁶

57. The CMA has considered whether:
 - a) the Merged Entity may engage in a tying or bundling strategy which would put rivals at a disadvantage, and/or
 - b) the Merged Entity may worsen any interoperability or compatibility between their products and rivals' products.
58. Some of the Parties' products and services may be complementary and may be bought by the same customers, in particular financial institutions. The CMA has therefore considered whether the Merged Entity may engage in tying or bundling of its products and services so as to foreclose competition.
59. Customers told the CMA that they would not commonly procure Fiserv's and First Data's products at the same time. The CMA's merger investigation also showed that: (i) customers tend to buy the products and services Fiserv and First Data provide using relatively sophisticated procurement exercises; (ii) these procurement exercises do not commonly take place at the same time; and (iii) for larger customers, the procurement exercises for Fiserv's and First Data's products and services tend to be undertaken by different parts of the organisation. Third parties also noted that customers do not commonly make changes to different business-critical systems at the same time, e.g., core banking systems at financial institutions, due to risks and complexity.
60. The CMA has also considered whether the Merged Entity would be able to worsen the compatibility or interoperability of the Merged Entity's products and services with those of its rivals. As part of its merger investigation, the CMA contacted competitors who told the CMA that they do not believe the Merged Entity would be able to harm competitors by worsening or preventing compatibility or interoperability with third-party solutions. In particular, competitors told the CMA that customers' purchasing decisions are such that a tying and bundling strategy would not be successful (see paragraph 60 above) and that, as a consequence, software solutions have therefore been developed in a way to allow customers to mix and match packages from different providers without loss of interoperability or compatibility (e.g., through using APIs).
61. Based on the evidence set out above, the CMA believes that the Merged Entity would not have the ability to foreclose competitors through a tying or

¹⁶ *Merger Assessment Guidelines*, paragraph 5.6.6.

bundling strategy or through a worsening of interoperability or compatibility. Accordingly, the CMA has not gone on to consider whether the Merged Entity would have an incentive to engage in such a strategy, or the effect of any such strategy on competition.

Conclusion on conglomerate effects

62. For the reasons set out above, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of conglomerate effects.

Barriers to entry and expansion

63. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.¹⁷
64. However, the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any plausible basis.

Third party views

65. As part of its merger investigation, the CMA contacted a large number of customers and competitors of the Parties.
66. Third party comments have been taken into account where appropriate in the competitive assessment above.

Decision

67. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the United Kingdom.
68. The Merger will therefore **not be referred** under section 33(1) of the Act.

¹⁷ [Merger Assessment Guidelines](#), from paragraph 5.8.1.

James Waugh
Director
Competition and Markets Authority
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