

## DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 1830

4 March 2022

## NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

NCR CORPORATION

AND

CARDTRONICS PLC

CASE NUMBER: 2021MAR0021

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

1. On 11 March 2021, the Competition Commission ("Commission") received a notice of an intermediate merger whereby the primary acquiring firm, NCR Corporation ("NCR") intends to acquire 100% of the issued share capital of Cardtronics Plc ("Cardtronics"). Following implementation of the proposed transaction, Cardtronics will be solely controlled by NCR.
2. NCR is a public company duly incorporated in terms of the company laws of the State of Maryland, United States of America. NCR is listed on the New York Stock Exchange, with its shares widely dispersed, and is not controlled by any single firm or individual. In South Africa, NCR controls NCR International (South Africa) (Pty) Ltd, a private company incorporated in accordance with the laws of South Africa. NCR and its subsidiaries will be referred to as 'NCR'.

3. NCR is a global software and services-led enterprise provider in the financial, retail, hospitality, telecommunications, and technology industries. NCR's global product offering includes digital offerings for the banking sector, restaurants, and retailers, as well as payments processing, multi-vendor connected device services, automated teller machines ("ATMs"), point of sale terminals and self-service technologies. NCR also resells third-party networking products and provides related service offerings in the telecommunications and technology sectors.
4. In South Africa, NCR has entered a distribution arrangement with Bytes Technology Group (Pty) Ltd ("Bytes"), which procures and distributes NCR manufactured ATM machines to customers in South Africa. In addition, NCR has entered into an agreement with Technology Corporate Management (Pty) Ltd ("TCM") to provide ATM-related services. Therefore, both Bytes and TCM provide ATM-related services, such as maintenance services for NCR ATM machines in South Africa (on a non-exclusive basis). TCM does not distribute or supply NCR's ATMs in South Africa.
5. The primary target firm is Cardtronics, a publicly traded company headquartered in United States of America and listed on the NASDAQ. Cardtronics is not controlled by any shareholder or entity. Cardtronics is active in South Africa through its subsidiary, Spark ATM Systems (Pty) Ltd ("Spark"), a South African Independent ATM Deployer.
6. Cardtronics' activities in South Africa relate to the deployment of ATMs that have been sourced from an international manufacturer of ATMs, Chungho Comnet ("Chungho"), a Korean entity. Spark's business activities relate to the deployment and operation (installation, maintenance, monitoring and reporting services) of ATMs, and the provision of ATM-related services such as ATM maintenance and repairs. Spark operates approximately 4,000 ATMs in South Africa.

### ***Competition Assessment***

7. The Commission found that there is a vertical relationship between the activities of the merging parties in that NCR and Cardtronics are active at different levels of the same
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value chain. From this vertical overlap, the Commission found that the merged entity will have both the ability and incentive to engage in an input foreclosure strategy, post-merger. The Commission also received concerns from third parties regarding possible input foreclosure post-merger.

8. In particular, the Commission found that NCR is the largest supplier of ATMs in South Africa with a market share of approximately 38% based on the number of ATMs supplied into South Africa in 2019. Further, the Commission found that there are no viable alternative suppliers at the upstream level that NCR's existing downstream service providers could viably turn to in a timely manner after the merger given that all other global upstream suppliers are locked-in into their own distribution arrangements in South Africa.
  9. The Commission further found that NCR would have an incentive to cease to supply ATMs and ATM spare parts to Bytes and TCM or to pursue other self-dealing strategies post-merger. In particular, the Commission found that such a strategy could be more profitable to NCR since it will internalise the profits currently generated by Bytes and TCM in the event of successful foreclosure.
  10. The Commission's investigation also revealed that Spark could start offering its services to the banking sector by virtue of being part of the NCR Group post-merger given that the NCR group has existing relationships with the banks. In addition, the Commission found that the proposed merger forms part of a broader strategy on the part of NCR to establish a fully integrated provider of ATMs to the South African banking sector, that would allow NCR to take advantage of its market position in the upstream market in order to offer 'ATM as-a Service' to the banks.
  11. The Commission also assessed whether the merger is likely to result in customer foreclosure as Spark currently sources ATMs from a third party. This follows concerns received by the Commission from third parties in this regard. The Commission found that Spark is not a significant distributor of ATMs in South Africa. Bytes is the largest downstream distributor of ATMs in South Africa, followed by Diebold Nixdorf. ATM Solutions, TCM and NET 1 are smaller players. The Commission is of the view that whilst
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there are existing agreements between ATM distributors and ATM vendors, it is likely that an OEM ATM manufacturer would be able to find a distribution partner relatively easily (and, specifically, easier than it would be for a distributor to find an upstream partner). It is therefore the Commission's view that anticompetitive customer foreclosure is unlikely to occur in the downstream market for the distribution and servicing of ATMs in South Africa.

12. However, given the input foreclosure concerns raised in connection with the proposed merger, the Commission has imposed conditions to ensure that NCR continues to supply ATMs and ATM spare parts to its existing service providers for a period of 2 years following the approval of the proposed merger. The Commission is of the view that the 2-year period will provide both Bytes and TCM sufficient time to look for alternative suppliers of the ATMs and ATM products in the event of successful foreclosure. The conditions are attached as **Annexure A** hereto. The merging parties have agreed to the conditions.

#### ***Public interest***

#### ***Employment***

13. With regard to the effect of the proposed merger on employment, the merging parties were not in a position to provide a definitive statement that there will be no merger-related job losses in South Africa. Accordingly, the Commission imposed the conditions attached as **Annexure A** hereto, which the merging parties have agreed to.

14. Further, no other public interest issues arise as a result of the proposed transaction.

#### ***Conclusion***

15. The Commission therefore approves the proposed transaction subject to the conditions set out in **Annexure A** hereto.

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**ANNEXURE A**  
**NCR CORPORATION**

**AND**  
**CARDTRONICS PLC**

**CASE NUMBER: 2021MAR0021**

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**CONDITIONS**

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**1. DEFINITIONS**

1.1. The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

- 1.1.1            **“Approval Date”** means the date referred to on the Commission’s merger Clearance Certificate;
- 1.1.2            **“Cardtronics”** means Cardtronics Plc, a public company duly incorporated in terms of the company laws of England and Wales, having its principal business address at 2050 W. Sam Houston Parkway South, Suite 1300, Houston, Texas 77042, United States of America;
- 1.1.3            **“Commission”** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act, with its principal place of business at 1st Floor, Mulayo Building (Block C), the DTI campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.1.4            **“Competition Act”** means the Competition Act, 89 of 1998, as amended;
- 1.1.5            **“Conditions”** means these conditions contained in this Annexure A, agreed to by the Merged Entity and the Commission;
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- 1.1.6            **“Days”** mean business days, being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.1.7            **“Implementation Date”** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.1.8            **“LRA”** means the Labour Relations Act No. 66 of 1995 (as amended);
- 1.1.9            **“Merged Entity”** means the combined firm resulting from the Merger between NCR and Cardtronics;
- 1.1.10           **“Merger”** means the acquisition of control over Cardtronics by NCR;
- 1.1.11           **“Merging Parties”** means NCR and Cardtronics;
- 1.1.12           **“NCR”** means NCR Corporation, a public company duly incorporated in terms of the company laws of the State of Maryland, United States of America, having its principal business address at 864 Spring Street NW, Atlanta, GA 30308, United States of America;
- 1.1.13           **“Rules”** mean the Rules for the Conduct of Proceedings in the Competition Commission and the Rules for the Conduct of Proceedings in the Competition Tribunal;
- 1.1.14           **“South Africa”** means the Republic of South Africa;
- 1.1.15           **“Traditional” ATM market”** means the market for the provision of the automated teller machines (ATMs), software and ATM-related services, including services relating to the maintenance and repair of the ATM hardware to the banks. The banks are the end user customer that will purchase the ATMs from a Traditional Participant, and work with the Traditional Participant to install, deploy and maintain the ATMs over a period of years.
- 1.1.16           **“Traditional Participant”** means a service provider in the traditional ATM market; and
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- 1.1.17 **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act.

## 2. CONDITIONS TO THE APPROVAL OF THE MERGER

### 2.1 EMPLOYMENT

- 2.1.1 The Merged Entity shall not retrench any employees in South Africa as a result of the Merger, for a period of 2 (two) years following the Implementation Date.
- 2.1.2 For the sake of clarity, retrenchments do not include (i) voluntary separation arrangements; or (ii) voluntary early retirement packages, (iii) unreasonable refusals to be redeployed in accordance with the provisions of the LRA; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance; (vii) any decision not to renew or extend a contract of a contract worker; and (viii) any transfer of employees to the employment of a third party as a result of any sale of business operations, including related assets and liabilities, or any joint venture or similar business arrangements.

### 2.2 INPUT FORECLOSURE

- 2.2.1 For a period of 2 (two) years from the Implementation Date, as well as between Approval Date and Implementation Date, the Merged Entity undertakes that:
- 2.2.1.1 NCR will continue to honour the existing Traditional Participants' contracts, on the terms and conditions as they exist upon the Implementation Date of the Merger. Insofar as the non-contracted

suppliers are concerned, NCR will continue to contract with the Traditional Participants on reasonable commercial terms.

2.2.1.2 NCR will not unduly discriminate between the net price, terms and/or conditions charged to different Traditional Participants with respect to equivalent transactions. More specifically –

2.2.1.2.1 NCR will not disadvantage a Traditional Participant as compared to other Traditional Participants in a manner that means that the Traditional Participants are unable to remain competitive.

2.2.1.2.2 NCR will continue to supply the ATM products and solutions (including but not limited to hardware, software and spare parts) of the same quality to the Traditional Participants, on commercially reasonable and non-discriminatory terms (and provided that the Traditional Participants comply with all applicable requirements and contractual terms and conditions).

### **3. MONITORING OF COMPLIANCE WITH THE CONDITIONS**

3.1 The Merging Parties shall inform the Commission of the Implementation Date of the Merger within 5 (five) Days of its occurrence.

3.2 The Merging Parties shall circulate a copy of the Conditions to all of its employees and/or their employee representatives and/or relevant trade unions in South Africa within 5 (five) Days of the Approval Date.

3.3 As proof of compliance with paragraph 3.2 above, an authorized representative of NCR and Cardtronics shall within 10 (ten) Days of circulating the Conditions, submit to the Commission an affidavit attesting to the circulation of the Conditions and provide a copy of the notice that was sent to the employees in that regard.

3.4 The Merged Entity shall submit a report to the Commission on each anniversary of the Approval Date, setting out its compliance with clauses 2.1 and 2.2 of the Conditions, for the duration of the Conditions. This report shall be accompanied by an

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affidavit, attested to by a director or other suitable person of the Merged Entity in South Africa confirming the accuracy of the report.

- 3.5 The Conditions in clauses 2.1 and 2.2 above shall apply between the Approval Date and Implementation Date.
- 3.6 Any employee of either of the Merging Parties who believes that the Merging Parties have not complied with or have acted in breach of the Conditions may approach the Commission.
- 3.7 The Commission may request such additional information from the Merging Parties which the Commission from time to time regards as necessary for the monitoring of compliance with these Conditions.

#### **4. VARIATION OF THE CONDITION**

- 4.1 The Merged Entity may at any time, and on good cause shown, apply to the Commission for any of the Conditions to be waived, relaxed, modified and/or substituted. Should a dispute arise in relation to the Merged Entity's application to the Commission, the Merged Entity may apply to the Tribunal for appropriate relief.

#### **5. APPARENT BREACH**

- 5.1 An apparent breach by the Merging Parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Commission Rules read together with Rule 37 of the Tribunal Rules.
- 5.2 All correspondence in relation to these Conditions must be submitted to the following e-mail address: [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za) and [Ministry@thedtic.gov.za](mailto:Ministry@thedtic.gov.za).

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

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