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# Submission to the ACCC – Response to interested party submissions regarding the Revised Proposed Undertaking

Application for merger authorisation by Linfox Armaguard Pty Ltd and Prosegur Australia Holdings Pty Limited

21 May 2023

The document contains confidential information which is indicated as follows:

**[Confidential to Armaguard]** .... for Linfox Armaguard Pty Ltd and its related bodies corporate.

**[Confidential to Prosegur]** .... for Prosegur Australia Holdings Pty Limited and its related bodies corporate.

**[Confidential to the Applicants]** .... for Linfox Armaguard Pty Ltd and its related bodies corporate and Prosegur Australia Holdings and its related bodies corporate.



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# Executive Summary

## Introduction

Linfox Armaguard Pty Ltd (**Armaguard**) and Prosegur Australia Holdings Pty Limited (**Prosegur**) (together, the **Applicants**) provide this submission in response to interested party submissions in relation to the revised proposed undertaking as submitted by the Applicants on 1 May 2023 (**Revised Proposed Undertaking**).<sup>1</sup> Further, acknowledging the feedback in relation to the Revised Proposed Undertaking, the Applicants now submit a **Further Revised Proposed Undertaking**.<sup>2</sup>

## Counterfactual

The Applicants endorse the views of the Reserve Bank of Australia (**RBA**) that:

*'[c]hange is required to reduce the excess capacity that currently exists in the banknote distribution system to ensure it is both viable and able to withstand further expected structural declines in transactional cash usage. The Reserve Bank continues to hold the view, as stated in its Previous Submissions, that it is in the national interest that the industry be put on a more sustainable footing. If this is not done, access to and availability of cash will decline, damaging the efficiency of the economy, particularly in regional Australia. The Revised Undertaking addresses many of the issues identified by the Reserve Bank in the Previous Submissions. The finite time horizon of three years largely resolves the issues with the in-perpetuity nature of the original undertaking provided to the ACCC in March 2023 (Original Undertaking), thereby providing more flexibility for the industry to respond to declining cash use.'*<sup>3</sup>

The Applicants have each independently provided the ACCC with significant evidence regarding the likely counterfactual as canvassed in the Application,<sup>4</sup> 13 witness statements,<sup>5</sup> the RBB Economic Report,<sup>6</sup> section 155 responses and the Applicants' response to the ACCC's statement of preliminary views,<sup>7</sup> which the ACCC has carefully considered through its thorough assessment and examination. Given the commercially and competitively sensitive nature of the issues, including all cost cutting, alternative arrangements and potential exit from the CIT industry, not all of the evidence relevant to the counterfactual provided has been or can be made, public, including between the Applicants themselves. The absence of publicly available evidence should not be confused with an

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<sup>1</sup> Revised Proposed Undertaking, submitted to the ACCC on 1 May 2023 <<https://www.accc.gov.au/system/files/public-registers/documents/Revised%20Proposed%20Undertaking%20-%2001.05.23%20-%20PR%20VERSION%20-%20MA1000022%20Armaguard%20Prosegur.pdf>>. All relevant capitalised terms have the same meaning given in the Revised Proposed Undertaking.

<sup>2</sup> Capitalised terms that are not defined in this submission have the meaning given in the Further Revised Proposed Undertaking.

<sup>3</sup> RBA interested party submission (8 May 2023), p 1.

<sup>4</sup> Section 9 of the Application for Merger Authorisation, filed with the ACCC on 26 September 2022, p 118.

<sup>5</sup> Annexure 36 of Application for Merger Authorisation, 26 September 2022, Witness statement of Michael Philip Cronin; Annexure 37.1 of Application for Merger Authorisation, 26 September 2022, Witness statement of Rodney Philip Mills; Annexure 38.1 of Application for Merger Authorisation, on 26 September 2022, Witness statement of Scott Antony Forster; Annexure 39.1 of Application for Merger Authorisation, 26 September 2022, Witness statement of Catherine Lee Canham; Annexure 40.1 of Application for Merger Authorisation, 26 September 2022, Witness statement of Ennio Paul Alberici; Annexure 41.1 of Application for Merger Authorisation, 26 September 2022, Witness statement of Javier Hergueta; Annexure 42.1 of Application for Merger Authorisation, 26 September 2022, Witness statement of Jose Antonio Lasanta Luri; Annexure 43.1 of Application for Merger Authorisation, 26 September 2022, Witness statement of Matthew Stephen Sykes; Second witness statement of Matthew Stephen Sykes, filed with the ACCC on 31 January 2023; Witness statement of Michael Douglas Shipton filed with the ACCC on 31 January 2023; Witness statement of Sunny Gill filed with the ACCC on 27 February 2023; Witness statement of Peter Donald Fox, filed with the ACCC on 2 March 2023; Supplementary witness statement of Catherine Canham filed with the ACCC on 9 March 2023.

<sup>6</sup> Annexure 31 of the Application for Merger Authorisation, 26 September 2022, RBB Economics Expert Report.

<sup>7</sup> Submission to the ACCC – Applicants' Response to Statement of Preliminary Views, 9 March 2023, pp 7, 34. Submission in response to interested party submissions

absence of relevant evidence. The likely impact of the Proposed Transaction on competition in the relevant markets and the public benefits it will provide have to be evaluated against a counterfactual in which one or both of the Applicants will exit in the short to medium term, and that exit is likely to be disorderly.

### **Further Revised Proposed Undertaking**

Nevertheless, in response to the further feedback from market participants and the ACCC following the latest round of consultation, the Further Revised Proposed Undertaking has been further amended as follows:

- the measure for the proposed price escalation has been adjusted from 'Inflation + 7.5%' (which was defined as the average in the change between CPI and Average Weekly Earnings (**AWE**)) to a single measure of 'CPI + 7.5%' for simplicity and transparency to respond to concerns from market participants that it was unclear how the previous formulation would operate;
- the geographic coverage commitment now makes it clear that the availability of established transport distribution networks (e.g. shipping, flights, couriers etc.) and their frequency into the location will be a relevant factor in determining whether or not a location is reasonably capable of being serviced;
- a new commitment has been included whereby MergeCo will establish a Surplus Equipment register and offer such Surplus Equipment for sale to other CIT Providers on request;
- with respect to the existing commitment to provide Independent ATM Deployers with ATM Specific Services, a new clause 5.21 has been incorporated which provides that MergeCo will supply ATM Specific Services to Independent ATM Deployers and its Internal Customer in a manner that does not unreasonably discriminate in favour of the Internal Customers; and
- to alleviate Authentic Security's concern regarding its existing wholesale note pool arrangements, the Further Revised Proposed Undertaking makes clear that MergeCo will continue to facilitate arrangements by the Major Banks' requirements regarding the transportation of Wholesale Cash between Major Bank Note Pools.

The Applicants note that while the Proposed Transaction together with the Further Revised Proposed Undertaking is incapable of providing financial sustainability for MergeCo in the future in the face of ongoing cash use decline and does not achieve MergeCo's ongoing financial sustainability, it will enable the Applicants to more efficiently provide continuity of CIT services, reduce the level of further losses being incurred and avoid the disruption that would result from the exit of one or both Applicants in the short to medium term.

The Further Revised Proposed Undertaking commits MergeCo to providing CIT Services across Australia to meet both Customer and consumer needs for ongoing cash, despite the ongoing decline in cash usage. It provides Customers and consumers with stability during the next phase of the transition to a low cash environment, as well as greater transparency regarding the terms and conditions on which CIT Services are supplied. The Further Revised Proposed Undertaking does this by essentially holding Customers' existing arrangements with the Applicants (many of which are the outcome of contested procurement processes) for the term of the Further Revised Proposed Undertaking, and enabling New Customers to obtain CIT Services on a similar basis. A new access regime for Third

Party CIT Providers will enhance the ability of Third Party CIT Providers to expand the scale and geographical reach of their operations.

The Further Revised Proposed Undertaking is an interim rather than a permanent solution to the systemic problem facing the supply of CIT Services in Australia. This is because the pricing mechanism under the Further Revised Proposed Undertaking will result in MergeCo incurring significant losses for the duration of the Undertaking that cannot be sustained on an ongoing basis if MergeCo is to be financially sustainable. However, the Applicants acknowledge that Customers need protection from price shocks during the next phase of the transition to the low cash environment as they adjust to the major impact that lower volumes of cash will have on the cost of delivering CIT Services as economies of scale decline.

### **Public benefits of the Further Revised Proposed Undertaking**

The Proposed Transaction together with the Further Revised Proposed Undertaking will result in material public benefits which substantially outweigh any detriment from a potential immediate loss of competition between the Applicants, which itself is unsustainable. All of the commitments provided under the Further Revised Proposed Undertaking reflect a benefit to the public against the likely counterfactual where one or both of the Applicants exit. The key public benefits of the Proposed Transaction with the Further Revised Proposed Undertaking are that:

- **the synergies of the Proposed Transaction are realised and passed onto customers:** a key benefit of the Proposed Transaction is the de-duplication of costs in providing CIT Services while the Further Revised Proposed Undertaking ensures that some of the synergies are passed on to customers;
- **the CIT industry has a more sustainable basis on which to provide services and maintain service levels and safety standards** it will enable the Applicants to more efficiently provide continuity of CIT Services, reduce the level of further losses being incurred and maintain service levels and safety standards;
- **a disorderly exit is avoided in circumstances where at least one Applicant is likely to exit in the short to medium term:** In light of the increasing, unsustainable losses, with no prospect of a turnaround, exit by at least one Applicant is likely. This means that, in order to avoid such amplified losses (from the cost of sustaining a fixed cost network whilst facilitating a gradual transition of volumes to other providers), an exiting Applicant would need to exit swiftly, meaning that disruption would be inevitable.

None of these benefits, in addition to a range of other benefits as outlined in the Applicants' response to the ACCC's statement of preliminary views and the application for merger authorisation (**Application**), will be realised without the merger.<sup>8</sup> Briefly stated, the evidence demonstrates that:

- the current industry structure is unsustainable;<sup>9</sup>

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<sup>8</sup> Refer to section 2 below.

<sup>9</sup> Application for Merger Authorisation, 26 September 2022, pp 17, 21, 45, 123; Submission to the ACCC – Response to Statement of Preliminary Views, 9 March 2023, p 6, 41.

- the Applicants have exhausted all opportunities for cost cutting, subcontracting or restructuring without significant risk of substantial service degradation;<sup>10</sup>
- a partial joint venture or other commercial arrangement between the Applicants is not commercially realistic;<sup>11</sup>
- absent the Proposed Transaction, exit by at least one Applicant in the short to medium is highly likely;<sup>12</sup>
- disorderly exit is unavoidable;<sup>13</sup>
- reputational concerns would not deter a disorderly exit;<sup>14</sup> and
- the Applicants will continue to be constrained by a range of factors,<sup>15</sup> and note in particular the submission by Streamcorp Armoured confirming its capability of providing financial institutions, retailers, ATM deployers and other businesses that view cash as a critical component of their operations with CIT services “to all markets in Australia”.<sup>16</sup>

In summary, the Proposed Transaction with the Further Revised Proposed Undertaking ensures that the clear public benefits of the Proposed Transaction are realised and that Australia continues to have sustainable, reliable and safe cash distribution. The ACCC should approve the Application on this basis.

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<sup>10</sup> Submission to the ACCC – Applicants’ Response to Statement of Preliminary Views, 9 March 2023, pp 6, 25; Annexure 36 of Application for Merger Authorisation, 26 September 2023, Witness statement of Michael Philip Cronin; Annexure 37.1 of Application for Merger Authorisation, 26 September 2023, Witness statement of Rodney Philip Mills; Application for Merger Authorisation, 26 September 2023 of Annexure 38.1, Witness statement of Scott Antony Forster; Annexure 40.1 of Application for Merger Authorisation, 26 September 2023, Witness Statement of Ennio Paul Alberici, section G; Annexure 42.1 of Application for Merger Authorisation, 26 September 2023, Witness Statement of Jose Antonio Lasanta Luri [35].

<sup>11</sup> Application for Merger Authorisation, 26 September 2023, pp 16, 99 – 100; Submission to the ACCC – Response to Statement of Preliminary Views, 9 March 2023, p 29.

<sup>12</sup> Application for Merger Authorisation, 26 September 2023, pp 16, 47 120; Submission to the ACCC – Response to Statement of Preliminary Views, 9 March 2023, section 2.7.

<sup>13</sup> Submission to the ACCC – Applicants’ Response to Statement of Preliminary Views, 9 March 2023, section 2.7.

<sup>14</sup> Submission to the ACCC – Applicants’ Response to Statement of Preliminary Views, 9 March 2023, section 2.10.

<sup>15</sup> Application for Merger Authorisation, 26 September 2023, section 12.

<sup>16</sup> Streamcorp Armoured interested party submission (18 May 2023), p. 2.

# 1. Counterfactual

## Key points:

- A range of evidence has been provided to demonstrate:
  - likely exit by at least one Applicant in the short to medium term;
  - due to the high fixed costs to serve, exit will likely be disorderly; and
  - that price increases and / or service level reductions can be expected to continue in the period leading up to exit.
- Not all evidence supporting the counterfactual has been, or can be made, public.
- While Prosecur has seen some revenue improvement, it continues to make large losses and does not expect to return to break even in the face of increasing costs and continued declines in cash usage. Armaguard is no longer financially viable, and it **[Confidential to Armaguard]**  
[REDACTED]  
[REDACTED]
- The Proposed Transaction subject to the Further Revised Proposed Undertaking will guarantee continued certainty in the delivery of CIT Services with limitations on price increases and no change to current terms of service for existing customers.

1. As the evidence highlights, absent the Proposed Transaction, either or both Applicants will be likely to cease offering CIT services in Australia in the short to medium term. In particular:
  - (a) there has been a significant, structural decline in cash usage, which accelerated during the Covid-19 pandemic, with further declines in cash usage expected;<sup>17</sup>
  - (b) Prosecur has been making ongoing losses since 2017 on a consolidated basis, with the EBITA margin of its CIT business being below (i.e. worse than) minus 10% each year since 2019.<sup>18</sup> Similarly, Armaguard has been in significant decline since at least 2017 and is forecast to continue to be loss making into the future;<sup>19</sup>
  - (c) the Applicants have exhausted all opportunities for cost cutting, subcontracting or restructuring without significant risk of substantial service degradation;<sup>20</sup> and

<sup>17</sup> Submission to the ACCC - Applicants' Response to Statement of Preliminary Views, 9 March 2023, section 2.1; RBA interested party submission (28 October 2022), pp 5-6, 10, 13; RBA interested party submission (6 April 2023) pp 1-2; RBA interested party submission (8 May 2022) p 1.

<sup>18</sup> Prosecur historic financials and budget, including as set out in witness statement of Ennio Paul Alberici, Prosecur response to s 155 notice dated 7 October 2022, in particular Schedule 1, item 3.

<sup>19</sup> Witness statement of Rodney Philip Mills, p. 3 [14]-[18].

<sup>20</sup> Submission to the ACCC – Applicants' Response to Statement of Preliminary Views, 9 March 2023, sections 2.4 – 2.5; Application for Merger Authorisation, 26 September 2022, section 9.2.

- (d) a partial joint venture or other commercial arrangement between the Applicants is not commercially realistic and would not create the efficiencies required to underpin a sustainable ongoing business.<sup>21</sup>
2. While some market participants have questioned the likelihood of exit, the Applicants note that some key evidence relevant to the likelihood of exit is confidential so as to not impact the competitive behaviour of each Applicant or other Third Party CIT Providers. The ACCC has been provided the following evidence on a confidential basis:
- (a) Armaguard regularly loses up to **[Confidential to Armaguard]** [REDACTED];<sup>23</sup>
- (b) Armaguard's Executive Chairman, Peter Donald Fox AM, has stated that **[Confidential to Armaguard]** [REDACTED];<sup>24</sup>
- (c) Prosegur has budgeted an EBITDA loss of around **[Confidential to Prosegur]** [REDACTED];<sup>25</sup>
- (d) Prosegur has needed more than **[Confidential to Prosegur]** [REDACTED] in parent company support since 2018 to remain solvent,<sup>26</sup> and approximately **[Confidential to Prosegur]** [REDACTED] per month in parent company support will be needed to sustain its operations going forward;<sup>27</sup>
- (e) **[Confidential to Prosegur]** [REDACTED]  
[REDACTED]  
[REDACTED];<sup>28</sup> and
- (f) in the absence of the Proposed Transaction, Prosegur **[Confidential to Prosegur]** [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

<sup>21</sup> Applicants' Response to the Statement of Preliminary Views (9 March 2023), section 2.5.

<sup>22</sup> Witness statement of Peter Donald Fox AM p 2, [8].

<sup>23</sup> Submission to the ACCC - Applicants' Response to Statement of Preliminary Views, 9 March 2023, pp 18, [18] – [19].

<sup>24</sup> Witness statement of Peter Donald Fox AM p 3, [15].

<sup>25</sup> Prosegur response to s 155 notice dated 24 November 2022, in particular Schedule 2 item 1.

<sup>26</sup> Annexure 41.1 of Application for Merger Authorisation, 26 September 2022, Witness statement of Javier Hergueta, section p 5, C.1.

<sup>27</sup> Witness statement of Michael Douglas Shipton [66].

<sup>28</sup> Witness statement of Michael Douglas Shipton [66(a) – 66(b)].

<sup>29</sup> Annexure 42.1 of Application for Merger Authorisation, 26 September 2022, Witness statement of Jose Antonio Lasanta Luri p 15, [84].



[REDACTED]

3. On the above evidence, and with the cost of capital having increased sharply in the past year, the most likely scenario must be the exit of at least one Applicant within the short to medium term.
  
4. Certain submissions from market participants have referred to public statements from Prosegur Cash identifying increases in revenue globally. The recent growth Prosegur Cash has reported in the Asia-Pacific region reflects its results across a number of markets other than Australia, Prosegur Cash does not report publicly on the standalone position of its Australian business. While Prosegur's Australian business has recorded higher revenues recently:
  - (a) the revenue increases are from a very low base. Australia continues to be Prosegur's worst performing market;<sup>31</sup>
  - (b) most of the growth in Australia reflects earnings from Prosegur's retail foreign exchange business, Prosegur Foreign Exchange, which does not form part of the Proposed Transaction nor the relevant markets being considering in the Application;
  - (c) revenue from the CIT business for the first quarter of 2023 remains below Q1 2018 levels;
  - (d) costs, including wages, fuel and other vehicle costs have also increased, limiting the ability of higher revenues to reduce the overall loss of the Australia business; and
  - (e) it is ultimately the profit / loss after costs, not revenue, that is relevant and taken into account. The large losses are ongoing and increasing for the Australian business. **[Confidential to Prosegur]** [REDACTED]

[REDACTED]

5. As the evidence has shown, the Applicants have exhausted opportunities to cut costs, without significantly impairing service levels, safety and operations of their business.<sup>32</sup> Joint ventures or other collaborations short of merger, do not deliver the cost savings required to create a sustainable business.

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<sup>30</sup> Annexure 42.1 of Application for Merger Authorisation, 26 September 2022, Witness statement of Jose Antonio Lasanta Luri p 10, [51].  
<sup>31</sup> Witness statement of Jose Antonio Jasanta Luri, at [40].  
<sup>32</sup> Submission to the ACCC - Applicants' Response to the Statement of Preliminary Views (9 March 2023), section 2; Application for Merger Authorisation, 26 September 2022, section 9.2; Annexure 40.1 of Application for Merger Authorisation, 26 September 2022, Witness statement of Ennio Paul Alberici p 24, [110]; Witness statement of Michael Douglas Shipton [18]; Annexure 37.1 of Application for Merger Authorisation, 26 September 2022, Witness statement of Rodney Philip Mills p 15, [75] – [110]; Annexure 36 of Application for Merger Authorisation, 26 September 2022, Witness statement of Michael Philip Cronin p 2, [10]; Witness statement of Peter Donald Fox AM p 3, [13].

6. While Coles Group Limited (**Coles**) has submitted that the Proposed Transaction, subject to the Further Revised Proposed Undertaking, would lead to market distortion,<sup>33</sup> the potential for any market distortion resulting from the Proposed Transaction should be considered against the likely counterfactual of exit, which will likely lead to significant market dislocation and a sole supplier without any remedial constraints. In the event that the Proposed Transaction does not proceed:
- (a) as noted above, either or both Applicants are likely to cease providing CIT services in Australia in the short to medium term. The exit of one Applicant would leave the other Applicant unconstrained by the other or by any undertaking, meaning that prices are likely to increase;
  - (b) in the period prior to exit, price increases and / or reductions in service levels would be inevitable and necessary;<sup>34</sup>
  - (c) exit is likely to be disorderly;<sup>35</sup> and
  - (d) cash as a method of payment will continue to decline regardless of whether the Proposed Transaction proceeds.<sup>36</sup> If, as Coles accepts, relative price increases 'compel' retailers to remove cash as a payment option,<sup>37</sup> this will act as a constraint on the extent to which MergeCo can increase prices.<sup>38</sup>
7. The Further Revised Proposed Undertaking therefore offers price and non-price protections which reduce the potential for any market distortion compared to the counterfactual. The Proposed Transaction with the Further Revised Proposed Undertaking prevents a disorderly exit by one or both Applicants by putting the combined entity on a path to sustainability by reducing losses, guaranteeing the continued provision of cash throughout Australia on current service levels and subject to limitations on price rises, with access and other protections for third party providers.

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<sup>33</sup> Coles Group Limited interested party submission (8 May 2023) p 3.

<sup>34</sup> Submission to the ACCC - Applicants' Response to the Statement of Preliminary Views, 9 March 2023 p 20, sections 2.3 – 2.4.

<sup>35</sup> Submission to the ACCC - Applicants' Response to the Statement of Preliminary Views, 9 March 2023 p 34, section 2.9.

<sup>36</sup> Submission to the ACCC - Applicants' Response to Statement of Preliminary Views, 9 March 2023 p 14, sections 2.1 – 2.2; Application for Merger Authorisation, 26 September 2022 p 53, section 4.2; Annexure 43.1 of Application for Merger Authorisation, 26 September 2022, Witness statement of Matthew Stephen Sykes p 29, [93(b)]; Annexure 38.1 of Application for Merger Authorisation, Witness statement of Scott Antony Forster p 6, [25].

<sup>37</sup> Coles Group Limited interested party submission (6 April 2023) p 4.

<sup>38</sup> Submission to the ACCC - Applicants' Response to Statement of Preliminary Views, 9 March 2023 p 55, [141].

## 2. Term of the Further Revised Proposed Undertaking

### Key points:

- The Term reflects that the Further Revised Proposed Undertaking is not intended to be a permanent solution, but is rather a short-term transitional arrangement that 'holds' the current arrangements of each of the Applicants. The Further Revised Proposed Undertaking is incapable of ensuring MergeCo's financial sustainability in the context of an unpredictable future of ongoing cash decline.
- While the Proposed Transaction together with the Further Revised Proposed Undertaking does not achieve MergeCo's ongoing financial sustainability, it will enable the Applicants to more efficiently provide continuity of CIT services, reduce the level of further losses being incurred and avoid the inevitable disruption that would result from the exit of one or both Applicants in the short to medium term.
- The Further Revised Proposed Undertaking will provide customers and consumers with stability during the next phase of the transition to a low cash environment as well as greater transparency regarding terms and conditions on which CIT Services are supplied.

8. The Further Revised Proposed Undertaking will commence on the Commencement Date and will operate for a term of 3 years (**Term**).
9. The Further Revised Proposed Undertaking is a short-term transitional measure that responds to concerns raised by stakeholders, including the RBA, that essentially 'holds' the current arrangements of each of the Applicants. However, the Further Revised Proposed Undertaking is inherently incapable of ensuring MergeCo's financial sustainability amidst an unpredictable future of ongoing cash decline. Despite this, the Further Revised Proposed Undertaking will allow MergeCo to meet its objectives by:
  - (a) maintaining current contractual arrangements during the Term, as Contracted Customers will continue to pay their contracted rates for CIT Services until the end of their contracts. After which, and for the remainder of the Term, Prices can only be increased in accordance with the price escalation process set out in the Revised Proposed Undertaking; and
  - (b) enabling flexibility to negotiate, as MergeCo and Customers will have the flexibility to negotiate their own price and non-price terms and conditions, including for optimised levels of service.
10. While such a solution is short-term and transitory (and is incapable of operating on a permanent or longer-term basis), the Term ensures that MergeCo can preserve its current commitments against a backdrop of broader industry change. For the reasons set out in the next section, MergeCo is simply unable to offer the pricing proposal in the Further Revised Proposed Undertaking for longer than three years due to the magnitude of the cumulative financial losses it will sustain. Any further period would

threaten MergeCo's financial sustainability and jeopardise the cash distribution system in an increasingly uncertain industry landscape. Relevantly, the RBA has expressed its support for the Term of the Revised Proposed Undertaking (as compared to the perpetual duration of the previous undertaking submitted by the Applicants on 9 March 2023 (**Initial Undertaking**)) given this provides 'more flexibility for the industry to respond to declining cash use' and 'underscore[s] the importance of government and relevant agencies (including the Reserve Bank) working with the wider cash industry to determine whether any additional policy or regulatory responses may be necessary to maintain adequate access to cash in the future'.<sup>39</sup>

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<sup>39</sup> RBA interested party submission (8 May 2023), p. 1.

### 3. Proposed price escalation under the Further Revised Proposed Undertaking

#### Key points:

- Existing Customers will continue to receive pricing in accordance with their contracts for the duration of those contracts, Similarly, there will be no changes to the mechanism for annual price reviews for customers on Standard Agreements (as defined below).
- For all other customers, price increases at the end of a contract term (and each year thereafter) are capped at a rate of escalation from the contracted prices of CPI + 7.5% p.a. for the Term.
- The price escalation mechanism has been amended to CPI + 7.5% for greater transparency and simplicity.
- Even with the price escalation mechanism of CPI +7.5%p.a., MergeCo is expected to incur continued, although reduced, financial losses and will not breakeven during the 3 year Term of the Further Revised Proposed Undertaking.

11. Under the terms of the Further Revised Proposed Undertaking, Existing Customers will continue to be supplied CIT Services in accordance with their Existing Arrangements, and at their Contracted Prices for the duration of those contracts.
12. For CIT customers on a standard Armaguard Cash Services Agreement or a standard Prosecur Master Services Agreement (**Standard Agreements**), MergeCo has made a commitment not to seek to exercise any right to unilaterally terminate or amend the terms of those existing Standard Agreements for the duration of the Further Revised Proposed Undertaking. This means that annual price increases for these customers will continue to be set in accordance with the terms of the Standard Agreements for at least three years.
13. For other Existing Customers, price increases at the end of a contract term and each year thereafter are capped at a rate of escalation from the contracted prices of CPI +7.5% p.a. for the duration of the Further Revised Proposed Undertaking. Subject to these capped price increases, CIT Services will continue to be supplied in accordance with the terms of the Customer's contract, or if there is no such price, subject to Open Book Pricing.
14. Further, in the event that a Customer is concerned that the price at which it is being offered CIT Services escalates by more than CPI +7.5% annually, they can make a complaint to the Independent Expert. The Independent Expert will decide whether a Customer's pricing complies with the price escalation measure and this decision will be both final and binding.

#### 3.1 Move to simple CPI

15. While the Revised Proposed Undertaking previously included AWE as a component of the price escalation calculation, the Applicants have responded to market feedback that it was unclear how the Submission in response to interested party submissions

previous Inflation formulation would operate and simplified the proposal by now including only CPI, rather than the average of CPI and AWE.

16. The Applicants note however that they consider the use of CPI only is likely to understate increases in MergeCo's cost structure and will therefore further erode its profitability over the period of the Revised Proposed Undertaking. This is for two reasons:
- (a) MergeCo has a high labour cost share relative to businesses in the economy generally. Labour costs are expected to represent around 80% of total costs for MergeCo's business. In contrast, labour costs (including salaries and wages and contractors) represent less than 20% of other companies' costs according to ATO taxation statistics. CPI is a measure of the average movement in consumer prices across the economy. It does not include any wage component directly;<sup>40</sup> and
  - (b) falling cash volumes mean that MergeCo will continue to experience diseconomies of scale. It is highly unlikely to be able to achieve the productivity gains necessary not to be squeezed by the expected increase in wages and the allowed CPI increase in prices over the period of the Revised Proposed Undertaking, based on independent RBA forecasts. Whilst substantial productivity gains are being observed in the payments sector generally, in the provision of CIT Services, productivity is likely to continue to fall. This is because the volume of cash carried by the Applicants is expected to fall (the historical average decline has averaged over 5% per year), yet its commitment to maintain the provision of CIT Services means that its labour inputs will not decline. The importance of economies of scale to productivity is well understood in the economic literature.<sup>41</sup>

### 3.2 Basis for 7.5% real annual price increase

17. Market participants have questioned why it was necessary to increase the maximum allowable annual price increase from a 5% real increase (i.e. above inflation) in the Initial Undertaking to a 7.5% real increase in the Further Revised Proposed Undertaking.
- (a) *Fundamental differences in Further Revised Proposed Undertaking meant that Inflation + 5% increase could not be retained*
18. As noted above, the Further Revised Proposed Undertaking essentially holds Customers' existing arrangements with the Applicants, even after the expiry of a contract for the Term of the Further Revised Proposed Undertaking. In contrast, the Initial Undertaking envisaged that contract terms, including standards of service, would be renegotiated after expiry. This shift may mean that MergeCo

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<sup>40</sup> Taxation statistics 2019–20, Table 4: Companies, Selected items, by industry, 2019–20 income year.

<sup>41</sup> McGee, John. (2014). Economies of Scale. 10.1002/9781118785317.weom120226.

will have higher than otherwise costs, which necessitated an increase in the maximum allowable annual price escalation.

19. In addition, under the Initial Undertaking, maximum allowable price increases were the *higher of* Inflation + 5% or amount that would result from a formula which took into account actual levels of volume decline (**Volume Decline Formula**). The Further Revised Proposed Undertaking removed the Volume Decline Formula to provide greater certainty and simplicity. However, the result of this was increased risk for MergeCo in the event that there are large declines in volume in the future.

20. Given the above fundamental changes, an Inflation + 7.5% maximum annual price increase was proposed in the Further Revised Proposed Undertaking.

(b) Despite this, MergeCo is unable to breakeven during the Term

21. The price escalation of CPI + 7.5% is an appropriate measure to balance the need for a mechanism that responds to both MergeCo's rigid, fixed cost structure and the needs of other stakeholders in the CIT industry.

22. In considering the justification for the proposed price escalation mechanism, the following modelling carried out by a third party economist outlines the annual price increases required for 'off contract' customers for MergeCo to break-even:<sup>42</sup>

**Table 1: Annual price increases to 'off contract' customers for MergeCo to break-even**

% Change in Price		Breakeven in Year				
		1	2	3	4	5
Volume Decline	0%	CPI +200%	CPI +40%	CPI +14%	CPI +6%	CPI +4%
	5%	CPI +217%	CPI +52%	CPI +22%	CPI +12%	CPI +8%
	10%	CPI +235%	CPI +64%	CPI +30%	CPI +18%	CPI +12%

23. **Table** above shows that if volume declines by 5% annually, MergeCo could breakeven in Year 3 with an annual price increase CPI + 22%. In contrast, if volume decline is 10% annually, then a CPI + 30% increase is required for MergeCo to break-even in Year 3.

24. This critically demonstrates that even with a price escalation of CPI + 7.5%, MergeCo will not breakeven by Year 3 (being, the Term of the Further Revised Proposed Undertaking). Rather, the

<sup>42</sup> In this context, the Applicants note that these are the price increases required to break-even, i.e., zero accounting profit and that MergeCo is incurring cumulative losses every year before it breaks even.

greater the decline in cash volume (which is an undetermined amount), the longer it will take for MergeCo to eventually breakeven in the future.

25. Further, the very high CPI + escalation required for MergeCo to breakeven in Year 1 is due to a number of factors including the high percentage of MergeCo's revenue that will still be contracted in Year 1 (a significant proportion of which is not indexed under current contractual terms) and that many of those contracts are loss-making. For completeness, **Table** below summarises the percentage of revenues that is coming off contract each year, broken down by whether the contracts do or do not include annual price indexation terms.

**Table 2: Percentage of revenue and indexation of Customers coming off contract**

	2024	2025	2026	2027	2028	2029	2030
<b>Indexed</b>	15%	4%	11%	11%	4%	8%	10%
<b>Unindexed</b>		3%	16%	8%	0%	10%	1%
<b>Total</b>	15%	7%	27%	19%	4%	18%	11%

26. **Table** and **Table** importantly show that as more Customers come off contract over time, lower price increases are required for MergeCo to breakeven.

(c) Cash outlook and financial performance has further declined

27. Since the Initial Undertaking was developed, there has been further deterioration in:

- (a) the outlook for cash; and
- (b) each Applicants' financial performance.

28. As noted in the RBA's March and April 2023 submissions, results from the RBA's 2022 Consumer Payments Survey show a continued step-down in cash usage over the last three years, with declining use of cash as a means of payment showing no signs of easing.<sup>43</sup>

29. The Applicants have also experienced further deterioration in their financial performance. As noted at 4(e) above, Prosegur is experiencing increasing losses, with the loss for its CIT and ATM businesses for the first quarter of 2023 [Confidential to Prosegur] [REDACTED]. For Armaguard, [Confidential to Armaguard] [REDACTED].

<sup>43</sup> RBA interested party submissions (8 May 2023, 6 April 2023).



[REDACTED]

30. Given the above, the Applicants considered a 7.5% real annual increase for customers on non-standard contracts is necessary to ensure MergeCo's ongoing viability.

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<sup>44</sup> Witness statement of Peter Donald Fox AM, p. 2 [11].

## 4. Further Revised Proposed Undertaking offers commitments that facilitate continued access to CIT infrastructure, and new entry and expansion

### Key points:

- The Proposed Transaction, together with the Further Revised Proposed Undertaking, contains a number of commitments that enhance the ability for Third Party CIT Providers to grow their service offerings, including:
  - providing standard terms upon which MergeCo will supply the Third Party CIT Service to Third Party CIT Providers, which are to be published by MergeCo on its website (as set out in Annexure C to the Revised Proposed Undertaking) and overseen by an Independent Expert;
  - establishing and maintaining a register of skilled personnel who were formerly employed by either Applicant or MergeCo, who can be approached by other Third Party CIT Providers, as well as a commitment to use best endeavours to obtain the relevant employees' consent to be listed in the register;
  - establishing and maintaining a register of any sites of duplicative ACCs intended for Closure on the register 3 months before the Closure of the relevant ACC, with a commitment to use best endeavours to assist an interested purchaser or lessee in obtaining the landlord's consent for transfer of the lease; and
  - establishing and maintaining a register of Surplus Equipment (where there is Surplus Equipment available as a result of rationalisation of the two businesses).

31. The Further Revised Proposed Undertaking offers pro-competitive commitments that enhance the ability for Third Party CIT Providers to grow their CIT service offerings. Such commitments would not otherwise be available absent the Proposed Transaction, and thereby reflect a significant public benefit to Australian businesses and consumers.

### 4.1 Scope of the commitment for third party access to cash centres

32. Authentic Security has raised a concern that the "Third Party CIT Provider Agreement" which forms part of the Further Revised Proposed Undertaking is "unsatisfactory and not commercial" relative to Authentic Security's existing arrangements regarding access to wholesale note pools. By way of clarification:

- (a) Authentic is currently provided access to Westpac's wholesale note pool via a commercial cash supply agreement between Westpac and Authentic; and

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- (b) accordingly:
  - (i) the Third Party CIT Provider Agreement provides terms and conditions in relation to CIT Services which do not include the provisions of wholesale note pool movements, as these services are only required by the Major Banks, and are regulated by the Major Banks' Banknote Distribution Arrangements (**BDA**) with the RBA; and
  - (ii) Authentic does not pay the Applicants for access to the wholesale note pools, with such payments being made by the Major Banks in accordance with their individual wholesale cash supply arrangements with the Applicants. Give these wholesale arrangements are directly between each Major Bank and the Applicants any terms of access with Authentic are a matter for negotiation between Westpac (or any other Major Bank) and Authentic.
  
- 33. In any event, and to address any concerns Authentic may have regarding access to Major Bank Note Pools, the Applicants have included at clause 5.26 in the Revised Proposed Undertaking, a commitment for MergeCo to continue to facilitate arrangements by the Major Banks' requirements regarding the transportation of Wholesale Cash between Major Bank Note Pools by Third Party CIT Providers.
  
- 34. Concerns were also raised in relation to specific terms of the Third Party CIT Provider Agreement, as well as the liability for discrepancies regarding cash counted by MergeCo pursuant to the agreement. The Applicants provide the following responses to each concern raised:
  - (a) the Applicants maintain that clause 2.2 is a standard and necessary provision that is common to its arrangements with customers;
  - (b) the Applicants have amended clause 12.7(a) of the Third Party CIT Provider Agreement to include a 6 month notice period (as opposed to 1 month) before MergeCo can terminate the Third Party CIT Provider Agreement; and
  - (c) with regards to the discrepancy function in clause 13.9 of the Third Party CIT Provider Agreement, this is contingent on the implementation of MergeCo's investigation of cash handling and counting procedures, including cash counting being carried out under CCTV footage. The Applicants submit that these procedures are already sufficiently robust in nature to resolve discrepancies without the need for any escalation beyond the comprehensive investigation process. A summary of the investigation process is set out in Annexure A to this submission.

#### **4.2 The registers of surplus Approved Cash Centres, skilled personnel, and Surplus Equipment (firearms and Cencon locks) facilitate new entry or expansion**

35. The Applicants have already offered:
- (a) a register of skilled personnel who were formerly employed by either Applicant or MergeCo, who can be approached by other Third Party CIT Providers, as well as a commitment to use best endeavours to obtain the relevant employees' consent to be listed in the register; and
  - (b) a register of any sites of duplicative ACCs intended for Closure on the register 3 months before the Closure of the relevant ACC, with a commitment to use best endeavours to assist an interested purchaser or lessee in obtaining the landlord's consent for transfer of the lease.
36. In response to third party concerns, the Applicants have now also proposed a commitment to establish and maintain a register of Surplus Equipment, which includes any surplus firearms or Cencon locks to the extent available following integration of the Applicants' operations.
37. The Applicants submit that the most critical resources required for the provision of CIT services is the secure access to premises and people. The additional commitment, to provide a register of Surplus Equipment, offers even further scope for new or existing providers to acquire resources and equipment for expansion of their CIT service offerings. The Applicants further note that, in relation to any Cencon locks, these are inexpensive, reusable assets that can be acquired from many sources. To the extent that the Surplus Equipment Register does not include any such locks, these can be readily acquired. Authentic Security has further sought a commitment that MergeCo should be required to provide a register of excess vehicles and cash counting equipment.<sup>45</sup> The Applicants have explored all avenues to feasibly meet this requirement but are unable to offer divestment of these assets for the following reasons:
- (a) In relation to any vehicles, the Applicants have significant safety and security concerns regarding any such divestment. Safety and security considerations are paramount to the Applicants and the security features of CIT vehicles are typically unique to each provider, particularly in relation to proprietary hardware and intellectual property. Offering surplus vehicles to other providers would provide access to, and understanding of, the equipment and features that are used by the Applicants to protect the supply of cash, and the safety of the Applicants' employees. Such information is highly confidential, the exposure of which has significant safety and security implications - especially in circumstances of unauthorised access by persons as a means of finding a way to compromise the specific safety systems built into the Applicants' vehicles. For this reason, Armaguard's practice is to destroy vehicles that it can no longer use. It has never once, in its 80 year history, sold a vehicle in light of the

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<sup>45</sup> Authentic Security interested party submission (4 May 2023), p 3.

overarching safety and security concerns that are critical to its people and operations. In any event, a vehicle stripped of these features would not be useful to a CIT provider, who would have to invest significant capital to have the vehicle refitted with its own security equipment.

- (b) In relation to any surplus cash counting equipment, Armaguard's consistent practice is that most surplus cash counting equipment is either traded in with the relevant manufacturer (given most, if not all, are under operating leases) for new equipment, meaning that Armaguard would forego cost benefits in purchasing new equipment from existing manufacturers. Some equipment is also destroyed, the key rationale for which is the focus on safety and security measures, which are core considerations in any decisions made by the business. Similarly, the Applicants have therefore not offered a register of surplus cash counting machines. By way of completeness, the Applicants note that any surplus cash counting equipment will either be at the end of its useful life (thus rendering it useless for any potential purchaser), or will be futile in light of the new proposed NQRS upgrade requirements (which are expected in the next 6 – 12 months), meaning that most cash counting machines that are unequipped to deal with the new NQRS upgrade will be ineffectual.

## 5. Non-price terms

### 5.1 Geographic coverage

**Key points:**

- The Applicants' Further Revised Proposed Undertaking commits to service all postcodes currently serviced by either Applicant.
- In relation to the commitment by the Applicants to service other locations reasonably capable of being serviced, in response to market feedback, the Applicants have made it clear that the availability of established transport distribution networks (e.g. shipping, flights, couriers etc.) and their frequency into the location will be a relevant factor in determining whether or not a location is reasonably capable of being serviced. Any dispute on this issue may be raised with the Independent Expert.

38. The Further Revised Proposed Undertaking included a commitment to service all sites in all postcodes currently serviced by either Prosegur or Armaguard.
39. For all other postcodes, some customer contracts already contain commitments that will continue to govern what is required with respect to the servicing of new sites. For these customers, the effect of clause 5.6 of the Revised Proposed Undertaking is that any such relevant provisions in an existing contract will continue to apply for the term of the Revised Proposed Undertaking.
40. For customers who do not have contractual terms governing new locations, MergeCo has committed to make an offer to provide service where the new location is reasonably capable of being serviced. In response to the market feedback, that it is not clear when a location is reasonably capable of being serviced, the Applicants have amended the proposed terms of clause 5.10 of the Further Revised Proposed Undertaking to make it clear that the availability of established transport distribution networks (e.g. shipping, flights, couriers etc.) and their frequency into the location will be a relevant factor in determining whether or not a location is reasonably capable of being serviced.
41. Whether a location is reasonably capable of being serviced is ultimately a matter that may be considered by the Independent Expert, in accordance with clause 6.1(a)(iii) or 6.1 (b)(iv) of the Further Revised Proposed Undertaking, with the Independent Expert's decision being final and binding.<sup>46</sup>

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<sup>46</sup> Revised remedy proposal cl 6.11.  
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## 5.2 Customers will receive current or improved levels of service

### Key points:

- Clause 5.6 requires that MergeCo continues to provide CIT Services for the remainder of the duration of the Further Revised Proposed Undertaking in accordance a customer's Existing Arrangements.
- Absent the proposed transaction, the evidence shows that there is a continuing degradation in service levels by each of the Applicants.
- With the synergies that will be achieved with the Proposed Transaction, MergeCo will be in a better financial position to achieve its current KPIs and to invest in service improvements / optimisation measures.
- MergeCo has an incentive to improve service levels to compete against other payment methods and ensure that cash remains a viable method of payment to Australian businesses and consumers.

42. Some third parties asserted that the Further Revised Proposed Undertaking provides insufficient detail as to how MergeCo will not only maintain, but improve, service levels.<sup>47</sup> In response, the Applicants submit that:

- (a) The Further Revised Proposed Undertaking provides adequate protection of service levels:
- (i) Clause 5.6 requires that MergeCo continues to provide CIT Services for the remainder of the duration of the Revised Proposed Undertaking in accordance a customer's Existing Arrangements. The effect of this is that customers will continue to be supplied CIT Services in accordance with their Existing Arrangements.
  - (ii) For New Customers, under clause 5.7, CIT services will be provided on terms no less favourable than the terms and conditions of the standard Armaguard Cash Services Agreement.
  - (iii) Clause 6 provides a mechanism for both Existing Customers and New Customers to raise a dispute with respect to whether the obligations set out in clauses 5.6 and 5.7 are being complied with.
- (b) The evidence has shown that, absent the Proposed Transaction and the Further Revised Proposed Undertaking, there is likely to be a continuing degradation in service levels by each

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<sup>47</sup> Coles Group Limited interested party submission (8 May 2023), page 2; Multi-store retail chain submission (9 May 2023), pp 2-3; Woolworths Group Limited interested party submission (8 May 2023), page 6.

of the Applicants. Indeed, as a result of significant cost cutting measures, reductions in service levels, including an increased number of missed deliveries are already being observed:

(i) **[Confidential to Prosegur]** [REDACTED]  
[REDACTED]  
[REDACTED]<sup>48</sup>

(ii) **[Confidential to Prosegur]** [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]<sup>50</sup> and

(iii) **[Confidential to Armaguard]** [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]<sup>52</sup>

(c) With the synergies that will be achieved from the Proposed Transaction, MergeCo will be in a better financial position to achieve its current customer KPIs and to invest in service improvements / optimisation measures.

(i) The Proposed Transaction will place MergeCo on a more sustainable financial footing than would exist absent the Proposed Transaction.

(ii) The Applicants will also be able to rationalise overlapping infrastructure and improve routing and the efficiency of services, which will enable better KPI performance with respect to the provision of CIT Services.

(d) MergeCo has an incentive to improve the provision of CIT Services to compete against other payment methods and ensure that cash remains a viable method of payment to Australian businesses and consumers. In particular:

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<sup>48</sup> Document ID PAH.001.008.1016, p 4.

<sup>49</sup> See Submission to the ACCC - Applicants' Response to Statement of Preliminary Views, 9 March 2023, section 2.3; Witness statement of Michael Douglas Shipton [24].

<sup>50</sup> See Submission to the ACCC - Applicants' Response to Statement of Preliminary Views, 9 March 2023, section 2.3; Witness statement of Michael Douglas Shipton [66].

<sup>51</sup> Annexure 39.1 of the Application for Merger Authorisation, 26 September 2022, Witness statement of Catherine Lee Canham, [14].

<sup>52</sup> Supplementary witness statement of Catherine Lee Canham, [16].



- (i) Surveys conducted by the RBA indicate that cash acceptance by retailers with a physical presence fell to 94% in June 2022, from 99% in February 2020, meaning that 6% of retailers are already refusing to accept cash;<sup>53</sup>
- (ii) In its submission of 6 April 2023, the RBA states that there has been a "further, significant step-down in cash usage compared to three years ago" in the latest Consumer Payment Survey conducted in late 2022;<sup>54</sup>
- (iii) Recently, certain retailers have been providing incentives to consumers to make payments using QR payment systems;<sup>55</sup>
- (iv) Similarly, banks have also continued to close branches at current CIT prices, making it more difficult for customers to access cash;<sup>56</sup> and
- (v) the NSW Government recently announced plans to make all poker machines in NSW cashless by 2028 by introducing mandatory cashless gaming technology.<sup>57</sup>

43. The continued decline in the use of cash as a payment method in favour of other payment methods provides a significant incentive for MergeCo to ensure that it identifies and implements innovative methods for delivering cash to customers, which improve the experience of cash as a service, but also keep the cost of cash at a level that competes with other payment methods.<sup>58</sup>

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<sup>53</sup> RBA, Payments System Board Annual Report 2022, 'The Evolving Retail Payments Landscape', available at: <https://www.rba.gov.au/publications/annual-reports/psb/2022/the-evolving-retail-paymentslandscape.html#:~:text=For%20example%2C%20the%20Bank's%20survey,23%20per%20cent%20in%202020.>

<sup>54</sup> RBA interested party submission (6 April 2023) p 1.

<sup>55</sup> Woolworths recently offered loyalty program members bonus points to use its QR payments system 'Everyday Pay'; and A number of restaurants are no providing cashback incentives for consumers making QR payments through Shopback Pay – see submission to the ACCC- of the Applicants' response to Statement of Preliminary Views, 9 March 2023, section 4.3.

<sup>56</sup> In October 2022, Westpac announced the closure of 23 branches, taking the total number of closures to 95 in the 4 months leading up to the announcement. Further, ANZ recently announced plans to end the handling of cash by branch employees at some branches. See submission to the ACCC - Applicants' response to Statement of Preliminary Views, 9 March 2023, section 4.3. See also cover letter to the Applicants' revised proposed undertaking, 1 May 2023, p 2.

<sup>57</sup> NSW Government, 'Pokies to be cashless in 2028 under historic changes' (6 February 2023), available at: <https://www.nsw.gov.au/media-releases/pokies-to-be-cashless-2028-under-historic-changes>.

<sup>58</sup> See for example the evidence from Matthew Sykes in his statement dated 23 September 2023 at [151](a), where he states that cash competes against other payment methods, merchant fees continue to decline and merchants are able to pass those fees directly to customers, and that cash is generally seen as carrying a higher administrative cost for retailers due to the needs around controls for cash handling, reconciliation, and other processing services.

### 5.3 MergeCo's subcontractors will be incentivised to maintain or improve their service quality

**Key points:**

- MergeCo will be required to comply with Existing Arrangements regardless of whether it chooses to subcontract the service or not. Therefore, MergeCo will be incentivised to ensure that subcontractors are meeting the service requirements under those customer contracts to ensure that MergeCo is not in breach.
- In most regions, there are multiple subcontractors capable of performing the service. The threat of switching supply to an alternate subcontractor will incentivise an existing subcontractor to maintain / improve service quality.

44. Coles Group Limited raised a concern that MergeCo's subcontractors' costs / service quality may deteriorate if they are only engaged by a single supplier of CIT Services.<sup>59</sup> This concern is unfounded. MergeCo's subcontractors will continue to be incentivised to improve costs and maintain or improve their service quality:

- (a) MergeCo is incentivised to ensure that third-party subcontractors meet the minimum service levels imposed by customers:
  - (i) Under the Further Revised Proposed Undertaking, MergeCo has provided a commitment to continue to supply Existing Customers with CIT services in accordance with their Existing Arrangements.
  - (ii) These services must be met regardless of whether the Applicants choose to subcontract the work under the contract to a third-party subcontractor, in which case, those service requirements may be reflected in the arrangement with that subcontractor.
  - (iii) Therefore, MergeCo will be incentivised to ensure that its subcontractors are meeting the service requirements under those customer contracts to ensure that MergeCo is not in breach of its contract and subject to penalties.
- (b) The third-party subcontractors will continue to be incentivised to ensure that they continue to meet minimum service requirements:
  - (i) There is no rational reason why a subcontractor who supplies one CIT provider rather than two (with the same volume requirements as would be required if there were two providers) is likely to offer that CIT provider worse terms of supply.

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<sup>59</sup> Coles Group Limited interested party submission (8 May 2023), p 2.

- (ii) With or without the Proposed Transaction, in most regions, there is more than one cash transportation subcontractor capable of performing the CIT Services. The threat of switching supply to an alternate subcontractor provides a strong incentive for subcontractors to maintain and / or improve service quality.

#### **5.4 MergeCo will be in a better position to be able to continue to invest in the maintenance and improvement of safety standards**

**Key points:**

- MergeCo will be in a better financial position to be able to continue to invest in maintaining and improving safety standards.
- The current situation is not sustainable, and the Applicants are concerned that any further cost cutting measures will even further inhibit their ability to function safely and effectively meet customers' service obligations and would likely put the health and safety of their employees at risk, to an untenable extent.
- The combination of resources may allow MergeCo to retire old, faulty or at-risk equipment, as well as invest in new equipment.
- The Applicants are often required under contract to maintain service and safety standards, including in relation to vehicle, staffing and firearm requirements. The Revised Proposed Undertaking provides a public benefit by ensuring the continuance of these contracts and the maintenance of those safety standards and requirements.

45. The Transport Workers' Union has emphasised the importance of safety standards for its members, whether with or without the Proposed Transaction.<sup>60</sup> The Applicants note that safety and security is an integral part of the cost base. In particular, each of the Applicants have obligations as a 'PCBU' (person conducting a business or undertaking) under the *Work Health and Safety Act 2011* (Cth), and this will not change with or without the Proposed Transaction. The Applicants will continue to owe their employees and the public a duty of care in light of the risk profile of their sensitive operation, and will not derogate from their existing standards in relation to people and safety.
46. The Applicants have a strong commitment to safety and security of their employees. For example, Armaguard measures safety performance by regular reporting of key indicators, including:
- (a) Lost Time Injury Frequency Rate (LTIFR);

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<sup>60</sup> Transport Workers' Union interested party submission (8 May 2023), pp 1-2.

- (b) Medically Treated Injuries (MTIs);
- (c) Motor Vehicle Incidents (MVIS); and
- (d) Total Recordable Injury Frequency Rate (TRFIR).

47. The Applicants submit that, under the Further Revised Proposed Undertaking, MergeCo will be in a better position to invest in the maintenance and improvement of safety standards:

(a) The current industry structure is not sustainable with the continued cost cutting measures creating significant risk of substantial service degradation and to the safety of the employees of the Applicants. For example, as a result of the significant cost cutting measures:

(i) **[Confidential to Prosegur]** [REDACTED]  
[REDACTED]  
[REDACTED]

(ii) Prosegur's employees are performing multiple roles within the business, and Prosegur has chosen not to replace some key staff in an effort to reduce costs,<sup>62</sup> which has exerted significant strain on remaining employees.

(iii) **[Confidential to Prosegur]** [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

(iv) **[Confidential to Prosegur]** [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

48. The Applicants are concerned that any further cost cutting measures will even further inhibit their ability to function safely and effectively to meet customers' service obligations and would likely put the health and safety of their employees at risk, to an untenable extent.

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<sup>61</sup> Document ID PAH.001.008.1016, p 4.  
<sup>62</sup> Witness statement of Michael Douglas Shipton [19]-[20].  
<sup>63</sup> Witness statement of Michael Douglas Shipton [66(a)].  
<sup>64</sup> Witness statement of Michael Douglas Shipton [66(a)].

49. The Proposed Transaction will ensure that MergeCo is placed in a better financial position to be able to invest in the maintenance and improvement of industry safety standards as the Proposed Transaction will place MergeCo on more sustainable financial footing than would exist absent the Proposed Transaction.
50. As a result of its improved financial position, MergeCo will:
- (a) be able to continue to meet the current CIT industry standards for safety. The Applicants each operate their businesses in compliance with the Australian Security Industry Associated Limited's (**ASIAL**) CIT Code of Conduct,<sup>65</sup> which sets out the minimum standards for operators in the CIT industry. MergeCo will be better placed to ensure continued compliance with the safety standards required under this code;
  - (b) be able to ensure compliance with contractual obligations with respect to safety. The Applicants are required under contract to maintain certain service levels with respect to safety, including in relation to vehicle types, staffing and firearm requirements. MergeCo will be better placed to ensure the contractual service levels with respect to safety are met;
  - (c) have a greater ability to retire old, faulty or at-risk equipment, as well as invest in new equipment - a positive financial outlook is required to improve the business' relative performance whilst achieving an adequate rate of return on any new investment; and
  - (d) be able to better facilitate calls by the Trade Workers' Union for increases in minimum standards of safety.

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<sup>65</sup> ASIAL CIT Code of Conduct, available at: [https://asial.com.au/Web/web/Advice-Services/Standards-and-Codes/CIT-Code-of-Practice.aspx#:~:text=Cash%2Din%2DTransit%20Code%20of,%2Darmoured%20vehicle\(s\).](https://asial.com.au/Web/web/Advice-Services/Standards-and-Codes/CIT-Code-of-Practice.aspx#:~:text=Cash%2Din%2DTransit%20Code%20of,%2Darmoured%20vehicle(s).)

## 5.5 The merged entity will have both the ability and incentive to increase efficiency, investment and innovation

### Key points:

- MergeCo has a greater ability for efficiency improvements, investment, and innovation:
  - the Proposed Transaction will allow the combination of overlapping infrastructure and operations, improving the efficiency of CIT Services;
  - the Proposed Transaction will create a more sustainable entity that has the means to continue to invest and innovate; and
  - MergeCo will have the ability to leverage off the expertise of each Applicant, providing access to Prosegur's global market leading CIT products and innovations and Armaguard's Australian logistics expertise.
- MergeCo will also have an incentive to improve efficiency, increase investment and continue to innovate:
  - MergeCo will need to continue to improve efficiency to become profitable:
    - The Further Revised Proposed Undertaking is not expected to return MergeCo to profitability within the next 3 years, and instead limits the revenue generating opportunities available to MergeCo by placing a cap on price increases; and
    - Combined with the decline in the use of cash, which is reducing the available sources of revenue in the industry, there is a continued need for MergeCo to looking for efficiency improvements to ensure profitability.
  - MergeCo competes against payment methods and has the incentive to continue to invest and innovate to ensure that cash remains a viable method of payment to Australian businesses and consumers.

51. Two third parties claim that the Further Revised Proposed Undertaking did not adequately encourage efficiency nor incentivise MergeCo to invest and / or innovate in the provision of CIT Services.<sup>66</sup> This claim is not supported by the evidence or the fundamental economics of the Proposed Transaction. The Applicants submit that, under the Further Revised Proposed Undertaking, MergeCo will have both the ability and incentive to increase efficiency, investment and innovation:

- (a) MergeCo will have a greater ability for efficiency improvements, greater investment, and for innovation:

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<sup>66</sup> Coles Group Limited interested party submission (8 May 2023), p 3; Multi-store retail chain interested party submission (9 May 2023), pp 2-3.

- (i) The Proposed Transaction will place MergeCo on more sustainable financial footing than would exist absent the Proposed Transaction.
- (ii) The Proposed Transaction will also allow for the deduplication of overlapping infrastructure and operations, reducing business costs and improving the efficiency of MergeCo's CIT operations.
- (iii) An entity with improved financial performance will have a greater ability to make investments and innovate. The Proposed Transaction also ensures the continued presence of the expertise of both Applicants within the industry. For example:
  - (A) Prosegur Group is one of the leading CIT providers in the world. Globally, the Prosegur Group invests heavily in, and is at the forefront of, the development of new products and technologies in the CIT industry and in related and new businesses. Prosegur considers that its most valuable expertise is in automation, including its Cash Today smart safe product. Prosegur has been making significant investments in these products globally since 2007, with such investments and product developments having been able to be leveraged by the Australian business.<sup>67</sup>
  - (B) Armaguard is owned by a significant logistics transport company, Linfox. Armaguard's infrastructure, investment and know-how in logistics provides the necessary security framework, systems, and coverage to safely and accurately manage, authenticate, circulate and withdraw Australian currency serving wholesale and retail cash users.<sup>68</sup>

The Applicants therefore consider that, absent the Proposed Transaction, the expertise of either one or both of the Applicants would be lost. In particular, the potential for investment in world leading CIT technology and innovation by Prosegur Group would be lost, and Australia is unlikely to receive the benefits of new and emerging technologies that are being developed and rolled out in CIT industries in other jurisdictions around the world.

- (b) MergeCo will also have the incentive to improve efficiency, increase investment and continue to innovate, noting that:

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<sup>67</sup> Submission to the ACCC -Applicants' response to Statement of Preliminary Views, 8 March 2023, section 5.4.

<sup>68</sup> Submission to the ACCC - Applicants' response to Statement of Preliminary Views, 8 March 2023, section 5.4.

- (i) The Further Revised Proposed Undertaking will not return MergeCo to profitability within the next three years and so MergeCo will be incentivised to take efficiency measures to improve profitability.<sup>69</sup>
- (ii) There will also be limited revenue growth opportunities for MergeCo in the next three years, because:
  - (A) MergeCo has committed to maintain the terms of current contracts with Existing Customers, notwithstanding that many of those contracts are currently loss making. MergeCo will be constrained in its ability to increase the prices other than in accordance with the terms of these contracts.
  - (B) For contracts that reach the end of their term, the Revised Proposed Undertaking places a cap on price increases. As shown in paragraph 16 and **Table** above, this cap will limit MergeCo's ability to return to profitability within the next three years.
  - (C) This limitation on the ability to grow revenues, when combined with the decline in the use of cash, is reducing the available sources of revenue in the industry. There is a continued need for MergeCo to continue to look for efficiency improvements to ensure that it can improve its profitability.
  - (D) MergeCo competes against other payment methods and has the incentive to continue to invest and innovate to ensure that cash remains a viable method of payment to Australian businesses and consumers.

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<sup>69</sup> See paragraph 16 and **Table**.



## 6. Concerns raised by Independent ATM Deployers

### Key points:

- The Applicants fundamentally disagree with the vertical foreclosure concerns raised by NCR / Cardtronics and Next Payments and submit that any perceived vertical foreclosure concerns are not consistent with the facts or economics that demonstrate there would be no incentive to foreclose.
- The Applicants reiterate the submissions set out at section 3.5 of the Applicants' response to the Statement of Preliminary Views that it would be irrational to engage in vertical foreclosure strategies in circumstances where ATM deployers are top sources of revenue.
- Notwithstanding this, the Applicants have offered a commitment to respond to any concerns of these market participants by committing to:
  - provide ATM Specific Services to Independent ATM Deployers subject to the provisions of the Revised Proposed Undertaking;
  - supply ATM Specific Services to Independent ATM Deployers and the Internal Customer in manner that does not unreasonably discriminate in favour of the Internal Customer.

### 6.1 There are no vertical foreclosure concerns in downstream ATM services

52. The Applicants refer to the concerns raised in the submissions of NCR Australia Group (**NCR / Cardtronics**) and Next Payments (**Next**),<sup>70</sup> that:

- (a) the Further Revised Proposed Undertaking does not address the vertical foreclosure concerns;
- (b) the only way to address the vertical foreclosure concerns is through a structural remedy in the form of divestment of the Applicants' ATM businesses or a market share cap; and
- (c) the counterfactual against which to assess the Proposed Transaction is not disorderly exit by one of the Applicants.<sup>71</sup>

53. The Applicants disagree with each of these propositions. First and foremost, the Applicants refer to the following key facts:

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<sup>70</sup> NCR Australia Group interested party submission (8 May 2023) p 2; Next Payments interested party submission (8 May 2023) p 4.

<sup>71</sup> The Applicants note that Streamcorp shared the concerns ATM deployers raised "due to the possibility of vertical foreclosure" but that the further detail substantiating this position is wholly redacted and therefore cannot be responded to. Submission in response to interested party submissions

- (a) NCR / Cardtronics is itself the clear number one provider of ATM deployment services with an independent network that far exceeds both the Applicants' footprints, while Next also has a network that is larger than the Applicants';
  - (b) in relation to the Applicants' ATM assets, the ACCC is of the preliminary view that the Proposed Transaction is unlikely to raise significant horizontal competition concerns in relation to ATM services and ATM maintenance services – the Applicants agree.<sup>72</sup> As submitted in the Application, the Proposed Transaction will not lead to any substantial lessening of competition in respect of ATM services due to the dominance of NCR / Cardtronics, as well as Next, and strong competitive constraint provided by the number of alternative cash access points (particularly where fee free), and other market participants (including banks and other independent ATM deployers).<sup>73</sup> In relation to ATM maintenance services, given Prosegur's de minimis presence (predominantly also only for first line maintenance), larger competing suppliers would be likely to constrain the merged entity;<sup>74</sup> and
  - (c) as noted at 1 above, the Applicants have confidentially submitted a significant amount of evidence regarding the counterfactual without the Proposed Transaction, which is contrary to NCR/Cardtronics and Next's assertions that the Applicants 'have provided insufficient evidence' in this regard.<sup>75</sup>
54. Notwithstanding the above, and to address the concerns raised in third party submissions, the Applicants have to the following commitments:
- (a) MergeCo will provide ATM Specific Services to Independent ATM Deployers subject to the provisions of the Further Revised Proposed Undertaking (i.e., regarding the provision of Price and Non-price terms); and
  - (b) MergeCo will supply ATM Specific Services to Independent ATM Deployers and its Internal Customer in a manner that does not unreasonably discriminate in favour of the Internal Customer.
55. The terms of these two commitments mean that, as 'Existing Customers', both NCR / Cardtronics and Next will:
- (a) continue to receive their current Contracted Price and ATM Specific Services in accordance with their Existing Arrangements;

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<sup>72</sup> ACCC SOPV [3.135], [3.139]- [3.141].

<sup>73</sup> ACCC SOPV [3.142]; Application for Merger Authorisation, 26 September 2022, pp 112, 175, 179.

<sup>74</sup> See ACCC SOPV [3.143] – [3.145].

<sup>75</sup> See, e.g., NCR Australia Group interested party submission (19 January 2023), p. 2

- (b) if their current contract comes to the end of its term, they will continue to be supplied with the ATM Specific Services at the same Price as their previous contract, except that the Price can be escalated by no more than CPI + 7.5%, and they will continue to be supplied with the ATM Specific Services in accordance with their Existing Arrangements;
- (c) NCR / Cardtronics and Next (as well as any other Independent ATM Deployers) will be provided ATM Specific Services in a manner that does not unreasonably discriminate in favour of the Internal Customer; and
- (d) the Price and Non-Price terms and conditions to the Internal Customer must also be provided in a manner that does not unreasonably discriminate in favour of the Internal Customer

56. Further, the Applicants reiterate their previous submission that Independent ATM Deployers are an important source of CIT revenue and given the persistent decline in demand for CIT Services, it would be irrational for MergeCo to discriminate against Independent ATM Deployers (such as by way of vertical foreclosure) in relation to the supply of CIT Services.<sup>76</sup>

## 6.2 ATM maintenance

### Key points:

- There is no meaningful change to the competitive landscape as Prosegur does not currently have the capability to offer national ATM maintenance services.
- Diebold Nixdorf and NCR will be viable alternative providers of national ATM maintenance services following the Proposed Transaction.
- Other providers could also build the capability to offer national ATM maintenance services.

57. The Commonwealth Bank of Australia (**CBA**) has raised a concern about ATM maintenance services not being covered by the Revised Proposed Undertaking.<sup>77</sup> In its 4 April 2023 submission, CBA stated that it is "particularly exposed to price increases in the supply of ATM Maintenance Services, as no other supplier is able to provide maintenance services to CBA's Diebold Nixdorf ATM network on a national basis".<sup>78</sup>

58. The Applicants understand that Diebold Nixdorf ATMs include:

<sup>76</sup> Submission to the ACCC – Response to Statement of Preliminary Views, 9 March 2023, p 47 [109].

<sup>77</sup> The Commonwealth Bank of Australia interested party submission (9 May 2023), p 2.

<sup>78</sup> The Commonwealth Bank of Australia interested party submission (4 April 2023), p 2.

- (a) Wincor ATMs (being the legacy ATMs of Wincor Nixdorf prior to the combination of Wincor Nixdorf and Diebold); and
  - (b) Diebold Nixdorf ATMs, being the new ATMs of the combined Diebold Nixdorf entity.
59. The Applicants understand that CBA's ATM fleet currently consists of mainly Wincor ATMs. However, CBA is moving its ATM fleet to the new Diebold Nixdorf ATMs.
60. Prosegur does not currently provide second line ATM maintenance (**SLM**) services over any Wincor ATMs. The only Diebold Nixdorf ATMs that Prosegur currently performs SLM services for a limited number of ATMs most of which form part of Prosegur's own ATM fleet. Indeed, as previously indicated, Prosegur performs only very limited SLM services to third parties.<sup>79</sup>
61. Absent the Proposed Transaction, for Prosegur to compete to supply SLM services to CBA, it would need to expand its capability significantly before it could provide CBA with ATM maintenance services on a national basis. Around 8-9 months could be required to reach business as usual operations. Specifically, Prosegur would need to:
- (a) expand its second line maintenance workforce by around 200 - 300%;
  - (b) purchase sufficient maintenance vehicles to cover all national locations required by CBA;
  - (c) receive training from either Diebold Nixdorf or from the global Prosegur business on how to perform SLM for Wincor ATMs;
  - (d) acquire a parts inventory for each device type in the CBA fleet;
  - (e) in some regions train subcontractors and ensure they have a basic parts inventory; and
  - (f) onboard each CBA ATM into its monitoring system and team (which would include adding a software agent to each ATM).
62. In light of the significant investment that would be required, based on current returns, it is not commercially likely that Prosegur would be prepared to make the investments required to supply CBA with SLM services.
63. The Applicants consider that Diebold Nixdorf and NCR are well placed to provide national ATM maintenance services for CBA. With Diebold Nixdorf already having access to parts and technical training resources for its own ATMs, it would only need additional technicians and vehicles to offer a national ATM maintenance service to a customer like CBA. NCR would also be able to offer national

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<sup>79</sup> Annexure 40.1 of Application for Merger Authorisation, 26 September 2022, Witness statement of Ennio Alberici (23 August 2022), [26]; Annexure 43.1 of Application for Merger Authorisation, 26 September 2022, Witness statement of Matthew Stephen Sykes (23 September 2022), [57].

ATM maintenance services on Diebold Nixdorf ATMs by sourcing parts for Diebold Nixdorf ATMs, which the Applicants consider should be possible. NCR already has a scaled technician workforce and the vehicles and monitoring capability necessary to offer national ATM maintenance services.

64. Other suppliers with technicians or with experience managing distributed technology fleets would also be well placed to commence offering national ATM maintenance services if training on Diebold Nixdorf ATMs could be provided in the same way as Prosegur would need. No formal qualifications or licensing is required.
65. Given its size and incentives, CBA would be able to support Diebold Nixdorf, NCR or another supplier to commence offering it ATM maintenance services.

## 7. Access to Independent Expert in shorter timeframe

**Key points:**

- The proposed timeframe for accessing the Independent Expert was in line with the timeframe for accessing external dispute resolution provided in the standard Armaguard Master Services Agreement and was more expedited than the timeframe provided in the standard Prosegur Master Services Agreement.
- To provide customers with greater confidence in the revised remedy proposal, the Applicants have proposed a shortening of the timeframe to access the Independent Expert to 25 Business Days.

66. The proposed timeframe for accessing the Independent Expert is in line with the timeframe for accessing external dispute resolution under the standard Armaguard Cash Services Agreement.
67. However, to provide customers with greater confidence, the Applicants have revised the timeframe for accessing the Independent Expert from 45 days to 25 Business Days.

## 8. The Proposed Transaction will not create a greater risk of service disruptions for customers

### Key points:

- The existence of both providers, operating independently, is not necessary to ensure the maintenance of contingency plans, nor to limit the impact of any disruption:
  - each Applicants' current business continuity plans do not contemplate use of the other Applicant as a contingency measure, but instead include a range of other contingency measures; and
  - the Applicants have historically implemented a range of other measures, including servicing regions from another nearby cash centre, moving trucks or staff interstate to cover impacted regions, or flying cash into or out of certain locations.
- MergeCo will have greater financial means to enact contingency plans – e.g., flying cash to other cash centres, hiring additional staff, moving staff or equipment between cash centres etc.
- MergeCo will also have a greater ability to invest in its IT systems and other security measures to prevent disruptions.
- In the event of a disruption, MergeCo would still have a contractual obligation to ensure delivery of the service (and risk potential penalties from the customer for non-delivery of the service). MergeCo will be in a better financial position to respond and reduce service disruptions to customers.

68. Coles Group Limited asserts that customer operations could be impacted by supply chain disruptions to MergeCo (e.g., strikes, servicing delays, etc) and have no alternative CIT service provider with a national presence to engage.<sup>80</sup> The Applicants have already addressed this issue in the response to the ACCC's statement of preliminary views,<sup>81</sup> but reiterate their view that there will be no change to the impact of disruptions to customer operations due to service outages:

- (a) The existence of both providers, operating independently, is not necessary to ensure the maintenance of contingency plans, nor to limit the impact of any disruption. Indeed, currently the Applicants do not consider the other as part of their contingency plans. Subcontractors and couriers/soft skins will continue to be the most suitable alternatives in the event of supply chain disruptions. For example:
- (i) Prosegur's current business continuity plans do not contemplate use of Armaguard as a contingency measure during times of crisis. Instead, Prosegur typically utilises a range of other measures that will also be available to MergeCo, including

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<sup>80</sup> Coles Group Limited interested party submission (8 May 2023) p 2.

<sup>81</sup> Submission to the ACCC - Applicants' Response to Statement of Preliminary Views, 9 March 2023, section 5.6. Submission in response to interested party submissions

[Confidential to Prosegur] [REDACTED]

[REDACTED]

(ii) Similarly for Armaguard, [Confidential to Armaguard] [REDACTED]

- (b) Although the Applicants agree that contingency measures can be costly, the Proposed Transaction will in fact put MergeCo in a better financial position to respond to disruptions as compared to the weakened financial state of each of the Applicants' individual businesses operating on a standalone basis. The improved financial position may also provide MergeCo with a greater ability to invest in its IT systems and other security measures to prevent future disruptions.
- (c) MergeCo has contractual obligations with its customers to deliver CIT services to minimum standards. Therefore, in the event of a disruption, MergeCo would still have a contractual obligation to ensure delivery of the service (and, in some cases, would even be required to compensate the customer for any loss of service during a disruption). As a result of the Proposed Transaction, MergeCo will be in a better financial position to respond to any disruptions and ensure minimal service disruptions to customers.



## 9. Other suggestions raised in market feedback

#	Suggestion	Response
1.	<b>Release of exclusivity arrangements</b>	<p>Authentic Security submitted that the Applicants' existing customers should be effectively released from any exclusivity arrangements they currently have with the Applicants due to the change in the competitive environment for CIT services post-merger.<sup>82</sup></p> <p>The Applicants do not consider it necessary nor appropriate to release existing exclusivity arrangements, and submit that:</p> <ul style="list-style-type: none"><li>There is a significant volume of work in the industry that is not currently bound up by exclusivity arrangements. For example, the majority of Prosegur's existing top 20 customers do not have exclusivity clauses in Existing Arrangements for the supply of CIT Services. For example:<ul style="list-style-type: none"><li><b>[Confidential to Prosegur]</b> [REDACTED]</li><li><b>[Confidential to Armaguard]</b> [REDACTED]</li><li>In addition, <b>[Confidential to Armaguard]</b> [REDACTED]</li></ul></li><li>The pricing under those contracts for CIT services that do contain exclusivity clauses is linked to, or based off, the forecasted volumes for each customer. Therefore, if a customer was released from their exclusive supply arrangements and chose to move</li></ul>

<sup>82</sup> Authentic Security interested party submission (4 May 2023), p 4.

<sup>83</sup> **[Confidential to Prosegur]** [REDACTED]

Submission in response to interested party submissions

# Suggestion	Response
	<p>a significant volume of work to another CIT provider, the Applicants would need to renegotiate prices with those customers to ensure the viability of the service to that customer, and more broadly.</p>
<p><b>2. Divestment of gaming clearance services contracts</b></p>	<p>Authentic Security submitted that gaming clearance services performed at hospitality and club venues should be deemed to be non-core CIT services and be excluded from the proposed MergeCo service offering.<sup>84</sup> Authentic then further submitted that any existing contracts the Applicants have with customers to provide these services be divested to Authentic.<sup>85</sup> In response:</p> <ul style="list-style-type: none"> <li>▪ The objective of competition law is to protect the competitive process, not individual competitors.<sup>86</sup> This is an opportunistic attempt to gain customers and acquire contracts. Authentic is already considered a key competitor for these customers and can compete for their business should these customers prefer. However, to suggest that customers should be given no choice but to contract with it would be likely to result in increased prices, and reduced levels of service and innovation.</li> <li>▪ By asking MergeCo to exclude gaming clearing services from its CIT service offerings in the Further Revised Proposed Undertaking, it appears that Authentic is either: <ul style="list-style-type: none"> <li>▪ proposing that MergeCo provide gaming clearing services during the term of the Further Revised Proposed Undertaking in a manner that is not governed by the terms of the Revised Proposed Undertaking which, for new customers or any customer who chooses to return to MergeCo following the proposed divestment, would forfeit the ability for those customers to receive any protections afforded under the Further Revised Proposed Undertaking; or</li> <li>▪ proposing that MergeCo be precluded from providing these services altogether during the term of the Further Revised Proposed Undertaking which, if agreed to, is a proposal that would raise significant concerns regarding Authentic's and MergeCo's compliance with Australian competition laws as such an arrangement could be considered a potential division of customers between competitors.</li> </ul> </li> </ul>

<sup>84</sup> Authentic Security interested party submission (4 May 2023), p 4.

<sup>85</sup> Authentic Security interested party submission (4 May 2023), p 4.

<sup>86</sup> ACCC v Pacific National Pty Ltd (No 2) [2019] FCA 669 [1261]; ACCC v Cement Australia Pty Ltd (2013) 310 ALR 165, 750; Telstra Corp Ltd v Australian Competition Tribunal (2009) 108 ALD 232, 266.

#	Suggestion	Response
		<ul style="list-style-type: none"> <li>▪ The Applicants do not agree that gaming and clearance CIT services are "non-core" CIT services, and submit that they should be included in the proposed CIT service offering. Such services have formed a central, long-term source of revenue for Prosegur and there is no clear point of differentiation between gaming and clearance services and other CIT Services offered by Prosegur.</li> </ul>
3.	<p><b>Ability to unilaterally impose additional or varied conditions should inadequacies be identified in the future</b></p>	<p>Two third parties raised concerns regarding oversight of the Further Revised Proposed Undertaking.<sup>87</sup> In particular, it was submitted that the ACCC should have the ability to unilaterally impose additional or varied conditions should inadequacies be identified in the future. This could follow from an independent periodic report into service levels. In response, the Applicants submit that:</p> <ul style="list-style-type: none"> <li>▪ The Further Revised Proposed Undertaking already contains mechanisms that enables the Independent Auditor to impose additional or varied conditions should inadequacies be identified with the Further Revised Proposed Undertaking: <ul style="list-style-type: none"> <li>▪ under clause 7.12, the Independent Auditor is able to make recommendations to improve MergeCo's compliance with the undertaking;</li> <li>▪ under clause 7.13, the Independent Auditor's response, including any recommendations, must be provided to the ACCC;</li> <li>▪ under clause 7.14, MergeCo must implement the recommendations of the Independent Auditor; and</li> <li>▪ under clause 7.15, the ACCC can make, and MergeCo must comply with, any directions in relation to the audit report.</li> </ul> </li> <li>▪ Including provisions to allow for an additional form of ACCC oversight would add unnecessary complexity and uncertainty to the Further Revised Proposed Undertaking.</li> </ul>

<sup>87</sup> Multi-store retail chain interested party submission (9 May 2023), p 4; Woolworths Group Limited interested party submission (8 May 2023), p 6.

#	Suggestion	Response
4.	<p><b>Collective bargaining as an alternative to the proposed transaction</b></p>	<p>Bendigo and Adelaide Bank submitted that a potential alternative to the Proposed Transaction would be authorisation of collective bargaining between the Applicants and buyers.<sup>88</sup> The Applicants have already made extensive submissions regarding their exhaustion of all commercially realistic options short of a full merger, but state further:</p> <ul style="list-style-type: none"> <li>▪ The Applicants are experiencing significant financial distress and consider that exit is likely in the short term: <ul style="list-style-type: none"> <li>▪ For Prosegur, <b>[Confidential to Prosegur]</b> [REDACTED]</li> <li>▪ For Armaguard, <b>[Confidential to Armaguard]</b> [REDACTED]</li> </ul> </li> <li>▪ In light of this, it would significantly aggravate this financial distress to require the Applicants to delay the merger process and engage in an expensive, and potentially lengthy, process of negotiation with customers with an uncertain outcome. The more likely result of such a process would be an accelerated exit by one or both of the Applicants.</li> <li>▪ Further, for so long as the Applicants remain fierce competitors to secure an ever-declining volume of business, as the evidence reveals,<sup>92</sup> and in light of ongoing losses, they have no incentives to cooperate and provide favourable pricing to each other. As the evidence reveals,<sup>93</sup> subcontracting efforts have largely failed for this reason, and proposals short of a full</li> </ul>

<sup>88</sup> Bendigo and Adelaide Bank interested party submission (8 May 2023), p 2.

<sup>89</sup> Submission to the ACCC - Applicants' response to Statement of Preliminary Views, 9 March 2023, section 2.8.

<sup>90</sup> Submission to the ACCC - Applicants' response to Statement of Preliminary Views (14 March 2023), section 2.8.

<sup>91</sup> Submission to the ACCC - Applicants' response to Statement of Preliminary Views, 9 March 2023, section 2.8.

<sup>92</sup> Submission to the ACCC - Applicants' response to Statement of Preliminary Views, 9 March 2023, section 2.5.1.

<sup>93</sup> Submission to the ACCC - Applicants' response to Statement of Preliminary Views, 9 March 2023, section 2.5.1.

#	Suggestion	Response
		<p>merger would add further increased inefficient duplication in the form of further fixed costs which would need to be recovered.</p> <ul style="list-style-type: none"> <li>Most of the synergies from the Proposed Transaction come from the deduplication of the Applicants' metropolitan operations (and related corporate functions).<sup>94</sup> None of the benefits from these synergies would be realised through collective bargaining.</li> </ul>
5.	<p><b>Price increases without the Proposed Transaction</b></p>	<p>Bendigo has suggested that the Proposed Transaction might be unnecessary as the Applicants could raise prices by Inflation + 7.5% without merging.<sup>95</sup> While a price increase in this amount is insufficient to make the Applicants profitable in any event, as volumes continue to decline and the Applicants strive to maintain as much volume as possible to cover fixed costs, the evidence indicates that unilaterally increasing pricing is unlikely to be achievable. Further, a collective price increase of the type described by Bendigo and Adelaide Bank is likely to raise concerns regarding unlawful cartel conduct and not enable the Applicants to capture the required cost savings.</p>
6.	<p><b>Submissions of Next and NCR regarding the agreement between Westpac and atm</b></p>	<p>In their respective submissions dated 20 April 2023, Next and NCR submit that the agreement between ATS and Westpac (<a href="#">link</a>) is inconsistent with the Applicants' assertions that, in the absence of the Proposed Transaction, one of them will exit the market in the near term. Next and NCR also submit that it is implausible that Armaguard would be experiencing significant financial duress in its core business while simultaneously foregoing substantial revenue from its ATM business by entering into such an arrangement.</p> <p>However, Armaguard strongly disputes these submissions as not at all inconsistent with the mitigation strategies that it has recently deployed in order to mitigate its losses. <b>[Confidential to Armaguard]</b> [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

<sup>94</sup> Annexure 37.1 of the Application for Merger Authorisation, 26 September 2022, Witness statement of Rodney Phillip Mills [117].

<sup>95</sup> Bendigo and Adelaide Bank interested party submission (8 May 2023), p 2.

# Suggestion	Response
	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
<p><b>7. Additional ringfencing requirements</b></p>	<p>Next Payments raised a concern that the Revised Proposed Undertaking does not include any requirements as to the separation of staff, information data bases and systems, and the use of secure encryption methods, to prevent inappropriate sharing of commercially sensitive information within MergeCo.<sup>96</sup></p> <p>The Applicants submit that the additional requirements are not necessary as the Further Revised Proposed Undertaking already represents a significant compliance burden on MergeCo and includes appropriate controls to ensure that commercially sensitive information is not inappropriately shared within MergeCo:</p> <ul style="list-style-type: none"> <li>▪ clause 14.1 restricts access to Confidential Information only to those persons with a legitimate need for access and only for the purpose of providing CIT Services to a Customer, resolving a complaint or dispute, or as otherwise expressly consented to in writing by the Customer;</li> <li>▪ MergeCo has also committed, under clause 14.2, to appoint a Compliance Officer who is responsible for monitoring MergeCo's compliance with clause 14.1;</li> <li>▪ in addition, under clause 14.3, MergeCo has committed to implementing an annual compliance education program for employees during the Term of this Undertaking, which provides training and information on MergeCo's obligations under</li> </ul>

<sup>96</sup> Application for Merger Authorisation, 26 September 2023 p 131, [228] – [229].

<sup>97</sup> Witness statement of Peter Donald Fox (26 February 2023) p 3, [15].

<sup>98</sup> Next Payments submission (8 May 2023), pages 7-8.

#	Suggestion	Response
		<p>clause 14, and must ensure that that compliance education program is given to new employees within 30 days of the commencement of their employment;</p> <ul style="list-style-type: none"> <li>▪ clause 14.4 requires MergeCo to report any breaches of clause 14 to the Independent Auditor and the ACCC within five Business Days of becoming aware of the breach. In addition to this specific reporting requirement, the operation of clause 14 as a whole is also subject to audit by the Independent Auditor, who will monitor MergeCo's compliance and, under clause 7.12, is also able to make specific recommendations to improve MergeCo's compliance with the undertaking. This may include, for example, recommendations for additional ringfencing measures to ensure compliance with clause 14. As the Applicants have already noted above: <ul style="list-style-type: none"> <li>▪ under clause 7.13, the Independent Auditor's response, including any recommendations, must be provided to the ACCC;</li> <li>▪ under clause 7.14, MergeCo must implement the recommendations of the Independent Auditor; and</li> <li>▪ under clause 7.15, the ACCC can make, and MergeCo must comply with, any directions in relation to the audit report.</li> </ul> </li> </ul> <p>Together, these clauses offer sufficient preventative protections and ongoing monitoring to prevent the unnecessary exchange of commercially sensitive information within MergeCo.</p> <p>In any event, the Applicants both understand their obligations with respect to compliance with Australian competition laws, and submit that MergeCo will be incentivised to ensure that clause 14 is closely followed to ensure that there is no risk of non-compliance with Australian competition law. In this regard, the Applicants reiterate that the ACCC will also be receiving reports through the Independent Auditor regarding compliance with clause 14.</p>

## Annexure A – Summary of investigation process regarding any discrepancies

### 1. Discrepancy investigation

- (a) **Said to Contain (STC) value errors due to desktop processing:** for discrepancies of \$10.00 or less between the STC cash and the actual cash counted, MergeCo will immediately perform a recount and, if the discrepancy still exists, check the envelope / security satchel for any remaining cash as well as search the immediate work area. If the discrepancy still exists, the employee must notify a Supervisor immediately who will then physically count the cash to ensure the discrepancy is genuine.
- (b) **STC error for Single Pass Processing:** if the balancing error is detected at the balancing stage of processing, the employee must immediately notify a Supervisor who will check accompanying cash collection paperwork and search the cash preparation area including rubbish bins.
- (c) **Seals are not intact, tampered with or do not match Collections Paperwork:** the employee must notify the Supervisor who is required to empty the contents of the security satchel with the cash processor under CCTV. Cash Processor and Supervisor are to verify the contents against the cash collection paperwork. If any cash is missing or the items have been tampered with, the Supervisor is required to record the details and a copy of the relevant paperwork will be emailed to the Regional Security Manager immediately.

### 2. Internal Discrepancy Reporting

- (a) **Daily report:** the Cash Manager / Supervisor is required to verify and authorise all discrepancies at the end of each session by reviewing the Deposit Discrepancy Report via Branch Web Reporting. This report is to be lodged by 2 pm the following Business Day, allowing for investigation times to be met, if required.
- (b) **CCTV review:** in the event of a large discrepancy (typically over \$1,000.00), the Branch Manager is to review the CCTV footage. The Branch Manager will then record date and camera numbers to provide details to the Regional Security Manager immediately.

### 3. Actioning Reports:

- (a) The Branch (or Cash) Manager will review, comment on and take any necessary steps when considering the daily Deposit Discrepancy Report to ensure the Discrepancy Checklist has been completed and verified for all values over \$1,000.00. This will be forwarded to the Regional Security Manager and CIT Ops Leads, who will then review and escalate the investigation to the Head of CIT operations, if necessary.

Further to the above, all rubbish from the cash processing areas must be retained for 30 days and, in the event that the investigation remains unresolved, it may be further escalated to the Regional Manager and Chief Operations Officer.

Submission in response to interested party submissions