

Australian Competition & Consumer Commission
Attention Ms Miriam Kolacz

By email: Armaguard-Prosegur-Merger@acc.gov.au

20 January 2023

Dear Ms Kolacz

We refer to your email of 28 March 2023. Our comments on the proposed undertaking are attached.

Please feel free to contact us if you have any queries.

Yours sincerely


Bendigo & Adelaide Bank

The Bendigo Centre
PO Box 480
Bendigo Victoria 3552
Telephone 1300 361 911
Facsimile +61 3 5485 7000
www.bendigoadelaide.com.au

Bendigo and Adelaide Bank Limited
ABN 11 068 049 178 AFSL 237879

Bendigo and Adelaide Bank views on Proposed Undertaking

1. *Appropriate price constraints for cash-in-transit (CIT) services that reflect efficient costs and reasonable returns over time.*

The pricing model does include aspects of efficiency and reasonable returns. This places it above a simple cost-plus model. As a customer of these services, the Bank does not have enough experience in whether there are extra protections used in other competition jurisdictions. On the price constraints offered, the following is noted:

- the Target Revenue is the main mechanism. The restraint of pricing increases for Large Customers coming off contract is initially set at inflation plus 5%. In time, the Target Revenue measure will become the main constraint.
- in the first few years, however, there is still a risk for customers coming off contract earlier. They could still bear a disproportionate burden of the MergeCo's need to improve on the returns that the Applicants had experienced (section 3.5 of the Executive Summary).
- The evidence before the Commission, at least the publicly available parts of it:
 - does not show a precise timeline of contract expiries. One response for the Commission to consider would be to lower the pricing increase in the first three years to inflation +2%. At that point, all customers should have come off contract. They can then together support the Target Revenue.
 - does not explain how a Cost Sensitivity coefficient of 40% is derived for the first and second Pricing Periods. Beyond those periods, this appears to be left for the auditor to calculate. If so, this could occur from the start, rather than be given in the definitions. If it is to be a given input, it would be useful to have evidence of how that is calculated.

2. *Sufficient to prevent reductions in service quality or coverage that might arise from any loss of competition between the Applicants*

The undertaking to serve all current cash points is welcome. It is also pleasing to see that there will be no unilateral changes to service levels in remote places.

This does not explicitly control the cost-benefit ratio of remote locations. This could still disadvantage a bank or retailer which continues to offer personal cash services to consumers. One solution for the ACCC to consider would be for the Special Pricing Conditions to apply at the level of each individual cashpoint, rather than to a customer overall. This would also protect consumers in those locations against unintended effects of mergers or consolidations within the banking or retail industries.

3. *Incentive or ability for the Merged Entity to foreclose on or discriminate against independent ATM providers*

Please see our response to item 4.

4. *Access to cash centres by third parties on reasonable commercial terms, conditions and for reasonable prices*

This undertaking could be strengthened. It could also refer to the overall conditions in the *Competition and Consumer Act 2010* (the 'Act') referring to non-discriminatory access. For example, conditions about security and safety for third-party access are reasonable. They should not, however, be allowed to exceed those that apply to MergeCo entities.

5. *Potential to distort the market over the life of the Proposed Undertaking*

The proposed undertaking addresses many of the issues with the proposed merger, particularly when measured against the Counterfactual. There are so many variables into the future that market distortion might still arise. The remedy for this would be the ability of the ACCC to require amendment of the undertaking if needed to achieve the overall aims of the Act.

7. *Effective operation, oversight and enforcement of the Proposed Undertaking.*

It would be useful to state the ACCC's plans for the auditor's report. In particular, whether the report or a summary of it would be published generally or to customers.

Some of the terms of the undertaking might unduly restrict the auditor:

- The auditor is not to assess the forecasting process (section 3.5(b) of the Executive Summary). Some commercial discretion can be retained by MergeCo. An auditor can still assess whether reasonable grounds have been collected to support such decisions.
- The auditor could have a specific duty to comment on whether its investigations have disclosed any evidence of breach of the Act overall.
- Shareholders at a public company AGM have the direct ability to pose questions to a statutory auditor. A similar mechanism would be useful for customers in this case. For example, the ACCC could use its power in section 4.56 of the undertaking to raise concerns from customers that the ACCC believes are issues of substance.
- ACCC has noted that in recent years it has engaged with a number of procurement officials to encourage information sharing between agencies and develop its cartel detection toolkit. This process could be adapted to the monitoring of an undertaking's effectiveness in compliance with the Act's objectives.