

5 April 2023

Lynn Camilleri  
General Manager, Competition Exemptions  
Australian Competition and Consumer Commission  
By email: Armaguard-Prosegur-Merger@accc.gov.au

Dear Ms Camilleri

## **Proposed merger between Armaguard and Prosegur = Consultation on proposed undertaking**

I refer to your letter dated 21 March 2023 in relation to the above matter.

Enclosed is National Australia Bank Limited's Response to the questions in your letter.

NAB requests that the enclosed response be excluded from the public register on the basis that it contains information that is commercially sensitive and confidential to NAB.

### Further inquiries

If you have any questions or would like to discuss NAB's responses, please contact Virginia Porter, General Counsel – Regulatory Advisory at [REDACTED]

Yours sincerely,



Patrick Wright  
Group Executive, Tech and Enterprise Ops

## RESPONSE TO CONSULTATION LETTER

Thank you for the opportunity to provide a submission to the ACCC in response to the letter dated 21 March 2023, regarding the Proposed Undertaking and whether it will be effective in addressing the concerns identified in the ACCC's Statement of Preliminary Views.

We refer to NAB's previous letter of 28 October 2022 regarding the description of NAB's business, and interest in the Proposed Merger.

1. Whether the Proposed Undertaking provides appropriate price constraints for cash-in-transit (CIT) services that reflect efficient costs and reasonable returns over time.

NAB is not in a position to comment whether each of the pricing process formulae and inputs set out in the Proposed Undertaking are reflective of efficient costs and reasonable returns over time for a provider of CIT Services.

NAB is concerned however that the pricing commitment in the form proposed will not appropriately constrain the merged entity's ability to raise prices to supracompetitive levels, and to mitigate the loss of other constraints on pricing post-merger, for the reasons set out below.

### **Bargaining power**

NAB is concerned that the pricing constraint derived from a customer's ability to effectively negotiate price for CIT Services will be substantially reduced post-merger. There is provision in the Proposed Undertaking for negotiation between an acquirer and the merged entity regarding future pricing, however NAB believes that in practice the ability of customers to negotiate will be impacted by a disparity in bargaining power. There will be no alternative supplier available to many customers, and for some customers there will be no option but to acquire the service given their regulatory obligations.

Given the situation facing customers, NAB requests that the ACCC consider possible additional mechanisms to protect customers of the merged entity from monopolistic outcomes. This may include (though may not be limited to) a mechanism to facilitate or mediate contract negotiations with the merged entity.

[Confidential]

### **Commitment to customers with ongoing contracts**

While the Applicants' response to the Statement of Preliminary Views states that pricing for currently contracted customers will continue in accordance with the terms of their contract until that contract expires,<sup>1</sup> this commitment is not currently reflected in the terms of the Proposed Undertaking itself. The only commitment to continuation of contracted pricing in the Proposed Undertaking appears to be at clause 4.5, which refers to pricing for Existing Customers to apply until 1 January 2024.

[Confidential]

NAB suggests that the commitment to continue pricing pursuant to contractual arrangements until the date of expiry for contracted customers should be expressly provided for in the terms of the Proposed Undertaking.

<sup>1</sup> See eg item 3.4 of the Submission accompanying the Undertaking to the ACCC

**Cap on pricing increases**

In respect of the proposed cap on pricing increases each year set out in clause 4.14 of the Proposed Undertaking, NAB’s view is that this cap should appropriately be set as an amount no greater than CPI. NAB considers that a “no greater than CPI” cap is appropriate in a market in which there will be limited competition for services that are effectively essential to customers.

**Ongoing assessment of pricing process**

NAB notes that, while the merged entity’s pricing is to be reviewed annually by an Independent Auditor, the role of the Independent Auditor in conducting those future reviews does not include assessment as to whether the formulae, or the inputs to the pricing formulae, are reflective of efficient costs and returns.

NAB suggests for the ACCC’s consideration that formulae and inputs underlying the price commitment be periodically reviewed, to assess if they are reflective of efficient costs and reasonable returns over time.

2. Whether the Proposed Undertaking is sufficient to prevent reductions in service quality or coverage that might arise from any loss of competition between the Applicants.

Under the terms of the Proposed Undertaking, the merged entity commits to continuing to provide CIT Services to NAB “in accordance with the standard of services” it receives in the period immediately prior to the Commencement Date, with any optimisation agreed between the merged entity and NAB. Additionally, the merged entity is required to continue to offer CIT services to all the cash point locations that it service as at the Commencement Date.

[Redacted]

[Confidential]

[Redacted]

[Confidential] NAB suggests for the ACCC’s consideration that the Proposed Undertaking be clarified to require that the CIT Services are continued to provided in accordance with the standards required in the existing contractual arrangements with the Ongoing Customer. This will also have the benefit of being easier to monitor for compliance, as the standards and qualities of service will be clearly articulated in formal contracts.

[Redacted]

[Confidential]

Restriction of publication part claimed

3. Whether the Proposed Undertaking removes incentive or ability for the Merged Entity to foreclose on or discriminate against independent ATM providers.

Under the terms of the Proposed Undertaking, the merged entity commits to providing certain ATM services to Independent ATM Deployers. While NAB does not have a direct relationship with independent ATM providers, they play an important role in the cash distribution ecosystem. If they were to be disrupted, in respect of the pricing or service offering they receive, this would have a knock on impact for NAB with either the independent ATM provider's customers using NAB to access cash, or the independent operations coming to NAB for cash to fill their ATMs.

NAB does not have any additional comments regarding questions 4-6.