



## Proposed Merger of Armaguard and Prosegur: Submission by Woolworths Group Limited

8 May 2023

Woolworths Group Limited (**Woolworths**) welcomes the opportunity to comment on the revised court enforceable undertaking proposed to the ACCC by Armaguard and Prosegur on 1 May 2023 (**Revised Proposed Undertaking**).

### 1. Cash-in-transit services are integral to Woolworths' business

- 1.1. As set out in Woolworths' submissions dated 28 October 2022 and 4 April 2023, Woolworths' customers value their ability to make cash payments for their purchases in more than 1,000 Woolworths stores nationally, and their ability to make high value cash withdrawals in those stores.
- 1.2. Woolworths' stores (including Woolworths Supermarkets, Metro and BIG W) collectively handle large volumes of cash. This cash is processed and transported to and from financial institutions by cash-in-transit (CIT) service providers. It is critical to Woolworths' operations to have effective and efficient cash management, including for the safety of customers and team.

[REDACTED]

[REDACTED]

2.1. [REDACTED]

[REDACTED] As set out in Woolworths' prior submissions:

- 2.1.1. The independent and successful operation of both Armaguard and Prosegur is Woolworths' preference, to maintain competitive tension in relevant markets.
- 2.1.2. If however one or both of the firms is likely to exit absent the merger, then the proposed merger should be authorised subject to conditions that will remedy the likely detrimental effects of the resulting absence of competition. The conditions should be designed to ensure reasonable fees and quality of service from a future MergeCo, as Australia's only full-service CIT service provider, over the longer term.

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**3. Comments on the Revised Proposed Undertaking**

- 3.1. As set out in Woolworths' previous submission, MergeCo will not be constrained by competition from any other full-service CIT service provider in Australia. In these circumstances, if the merger is authorised, Woolworths supports MergeCo providing the Revised Proposed Undertaking (subject to the qualifications and comments

below) or otherwise being subject to effective oversight and regulation to counter the absence of competition and ensure that:

- Customers of CIT services pay reasonable fees and receive reasonable geographic coverage going forward; and
  - End-consumers' cash needs can continue to be met.
- 3.2. Woolworths considers that further careful consideration should be given to the suitability of a court enforceable undertaking to achieve the above objectives. Other supplementary options warrant careful consideration, such as legislation establishing a dispute resolution framework and an industry ombudsman.
- 3.3. If MergeCo provides an enforceable undertaking, additional careful consideration and independent stress testing should be applied by reference to the following elements:
- Duration of the undertaking;
  - Appropriateness of the proposed price increase model;
  - Future expansion of geographic coverage; and
  - Service levels.

#### Duration of the undertaking

- 3.4. Woolworths considers that the proposed three year duration of the Revised Proposed Undertaking is very short. There is no clear justification for this particular duration, or such a large reduction in duration compared to the unlimited duration proposed by the Applicants in April. Woolworths would like the duration of the Revised Proposed Undertaking to be as long as possible. In Woolworths' view, five years should be the minimum duration, to ensure that customers receive ongoing reasonable pricing and geographic coverage for a reasonable time period once MergeCo is a monopoly provider unconstrained by competitive tension.

#### Appropriateness of the proposed price increase model

- 3.5. The Revised Proposed Undertaking states:

*5.1 Existing Customers will continue to receive their current Contracted Price.*

*5.2. ...an Existing Customer whose contract comes to an end during the Term of the Undertaking will continue to be supplied CIT Services at the same Price as its previous contract, except that the **Price can be escalated by no more than inflation + 7.5% annually.***

where:

***Inflation** is a measure of the change in the average of the CPI<sup>1</sup> and AWE<sup>2</sup> across a defined period.*

***Price** means the schedule of charges MergeCo or an Applicant levies on Customers for the supply of CIT Services.*

- 3.6. Woolworths considers that for large customers whose contract comes to an end during the Term of the Undertaking, price increases should be no more than Inflation + 5% p.a. (as contemplated under the previous Undertaking proposed by the Applicants in April, for MergeCo's top 30 customers) rather than Inflation + 7.5% p.a.. Given the current high levels of Inflation, an up to 5% increment on Inflation would still enable MergeCo to increase prices substantially each year. Woolworths expects that the absolute value of a price increase for large customers would generally be more material to MergeCo than the absolute value of a price increase for smaller customers.
- 3.7. Woolworths also considers that the definition of "Inflation" should be amended such that the words "a defined period" are replaced with "the previous 12 months". Otherwise, if inflation was considered over a longer period (such as three years since a previous price review), this could have a multiplier effect that substantially increases a potential price rise, beyond an ordinary understanding of inflation. To clarify the meaning of Inflation and avoid doubt, the Revised Proposed Undertaking could also include an example. For instance, the definition could state that if the previous 12 months' Consumer Price Index (CPI) increase is 5%, the maximum increase that can be applied is 12.5% per annum.
- 3.8. The longer the duration of the Revised Proposed Undertaking, the more it would be desirable for the appropriateness of the annual cap on price increases to be periodically assessed by an independent expert. The Revised Proposed Undertaking does not currently provide for such assessment. Woolworths submits that the Revised Proposed Undertaking should be amended to do so, if its duration is longer than three years.

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<sup>1</sup> **CPI** means the value of the CPI All Groups Consumer Price Index, Weighted Average of Eight Capital Cities index number published by the Australian Bureau of Statistics or an index that replaces it.

<sup>2</sup> **AWE** means the dollar value of Average Weekly Earnings, Australia (Dollars) – Seasonally Adjusted published by the Australian Bureau of Statistics or a series that replaces it.

### Future expansion of geographic coverage

- 3.9. The Revised Proposed Undertaking requires MergeCo to continue over the Term to offer at least the same national geographic coverage as at the date the Undertaking commences, and to extend coverage to new locations that are “reasonably capable of being serviced”. While this is an improvement from the initial Proposed Undertaking, Woolworths considers that the meaning of the phrase “reasonably capable of being serviced” should be amended to take into account customer need. For example, the phrase could be amended to state, “reasonably required by customers to be serviced”. Otherwise, there is insufficient incentive for MergeCo to expand its geographic coverage to less profitable locations, and customers will be left with no viable option for obtaining CIT services in certain new locations that are more difficult to access. Such locations may include more regional or remote communities that would greatly benefit from the option to purchase groceries and use/ withdraw cash at Woolworths.
- 3.10. As noted in Woolworths’ last submission, the ACCC should consider the applicability of principles akin to the “universal service obligation” - a long standing consumer protection policy with its inception in the telecommunications sector, which promotes universal access to an essential service or facility regardless of where end-users live or work. While cash remains legal tender and is relied on by customers across the country, MergeCo as Australia’s only full-service CIT provider should enable businesses to deal with consumers in cash without discrimination or disadvantage.
- 3.11. At minimum, the phrase “reasonably capable of being serviced” should be defined upfront in terms of relevant factors and thresholds that must guide MergeCo’s decision as to whether a location is reasonably capable of being serviced. For example, relevant factors may include the distance of a proposed new location from existing locations serviced by MergeCo, and the additional net cost for MergeCo to service the new location. MergeCo could be required to provide service if the relevant distance or cost of servicing a new location does not exceed thresholds based on distances or costs that Armaguard or Prosegur was willing to cover or incur to service a customer before the merger.

### Service levels

- 3.12. The Revised Proposed Undertaking states in relation to non-price terms for Existing Customers, that such customers will continue to be supplied CIT Services “*in accordance with their Existing Arrangements*” (clauses 5.5 - 5.6), where “**Existing Arrangements** means the standards of service set out in a written contract for the supply of CIT Services between an Existing Customer and either Applicant (as varied

*by agreement) in the period immediately preceding the Commencement of this Undertaking.”*

3.13. Woolworths submits that the clauses in the Revised Proposed Undertaking pertaining to non-price terms should be amended to refer specifically to key aspects of service such as frequency of cash collections and security protections. Standards of service in relation to these aspects must not drop, otherwise there will be safety, security and insurance implications for MergeCo’s customers.

3.14. The Revised Proposed Undertaking should also be strengthened to require MergeCo not only to maintain but also to improve standards of service as reasonably required by MergeCo’s customers. [REDACTED]

3.15. Finally, the Revised Proposed Undertaking should require MergeCo to commission periodic independent reports on the level of service that MergeCo provides. Such reports should consider relevant overseas developments in the provision of CIT services, and be based on feedback from MergeCo’s customers on whether they are satisfied or have concerns. The reports should make recommendations on potential variations to the Revised Proposed Undertaking where relevant. MergeCo should be required to engage with the ACCC in relation to the recommendations and MergeCo’s proposed plan to implement them.