

# Linfox Armaguard / Prosegur

Economic Expert Report prepared for Next Payments

---

**Prepared for**

Allens  
Level 37  
101 Collins Street  
Melbourne VIC 3000  
AUSTRALIA

---

**Prepared by**

Dr Geoff Edwards  
Suite 2201, Level 22, Tower 2  
101 Grafton Street  
Bondi Junction NSW 2022  
Australia  
Date: 2 November 2022

**CRA** Charles River  
Associates

## TABLE OF CONTENTS

EXECUTIVE SUMMARY .....	1
RELEVANT MARKETS .....	1
RISK OF VERTICAL FORECLOSURE EFFECTS IN ATM DEPLOYMENT SERVICES .....	2
ALTERNATIVES TO THE PROPOSED MERGER .....	2
1. INTRODUCTION .....	3
1.1. INSTRUCTIONS .....	3
1.2. DOCUMENTS AND ASSUMPTIONS .....	4
1.3. COMPLIANCE WITH THE EXPERT EVIDENCE PRACTICE NOTE AND THE HARMONISED EXPERT WITNESS CODE OF CONDUCT .....	4
1.4. ORGANISATION OF THIS REPORT .....	4
2. RELEVANT MARKETS .....	4
2.1. RELEVANT MARKETS IDENTIFIED IN THE APPLICATION AND THE RBB ECONOMICS REPORT .....	4
2.2. THE SUPPLY OF CIT SERVICES TO IADs .....	5
2.2.1. Demand side considerations .....	5
2.2.2. Supply side considerations .....	6
2.2.3. Purposive considerations .....	7
2.2.4. Summary .....	7
2.3. THE SUPPLY OF CASH AND CASH PROCESSING AT ACCs TO CIT PROVIDERS .....	8
3. RISK OF VERTICAL FORECLOSURE EFFECTS IN ATM DEPLOYMENT SERVICES .....	9
3.1. INTRODUCTION .....	9
3.2. ABILITY TO FORECLOSE .....	10
3.3. INCENTIVES TO FORECLOSE .....	11
3.4. LIKELY EFFECTS .....	14
3.5. SUMMARY .....	15
4. POSSIBLE ALTERNATIVES TO THE PROPOSED MERGER .....	16
4.1. THE PROPOSED MERGER WITH DIVESTMENT OF THE MERGING PARTIES' DOWNSTREAM ATM BUSINESSES .....	18
4.2. SHARING OF CIT INFRASTRUCTURE ONLY WHERE FIXED COST RATIONALISATION IS REQUIRED (OR "DO AS LITTLE HARM AS NECESSARY") .....	18
APPENDIX A : ENGAGEMENT LETTER AND LETTER OF INSTRUCTIONS .....	21
APPENDIX B : ASSUMPTIONS .....	22
APPENDIX C : CV OF DR GEOFF EDWARDS .....	23

## EXECUTIVE SUMMARY

1. I have been engaged by Allens on behalf of Next Payments Pty Ltd (Next) in the context of the application for authorisation (Application) of the proposed merger of Linfox Armaguard Pty Ltd and Prosegur Australia Holdings Pty Limited (Proposed Merger).
2. Specifically, Allens has requested my written expert economic opinions and reasons for those opinions in respect of the following matters:
  - a. The relevant markets for assessing the Proposed Merger;
  - b. Whether the Proposed Merger raises a risk of vertical foreclosure effects in relation to ATM deployment services; and
  - c. Whether there might exist alternatives to the Proposed Merger that would be likely to realise the public benefits claimed in the Application.

### Relevant Markets

3. The Application and the accompanying RBB Economics report propose the following three “cash in transit” (CIT) markets:
  - a. A market for the supply of integrated end-to-end wholesale and retail cash services for which the Major Banks are the only customers as they have wholesale banknote distribution arrangements (BDAs) with the RBA (**first CIT market**);
  - b. A market for the supply of CIT services to retail customers who require a full service solution (i.e. both cash transportation and processing services) (**second CIT market**); and
  - c. A market for the supply of cash transport services to retail customers between their locations and bank branches (**third CIT market**).
4. I consider that, in addition to these three markets, there is merit in defining a distinct market for the supply of CIT services to independent ATM deployers (IADs). The merging parties both act in this market as CIT providers and compete with IADs downstream in ATM markets. Defining supply of CIT services to IADs as a separate market is appropriate not only on the basis of differences in the nature and quality of the services provided and demand and supply side substitutability considerations, but also to make fully transparent the vertical relationships and provide a useful framework for understanding the vertical effects of the proposed merger in relation to downstream ATM markets.
5. I also consider that the Application and the RBB Economics report have omitted another relevant market in which the merging parties overlap and which is, again, vertically related to markets in which the merged entity will be competing post-merger. This is a market for the supply of cash and cash processing at ACCs to CIT providers who compete downstream in CIT services with the merging parties. There do not appear to be any demand or supply side substitutes for the supply of cash from ACCs to CIT providers. Moreover, defining a market for the supply of cash to CIT providers provides a useful framework for assessing whether there are likely to be vertical foreclosure effects of the Proposed Merger in relation to downstream CIT markets.

## **Risk of vertical foreclosure effects in ATM deployment services**

6. In addition to horizontal issues raised by the Proposed Merger (in particular in each of the CIT markets), the Proposed Merger raises a vertical input foreclosure issue in relation to ATM deployment. This arises because the Proposed Merger brings together the two main suppliers of an upstream input (CIT services) required by IADs in a context in which the merged entity will also compete with those IADs in downstream ATM markets.
7. This is not the only potential vertical input foreclosure issue that the Proposed Merger generates. Another relates to the supply of cash and cash processing at ACCs to CIT providers that will be in competition with the merged entity in at least the second CIT market. However, given my instructions, my report is focused on the vertical foreclosure issue in relation to IADs.
8. I consider that there is a likelihood (in the sense of a real chance) that the Proposed Merger will substantially lessen competition through vertical foreclosure effects in relation to ATM deployment services. This is for the following reasons.
  - a. By eliminating competition between Armaguard and Prosegur in relation to CIT services to IADs, the Proposed Merger will generate an ability that does not exist pre-merger to fully or partially foreclose rival IADs, whether by refusing to supply rival IADs with CIT services, increasing prices for CIT services or reducing the quality of CIT services.
  - b. There is a likelihood (in the sense of a real chance) that the merged entity will have incentives to foreclose IADs such as Next.
  - c. The effects of input foreclosure of IADs such as Next on customers of ATM deployment services (e.g., shopping malls, service stations and convenience stores) and ATM users (end-consumers) are likely to be substantial. The weakening of competition and constraints on the merged entity would be likely to result in higher prices, lower quality and reduced investment and innovation in ATM markets.

## **Alternatives to the Proposed Merger**

9. Having identified the risk of vertical foreclosure effects in addition to horizontal effects of the Proposed Merger, I have given consideration to two alternatives to the Proposed Merger that have the potential to achieve the stated rationale and public benefits claimed for the Proposed Merger with less anti-competitive effect.
10. First, if the merging parties were to divest their ATM deployment businesses, this should achieve the rationale and the same public benefits as the Application claims for the Proposed Merger, and better outcomes for competition and ultimately customers and end-consumers, as it would completely address the vertical foreclosure concern with respect to ATM deployment. This alternative would not, however, address the vertical foreclosure issue in relation to the supply of cash and cash processing at ACCs to CIT providers that will be in competition with the merged entity in at least the second CIT market, nor the horizontal concerns in CIT services raised by the Proposed Merger.
11. Second, I consider there would be merit in investigating whether a more limited consolidation than the Proposed Merger would be capable of ensuring the financial viability of Armaguard and Prosegur with less anti-competitive effect. I have illustrated this with the example of a joint venture (JV) limited to ACCs, or to ACCs and the transport networks involved in wholesale cash distribution, although this is not to exclude the possibility of other

- sharing structures and other boundaries around the minimum set of infrastructure in need of rationalisation.
12. This alternative, if feasible, would offer a number of benefits for competition, customers and end-consumers compared to the Proposed Merger.
- a. First, it would completely address the vertical foreclosure concern raised by the Proposed Merger in relation to ATM deployment services, as under this alternative Armaguard and Prosegur would continue to compete to supply CIT services to IADs.
  - b. Second, open access for third party CIT providers to the JV's services on FRAND terms would address the vertical foreclosure concern raised by the Proposed Merger in relation to the supply of cash and cash processing at ACCs to CIT providers downstream of ACCs.
  - c. Third, this alternative would improve on the Proposed Merger in relation to horizontal price and non-price effects, by limiting the concentration to at most ACCs and other wholesale cash infrastructure, and retaining competition between Armaguard and Prosegur in CIT services downstream of ACCs.
13. To fully address horizontal concerns, an undertaking might need to be given that prices will not exceed levels that recover the fixed and variable costs of the services. However, even without such an undertaking I consider that this alternative would provide better outcomes for customers and end-consumers than the Proposed Merger by eliminating vertical foreclosure risks and reducing horizontal effects.
14. A final observation is that such an alternative (authorisation of a more limited form of consolidation) may well be a likely counterfactual to the Proposed Merger, should the ACCC decline to authorise the Proposed Merger. Compared to this counterfactual, the Proposed Merger would be likely to result in substantial anti-competitive horizontal and vertical effects with limited or no additional public benefit.

## 1. INTRODUCTION

### 1.1. Instructions

15. I have been engaged by Allens on behalf of Next Payments Pty Ltd (Next) in the context of the application for authorisation (Application) of the proposed merger of Linfox Armaguard Pty Ltd and Prosegur Australia Holdings Pty Limited (Proposed Merger).
16. Specifically, Allens has requested my written expert economic opinions and reasons for those opinions in respect of the following matters:
- a. The relevant markets for assessing the Proposed Merger;
  - b. Whether the Proposed Merger raises a risk of vertical foreclosure effects in relation to ATM deployment services; and
  - c. Whether there might exist alternatives to the Proposed Merger that would be likely to realise the public benefits claimed in the Application.
17. My engagement letter and letter of instruction from Allens are included in **Appendix A** to this report.

## 1.2. Documents and assumptions

18. In preparing the expert economic opinions presented in this report I have reviewed and rely on the following documents and assumptions:
- a. The Application to the Australian Competition and Consumer Commission for Merger Authorisation submitted by Linfox Armaguard Pty Ltd and Prosegur Australia Holdings Pty Limited on 26 September 2022 (Application);
  - b. A report by RBB Economics titled “Armaguard and Prosegur: Competitive effects and public benefits, dated 26 September 2022 (RBB Economics report); and
  - c. A list of factual assumptions provided to me by Allens, which is included as **Appendix B** to this report.

## 1.3. Compliance with the Expert Evidence Practice Note and the Harmonised Expert Witness Code of Conduct

19. I have read, understood, complied with and agree to be bound by the Federal Court of Australia’s Expert Evidence Practice Note (GPN-EXPT) supplied to me by Allens. I have also read, understood, complied with and agree to be bound by the Harmonised Expert Witness Code of Conduct (Annexure A to the GPN-EXPT) also supplied to me by Allens.
20. All the opinions and views expressed in this report are my own and are based wholly or substantially on specialised knowledge arising from my training, study or experience. My CV is attached as **Appendix C** to this report.
21. I have made all inquiries that I believe are desirable and appropriate and no matters of significance that I regard as relevant have, to my knowledge, been withheld from my report.

## 1.4. Organisation of this report

22. The remainder of this report is organised as follows.
- a. In Section 2, I consider the markets proposed in the Application and the RBB Economics report and identify two markets that I consider have been overlooked and are relevant for assessing the Proposed Merger.
  - b. In Section 3, I address the risk that the Proposed Merger will generate vertical foreclosure effects in relation to ATM deployment services by reducing the “cash-in-transit” (CIT) options available to independent ATM deployers (IADs) in a context in which the merging parties are vertically integrated into ATM deployment services.
  - c. Finally, in Section 4, I consider a number of possible alternatives to the Proposed Merger that would be likely to realise the public benefits claimed in the Application with less anti-competitive effect.

## 2. RELEVANT MARKETS

### 2.1. Relevant markets identified in the Application and the RBB Economics Report

23. The Application and the RBB Economics report propose the following three CIT markets:
- a. A market for the supply of integrated end-to-end wholesale and retail cash services for which the Major Banks are the only customers as they have wholesale banknote distribution arrangements (BDAs) with the RBA (**first CIT market**);

- b. A market for the supply of CIT services to retail customers who require a full service solution (i.e. both cash transportation and processing services) (**second CIT market**);
  - c. A market for the supply of cash transport services to retail customers between their locations and bank branches (**third CIT market**).
24. The Application and the RBB Economics report also propose a number of ATM-related markets:
- a. Local markets for the supply of cash withdrawal facilities (**first ATM market**);
  - b. A national market for the supply of ATM deployment services to merchants (**second ATM market**);
  - c. A national market for the supply of ATM access arrangements to financial institutions (**third ATM market**); and
  - d. A national market for specialist ATM maintenance (**fourth ATM market**).

## 2.2. The supply of CIT services to IADs

25. For the reasons explained in this sub-section I consider that there is merit in defining at least a fourth distinct relevant market for the supply of CIT services to IADs.

### 2.2.1. Demand side considerations

26. I understand that IADs such as Next acquire a number of services from the merging parties. These services include:
- a. CIT delivery/replenishment from ACCs via armoured vehicle and armed guard to ATMs;
  - b. CIT collection/clearance from ATMs and cash recycling machines to ACCs via armoured vehicle and armed guard; and
  - c. Cash reconciliation (the counting of cash taken back to ACCs and reporting to the IADs).<sup>1</sup>
27. In addition to this, first level maintenance (FLM) services for ATMs are typically provided to IADs by the IAD's CIT provider.<sup>2</sup>
28. The provision of CIT services to IADs does not obviously fall within any of the three CIT markets listed in the Application and the RBB Economics report. Certainly, these services do not fall within the first or third CIT markets. The customers in the first CIT market are limited to the major banks with BDAs. The third CIT market only includes cash transport services between the customer's location and bank branches,<sup>3</sup> whereas I understand that IADs such as Next require a much more extensive range of services from CIT providers.<sup>4</sup>

---

1 Assumption 5.

2 Assumption 5 and RBB Economics report, para 254 on page 62.

3 RBB Economics report, para 19.c on page 9.

4 Assumptions 5 and 7.

29. The second CIT market comes closest in terms of the services provided, however I understand that CIT services supplied to IADs are distinct in a number of respects from CIT services supplied in the second CIT market to retailers (e.g. supermarkets, shops, petrol stations, food service chains, etc.).
- a. First, for IADs, timely replenishment of ATMs and first level maintenance (FLM) are critical inputs, as instances of an ATM not working or being out of cash will undermine cardholder and merchant confidence in and usage of that ATM.<sup>5</sup> By contrast, the primary CIT service requirements for retailers are the collection and processing of cash received when end consumers use cash to pay for goods and services in-store.<sup>6</sup>
  - b. Second, CIT services supplied to IADs include specific requirements that are not critical requirements for CIT services supplied to retailers:
    - i. Secured safe management leveraging remotely accessible locking mechanisms and individual personnel access tracking capability;
    - ii. First level ATM maintenance services;
    - iii. Armed guards trained in ATM replenishment/clearance and the handling and care of ATMs in a manner to reduce faults;
    - iv. Second level ATM maintenance escort guarding, provision of skilled electro-mechanical technicians, cash oversight and blind spot security;
    - v. Provisioning (i.e., replenishing) of ATMs with banknotes of sufficient quality to minimise ATM faults or maintenance issues;
    - vi. Quick response times in provisioning ATMs; and
    - vii. Out of hours deliveries / replenishments to ATMs which operate outside of retailer business hours.<sup>7</sup>
30. These differences suggest that, from a demand side substitution perspective, the nature and quality of CIT services supplied to retailers would not be a close substitute for the nature and quality of CIT services required by and supplied to IADs.

### 2.2.2. Supply side considerations

31. On the supply side I understand that not all CIT providers capable of supplying CIT services to retailers in the second CIT market are readily able to supply the nationwide CIT services required by IADs such as Next and that there are different competitive conditions – in particular, fewer competitors – in the supply of CIT services to IADs.
32. To elaborate on this, the RBB Economics report suggests that for at least some retailers that are customers in the second CIT market the competing set of suppliers includes CIT providers other than Armaguard and Prosegur including Authentic Security, Streamcorp,

---

5 Assumption 16. I understand that IADs compete not only on price but also on reliability of service, measured in ATM “uptime”: Assumptions 15 and 17.

6 Assumption 8.

7 Assumption 7.



Border Security, Amalgamated Cash Services and Security Specialists.<sup>8</sup> For IADs such as Next, however, I understand that the only two options for CIT service are Armaguard and Prosegur.<sup>9</sup>

### 2.2.3. Purposive considerations

33. A further important consideration is the vertical integration of Armaguard and Prosegur between CIT services supplied to IADs on the one hand and ATM deployment on the other. Taking a purposive approach to market definition we should seek to identify markets that provide useful frameworks for assessing the likely effects of the Proposed Merger.<sup>10</sup> The fact that the merging parties – Armaguard and Prosegur – are both suppliers of CIT services to IADs *and* vertically integrated into ATM deployment (supplying the same CIT services as inputs to themselves) further distinguishes supply of CIT services to IADs from supply of CIT services to retailers. I therefore consider that defining a separate market for the supply of CIT services to IADs would provide a useful framework for assessing whether there are likely to be vertical foreclosure effects of the Proposed Merger in relation to ATM deployment.
34. The RBB Economics report classifies IADs as customers in the second CIT market rather than in a separate market,<sup>11</sup> notwithstanding the above distinctions. In common with the Application, the RBB Economics report does not recognise the vertical relationships between CIT services supplied to IADs and a number of the ATM markets in which the merged entity will be active post-merger, nor the potential for vertical foreclosure effects in relation to ATM deployment. This omission may well be the result of not defining a separate market for CIT services to IADs.

### 2.2.4. Summary

35. I consider that there is merit in defining a distinct market for the supply of CIT services to IADs. This is appropriate not only on the basis of differences in the nature and quality of the services provided and demand and supply side substitutability considerations, but also to make fully transparent the vertical relationships and provide a useful framework for

---

<sup>8</sup> RBB Economics report, para 398 on page 99. The RBB Economics report states that “[t]he merged entity will be constrained” by these alternative CIT providers and “[w]hile the market shares of each of these providers are currently low, they still provide a credible alternative to the Parties for customers requiring a full-service retail CIT solution” and “some of these providers (such as Authentic Security, which has recently acquired Secutor and ARA to become the third largest CIT provider in Australia) have grown considerably in recent years and are well placed to expand further in response to a price increase by the merged entity”: RBB Economics report, paragraphs 399-400 on page 100. However, it is not clear from the Application or the RBB Economics report whether CIT providers other than Armaguard and Prosegur are within the competitor set for large retail customers such as the major supermarkets and Australia Post, which may have stringent service quality requirements and a preference for a supplier that can provide nationwide service including in regional areas.

<sup>9</sup> Assumptions 9-11 and 16.

<sup>10</sup> See Neville R. Norman and Philip L. Williams (1983), “Analysis of Market and Competition under the Trade Practices Act: Towards the Resolution of Some Hitherto Unresolved Issues,” 11 *Australian Business Law Review* 396 at 400.

<sup>11</sup> For example, the RBB Economics report refers to retail customers that “own ATMs” typically purchasing FLM services as part of the same contract as their contract for the supply of CIT services: RBB Economics report, para 19.b on page 8.

understanding the vertical effects of the proposed merger in relation to ATM deployment (see Section 3 below).

### **2.3. The supply of cash and cash processing at ACCs to CIT providers**

36. The Application and the RBB Economics report appear to have omitted another relevant market in which the merging parties overlap and that is, again, vertically related to markets in which the merged entity will be active post-merger. This is a market for the supply of cash and cash processing at ACCs to CIT providers such as Authentic Security, Border Security and others, who compete downstream in CIT services with Armaguard and Prosegur, in particular in the second CIT market (i.e., the market for the supply of CIT services to retail customers who require a full service solution).<sup>12</sup>
37. I understand that these CIT providers (among others) do not have their own ACCs and have a demand for sourcing of cash from ACCs and cash processing at ACCs.<sup>13</sup> There do not appear to be any demand or supply side substitutes for the supply of cash from ACCs to CIT providers. Moreover (as for the supply of CIT services to IADs), from a purposive market definition perspective there is merit in defining a market for supply of cash and cash processing at ACCs to CIT providers because Armaguard and Prosegur are vertically integrated between these services and CIT services downstream. Defining a market for the supply of cash and cash processing at ACCs to CIT providers therefore provides a useful framework for assessing whether there are likely to be vertical foreclosure effects of the Proposed Merger in relation to CIT services.

---

<sup>12</sup> See Application, page 166, for a list of competing CIT providers that the Application claims “will effectively constrain the merged entity” in the second CIT market.

<sup>13</sup> Assumption 9(b)(iii). The Application also explains that “CIT providers without ACCO status can supply cash processing services to other financial institutions or business. However, given these other CIT providers are not involved in the wholesale cash distribution system, these other CIT providers (not to mention their customers and the broader public) rely on ACCOs for a reliable supply of fit cash” and “all the cash collected by the non-ACCO CIT operators ends up in an ACC either directly as an express business deposit to be counted, or indirectly as a bank clearance” and “[t]hese operators rely on the infrastructure and services provided by the Applicants either through logistics or cash processing”: Application, pages 77 and 79.

### 3. RISK OF VERTICAL FORECLOSURE EFFECTS IN ATM DEPLOYMENT SERVICES

#### 3.1. Introduction

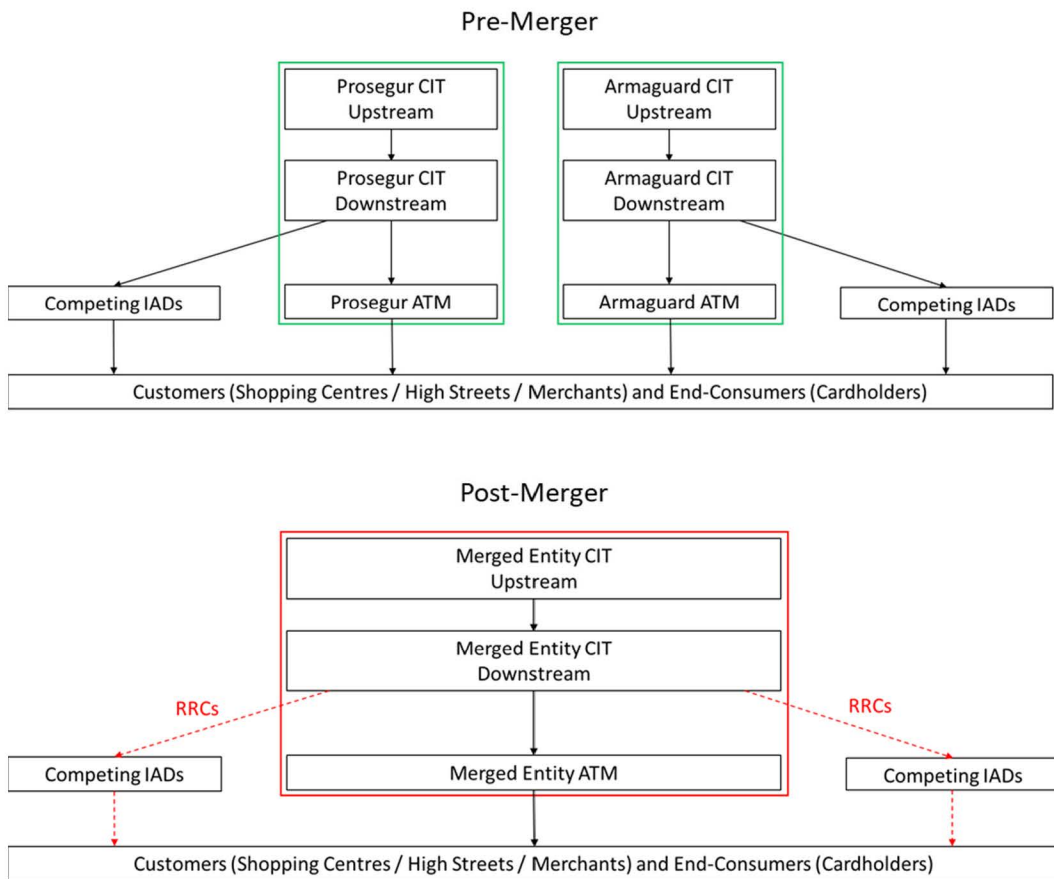
38. In addition to horizontal issues raised by the Proposed Merger (in particular in each of the CIT markets),<sup>14</sup> the Proposed Merger raises a vertical (input) foreclosure issue in relation to ATM deployment. This arises because the Proposed Merger brings together the two main suppliers of an upstream input (CIT services) required by IADs in a context in which the merged entity will also compete downstream with those IADs (in the first, second and third ATM markets).
39. This is not the only potential input foreclosure issue that the Proposed Merger generates. Another relates to the supply of cash and cash processing at ACCs to CIT providers that will be in competition with the merged entity in at least the second CIT market.<sup>15</sup> However, given my instructions, this report is focused on the vertical foreclosure issue in relation to IADs.
40. Concerns for competition from the potential for input foreclosure arise where the merged entity will have control over an input used by downstream competitors, and incentives to use that control to weaken downstream competitors by raising their costs, either by denying them the input altogether (full or total foreclosure) or by raising the price or lowering the quality of the input supplied to them (partial foreclosure). The pre-merger and post-merger situations are shown in Figure 1. Broken red arrows depict the potential input foreclosure and its effects downstream due to the raising of rivals' costs (RRC).

---

14 Horizontal issues arise not only in the three CIT markets identified by the Application and the RBB Economics report, but also in the additional markets I have identified (markets for the supply of CIT services to IADs and for the supply of cash from ACCs to CIT providers). Horizontal effects are likely to be substantial given that the Proposed Merger represents a "two to one" in national CIT providers with ACCs, the "critical role" the merging parties play in wholesale and retail cash distribution and the reliance of a range of customers on them. The RBB Economics report expects that while prices will rise, they will not rise above the level that recovers fixed and variable costs in CIT, due to indirect constraints from digital payment methods: RBB Economics report, para 298 on page 75. While digital payment methods might constrain CIT prices to some extent, I do not see an economic basis for a conclusion that prices will settle at a level no higher than the Goldilocks level where costs are only just recovered. In addition to substantial horizontal price effects, there are likely to be substantial horizontal non-price effects. [REDACTED]

15 As noted earlier, the market for the supply of cash and cash processing at ACCs to CIT providers appears to have been overlooked in the Application and the RBB Economics report. Pre-merger, CIT providers that do not have their own ACCs can source cash from and have cash processed at the ACCs of either Armaguard or Prosegur and there will be competition between Armaguard and Prosegur to supply these services. Post-merger, the merged entity will be the only option for these cash supply and processing services for these CIT providers and at the same time the merged entity will be in competition downstream with these CIT providers in at least the second CIT market (i.e., the market for the supply of CIT services to retail customers who require a full service solution).

**Figure 1: Illustration of Pre-Merger and Post-Merger Vertical Relationships**



41. Following the ACCC's Merger Guidelines, in the remainder of this section I consider the following three questions:<sup>16</sup>
- a. First, will the merged entity have an ability to foreclose downstream competitors by refusing to supply or worsening the terms of supply of an important input?
  - b. Second, will the merged entity have incentives to do so?
  - c. Third, even if the merged entity would have the ability and incentives to foreclose downstream competitors, is it likely that customers and ultimately end-consumers would be harmed in the form of higher prices or lower quality (i.e., are anti-competitive effects likely)?
42. The following sub-sections consider each of these questions in turn.

### 3.2. Ability to foreclose

43. When assessing ability to foreclose we are interested in whether the merged entity will control an upstream input that is important for downstream rivals such that their ability to compete would be substantially compromised without it. CIT services supplied to IADs are an input of that nature. As noted earlier, Next's ATM deployment business is critically dependent on CIT services and in particular on the nature and quality of CIT services that

<sup>16</sup> ACCC Merger Guidelines, paragraph 5.23 on page 25.

only Armaguard and Prosegur provide.<sup>17</sup> More generally, the Application observes that “[t]he Applicants play a critical role in the physical distribution and management of cash in Australia” which the major banks, other banks and large and small retailers all “rely on to ensure consumers have access to cash”.<sup>18</sup>

44. Pre-merger, although both Armaguard and Prosegur are already vertically integrated between CIT and ATM deployment, it appears that neither has the ability to foreclose IAD operators such as Next due to the competition between them. [REDACTED]

[REDACTED] which suggests that the merging parties lack any ability to foreclose Next today due to the competition between them.<sup>19</sup>

45. The effect of the Proposed Merger will be to remove this competition in a context in which Armaguard and Prosegur are the only two options for CIT services for IADs such as Next.<sup>20</sup> The lack of any other good option for CIT services means that the Proposed Merger will confer on the merged entity the ability to foreclose IAD operators such as Next, either fully or partially.

### 3.3. Incentives to foreclose

46. It is possible that incentives to foreclose already exist for Armaguard and/or Prosegur, which compete closely with Next for ‘retail site’ ATM deployments in shopping centres, high street locations, petrol stations and convenience stores.<sup>21</sup> However, as explained above, it appears that they lack the ability to foreclose Next today.
47. Given that there is currently (pre-merger) no ability to foreclose, and having established an ability to foreclose post-merger, the incentives question is not whether the merger changes incentives, but simply whether there is a likelihood that there will be incentives to foreclose post-merger.
48. Without purporting to have fully analysed input foreclosure incentives, the risk that the merged entity will have such incentives can be illustrated using vertical arithmetic. Vertical arithmetic is an analytical model that can be used to assess the incentives for a particular type of foreclosure strategy, namely withholding a fixed volume of inputs (possibly all inputs) from one or more (or all) downstream competitors, while keeping all prices (and hence profit margins) unchanged.
49. Whether the merged entity would have incentives to engage in input foreclosure will depend on whether such a strategy would be profitable for the merged entity overall. Vertical arithmetic is founded on the understanding that when considering incentives of a vertically integrated merged entity to foreclose downstream competitors that make use of inputs supplied by the merged entity’s upstream operation, there is usually the following trade-off to consider for the merged entity’s overall profitability.

---

17 Above Sections 2.2.1 and 2.2.2, and Assumptions 9-11 and 16.

18 Application, page 10. See also page 73, where the Application explains that “without the Applicants, Australia’s cash distribution system would collapse, to the detriment of those who need it most”.

19 Assumption 6.

20 Assumptions 9-11 and 16.

21 Assumption 13. See also Application, para 450 on page 178, and RBB Economics report, para 459 on page 111.

- a. **Loss of upstream margins on downstream units that are foreclosed.** On the one hand, foreclosure will usually reduce the merged entity's upstream volumes (i.e., its sales of inputs to independent downstream firms), and the margins on those foregone sales represent a loss for the merged entity.
- b. **Gain of upstream and downstream margins on downstream units that divert to the merged entity.** On the other hand, foreclosure will usually increase the merged entity's downstream volumes, and the upstream and downstream margins on those additional downstream units represent a gain for the merged entity. The merged entity may also gain upstream margins in relation to downstream units that divert to downstream competitors that are not foreclosed, if the merged entity supplies inputs to those downstream competitors.

50. Assuming for simplicity a single unit of the upstream service is used for each downstream unit sold, the "loss" from the foreclosure strategy for each upstream unit withheld can be represented as:

$$L = \mu_u \tag{1}$$

where  $\mu_u$  is the gross margin on each upstream unit.

51. The "gain" can be represented as:

$$G = [d_{ME} \times (\mu_D + \mu_u)] + [d_{OTHER} \times \mu_u] \tag{2}$$

where  $d_{ME}$ , and  $d_{OTHER}$ , which can each take any value from zero to one as long as their sum does not exceed one, represent the extent of diversion of downstream ATM deployments from the foreclosed downstream competitor (e.g. Next) to the merged entity's downstream operation and to other (non-foreclosed) downstream competitors respectively, and  $\mu_D$  represents the merged entity's gross margin on each downstream unit.

52. The first term in square brackets is the gain from diversion to the merged entity's downstream ATM operation, which is the sum of upstream and downstream margins on the diverted ATM deployments. The second term in square brackets is the gain from diversion to other downstream competitors, which is the upstream margin that the merged entity will continue to earn on those diverted ATM deployments, assuming that downstream IAD competitors will use the merged entity for CIT services.

53. There will then be incentives to foreclose if  $G > L$  or:

$$[d_{ME} \times (\mu_D + \mu_u)] + [d_{OTHER} \times \mu_u] > \mu_u \tag{3}$$

54. Rearranging terms we get:

$$d_{ME} \times \mu_D > (1 - d_{ME} - d_{OTHER}) \times \mu_u \tag{4}$$

55. This means that there will be incentives to foreclose if the additional downstream margins realised by the merged entity from the foreclosure strategy (the left-hand side) exceed the net impact on upstream margins (the right-hand side). The net impact on upstream margins is the loss upstream from no longer selling the upstream unit to the foreclosed downstream operator, minus the gain upstream from additional downstream units sold by the merged entity's IAD operation or by other IAD competitors (as in each case the merged entity can expect to retain the upstream margins from CIT services).

56. We can rewrite (4) as:

$$d_{ME} \times m_D > d_{OUTSIDE} \times m_U \quad (5)$$

where  $d_{OUTSIDE}$  is the proportion of downstream ATM deployments of the foreclosed competitor that would leave the market altogether (i.e., where customers of the foreclosed downstream IAD operator choose to no longer have ATMs deployed on their premises or have fewer ATMs deployed) rather than divert to the merged entity's downstream operation or other downstream competitors (i.e.,  $d_{OUTSIDE} = 1 - d_{ME} - d_{OTHER}$ ).

57. If all downstream ATM deployments that are foreclosed would divert either to the merged entity's downstream ATM operation or to other downstream IAD competitors (i.e., no customers of the foreclosed downstream IAD operator would leave the downstream market or reduce their purchases of IAD services) then  $d_{ME} + d_{OTHER} = 1$  and  $d_{OUTSIDE} = 0$ , and there would be incentives to foreclose if:

$$d_{ME} \times m_D > 0 \quad (6)$$

58. There are reasons to think there is at least a likelihood (in the sense of a real chance) that the gain from a foreclosure strategy (the left-hand side of (5)) would exceed the loss (the right-hand side of (5)).

a. Diversion of ATM deployments to the merged entity's downstream operation ( $d_{ME}$ ) is likely to be close to 1 in some customer segments, such as for 'retail site' ATM deployments (e.g., deployments on high streets and in shopping centres), where I understand Next, Armaguard and Prosegur are the main alternative IAD providers.<sup>22</sup>

b.

[REDACTED]

c. Meanwhile, whatever upstream margins might be, the proportion of downstream ATM deployments of Next that would leave the market altogether rather than divert to the merged entity or another IAD competitor ( $d_{OUTSIDE}$ ) is likely to be small as there will be demand for ATM deployments wherever there is commercially viable levels of "foot traffic".<sup>24</sup> If there would be no diversion "outside" the market, inequality (6) demonstrates that there would be incentives to foreclose as long as there would be some diversion to the merged entity's downstream operation and positive margins downstream in ATM deployment.

d. Looking at things another way, if upstream and downstream margins are similar, then there will be incentives to foreclose as long as the proportion of Next's ATM deployments that would divert to the merged entity's downstream operation ( $d_{ME}$ ) would be greater than the proportion of those deployments that would leave the market altogether ( $d_{OUTSIDE}$ ). Given the closeness of competition between Next, Armaguard and Prosegur,<sup>25</sup> I consider it likely that this would be the case.

---

22 Assumption 13.

23 Assumption 3.

24 Assumption 19.

25 Assumption 13.

59. In any event, there appears to be a sufficient risk of incentives to foreclose to justify the ACCC giving close consideration to vertical foreclosure of IAD competitors such as Next as an issue of concern with the proposed merger.
60. Indeed, as the proposed merger is essentially a “two to one” in CIT services to IADs and IADs such as Next have no other options for CIT services, the proposed merger is particularly problematic from a vertical foreclosure perspective. In other merger contexts where vertical foreclosure is assessed it is often the case that there are alternatives to the upstream input supplied by the merged entity or there are downstream competitors that are themselves vertically integrated upstream or otherwise do not require the input. In those contexts, the merged entity will need to take into account the loss of upstream margins on all ATM deployments that do not divert to the merged entity’s downstream operation. In the current case, however, the merged entity can be confident of retaining the upstream margins on downstream ATM deployments whether they divert to the merged entity’s own downstream operation or to other downstream competitors.

### 3.4. Likely effects

61. The effects of input foreclosure of IADs such as Next on customers of ATM deployment services (e.g., shopping malls, service stations and convenience stores) and ATM users (end-consumers) are likely to be substantial.
62. Full foreclosure would be likely to eliminate the targeted IADs altogether as competitors in ATM markets, given that they would have no other good options for CIT services, which are critical inputs for their businesses.<sup>26</sup> Even partial foreclosure (which could take the form of either higher prices for CIT services or lower quality CIT services) would weaken IADs as competitors to the merged entity’s downstream ATM deployment operation by increasing their costs (which may have to be passed on to ATM deployment customers and ATM users in higher prices) or reducing the quality of service they would be able to provide to ATM deployment customers and ATM users. Both full and partial foreclosure would therefore reduce the effectiveness of competition and constraints from IADs on the merged entity’s downstream ATM deployment operation.
63. In the short term this would allow the merged entity to charge higher prices and/or offer lower quality service to ATM deployment customers and ATM users,<sup>27</sup> even while increasing its own ATM deployments at the expense of its foreclosed rivals. The more IADs that the strategy was applied to the greater the harm would be. However, even if the strategy were targeted only at Next, substantial effects are likely as I understand Next to be a close competitor to the merging parties for many customers of ATM deployment services (including shopping centres, high street locations, petrol stations and convenience stores, [REDACTED]).

---

26 Assumptions 9-11 and 16.

27 Higher prices for ATM deployment customers would take the form of a larger share of ATM revenue flowing to the merged entity and smaller shares of revenue for these customers. Higher prices for ATM users would take the form of higher ATM withdrawal charges.



- ██████████<sup>28</sup> The strength of constraint from Next faced by the merging parties is acknowledged in the Application and the RBB Economics report.<sup>29</sup>
64. Longer term, foreclosure of IADs would be likely to reduce investment and innovation in ATM markets.
- a. The relaxation of competitive constraints in ATM markets would reduce incentives for the merged entity to invest and innovate.
  - b. At the same time, tighter margins and fewer ATM deployments for IADs that survive would be likely to compromise their ability to invest and innovate.
65. An assessment of likely effects would not be complete without consideration of the potential for the Proposed Merger to generate efficiencies that might translate into better overall outcomes for customers and consumers notwithstanding that there may be foreclosure of downstream competitors. In particular, it is often argued that a vertical merger will have “elimination of double marginalisation” (EDM) effects that could offset the harms of foreclosure.
66. Double marginalization arises when an upstream firm that is not integrated downstream charges a linear price for an input to an independent downstream firm that in turn chooses its downstream prices to final customers without considering the margins earned by the upstream firm.<sup>30</sup> This results in downstream prices that are higher than what a vertically integrated firm would charge. The elimination of this inefficiency is a possible pro-competitive benefit of a vertical merger.
67. However, while the Proposed Merger generates vertical effects, the Proposed Merger is not a vertical merger. Each of the merging parties is already vertically integrated and their downstream prices for ATM services should therefore already reflect the elimination of double marginalisation. The Proposed Merger should therefore not produce any additional incentive to lower downstream prices. To the contrary, if Next and/or other rival IADs are foreclosed (totally or partially) their customers will be worse off because they will either stay with the same IAD and pay higher prices and/or experience lower quality, or switch to a merged entity that faces weaker competition and will therefore be able to offer them worse deals.

### 3.5. Summary

68. I consider that there is a likelihood (in the sense of a real chance) that the Proposed Merger will substantially lessen competition through vertical foreclosure effects in relation to ATM deployment services. This is for the following reasons.
- a. By eliminating competition between Armaguard and Prosegur in relation to CIT services to IADs, the Proposed Merger will generate an ability that does not exist pre-merger to fully or partially foreclose rival IADs, whether by refusing to supply rival

---

28 Assumptions 13 and 14.

29 The Application and the RBB Economics report state that “Next Payments has been competing particularly aggressively recently”: Application, para 450 on page 178; and RBB Economics report, para 459 on page 111.

30 For a simple formal analysis of this effect see Massimo Motta (2004), *Competition Policy – Theory and Practice*, Cambridge University Press, Section 6.2.1.1.

IADs with CIT services, increasing prices for CIT services or reducing the quality of CIT services.

- b. There is a likelihood (in the sense of a real chance) that the merged entity will have incentives to foreclose IADs such as Next.
- c. The effects of input foreclosure of IADs such as Next on customers of ATM deployment services (e.g., shopping malls, service stations and convenience stores) and ATM users (end-consumers) are likely to be substantial. The weakening of competition and constraints on the merged entity would be likely to result in higher prices, lower quality and reduced investment and innovation in ATM markets.

#### 4. POSSIBLE ALTERNATIVES TO THE PROPOSED MERGER

69. To paraphrase the Application, there is underutilisation of and significant excess capacity in the Applicants' duplicated cash infrastructures, and total cash related demand is insufficient for the Applicants, in competition with each other, to cover the fixed costs associated with those infrastructures.<sup>31</sup> The Application claims that "neither Prosegur nor Armaguard is able to operate a financially viable business providing cash-related services".<sup>32</sup>
70. In this context the stated rationale for the Proposed Merger is that it "will enable the Applicants to realise significant efficiencies by combining their operations into one national network, allowing them to de-duplicate their high fixed cost bases and enabling them to offer CIT services to customers in a way that is financially viable and sustainable on an ongoing basis".<sup>33</sup>
71. Related to this rationale, the main public benefits claimed in the Application are that the Proposed Merger will:
  - a. Ensure "sustainable, reliable and safe cash distribution as digital payments become increasingly prominent";
  - b. Avoid a "major interruption to the operation of the cash distribution system" and associated costs from the exit of Armaguard or Prosegur, which the Application claims is "inevitable" in the counterfactual;
  - c. Improve productive efficiency by eliminating inefficient duplication of fixed costs of the Applicants' national networks;
  - d. Avoid the "cost, delay and uncertainty associated with the RBA moving to any new regulatory model for cash distribution";
  - e. Avoid the "need for the RBA or the Australian Government to assume the responsibility and cost of cash distribution";
  - f. Ensure the "continued operation of CIT services in a safe and secure way to the benefit of employees safety, customer certainty and society more broadly"; and

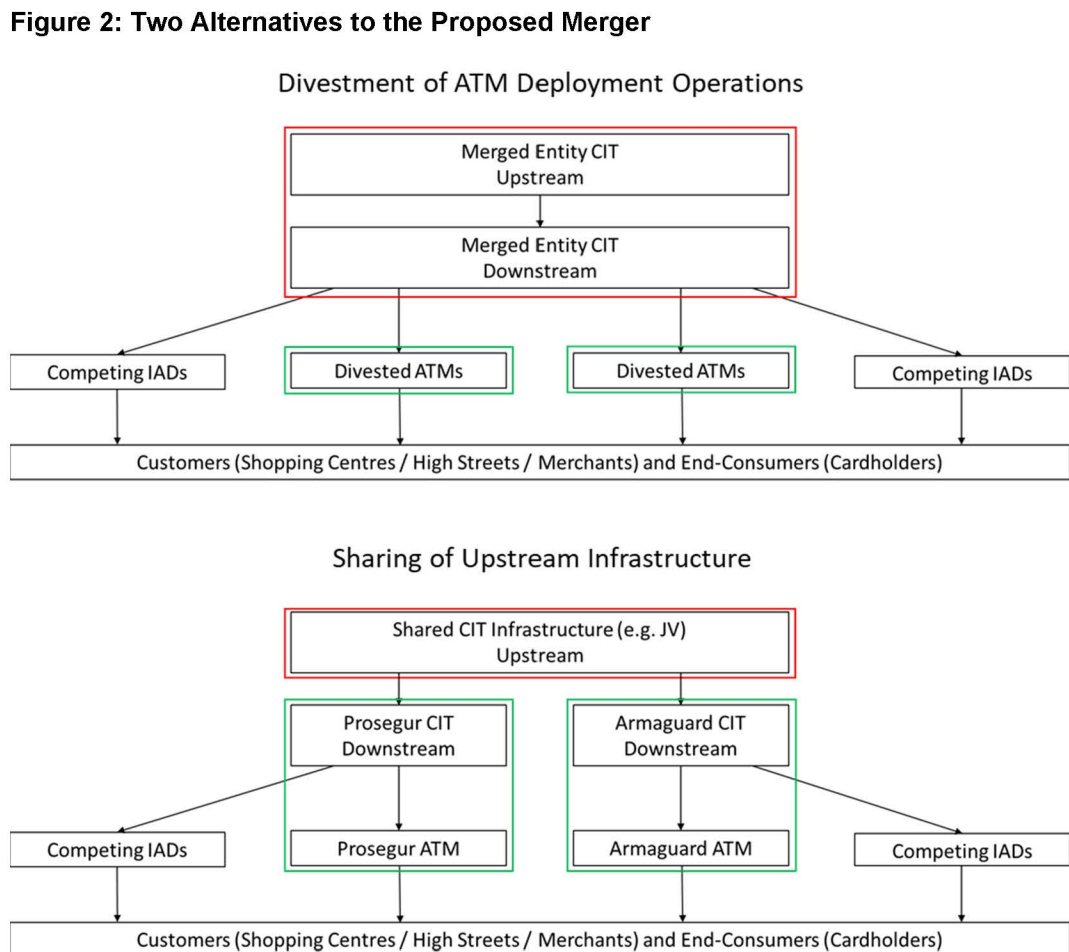
---

31 Application, page 11.

32 Application, page 11.

33 Application, page 12.

- g. Ensure the “continued participation of both Applicants within the Australian markets”.<sup>34</sup>
72. As explained in the previous section, the Proposed Merger gives rise to vertical foreclosure risks in addition to anti-competitive horizontal effects. In this section, I consider alternatives to the Proposed Merger that have the potential to achieve the stated rationale of the merger by addressing the excess capacity and under-recovery issue, and deliver the same public benefits as those listed above, *with less anti-competitive effect*.
73. Specifically, I consider the following two possible alternatives (there may of course be others and all should be explored):
- a. The Proposed Merger with divestment of the merging parties’ downstream ATM businesses; and
  - b. A joint venture or other form of infrastructure sharing confined to the infrastructure where fixed cost rationalisation is required.
74. These alternatives are illustrated in Figure 2 below.



<sup>34</sup> Application, pages 13-15. The Application also claims that the Proposed Merger will reduce the Applicants’ carbon footprint through the use of fewer vehicles using less fuel as well as other rationalisations (e.g., from the reduction in ACCs): Application, page 14.

#### **4.1. The Proposed Merger with divestment of the merging parties' downstream ATM businesses**

75. One alternative to the Proposed Merger would be the Proposed Merger as contemplated, but with divestment of the Armaguard and Prosegur ATM deployment businesses.
76. This alternative should realise the rationale and the public benefits that the Application claims for the Proposed Merger, because the merging parties will still be allowed to consolidate and de-duplicate high fixed cost CIT operations that they claim are causing their financial difficulties. The benefit of this alternative compared to the Proposed Merger, for competition and ultimately customers and end-consumers, is that it would completely address the vertical foreclosure concern with respect to ATM deployment. This is because severing the merged entity's vertical integration between CIT services and ATM deployment will remove any incentive to foreclose IADs. This alternative would not, however, address the vertical foreclosure concern in relation to the supply of cash and cash processing at ACCs to CIT providers that will be in competition with the merged entity in at least the second CIT market, nor the horizontal concerns in CIT services raised by the Proposed Merger.

#### **4.2. Sharing of CIT infrastructure only where fixed cost rationalisation is required (or "do as little harm as necessary")**

77. The rationale and the public benefits claimed for the Proposed Merger relate to a need for rationalisation of duplicated infrastructure in order for the costs of cash infrastructure to be recovered (given current and expected future cash volumes) and for the merging parties to offer CIT services in a financially viable and sustainable way. The Proposed Merger, however, is a full merger that would consolidate not necessarily just the minimum set of infrastructure necessary for both merging parties to remain viable as CIT competitors, but all of the merging parties' CIT businesses (as well as their ATM businesses).
78. This begs the question whether there may be alternatives to the Proposed Merger that would achieve fixed cost rationalisation only where it is truly needed, and most or all of the claimed public benefits, without consolidating Armaguard and Prosegur's entire CIT businesses (and ATM operations), thereby allowing Armaguard and Prosegur to continue to compete in CIT (and ATM) markets.
79. The Application claims that "some other commercial arrangement between the Applicants' businesses short of full merger, such as a limited joint venture or partial merger, would not realise the cost savings necessary to create a financially sustainable business".<sup>35</sup> The question is whether this claim is true.

---

<sup>35</sup> Application, page 16. Apart from a discussion of the viability of a joint venture in relation to regional areas (pages 99-100), the Application does not elaborate on the claim that a limited joint venture or partial merger would not realise the cost savings necessary to allow the Applicants to remain viable. In particular, the Application does not explain why a joint venture in relation to all ACCs, or in relation to all ACCs and the wholesale distribution network, would not realise sufficient cost savings.

80. For example, it could be that the minimum set of infrastructure in need of rationalisation for both Armaguard and Prosegur to be financially viable is limited to ACCs, or to ACCs and the transport networks involved in “wholesale cash distribution”.<sup>36</sup>
- a. The Application lists a number of players downstream of ACCs in the second CIT market that appear to be viable, despite operating duplicative retail CIT infrastructure (including transport networks).<sup>37</sup> It also claims that there is a “threat of entry” into the second CIT market from CIT providers that are currently only active in the provision of cash transport (the third CIT market). This all suggests that economies of scale and density in retail CIT transport may not be so great as to preclude Armaguard and Prosegur viably maintaining their own CIT transport networks downstream of ACCs. Indeed, any economies of scope between their wholesale and retail transport operations should give the Applicants greater scope for their retail transport operations to be viable than other CIT providers.
- b. Other parts of the Application suggest that the high fixed cost issues the merging parties are facing may be more to do with their ACCs than with their retail CIT transport networks. For example, the Application claims that barriers to entry into the second CIT market are “low” because there is no need to make large investments in processing centres or in being approved as an ACCO, and that as cash volumes decline more collections and deliveries can be performed using soft-skin or courier cash movements rather than armoured trucks.<sup>38</sup>
81. A question for consideration, therefore, is whether both Armaguard and Prosegur could be financially viable if they were to share the costs of ACCs (or share the costs of a single “wholesale” infrastructure including ACCs), while continuing to provide separate CIT services (including separate nationwide transport networks) downstream of ACCs.
82. Sharing might be realised by a joint venture (JV) between Armaguard and Prosegur that would consolidate their ACCs (and, if necessary, their wholesale transport infrastructure) and provide services such as cash sourcing and cash processing<sup>39</sup> on fair, reasonable and non-discriminatory (FRAND) terms to Armaguard, Prosegur and third party CIT providers.
83. This alternative, if feasible, would offer a number of benefits for competition, customers and end-consumers compared to the Proposed Merger.
- a. First, it would completely address the vertical foreclosure concern raised by the Proposed Merger in relation to ATM deployment services, as under this alternative

---


<sup>36</sup> The Application describes wholesale cash distribution as “the bulk movement of banknotes between the RBA and approved cash centres, banknote fitness sorting, and the daily reporting of cash holdings on behalf of the Major Banks” as well as “the cash services that facilitate interbank trading between the big four banks”: Application, page 68.

<sup>37</sup> See the Application, pages 166-167. Indeed, the Application claims that these other CIT providers “will effectively constrain the merged entity” in the second CIT market and that “Authentic Security is well placed to expand further in response to a price increase by the merged entity”.

<sup>38</sup> Application, page 167.

<sup>39</sup> The Application describes cash processing as involving “the counting and balancing of collected cash, and the payment of that cash into customers’ bank accounts), as well as [...] and the detection of counterfeit money”: Application, page 77.

- Armaguard and Prosegur would continue to compete to supply CIT services to IADs (downstream of ACCs).
- b. Second, open access for third party CIT providers to the JV's services on FRAND terms would address the vertical foreclosure concern raised by the Proposed Merger in relation to the supply of cash and cash processing at ACCs to CIT providers downstream of ACCs.<sup>40</sup>
  - c. Third, this alternative would improve on the Proposed Merger in relation to horizontal price and non-price effects, by limiting the concentration to, at most, ACCs and other wholesale cash infrastructure, and retaining competition between Armaguard and Prosegur in CIT services downstream of ACCs.
84. To fully address horizontal concerns, an undertaking might need to be given that prices for the supply of cash and cash processing at ACCs will not exceed levels that recover the fixed and variable costs of the services. However, even without such an undertaking I consider that this alternative would provide better outcomes for customers and end-consumers than the Proposed Merger, by eliminating vertical foreclosure risks and reducing horizontal effects.
85. The Application describes a number of international examples where it appears that ACCs are operated independently of CIT transport operations.<sup>41</sup> This suggests that it should be feasible to create an "ACC JV" that provides services to CIT providers downstream of ACCs, including third-party CIT providers as well as the JV's owners.
86. In summary, I consider there would be merit in the merging parties and the ACCC applying a merger policy ethic of "first do as little harm as necessary"<sup>42</sup> by investigating whether a more limited consolidation than the Proposed Merger would be capable of ensuring the financial viability of Armaguard and Prosegur with less anti-competitive effect. I have illustrated this with the example of a JV limited to ACCs, or to ACCs and the transport networks involved in wholesale cash distribution, but this is not to exclude the possibility of other sharing structures and other boundaries around the minimum set of infrastructure in need of rationalisation.
87. A final observation is that such an alternative (authorisation of a more limited form of consolidation) may well be a likely counterfactual to the Proposed Merger, should the ACCC decline to authorise the Proposed Merger. Compared to this counterfactual, the Proposed Merger would be likely to result in substantial anti-competitive horizontal and vertical effects with limited or no additional public benefit.

  
Geoff Edwards  
2 November 2022

---

40 Without open access on FRAND terms there may be concerns that the JV (like the merged entity if the Proposed Merger were to proceed) would have the ability and incentives to fully foreclose, raise prices to or reduce the quality of services to third party CIT providers, reducing competition compared to the current situation in which third party CIT providers have two options for cash sourcing and processing at ACCs.

41 Application, pages 149-150.

42 A variation of the "first do no harm" ethic of modern medicine.

## APPENDIX A: ENGAGEMENT LETTER AND LETTER OF INSTRUCTIONS

20 October 2022

Dr Geoff Edwards  
Vice President, Charles River Associates  
Suite 2201, Level 22, Tower 2  
101 Grafton Street  
Bondi Junction NSW 2022

Dear Dr Edwards

## Letter of engagement

Allens acts for Next Payments Pty Ltd (**Next Payments**) in relation to the proposed merger of Linfox Armaguard Pty Ltd (**Armaguard**) and Prosegur Australia Holding Pty Ltd (**Prosegur**) (the **Proposed Merger**).

On 26 September 2022, Armaguard and Prosegur lodged an application with the Australian Competition and Consumer Commission (**ACCC**) seeking authorisation in relation to the Proposed Merger pursuant to section 88 of the *Competition and Consumer Act 2010* (Cth) (the **Application**). Armaguard and Prosegur together are referred to in this letter as the **Applicants**.

We are instructed to engage CRA International (UK) Ltd (d/b/a Charles River Associates) (**CRA**) for its services, and specifically for your services as an independent expert in relation to the Proposed Merger, to provide your expert opinion based on your knowledge and experience.

This letter sets out the terms of CRA's engagement with Allens and the scope of your obligations under it. The terms of this letter shall apply to all Charles River Associates staff who may be required to perform work in connection with this engagement.

### 1 Scope of work

We would like you to prepare an expert economic report that can be submitted to the ACCC in connection with the Proposed Merger (**initial report**). We will separately provide you with the instructions as to the matters you are to address in your initial report and the documents and materials relevant to those matters.

You may also be required to respond to questions or requests from us, Next Payments, or the ACCC. This may include attending meetings with the ACCC and engaging with any other experts or consultants retained by the ACCC or third parties. You may also be asked to prepare a supplementary or further report.

In the event the ACCC's decision with respect to the Proposed Merger becomes the subject of proceedings before the Australian Competition Tribunal (**Tribunal**), you may be required to give evidence in the Tribunal.



## 2 Fees

[REDACTED]

If you intend to use the services of any other person, including any additional research assistant or analyst, to support your role, please advise us and provide us with their details, including their name, position and fees before doing so. Any person working under your supervision in relation to the Application must maintain the confidentiality requirements set out in this retainer and comply with the Federal Court's Harmonised Expert Witness Code of Conduct (referred to below at section 4) at all times.

We request that your invoices itemise the time spent on this matter and all reasonable expenses, together with a copy of receipts for any expenses incurred. Expenses such as taxis, flights, accommodation, parking, couriers, printing etc are to be billed at cost. Please invoice Allens in respect of this matter.

You should present your memoranda of fees on a monthly basis.

## 3 Confidentiality and privilege

Your engagement and all information given to you in connection with it are confidential and will be kept secret and confidential by you.

In connection with the engagement (whether before or after the date of this letter), you are likely to receive or produce confidential or privileged information of Next Payments, or confidential or privileged information relating to Next Payments. Such confidential or privileged information, the nature and terms of this letter, your instructions and the nature and terms of your engagement by Allens, are referred to in this letter as **Information**.

In accepting the engagement, CRA agrees to the following.

- (a) To keep all Information confidential, and not directly or indirectly use any such Information except as required in the course of the engagement. The position in relation to confidentiality will be reviewed with you if you are asked to give evidence in the Tribunal, whether by way of a report, oral evidence or both.
- (b) To not disclose or communicate any Information to any third person or entity (other than Allens or Next Payments) except as Allens or Next Payments may specifically request.
- (c) Except as Allens or Next Payments may direct, to maintain the confidentiality of all reports and documents (including any drafts, notes or working papers) prepared by you or at your direction and all other correspondence, emails, file notes, memoranda and other records of communications between us, you and Next Payments in connection with the engagement.
- (d) To ensure that all such documents prepared by you or at your direction (including correspondence sent to you by Allens or Next Payments) for the purpose of the engagement contain the header 'Confidential and Subject to Legal Professional Privilege'.

- (e) The obligations contained in sections 4(a) to 4(c) continue to apply notwithstanding that the engagement may have come to an end.
- (f) The obligations of confidentiality in this letter do not extend to information that (whether before or after the date of this letter):
  - (i) is public knowledge (other than as a result of a breach of this letter);
  - (ii) is disclosed to you by any third party which you reasonably believe was entitled to disclose such information; or
  - (iii) is required by law to be disclosed. To the extent permitted by law, you will notify us immediately on becoming aware of a requirement to disclose Information (including if you receive any subpoena, notice or request concerning production of any documents connected with the Application or to give evidence which may include your opinions in this matter) and will consult with us regarding any claim of privilege. Next Payments may wish to make in connection with Information you are required by law to disclose.
- (g) All such documents prepared by you or at your direction (including correspondence sent to you by Allens or Next Payments) for the purpose of the engagement, together with any other documents which may be provided to you in relation to the engagement, and any copies made of those documents, will be returned or destroyed on the termination of your engagement. Notwithstanding the foregoing, CRA may retain a secure electronic copy of any such materials that is created by its automated backup processes in the ordinary course of business, provided that such material is not accessed and provided further that such material “ages off” from such backups within a reasonable period of time.

#### 4 The role of an independent expert

We enclose a copy of Expert Evidence Practice Note GPN-EXPT of the Federal Court of Australia, issued on 25 October 2016, which includes the Federal Court's Harmonised Expert Witness Code of Conduct (the **Code**).

Please read the Code and comply with it when preparing your report. In acknowledgment of having done so, we request that you insert the following passage at the end of any report you prepare:

I, Dr Geoff Edwards, have read and understood the contents of the Expert Witness Code of Conduct supplied to me by Allens. I agree to be bound by the contents of that code.

I have made all the inquiries that I believe are desirable and appropriate and no matters of significance that I regard as relevant have, to my knowledge, been withheld from my report.

We also note your role as an independent expert is to provide an independent expert opinion. Accordingly, you are expected to be objective, professional and to form an independent view as to the matters in respect of which your opinion is sought.

#### 5 Conflicts of interest

As an independent expert, it is important that you are free from any possible conflict of interest in the provision of your advice. You should ensure that you have no connection with any other party which would preclude you from providing your opinion in an objective and independent manner.

We note you have informed us that you do not have any relevant conflict of interest in this matter. Please inform us immediately if at any time in the course of this engagement you become aware of an actual or potential conflict.

**6 Your obligations to our client**

We will rely on you to let us know if any aspect of this matter is outside your area of expertise and experience and if so, to let us have your recommendations as to an expert who may be able to assist in that area.

You will inform us of any matters which might be said to affect your independence. You will not take any action which will compromise your independence in any way.

You will not, without the written consent of Next Payments:

- (a) provide any advice, opinion or information in relation to the Application to any third party; or
- (b) accept any instructions in relation to the Application from any third party.

**7 Liability**

We acknowledge and agree that the total liability of CRA shall be limited to the total amount of fees paid to CRA under this retainer and that you shall have no personal liability in connection with this retainer. Under no circumstances shall you or CRA be liable for consequential, punitive, incidental or special damages or claims in the nature of lost profits, lost revenue or lost opportunity costs. The terms of this paragraph shall survive termination and/or the expiration of this retainer.

Please sign and return a copy of this letter to confirm CRA's agreement to the terms of the engagement. We look forward to working with you on this matter.

Yours sincerely

[Redacted signature]

**Robert Walker**

Partner

Allens

[Redacted contact information]

**Confirmation and acceptance of the terms of engagement and confidentiality provisions**

I accept the terms of the engagement and the conditions as to the use and disclosure of Information as set out in this letter:

A large black rectangular redaction box covering the signature area.

---

**Dr Geoff Edwards,  
Vice President, Charles River Associates**

**Date:** 20 October 2022

**Attachment 1: Expert Evidence Practice Note GPN-EXPT of the Federal Court of Australia**



## EXPERT EVIDENCE PRACTICE NOTE (GPN-EXPT)

### General Practice Note

#### 1. INTRODUCTION

- 1.1 This practice note, including the *Harmonised Expert Witness Code of Conduct* (“**Code**”) (see **Annexure A**) and the *Concurrent Expert Evidence Guidelines* (“**Concurrent Evidence Guidelines**”) (see **Annexure B**), applies to any proceeding involving the use of expert evidence and must be read together with:
- (a) the Central Practice Note (CPN-1), which sets out the fundamental principles concerning the National Court Framework (“**NCF**”) of the Federal Court and key principles of case management procedure;
  - (b) the Federal Court of Australia Act 1976 (Cth) (“**Federal Court Act**”);
  - (c) the *Evidence Act 1995* (Cth) (“**Evidence Act**”), including Part 3.3 of the Evidence Act;
  - (d) Part 23 of the *Federal Court Rules 2011* (Cth) (“**Federal Court Rules**”); and
  - (e) where applicable, the Survey Evidence Practice Note (GPN-SURV).
- 1.2 This practice note takes effect from the date it is issued and, to the extent practicable, applies to proceedings whether filed before, or after, the date of issuing.

#### 2. APPROACH TO EXPERT EVIDENCE

- 2.1 An expert witness may be retained to give opinion evidence in the proceeding, or, in certain circumstances, to express an opinion that may be relied upon in alternative dispute resolution procedures such as mediation or a conference of experts. In some circumstances an expert may be appointed as an independent adviser to the Court.
- 2.2 The purpose of the use of expert evidence in proceedings, often in relation to complex subject matter, is for the Court to receive the benefit of the objective and impartial assessment of an issue from a witness with specialised knowledge (based on training, study or experience - see generally s 79 of the Evidence Act).
- 2.3 However, the use or admissibility of expert evidence remains subject to the overriding requirements that:
- (a) to be admissible in a proceeding, any such evidence must be relevant (s 56 of the Evidence Act); and
  - (b) even if relevant, any such evidence, may be refused to be admitted by the Court if its probative value is outweighed by other considerations such as the evidence

being unfairly prejudicial, misleading or will result in an undue waste of time (s 135 of the Evidence Act).

- 2.4 An expert witness' opinion evidence may have little or no value unless the assumptions adopted by the expert (ie. the facts or grounds relied upon) and his or her reasoning are expressly stated in any written report or oral evidence given.
- 2.5 The Court will ensure that, in the interests of justice, parties are given a reasonable opportunity to adduce and test relevant expert opinion evidence. However, the Court expects parties and any legal representatives acting on their behalf, when dealing with expert witnesses and expert evidence, to at all times comply with their duties associated with the overarching purpose in the Federal Court Act (see ss 37M and 37N).

### **3. INTERACTION WITH EXPERT WITNESSES**

- 3.1 Parties and their legal representatives should never view an expert witness retained (or partly retained) by them as that party's advocate or "hired gun". Equally, they should never attempt to pressure or influence an expert into conforming his or her views with the party's interests.
- 3.2 A party or legal representative should be cautious not to have inappropriate communications when retaining or instructing an independent expert, or assisting an independent expert in the preparation of his or her evidence. However, it is important to note that there is no principle of law or practice and there is nothing in this practice note that obliges a party to embark on the costly task of engaging a "consulting expert" in order to avoid "contamination" of the expert who will give evidence. Indeed the Court would generally discourage such costly duplication.
- 3.3 Any witness retained by a party for the purpose of preparing a report or giving evidence in a proceeding as to an opinion held by the witness that is wholly or substantially based in the specialised knowledge of the witness<sup>1</sup> should, at the earliest opportunity, be provided with:
  - (a) a copy of this practice note, including the Code (see Annexure A); and
  - (b) all relevant information (whether helpful or harmful to that party's case) so as to enable the expert to prepare a report of a truly independent nature.
- 3.4 Any questions or assumptions provided to an expert should be provided in an unbiased manner and in such a way that the expert is not confined to addressing selective, irrelevant or immaterial issues.

---

<sup>1</sup> Such a witness includes a "Court expert" as defined in r 23.01 of the Federal Court Rules. For the definition of "expert", "expert evidence" and "expert report" see the Dictionary, in Schedule 1 of the Federal Court Rules.

#### **4. ROLE AND DUTIES OF THE EXPERT WITNESS**

- 4.1 The role of the expert witness is to provide relevant and impartial evidence in his or her area of expertise. An expert should never mislead the Court or become an advocate for the cause of the party that has retained the expert.
- 4.2 It should be emphasised that there is nothing inherently wrong with experts disagreeing or failing to reach the same conclusion. The Court will, with the assistance of the evidence of the experts, reach its own conclusion.
- 4.3 However, experts should willingly be prepared to change their opinion or make concessions when it is necessary or appropriate to do so, even if doing so would be contrary to any previously held or expressed view of that expert.

#### ***Harmonised Expert Witness Code of Conduct***

- 4.4 Every expert witness giving evidence in this Court must read the *Harmonised Expert Witness Code of Conduct* (attached in Annexure A) and agree to be bound by it.
- 4.5 The Code is not intended to address all aspects of an expert witness' duties, but is intended to facilitate the admission of opinion evidence, and to assist experts to understand in general terms what the Court expects of them. Additionally, it is expected that compliance with the Code will assist individual expert witnesses to avoid criticism (rightly or wrongly) that they lack objectivity or are partisan.

#### **5. CONTENTS OF AN EXPERT'S REPORT AND RELATED MATERIAL**

- 5.1 The contents of an expert's report must conform with the requirements set out in the Code (including clauses 3 to 5 of the Code).
- 5.2 In addition, the contents of such a report must also comply with r 23.13 of the Federal Court Rules. Given that the requirements of that rule significantly overlap with the requirements in the Code, an expert, unless otherwise directed by the Court, will be taken to have complied with the requirements of r 23.13 if that expert has complied with the requirements in the Code and has complied with the additional following requirements. The expert shall:
  - (a) acknowledge in the report that:
    - (i) the expert has read and complied with this practice note and agrees to be bound by it; and
    - (ii) the expert's opinions are based wholly or substantially on specialised knowledge arising from the expert's training, study or experience;
  - (b) identify in the report the questions that the expert was asked to address;
  - (c) sign the report and attach or exhibit to it copies of:
    - (i) documents that record any instructions given to the expert; and



- (ii) documents and other materials that the expert has been instructed to consider.

5.3 Where an expert's report refers to photographs, plans, calculations, analyses, measurements, survey reports or other extrinsic matter, these must be provided to the other parties at the same time as the expert's report.

## **6. CASE MANAGEMENT CONSIDERATIONS**

6.1 Parties intending to rely on expert evidence at trial are expected to consider between them and inform the Court at the earliest opportunity of their views on the following:

- (a) whether a party should adduce evidence from more than one expert in any single discipline;
- (b) whether a common expert is appropriate for all or any part of the evidence;
- (c) the nature and extent of expert reports, including any in reply;
- (d) the identity of each expert witness that a party intends to call, their area(s) of expertise and availability during the proposed hearing;
- (e) the issues that it is proposed each expert will address;
- (f) the arrangements for a conference of experts to prepare a joint-report (see Part 7 of this practice note);
- (g) whether the evidence is to be given concurrently and, if so, how (see Part 8 of this practice note); and
- (h) whether any of the evidence in chief can be given orally.

6.2 It will often be desirable, before any expert is retained, for the parties to attempt to agree on the question or questions proposed to be the subject of expert evidence as well as the relevant facts and assumptions. The Court may make orders to that effect where it considers it appropriate to do so.

## **7. CONFERENCE OF EXPERTS AND JOINT-REPORT**

7.1 Parties, their legal representatives and experts should be familiar with aspects of the Code relating to conferences of experts and joint-reports (see clauses 6 and 7 of the Code attached in Annexure A).

7.2 In order to facilitate the proper understanding of issues arising in expert evidence and to manage expert evidence in accordance with the overarching purpose, the Court may require experts who are to give evidence or who have produced reports to meet for the purpose of identifying and addressing the issues not agreed between them with a view to reaching agreement where this is possible ("**conference of experts**"). In an appropriate case, the Court may appoint a registrar of the Court or some other suitably qualified person ("**Conference Facilitator**") to act as a facilitator at the conference of experts.

- 7.3 It is expected that where expert evidence may be relied on in any proceeding, at the earliest opportunity, parties will discuss and then inform the Court whether a conference of experts and/or a joint-report by the experts may be desirable to assist with or simplify the giving of expert evidence in the proceeding. The parties should discuss the necessary arrangements for any conference and/or joint-report. The arrangements discussed between the parties should address:
- (a) who should prepare any joint-report;
  - (b) whether a list of issues is needed to assist the experts in the conference and, if so, whether the Court, the parties or the experts should assist in preparing such a list;
  - (c) the agenda for the conference of experts; and
  - (d) arrangements for the provision, to the parties and the Court, of any joint-report or any other report as to the outcomes of the conference (“**conference report**”).

#### ***Conference of Experts***

- 7.4 The purpose of the conference of experts is for the experts to have a comprehensive discussion of issues relating to their field of expertise, with a view to identifying matters and issues in a proceeding about which the experts agree, partly agree or disagree and why. For this reason the conference is attended only by the experts and any Conference Facilitator. Unless the Court orders otherwise, the parties' lawyers will not attend the conference but will be provided with a copy of any conference report.
- 7.5 The Court may order that a conference of experts occur in a variety of circumstances, depending on the views of the judge and the parties and the needs of the case, including:
- (a) while a case is in mediation. When this occurs the Court may also order that the outcome of the conference or any document disclosing or summarising the experts' opinions be confidential to the parties while the mediation is occurring;
  - (b) before the experts have reached a final opinion on a relevant question or the facts involved in a case. When this occurs the Court may order that the parties exchange draft expert reports and that a conference report be prepared for the use of the experts in finalising their reports;
  - (c) after the experts' reports have been provided to the Court but before the hearing of the experts' evidence. When this occurs the Court may also order that a conference report be prepared (jointly or otherwise) to ensure the efficient hearing of the experts' evidence.
- 7.6 Subject to any other order or direction of the Court, the parties and their lawyers must not involve themselves in the conference of experts process. In particular, they must not seek to encourage an expert not to agree with another expert or otherwise seek to influence the outcome of the conference of experts. The experts should raise any queries they may have in relation to the process with the Conference Facilitator (if one has been appointed) or in

accordance with a protocol agreed between the lawyers prior to the conference of experts taking place (if no Conference Facilitator has been appointed).

- 7.7 Any list of issues prepared for the consideration of the experts as part of the conference of experts process should be prepared using non-tendentious language.
- 7.8 The timing and location of the conference of experts will be decided by the judge or a registrar who will take into account the location and availability of the experts and the Court's case management timetable. The conference may take place at the Court and will usually be conducted in-person. However, if not considered a hindrance to the process, the conference may also be conducted with the assistance of visual or audio technology (such as via the internet, video link and/or by telephone).
- 7.9 Experts should prepare for a conference of experts by ensuring that they are familiar with all of the material upon which they base their opinions. Where expert reports in draft or final form have been exchanged prior to the conference, experts should attend the conference familiar with the reports of the other experts. Prior to the conference, experts should also consider where they believe the differences of opinion lie between them and what processes and discussions may assist to identify and refine those areas of difference.

#### ***Joint-report***

- 7.10 At the conclusion of the conference of experts, unless the Court considers it unnecessary to do so, it is expected that the experts will have narrowed the issues in respect of which they agree, partly agree or disagree in a joint-report. The joint-report should be clear, plain and concise and should summarise the views of the experts on the identified issues, including a succinct explanation for any differences of opinion, and otherwise be structured in the manner requested by the judge or registrar.
- 7.11 In some cases (and most particularly in some native title cases), depending on the nature, volume and complexity of the expert evidence a judge may direct a registrar to draft part, or all, of a conference report. If so, the registrar will usually provide the draft conference report to the relevant experts and seek their confirmation that the conference report accurately reflects the opinions of the experts expressed at the conference. Once that confirmation has been received the registrar will finalise the conference report and provide it to the intended recipient(s).

## **8. CONCURRENT EXPERT EVIDENCE**

- 8.1 The Court may determine that it is appropriate, depending on the nature of the expert evidence and the proceeding generally, for experts to give some or all of their evidence concurrently at the final (or other) hearing.
- 8.2 Parties should familiarise themselves with the *Concurrent Expert Evidence Guidelines* (attached in Annexure B). The Concurrent Evidence Guidelines are not intended to be exhaustive but indicate the circumstances when the Court might consider it appropriate for

concurrent expert evidence to take place, outline how that process may be undertaken, and assist experts to understand in general terms what the Court expects of them.

- 8.3 If an order is made for concurrent expert evidence to be given at a hearing, any expert to give such evidence should be provided with the Concurrent Evidence Guidelines well in advance of the hearing and should be familiar with those guidelines before giving evidence.

## **9. FURTHER PRACTICE INFORMATION AND RESOURCES**

- 9.1 Further information regarding Expert Evidence and Expert Witnesses is available on the Court's website.
- 9.2 Further information to assist litigants, including a range of helpful guides, is also available on the Court's website. This information may be particularly helpful for litigants who are representing themselves.

J L B ALLSOP  
Chief Justice  
25 October 2016

## Annexure A

# HARMONISED EXPERT WITNESS CODE OF CONDUCT<sup>2</sup>

---

### APPLICATION OF CODE

1. This Code of Conduct applies to any expert witness engaged or appointed:
  - (a) to provide an expert's report for use as evidence in proceedings or proposed proceedings; or
  - (b) to give opinion evidence in proceedings or proposed proceedings.

### GENERAL DUTIES TO THE COURT

2. An expert witness is not an advocate for a party and has a paramount duty, overriding any duty to the party to the proceedings or other person retaining the expert witness, to assist the Court impartially on matters relevant to the area of expertise of the witness.

### CONTENT OF REPORT

3. Every report prepared by an expert witness for use in Court shall clearly state the opinion or opinions of the expert and shall state, specify or provide:
  - (a) the name and address of the expert;
  - (b) an acknowledgment that the expert has read this code and agrees to be bound by it;
  - (c) the qualifications of the expert to prepare the report;
  - (d) the assumptions and material facts on which each opinion expressed in the report is based [a letter of instructions may be annexed];
  - (e) the reasons for and any literature or other materials utilised in support of such opinion;
  - (f) (if applicable) that a particular question, issue or matter falls outside the expert's field of expertise;
  - (g) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications;
  - (h) the extent to which any opinion which the expert has expressed involves the acceptance of another person's opinion, the identification of that other person and the opinion expressed by that other person;
  - (i) a declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate (save for any matters identified explicitly in the report), and that no matters of significance which the expert regards as relevant have, to the

---

<sup>2</sup> Approved by the Council of Chief Justices' Rules Harmonisation Committee

- knowledge of the expert, been withheld from the Court;
- (j) any qualifications on an opinion expressed in the report without which the report is or may be incomplete or inaccurate;
  - (k) whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason; and
  - (l) where the report is lengthy or complex, a brief summary of the report at the beginning of the report.

#### **SUPPLEMENTARY REPORT FOLLOWING CHANGE OF OPINION**

- 4. Where an expert witness has provided to a party (or that party's legal representative) a report for use in Court, and the expert thereafter changes his or her opinion on a material matter, the expert shall forthwith provide to the party (or that party's legal representative) a supplementary report which shall state, specify or provide the information referred to in paragraphs (a), (d), (e), (g), (h), (i), (j), (k) and (l) of clause 3 of this code and, if applicable, paragraph (f) of that clause.
- 5. In any subsequent report (whether prepared in accordance with clause 4 or not) the expert may refer to material contained in the earlier report without repeating it.

#### **DUTY TO COMPLY WITH THE COURT'S DIRECTIONS**

- 6. If directed to do so by the Court, an expert witness shall:
  - (a) confer with any other expert witness;
  - (b) provide the Court with a joint-report specifying (as the case requires) matters agreed and matters not agreed and the reasons for the experts not agreeing; and
  - (c) abide in a timely way by any direction of the Court.

#### **CONFERENCE OF EXPERTS**

- 7. Each expert witness shall:
  - (a) exercise his or her independent judgment in relation to every conference in which the expert participates pursuant to a direction of the Court and in relation to each report thereafter provided, and shall not act on any instruction or request to withhold or avoid agreement; and
  - (b) endeavour to reach agreement with the other expert witness (or witnesses) on any issue in dispute between them, or failing agreement, endeavour to identify and clarify the basis of disagreement on the issues which are in dispute.

## ANNEXURE B

# CONCURRENT EXPERT EVIDENCE GUIDELINES

---

### APPLICATION OF THE COURT'S GUIDELINES

1. The Court's Concurrent Expert Evidence Guidelines ("**Concurrent Evidence Guidelines**") are intended to inform parties, practitioners and experts of the Court's general approach to concurrent expert evidence, the circumstances in which the Court might consider expert witnesses giving evidence concurrently and, if so, the procedures by which their evidence may be taken.

### OBJECTIVES OF CONCURRENT EXPERT EVIDENCE TECHNIQUE

2. The use of concurrent evidence for the giving of expert evidence at hearings as a case management technique<sup>3</sup> will be utilised by the Court in appropriate circumstances (see r 23.15 of the *Federal Court Rules 2011* (Cth)). Not all cases will suit the process. For instance, in some patent cases, where the entire case revolves around conflicts within fields of expertise, concurrent evidence may not assist a judge. However, patent cases should not be excluded from concurrent expert evidence processes.
3. In many cases the use of concurrent expert evidence is a technique that can reduce the partisan or confrontational nature of conventional hearing processes and minimises the risk that experts become "opposing experts" rather than independent experts assisting the Court. It can elicit more precise and accurate expert evidence with greater input and assistance from the experts themselves.
4. When properly and flexibly applied, with efficiency and discipline during the hearing process, the technique may also allow the experts to more effectively focus on the critical points of disagreement between them, identify or resolve those issues more quickly, and narrow the issues in dispute. This can also allow for the key evidence to be given at the same time (rather than being spread across many days of hearing); permit the judge to assess an expert more readily, whilst allowing each party a genuine opportunity to put and test expert evidence. This can reduce the chance of the experts, lawyers and the judge misunderstanding the opinions being expressed by the experts.
5. It is essential that such a process has the full cooperation and support of all of the individuals involved, including the experts and counsel involved in the questioning process. Without that cooperation and support the process may fail in its objectives and even hinder the case management process.

---

<sup>3</sup> Also known as the "hot tub" or as "expert panels".

## **CASE MANAGEMENT**

6. Parties should expect that, the Court will give careful consideration to whether concurrent evidence is appropriate in circumstances where there is more than one expert witness having the same expertise who is to give evidence on the same or related topics. Whether experts should give evidence concurrently is a matter for the Court, and will depend on the circumstances of each individual case, including the character of the proceeding, the nature of the expert evidence, and the views of the parties.
7. Although this consideration may take place at any time, including the commencement of the hearing, if not raised earlier, parties should raise the issue of concurrent evidence at the first appropriate case management hearing, and no later than any pre-trial case management hearing, so that orders can be made in advance, if necessary. To that end, prior to the hearing at which expert evidence may be given concurrently, parties and their lawyers should confer and give general consideration as to:
  - (a) the agenda;
  - (b) the order and manner in which questions will be asked; and
  - (c) whether cross-examination will take place within the context of the concurrent evidence or after its conclusion.
8. At the same time, and before any hearing date is fixed, the identity of all experts proposed to be called and their areas of expertise is to be notified to the Court by all parties.
9. The lack of any concurrent evidence orders does not mean that the Court will not consider using concurrent evidence without prior notice to the parties, if appropriate.

## **CONFERENCE OF EXPERTS & JOINT-REPORT OR LIST OF ISSUES**

10. The process of giving concurrent evidence at hearings may be assisted by the preparation of a joint-report or list of issues prepared as part of a conference of experts.
11. Parties should expect that, where concurrent evidence is appropriate, the Court may make orders requiring a conference of experts to take place or for documents such as a joint-report to be prepared to facilitate the concurrent expert evidence process at a hearing (see Part 7 of the Expert Evidence Practice Note).

## **PROCEDURE AT HEARING**

12. Concurrent expert evidence may be taken at any convenient time during the hearing, although it will often occur at the conclusion of both parties' lay evidence.
13. At the hearing itself, the way in which concurrent expert evidence is taken must be applied flexibly and having regard to the characteristics of the case and the nature of the evidence to be given.
14. Without intending to be prescriptive of the procedure, parties should expect that, when evidence is given by experts in concurrent session:



- (a) the judge will explain to the experts the procedure that will be followed and that the nature of the process may be different to their previous experiences of giving expert evidence;
- (b) the experts will be grouped and called to give evidence together in their respective fields of expertise;
- (c) the experts will take the oath or affirmation together, as appropriate;
- (d) the experts will sit together with convenient access to their materials for their ease of reference, either in the witness box or in some other location in the courtroom, including (if necessary) at the bar table;
- (e) each expert may be given the opportunity to provide a summary overview of their current opinions and explain what they consider to be the principal issues of disagreement between the experts, as they see them, in their own words;
- (f) the judge will guide the process by which evidence is given, including, where appropriate:
  - (i) using any joint-report or list of issues as a guide for all the experts to be asked questions by the judge and counsel, about each issue on an issue-by-issue basis;
  - (ii) ensuring that each expert is given an adequate opportunity to deal with each issue and the exposition given by other experts including, where considered appropriate, each expert asking questions of other experts or supplementing the evidence given by other experts;
  - (iii) inviting legal representatives to identify the topics upon which they will cross-examine;
  - (iv) ensuring that legal representatives have an adequate opportunity to ask all experts questions about each issue. Legal representatives may also seek responses or contributions from one or more experts in response to the evidence given by a different expert; and
  - (v) allowing the experts an opportunity to summarise their views at the end of the process where opinions may have been changed or clarifications are needed.

15. The fact that the experts may have been provided with a list of issues for consideration does not confine the scope of any cross-examination of any expert. The process of cross-examination remains subject to the overall control of the judge.
16. The concurrent session should allow for a sensible and orderly series of exchanges between expert and expert, and between expert and lawyer. Where appropriate, the judge may allow for more traditional cross-examination to be pursued by a legal representative on a particular issue exclusively with one expert. Where that occurs, other experts may be asked to comment on the evidence given.
17. Where any issue involves only one expert, the party wishing to ask questions about that issue should let the judge know in advance so that consideration can be given to whether

arrangements should be made for that issue to be dealt with after the completion of the concurrent session. Otherwise, as far as practicable, questions (including in the form of cross-examination) will usually be dealt with in the concurrent session.

18. Throughout the concurrent evidence process the judge will ensure that the process is fair and effective (for the parties and the experts), balanced (including not permitting one expert to overwhelm or overshadow any other expert), and does not become a protracted or inefficient process.

**Allens**

101 Collins Street  
Melbourne VIC 3000 Australia

GPO Box 1776  
Melbourne VIC 3001 Australia

T +61 3 9614 1011

F +61 3 9614 4661

www.allens.com.au

ABN 47 702 595 758

**Allens**

24 October 2022

Dr Geoff Edwards  
Vice President, Charles River Associates  
Suite 2201, Level 22, Tower 2  
101 Grafton Street  
Bondi Junction NSW 2022

Dear Dr Edwards

**Letter of Instructions**

We refer to our letter dated 20 October 2022 retaining you as an independent expert in relation to the proposed merger of Linfox Armaguard Pty Ltd and Prosegur Australia Holdings Pty Ltd (the **Proposed Merger**).

This letter sets out instructions to be taken into account as part of your engagement.

Please continue to comply with all obligations set out in our 20 October 2022 letter in addition to the obligations set out in the Federal Court's Expert Evidence Practice Note provided to you with our letter.

**Background**

On 27 September 2022, Armaguard and Prosegur lodged an application with the ACCC seeking authorisation of the Proposed Merger (the **Application**). An expert report prepared by RBB Economics was filed with the Application (the **RBB Report**).

**Instructions**

Having regard to the materials briefed to you (including the Application and the RBB Report), and based upon your training, study and experience, you are requested to provide a written opinion in respect of the following matters and your reasons for those opinions:

- 1 The relevant markets for assessing the Proposed Merger.
- 2 Whether the Proposed Merger raises a risk of vertical foreclosure effects in relation to ATM deployment services.
- 3 Whether there might exist alternatives to the Proposed Merger that would be likely to realise the public benefits claimed in the Application.

Please let us know whether you have any queries about the questions above or the engagement more generally.

Yours sincerely

**Robert Walker**

Partner

Allens

## APPENDIX B: ASSUMPTIONS

30 October 2022

Dr Geoff Edwards  
Vice President, Charles River Associates  
Suite 2201, Level 22, Tower 2  
101 Grafton Street  
Bondi Junction NSW 2022

Dear Dr Edwards

### **Factual assumptions**

We refer to our engagement letter dated 20 October 2022 (**Engagement Letter**) retaining you as an independent expert in relation to the proposed merger of Linfox Armaguard Pty Ltd and Prosegur Australia Holdings Pty Ltd (the **Proposed Merger**), and our letter of instructions dated 24 October 2022 (**Instructions Letter**).

As set out in the Engagement Letter and the Instructions Letter, we have instructed you to provide a written opinion in respect of the Proposed Merger.

In preparing your written opinion, we request you have regard to the factual assumptions set out in Annexure 1 to this letter.

Please continue to comply with all obligations set out in the Engagement Letter in addition to the obligations set out in the Federal Court's Expert Evidence Practice Note provided to you with that letter.

Yours sincerely

**Robert Walker**  
Partner  
Allens

## Annexure 1

### Factual Assumptions

- 1 Next Payments' business is primarily focused on the deployment of ATMs nationally at sites owned or operated by the following type of merchants or organisations:
  - (a) locations where a bank previously supplied an ATM such as shopping centres, high street locations and petrol stations and convenience stores. Next Payments refers to these ex-bank sites as 'retail sites';
  - (b) venues such as hospitality venues (restaurants, pubs and clubs) and entertainment and gaming venues;
  - (c) government and other organisations;
  - (d) shops such as supermarkets and newsagents; and
  - (e) smaller Australian banks, such as Defence Bank.
- 2 Next Payments' ATM network is present in each state and capital city of Australia as well as in regional and remote areas.
- 3 [REDACTED]
- 4 Next Payments acquires cash-in-transit (**CIT**) and related services from Prosegur. [REDACTED] The remaining ATMs deployed by Next Payments are self-cashed (ie, replenished) by the merchant at whose site the ATM is deployed.
- 5 The CIT and related services that Prosegur supplies to Next Payments are:
  - (a) Cash in Transit Delivery – the physical transportation of cash from Prosegur depots via armoured vehicle and armed guard to ATMs.
  - (b) Cash in Transit Clearance – the physical transportation of cash from ATMs and cash recyclers to Prosegur depots via armoured vehicle and armed guard.
  - (c) Cash reconciliation – the counting of cash that is taken back to Prosegur depots from Next Payments' sites, and reporting to Next Payments' treasury and finance teams.
  - (d) First Level Maintenance – clearing minor faults, for example cash jams, at Next Payments' ATMs or cash recyclers in a secure manner (Australia wide).
  - (e) Second Level Maintenance – detailed technical and modular part replacement for hardware faults at Next Payments' ATMs or cash recyclers (in South Australia only).
  - (f) Installation and management of Cencon Locks – high security remotely accessible locking mechanisms that Prosegur can install and manage on behalf of Next Payments.
- 6 [REDACTED]
- (a) [REDACTED]

[REDACTED]

(b) [REDACTED]

(c) [REDACTED]

7 The following CIT services are specific requirements for the operation of an ATM network that are not critical requirements for other CIT service customers (such as retailers):

- (a) secured safe management leveraging remotely accessible locking mechanisms and individual personnel access tracking capability;
- (b) first level maintenance of ATMs;
- (c) armed guards trained in ATM replenishment/clearance and the handling and care of ATMs in a manner to reduce faults;
- (d) second level maintenance including escort guarding, provision of skilled electro-mechanical technicians, cash oversight and blind spot security;
- (e) provisioning (ie, replenishing) of ATMs with banknotes of sufficient quality to minimise ATM faults or maintenance issues;
- (f) quick response times in provisioning ATMs; and
- (g) out of hours deliveries / replenishments to ATMs which operate outside retailer business hours.

8 Retailer customers have different requirements in relation to CIT services. Retailers' primary CIT service requirements are the collection and processing of cash received when end consumers use cash to pay for goods and services in-store.

9 Next Payments sees Armaguard and Prosegur as its only two choices for the provision of CIT services to Next Payments' ATM network as:

- (a) Only Armaguard and Prosegur can satisfy all the requirements listed at paragraph 7 above.
- (b) Using smaller CIT service providers would increase Next Payments' costs or otherwise not be feasible, including because:
  - (i) Armaguard and Prosegur's scale enables them to offer lower prices for CIT services than smaller CIT service providers.
  - (ii) Next Payments can enter into an agreement with one CIT service provider to service Next Payments' national fleet of ATMs rather than having to enter agreements with multiple small CIT service providers.
  - (iii) Smaller CIT service providers rely on access to cash from Armaguard and Prosegur, sourced from Armaguard and Prosegur's secure cash depots (also referred to as 'Approved Cash Centres', or ACCs). This is an input cost which contributes to higher prices charged by smaller CIT service providers.

(iv) [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- (v) Armaguard and Prosegur have the scale and geographic coverage required to provide CIT services to Next Payments' national ATM network. Other CIT service providers do not have the scale and geographic coverage of Armaguard and Prosegur.

- 10 [REDACTED]
- 11 It would take significant time and investment for smaller CIT service providers to develop the necessary scale and capabilities to service Next Payments' nationwide ATM network including in regional and remote areas.
- 12 Next Payments competes with other independent ATM deployers for the deployment of ATMs to merchants. The independent ATM deployers it most often competes with in this respect are Armaguard (who owns and operates the ATMx network), Prosegur (Precinct and KwikCash networks), Cardtronics (Allpoints and Allpoints+ networks), Banktech, and Cashpoint.
- 13 Independent ATM deployers compete to varying degrees for different types of merchants. Next Payments competes closely with Armaguard and Prosegur for shopping centre, high street and petrol station and convenience store locations.
- 14 There is a trend of banks selling or shutting down their 'retail site' ATMs, which are most commonly located in shopping centres, high street locations or petrol stations and convenience stores. [REDACTED]  
[REDACTED] This is an area of growth for ATM deployment in Australia.
- 15 Independent ATM deployers make commitments to merchants relating to:
- (a) the reliability of ATMs deployed to the merchant's site, as measured by the time the ATM is replenished with cash and operational for cardholders accessing the ATM during the hours the merchant's site or venue is open. This is referred to as the ATM's 'uptime'. 98.5% uptime is considered best practice internationally. [REDACTED]  
[REDACTED]
- (b) value added services, eg, on-screen advertising; and
- (c) payments to merchants in relation to the ATM deployed to the merchant's site, generally in the form of a revenue sharing arrangement that provides the merchant a proportion of transaction fees charged at the relevant ATM, and / or a flat fee payment as a form of lease payment for the deployment of the ATM at the relevant site.
- 16 Timely cash replenishment of ATMs, and first line maintenance service, are critical CIT service inputs to ATM networks. These services are required to ensure ATMs remain operational at all times. Cardholders and merchants lose confidence in an ATM if it runs out of cash. Prosegur and Armaguard can currently provide these services across Next Payments' network, whereas smaller CIT service providers cannot, for the reasons set out in paragraph 9 above.
- 17 Independent ATM deployers compete in relation to:
- (a) revenue sharing and / or lease arrangements with merchants;



- (b) value added services provided to merchants;
  - (c) transaction fees charged to cardholders; and
  - (d) perceptions of reliability of ATMs (the reliability of an ATM being measured in uptime).
- 18 Independent ATM deployers secure agreements with merchants via bilateral negotiations as well as tender processes.
- 19 If Next Payments' ability to compete in the supply of ATM deployments services were reduced, or if it exited the market, its merchant customers would continue to acquire ATM deployment services from other ATM deployers, provided the projected level of ATM use (eg, calculated by projected foot traffic) at any particular location indicated that it would be commercially viable to continue to deploy an ATM at that location.

## APPENDIX C: CV OF DR GEOFF EDWARDS

## DR GEOFF EDWARDS

Vice President

Head of Asia-Pacific Competition  
Practice

Masters in Economics and PhD  
University of California, Berkeley

Bachelor of Economics (First Class Honours)  
Australian National University

Bachelor of Laws (First Class Honours)  
Australian National University

Dr Geoff Edwards is a Vice-President in the Asia-Pacific and European Competition Practices of Charles River Associates (CRA), a global economic consulting firm with offices in Sydney and throughout Europe and North America.

Dr Edwards has more than 20 years' experience providing economic advice, opinions and expert testimony in competition and regulatory proceedings, including in the context of market investigations, merger proposals and reviews, authorisation applications, allegations of anti-competitive behaviour (unilateral and coordinated) and damages claims. Dr Edwards has advised firms and authorities on competition matters in relation to a wide range of sectors including retail, manufacturing, mining, banking, payments, transport and health, and has extensive experience in telecoms, broadcasting and postal services.

Prior to joining CRA in 2004, Dr Edwards worked as an economist in the mergers and telecommunications branches of the ACCC and as a competition lawyer at Mallesons Stephen Jaques (now King and Wood Mallesons), before earning a Masters in Economics and a PhD from the University of California, Berkeley. He has published many articles and presented at many forums on competition matters and has been cited with approval by the Federal Court and the High Court of Australia.

### EXPERIENCE SUMMARY

2011 – present	<i>Vice President</i> , CRA International, London and Sydney
2007 – 2010	<i>Principal</i> , CRA International, London
2005 – 2006	<i>Associate Principal</i> , CRA International, London
2004 – 2005	<i>Senior Consultant</i> , Lexecon Ltd, London (acquired by CRA International)
2001 – 2004	<i>MEc and PhD</i> , Haas School of Business, University of California, Berkeley
1999 – 2000	<i>Lawyer</i> , Mallesons Stephen Jaques Solicitors, Sydney
1997 – 1998	<i>Economist</i> , Australian Competition and Consumer Commission