



NCR Australia Group

Proposed merger of Armaguard and Prosegur

Submission to the Australian Competition and
Consumer Commission

PUBLIC VERSION

19 January 2023

1. INTRODUCTION

- 1.1 NCR Australia Group broadly supports the ACCC's views set out in the Statement of Preliminary Views (**SOPV**) dated 21 December 2022, and welcomes the opportunity to provide a submission in response.
- 1.2 This submission responds to a selection of the consultation questions raised in the SOPV. NCR Australia Group relies on its previous submission dated 28 October 2022 (**NCR Submission**), and accompanying expert report of Greg Houston (**HK Report**), which already addressed many of the issues raised in the SOPV.
- 1.3 Pursuant to section 90(7) of the CCA, the ACCC can grant a merger authorisation **if it is satisfied in all the circumstances** that either: (i) the proposed acquisition would not have the effect, or would not be likely to have the effect, of substantially lessening competition, or (ii) the likely benefit to the public resulting from the proposed acquisition outweighs the likely detriment to the public resulting from the proposed acquisition. The Applicant bears the onus of satisfying the ACCC that at least one limb of the test for authorisation is satisfied.
- 1.4 NCR Australia Group acknowledges that it has limited access to materials provided to the ACCC by the Applicants, including the application itself, which is heavily redacted. However, based on publicly available information, including the public versions of the Applicants' application and the RBB Report, third party submissions and the SOPV, NCR Australia Group considers that the Applicants have provided insufficient evidence for the ACCC to be satisfied of either of the limbs of the authorisation test. For the reasons stated in the NCR Submission, the HK Report and this supplementary submission, NCR Australia Group submits that the Proposed Transaction:
- (a) is likely to substantially lessen competition in one or more markets in Australia; and
 - (b) is unlikely to lead to public benefits that outweigh the likely public detriments, including competitive detriments.
- 1.5 The ACCC acknowledges that there is a clear reduction in competition if Armaguard and Prosegur merge, but "the critical question is whether a reduction in competition would also soon occur without the transaction".¹ The SOPV notes that the ACCC is continuing to consider whether more than one major supplier would continue to supply CIT services absent the Proposed Transaction.
- 1.6 In the context of section 50 of the CCA, which prohibits acquisitions that are likely to substantially lessen competition, the term "likely" means "a real commercial likelihood".² In order to apply this test, the ACCC must analyse what is likely to occur in a future in which the proposed transaction proceeds (the factual) compared to the state of affairs if the proposed transaction does not occur (the counterfactual). While there is some authority that where there are several possible hypotheticals, this requires the ACCC to determine, on the balance of probabilities, the most likely of those hypotheticals,³ more recent authority and the ACCC's approach in its determination of the application for merger authorisation lodged by Telstra and TPG⁴ suggests that the ACCC ought to take into account multiple

¹ <https://www.accc.gov.au/media-release/accc-seeks-further-views-on-armaguard-and-prosegur-merger>

² *ACCC v Pacific National Pty Ltd* (2020) 277 FCR 49.

³ *Australian Competition and Consumer Commission v Metcash Trading Ltd* (2011) 198 FCR 297 ('Metcash') at [225] (Yates J, Finn J agreeing); Applications by Tabcorp Holdings Limited [2017] ACompT 5.

⁴ See *Reasons for Determination – Application for merger authorisation lodged by Telstra and TPG in respect of the proposed Multi-Operator Core Network commercial arrangements and spectrum sharing*, Authorisation number: MA1000021 (**Telstra/TPG Reasons for Determination**), dated 21 December 2022, at iii, available at: <https://www.accc.gov.au/system/files/public->

counterfactuals that have a "realistic prospect of occurring", without selecting which is more likely to occur. According to the ACCC:

"2.11. In section 50 proceedings, the Court has said that a party who wishes to prove that a transaction will not have the likely effect of substantially lessening competition 'must negative the existence of any real chance ... of a commercially relevant or meaningful lessening of competition flowing from the acquisition.³² Applying this in the merger authorisation context, the ACCC will need to form a view as to whether it is satisfied, in all the circumstances, there is no likely substantial lessening of competition. In determining whether it is so satisfied, the ACCC will take into account all relevant counterfactuals."⁵

1.7 For the reasons outlined in section 8 of the NCR Submission, we consider that the Applicants' contended counterfactual (that it is most likely that one of the parties will cease to provide CIT services in Australia within two years) is not the most likely counterfactual, and that there are other counterfactuals that the ACCC ought to take into account. NCR Australia Group considers that there is at least a real commercial likelihood that one of the following hypothetical scenarios will occur, and we consider that they are more likely to occur than the Applicants' claimed counterfactual:

- (a) neither of the Applicants would exit the market in the next 2 years (or later) – that is, both of the Applicants would continue to supply CIT services and compete vigorously in the foreseeable future. We refer to section 8 of the NCR Submission and section 3.2 of the HK report;
- (b) if one of the Applicants sought to exit the market in the next 2 years (or later), the Applicant's business and/or assets would be acquired by another entity (ie not the other Applicant). As noted below in paragraph 2.19, NCR Australia Group has not been approached by either Applicant in relation to a sale of their business / assets and is not aware of any open market sale process for either Applicant's CIT business / assets. In this context, we are not aware of any evidence to suggest that there is no alternative buyer for either Applicant's CIT business or assets. We also refer to paragraphs 8.17 and 8.20(b) of the NCR Submission and paragraphs 118 to 127 of the HK Report; or
- (c) the Applicants would pursue an alternative arrangement short of a full merger that would help reduce costs of supplying CIT services while preserving competition between them. We refer to paragraphs 8.15, 8.18 and 8.20 of the NCR Submission and paragraphs 106 to 110 of the HK Report.

1.8 In each of the above possible counterfactuals, there would remain two suppliers of CIT services, who would continue to compete for customers on price and non-price terms.

1.9 NCR Australia Group notes that the ACCC's Merger Guidelines⁶ state that:

"Mere speculation that the target firm will exit in the near future or evidence of a recent decline in profitability is insufficient to establish that an absence of competition between the merger parties is the counterfactual. In general, to demonstrate that a merger will not substantially lessen competition due to the prospective failure of one of the merger parties, it is necessary to show that:

[registers/documents/Reasons%20for%20determination%20-%202021.12.12%20-%20PR%20-%20MA1000021%20TeIstra%20TPG_0.pdf](https://www.accc.gov.au/system/files/Reasons%20for%20determination%20-%202021.12.12%20-%20PR%20-%20MA1000021%20TeIstra%20TPG_0.pdf)

⁵ Ibid, at paragraph 2.11, citing *Australian Gas Light Company v Australian Competition & Consumer Commission* [No 37] (2003) 137 FCR 317, at [305], and *Australian Competition and Consumer Commission v NSW Ports Operations Hold Co Pty Ltd* [2021] FCA 720, at [1031] (Jagot J).

⁶ <https://www.accc.gov.au/system/files/Merger%20guidelines%20-%20Final.PDF>, at paragraph 3.23.

- the relevant firm is in imminent danger of failure and is unlikely to be successfully restructured without the merger
- in the absence of the merger, the assets associated with the relevant firm, including its brands, will leave the industry
- the likely state of competition with the merger would not be substantially less than the likely state of competition after the target has exited and the target's customers have moved their business to alternative sources of supply."

1.10 In light of the above, and the ACCC's historical approach to transactions alleged to involve failing firms, NCR Australia Group would expect the ACCC to test vigorously whether one or more of the Applicants is in imminent danger of failure and whether, without the Proposed Transaction, its CIT capacity would exit the market, including by reference to evidence from an independent insolvency advisor. NCR Australia Group questions whether the ACCC can be satisfied that there is no alternative buyer for one of the Applicants' CIT businesses / assets if there has been no attempt by the Applicants to sell those businesses / assets to third parties or to seek expressions of interest from potential buyers. [REDACTED]

1.11 If the ACCC finds that there is a real commercial likelihood of a counterfactual in which there would remain two suppliers of CIT services, who would continue to compete for customers on price and non-price terms, then it would follow that the Proposed Transaction would be likely to substantially lessen competition in one or more markets. We also consider that it would follow that the Proposed Transaction would be unlikely to lead to net public benefits.

1.12 In relation to the application of the public benefit test, the Tribunal has said:

"The Tribunal must consider the claimed benefits and detriments that will be *caused or probably caused* by the proposed merger. Benefits and detriments that will or may arise in both the future with and without the merger are not relevant to the analysis. The claimed benefits and detriments must be of substance and have durability. Any estimate as to their quantification should be robust and commercially realistic. Together with the requirement of commercial likelihood, the necessity of substance and durability effectively means benefits and detriments must be material to the assessment of "such a benefit to the public that the acquisition should be allowed to occur".⁷

1.13 The ACCC must be satisfied that "there is a real chance, and not a mere possibility" of the benefit or detriment occurring, and the claimed benefits must be transaction-specific. Relevantly:

- (a) The following public benefits claimed by the Applicants would not be relevant to the ACCC's assessment because they would likely occur without the Proposed Transaction in the alternative counterfactuals outlined above:
- (i) avoiding the likely dislocation costs, uncertainty and customer impacts associated with the (inevitable) disorderly exit of one or both of the Applicants;
 - (ii) maintaining confidence in cash as a high-quality payment system;
 - (iii) ensuring high levels of service (which would be brought about by continued competition); and
 - (iv) avoiding transition costs associated with a move to a new regulatory model;

⁷ *Applications by Tabcorp Holdings Limited* [2017] ACompT 5 at [31], cited by the ACCC in the Telstra/TPG Reasons for Determination, at 10.3.

- (b) Additionally, depending on which of the alternative counterfactuals is being taken into account, the following public benefits claimed by the Applicants may not be relevant to the ACCC's assessment:
- (i) improving productive efficiencies by reducing duplication of fixed costs;
 - (ii) creating a sustainable entity better placed to invest (NCR Australia Group's view is that investment that benefits customers is more likely to occur where a supplier faces competition);
 - (iii) reducing the Applicants' carbon footprint;
 - (iv) maintaining industry safety standards; and/or
 - (v) preserving the complementary expertise of both Applicants.
- (c) There would be significant public detriments from the lessening of competition brought about by the Proposed Transaction in any of the alternative counterfactuals described above. This includes that the merged entity would have the ability and incentive to substantially raise prices and/or reduce the level of service offerings, which would detrimentally impact its customers and, in turn, cardholders and merchants. NCR Australia Group also considers that the Proposed Transaction would lead to less resilience in wholesale cash distribution (greater difficulties in managing supply disruptions) and that there is a real commercial likelihood that it would result in reduced access to cash, particularly in regional areas. These detriments would need to be weighed against any applicable transaction-specific public benefits.

1.14 Unless otherwise stated, capitalised terms have the same meaning as defined in the NCR Submission.

2. **COMPETITIVE EFFECTS**

The ACCC invites views and any further information on:

1. Whether a sole major supplier of CIT services would have the ability and/or incentive to raise prices or decrease the quality of service.
2. The extent to which CIT services are amenable to differentiation on non-price factors, such as service levels and innovative offerings.
3. The extent to which customers would be, or already are, willing to pay higher prices for CIT services that are differentiated based on non-price factors.
4. The extent to which Prosegur acts as a 'disruptor' or innovator, and whether the Proposed Transaction will result in the removal of a vigorous and effective competitor, including:
 - a. evidence of past competitive pricing behaviour, both before and after Prosegur's entry into Australia
 - b. evidence of innovation and leadership in non-price competition.

2.1 NCR Australia Group considers that a sole major supplier of CIT services would have the ability and incentive to increase prices or decrease service quality.

- 2.2 For the reasons outlined in section 9 of the NCR Submission, NCR Australia Group considers that the merged entity would have an effective monopoly in respect of CIT services and that it would not be effectively constrained by the factors identified by the Applicants.
- 2.3 Given the absence of meaningful constraints, the merged entity will have the ability to raise prices and/or decrease service quality, and, in relation to independent ATM deployers such as the NCR Australia Group, engage in vertical foreclosure strategies. NCR Australia Group considers that the merged entity would also have the incentive to do so as a profit-maximising strategy.
- 2.4 NCR Australia Group considers Prosegur to be a vigorous and effective competitor. The Applicants and the RBB Report accept that the CIT market is characterised by intense competition.⁸ This competition is not limited to price. Although price is a key factor, there are critical non-price factors which are relevant to the decision to engage CIT providers.

[Redacted]

(a) [Redacted]

(b) [Redacted]

(c) [Redacted]

(d) [Redacted]

(e) [Redacted]

(f) [Redacted]

⁸ Application, at paragraph 269(c); RBB Report, at paragraph 320.

(g) [REDACTED]

(h) [REDACTED]

2.5

[REDACTED]

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

The ACCC invites views and any further information on:

9. Whether in the supply of cash withdrawal facilities, independent ATM deployers are constrained by bank or other ATMs which do not charge fees.
10. The likelihood that the merged entity will engage in vertical foreclosure strategies with the purpose or effect of limiting or reducing competition from firms who are actual or potential suppliers of:
 - ATM deployment services to merchants
 - ATM access arrangements and 'ATMs as a service' to financial institutions
 - ATM maintenance services to financial institutions
 - independent ATM deployment servicesand if so, how (e.g., by increasing prices of CIT services to those competitors above monopoly levels, or by other means).
11. Whether:
 - a. prices or terms for CIT services supplied to competitors in downstream or adjacent markets are likely to worsen following the Proposed Transaction and
 - b. the extent to which such worsening would likely cause independent operators to lose scale efficiencies and/or raise their own prices or to cease supplying the relevant services.

- 2.6 NCR Australia Group supports the ACCC's preliminary view that, if the Proposed Transaction leads to a substantial lessening of competition in the supply of retail CIT services, vertical foreclosure harms would be likely to follow.⁹

Constraints from fee-free withdrawal alternatives

- 2.7 Independent ATM deployers are constrained in the supply of cash withdrawal facilities by bank and other fee-free ATMs that are located nearby. Cardholders naturally choose to use a fee-free ATM over a surcharge ATM, unless there is a geographic or convenience advantage to using the surcharge ATM (e.g. pubs, stadiums, gaming venues). NCR Australia Group typically seeks to place surcharge ATMs in locations where there are no or limited fee-free ATMs.
- 2.8 Independent ATM deployers are also constrained by other suppliers of non-ATM cash withdrawal facilities, such as bank branches, Bank@Post, and retailers offering "cash out" options to customers. The extent of the constraint depends on geographic proximity / convenience and customer preference.

Vertical foreclosure

- 2.9 NCR Australia Group considers it highly likely that the merged entity would engage in vertical foreclosure strategies, and that these strategies would be effective and profitable.
- 2.10 As outlined in paragraphs 3.19-3.30 of the NCR Submission, NCR Australia Group is dependent upon CIT services, which are a key input into its business, in order to provide services in downstream markets in competition with the Applicants. The merged entity would have no incentive to supply NCR Australia Group (or its other competitors) on competitive terms, and could maximise profits and distort competition in those markets by pursuing a foreclosure strategy.
- 2.11 A material increase in prices, or decrease in quality, is likely to cause independent operators like NCR Australia Group to increase their own prices downstream, or take other action to reduce services and rationalise activities.¹⁰ For example, in relation to ATM deployment services, if the merged entity increased prices of CIT services, NCR Australia Group would seek to:
- (a) pass these costs on to consumers through higher ATM surcharges;
 - (b) offer lower rebate payments to new or existing merchants / corporate groups;
 - (c) cease to offer ATM deployment services to merchants in particular areas (i.e. remove ATMs); or
 - (d) implement a combination of these measures.¹¹
- 2.12 As explained in paragraphs 3.24-3.30 of the NCR Submission, Armaguard's ability to supply both CIT services and ATM maintenance services puts NCR Australia Group at a competitive disadvantage in the adjacent and downstream markets for the provision of ATM maintenance services and ATMaas. The Applicants would be able to take advantage of their ability to bundle CIT services with ATM maintenance when pursuing tenders to provide maintenance services and/or ATMaas services. The Applicants are able to obtain an advantage by offering the prospective end customer a discount on CIT services even where this is outside the scope of the tender process. Because CIT services are an essential input,

⁹ SOPV, [3.83].

¹⁰ See NCR Australia Group's previous submission, [3.47]-[3.51].

¹¹ NCR Submission, [3.48]-[3.50].

and likely comprise a substantial proportion of costs, a discount on CIT services is highly likely to be attractive to customers of ATM maintenance or ATMaas.

2.13 The SOPV refers to NCR Australia Group's submission that it can currently mitigate this disadvantage to some extent by partnering with Prosegur (which does not have a material presence in specialised ATM maintenance), but that the Proposed Transaction will remove that option.¹² The merged entity will simply have no incentive to provide CIT services to NCR Australia Group, or other competitors, in order to enable them to compete with it. This is especially so where, by withholding CIT services from NCR Australia, the merged entity would not be foregoing any CIT sales, as it would be servicing the customer's CIT demand either way. In other words, pursuing a foreclosure strategy in those circumstances has significant benefits and no downsides for the merged entity.

2.14 If the merged entity were to pursue these strategies as we expect, it would severely limit NCR Australia Group's ability to compete in the supply of these services. If NCR Australia Group or other competitors of the merged entity were unable to secure sufficient demand, they may be forced to stop providing these services and exit the market. This would result in the merged entity being unconstrained in these markets in future.

15. The ACCC invites views and any further information about:

- a. whether any entity, including multinational firms, would be able to acquire all or most of the business or assets and continue to supply CIT services in Australia, particularly at a national scale or wholesale level
- b. whether any existing CIT supplier could expand into the supply of wholesale CIT services, either with backing by a large customer, in partnership with another CIT supplier or otherwise, and if so at what scale (incremental expansion versus expanding to become a national supplier in the short to medium term)
- c. the identity of potential buyers who could service the Major Banks (both integrated wholesale and retail CIT services) and other large retail customers such as Australia Post and the large retailers
- d. the likelihood that no entity would acquire all [or] most of the business or assets and continue to supply CIT services in Australia, particularly at a national scale or wholesale level, given current demand for CIT services

2.15 As submitted in the NCR Submission, at paragraph 8.20(b), NCR Australia Group considers that there are likely to be alternative interested buyers of the CIT assets and/or business of one of the Applicants, including smaller CIT providers or a new entrant (eg Brinks).

2.16 

2.17 

(a) 

¹² SOPV, [3.77].

(b) [Redacted]

2.18 [Redacted]

2.19 [Redacted]

2.20 [Redacted]

16. The ACCC invites views and any further information about:
- a. the likely timing of exit (if any), having regard to contract lifespans and upcoming contract review points, especially for larger customers, and
 - b. whether any exit would occur sooner within the next 2 years if an Applicant were to lose any important contracts.

2.21 NCR Australia Group refers to section 8 of the NCR Submission in relation to the likely timing of exit, and to the sections of the HK Report to which it refers.

2.22 In addition to the factors referred to in its previous submission, NCR Australia Group considers that the conduct of the Applicants involves not only competition in the short to medium term but is also suggestive of longer-term commitment to the Australian market.

[Redacted]

(a) [Redacted]

(b) [Redacted]

(c) [Redacted]

(d) [Redacted]

(e) [REDACTED]

(f) [REDACTED]

2.23 NCR Australia Group is not privy to the lifespans / end dates of the Applicants' contracts with "larger" or "important" customers. However, NCR Australia Group does not consider it likely that any exit would occur within less than two years if either Applicant were to lose one or more important contracts. The RBB Report states that the market for CIT services is currently characterised by (in their view, unsustainably) vigorous competition between the Applicants.¹³ In those circumstances, the loss of important contracts by one Applicant to the other is reasonably foreseeable. If the loss of particularly important contracts were likely or sufficiently material to bring on an exit within less than two years, [REDACTED]

2.24 NCR Australia Group's contract with Prosegur (ie the CIT Agreement) will expire on [REDACTED], unless it is renewed as provided under the agreement, [REDACTED]. NCR Australia Group considers it unlikely that Armaguard would exit the market in this period for the reason that it does not supply NCR Australia Group since Armaguard has operated without NCR Australia Group's volume [REDACTED]. NCR Australia Group also considers it unlikely that Prosegur would exit the market because, in accordance with the CIT Agreement, it has NCR Australia Group's volume until at least [REDACTED].

19. The ACCC invites views and further information about:

ATM services:

a. Any impact of the Proposed Transaction on competition in the supply of ATM services (whether the supply of cash withdrawal facilities, ATM deployment services to merchants, or ATM access arrangements to financial institutions)

Specialist ATM maintenance services:

b. Any impact of the Proposed Transaction on competition in the supply of specialist ATM maintenance services.

c. Whether customers who acquire both specialist ATM maintenance services and CIT services typically acquire those services jointly.

2.25 NCR Australia Group agrees with the ACCC's preliminary view that, if horizontal effects are viewed in isolation, the Proposed Transaction is unlikely to substantially lessen competition in the markets for ATM services and specialist ATM maintenance services. In other words, if the Applicants were active solely in these markets, NCR Australia Group would expect that it and other market participants would be able to compete with and constrain the merged entity in these markets. However, NCR Australia Group submits that the likely effect of the

¹³ RBB Report, [511].

Proposed Transaction on these markets should be assessed holistically in light of the vertical and adjacent context. The merged entity would have the ability and incentive to take advantage of its effective monopoly in CIT services to distort competition in these markets by:

- (a) preventing its competitors from competing effectively by increasing the prices of, or reducing quality or access to, a key input controlled by the merged entity; or
- (b) bundling these services with CIT services, or threatening not to supply CIT services unless the customer obtains ATM services from the merged entity.

2.26 NCR Australia Group considers that it is common for customers to acquire CIT services jointly with ATM access arrangements and/or ATM maintenance services. Nearly all of NCR Australia Group's financial institution and corporate customers require both CIT services and ATM services.

- (a) [Redacted]
- (b) [Redacted]
- (c) [Redacted]

3. PUBLIC BENEFITS

21. The ACCC invites views and further information on:

- a. Whether, if either Applicant were to cease supplying CIT services, this would cause disruption to the supply of cash and/or reduce confidence in cash as a payment system.
- b. Whether alternative CIT suppliers would be capable of providing interim services to minimise disruption in the event that 1 of the Applicants ceased supplying CIT services.
- c. Whether any factors, including those noted at paragraph 4.28, would be likely to mitigate the risk of the withdrawal of CIT services by 1 of the Applicants causing disruption to the supply of cash.
- d. If the withdrawal of CIT services were to occur at short notice and without an orderly wind down, what the most significant risks are, and whether any measures could be put in place to address these risks.

- 3.1 NCR Australia Group considers that it is unlikely that, in the absence of the Proposed Transaction, either Applicant will cease supplying CIT services in the next 2 years. NCR Australia Group also considers that there is no real chance that both Applicants will cease supplying CIT services in the next 2 years such that there would be no national supplier of CIT services.
- 3.2 We accept that if one of the Applicants were to abruptly cease supplying CIT services, this would be likely to cause disruption to the supply of cash. However, we consider that any exit would not be disorderly given the Applicants' existing contracts ([REDACTED]), broader businesses and reputations. We agree with the ACCC's observations in paragraph 4.28 of the SOPV. We also consider that the remaining CIT supplier would ramp up its supply, that assets used to supply CIT services would not leave the market and would be available for purchase by a third party who would assume the exiting party's contractual obligations, and that any disruption is, therefore, likely to be short lived and largely manageable.
- 3.3 For reasons outlined in paragraphs 2.21–2.24 above, we do not think that there is any real likelihood of a withdrawal by either Applicant at short notice and without an orderly wind down. Even if such exit occurred, the likely scenario is that it would involve, amongst things, the sale of assets and transfer of contracts to a third party provider who could continue to provide the services of the outgoing provider.

22. The ACCC invites views and further information on:
- a. Whether the Proposed Transaction is likely to generate productive efficiencies in the provision of CIT services, for example by reducing duplicative Approved Cash Centres.
 - b. The extent to which the benefits of any such efficiencies, in the form of cost savings, are likely to be passed through to end customers.

- 3.4 NCR Australia Group acknowledges that the Proposed Transaction would likely involve some productive efficiencies in the provision of CIT services, such as reducing duplicative Approved Cash Centres. However, the extent to which those efficiencies are likely to be "generated" by the Proposed Transaction is not clear. If those efficiencies could be achieved by a measure short of full merger (such as a joint venture in relation to the operation of ACCs), NCR Australia Group submits that it would not be appropriate to regard those efficiencies as a public benefit attributable to the Proposed Transaction. At the very least, given the possibility that those efficiencies could be achieved in alternative counterfactuals, the weight given to this benefit ought to be reduced. See paragraphs 107-110 and 127 of the HK Report regarding alternative means to achieve efficiencies; and section 5.2.2 regarding the appropriate economic framework for addressing the potential of the merged entity to use fewer assets.
- 3.5 Even if such productive efficiencies are treated as a benefit of the Proposed Transaction, NCR Australia Group agrees with the ACCC's preliminary view that, without pressure from a competing national provider, the likelihood of these cost savings being passed on to customers is lower.¹⁴ The merged entity's commercial incentive would be to retain those profits unless constrained to do otherwise. See paragraphs 135 to 149 of the HK Report regarding the merged entity's incentives and lack of constraints. NCR Australia Group submits that the merged entity would not be subject to any meaningful constraints and

¹⁴ SOPV, [4.46].

have no incentive to pass on any cost savings to customers, and therefore, the ACCC should not place weight on this claimed benefit.

23. The ACCC invites views and further information on:
- a. The extent to which the risk of customers expanding their adoption of non-cash payment options at the expense of cash payments is likely to incentivise investment in CIT services by the merged entity
 - b. The extent to which the merged entity is likely to have incentives to:
 - i. invest in new technology
 - ii. develop new and innovative solutions
 - c. maintain high levels of service for its customers.

3.6 NCR Australia Group refers to paragraphs 9.9 and 12.8 of its previous submission, and paragraphs 237-249 of the HK Report, in relation to these items. In short, NCR Australia Group considers that the threat of greater adoption of non-cash payment options would not be a material constraint on the merged entity. In the absence of competitive constraint, the merged entity would not be incentivised to invest in new technology (or any other operating input), develop new or innovative solutions, or maintain high levels of service for its customers. These activities would involve incurring potentially significant expenses without any increase in revenue to compensate the merged entity for doing so, since all customers requiring CIT services would already be forced to transact with the merged entity on its terms.

3.7 The SOPV states that the merged entity would only be expected to undertake investments where doing so would maximise its profits, such as if CIT customers "were willing to pay considerably higher prices than they presently do for the maintenance of frequent cash collection and processing services".¹⁵ While NCR Australia Group agrees with the suggestion that the merged entity would only have the incentive to undertake profit-maximising investments, it does not consider that such investments are realistic. In respect of the example given in the SOPV, if the merged entity formed the view that its customers were willing to pay significantly more for high service standards, it would still have the incentive to take advantage of its monopoly position to increase its charges *without* maintaining those service standards. For the merged entity to be incentivised to maintain them, it would be necessary either for:

- (a) customers to be in a position to refuse to pay the higher amount *unless* the service standards are maintained (which is unlikely, in the absence of countervailing power or competitive constraints); or
- (b) maintaining high standards to enable customers to generate sufficient additional profits to enable them to pay the merged entity higher fees than they would otherwise be able, if the service standards were lower.

¹⁵ SOPV, [4.57].

24. The ACCC invites views and further information on:

...

- c. Whether either Applicant has unique expertise in the operation of a CIT business that would be likely to be lost if they ceased supplying CIT services.

3.8 In relation to paragraph (c), the SOPV:

- (a) states that the extent of the public benefit is unclear relative to a scenario in which one of the Applicants were to cease supplying CIT services, because it is unclear what important expertise either Applicant holds that the other does not, or could not, acquire;
- (b) acknowledges that the potential public benefit of preserving expertise would be unlikely to be realised by the Proposed Transaction if, without the merger, both parties continued to operate independently of each other;¹⁶ and
- (c) states that the Proposed Transaction is likely to result in a public benefit of maintaining this expertise compared to a scenario in which both Applicants ceased supplying CIT services.¹⁷

3.9 NCR Australia Group agrees with the ACCC's preliminary view. It also submits that neither Applicant has unique experience that would be lost if one of them left the market. In NCR Australia Group's experience, for customers requiring CIT services on a national scale, decisions to switch from one Applicant to the other are mainly driven by pricing factors and the willingness of the provider to comply with the preferred terms of the customer, not by any perceived differences in expertise between the Applicants.

3.10 In addition, NCR Australia Group considers that, if one of the Applicants were to exit the Australian market, former employees of that Applicant with valuable CIT expertise are generally likely to seek employment with the remaining firm, in preference to moving to industries to which that expertise is not relevant. If the remaining firm does not have that expertise, it is likely to be valuable to acquire it. These consequences are likely to mitigate the risks of loss of expertise.

¹⁶ SOPV, [4.79].

¹⁷ SOPV, [4.80].

4. PUBLIC DETRIMENTS

25. The ACCC invites views and any further information on:
- a. Whether the Proposed Transaction is likely to affect the ability for banks and remaining CIT suppliers to respond to disruptions and maintain sufficient business contingency plans.
 - b. Whether the Proposed Transaction could reduce access to cash in regional and remote areas.
 - c. If access to cash was reduced in regional areas, the effect this would have on vulnerable members of the community.
 - d. Any other detriments you consider are likely to result from the Proposed Transaction.

Supply disruptions

- 4.1 NCR Australia Group agrees with the ACCC's preliminary view that, compared with a counterfactual where both Applicants continue to operate independently, the Proposed Transaction:
- (a) removes the main alternative option for sourcing cash in the event of a business-specific supply disruption;
 - (b) is likely to make it more difficult and costly to maintain the necessary contingency plans to respond effectively to disruptions; and
 - (c) is likely to exacerbate the consequences of an actual disruption due to the disruption likely being less well managed.
- 4.2 As the only national provider of wholesale CIT services, the merged entity would perform a critical role underpinning the Australian cash distribution system. The Proposed Transaction generates a single point of failure in respect of that system. The creation of this vulnerability is a substantial public detriment.

Reduced access to cash

- 4.3 NCR Australia Group submits that the Proposed Transaction is likely to reduce access to cash in regional and remote areas.
- 4.4 The SOPV suggests that the absence of competitive pressure between the Applicants to service less profitable routes means that the merged entity could raise prices on those routes, not provide the same level of service, or cease servicing some routes altogether.¹⁸ NCR Australia Group agrees with the ACCC's preliminary assessment.
- 4.5 However, NCR Australia Group also considers that reduced access to cash in remote and regional areas would also occur if the merged entity chose to pursue vertical foreclosure strategies.
- 4.6 Consumer access to cash is dependent not only on CIT services but on the availability of cash access points, such as ATMs. The provision and maintenance of ATMs in turn depends on ATM deployment services and ATMaas services. The merged entity is likely to have the

¹⁸ SOPV, [4.93].

ability and incentive to distort competition in these markets in a way that would lead to a reduction in the availability of ATMs, and increased costs for consumers.

- 4.7 As explained in paragraph 2.11, an increase in the costs (or a decline in quality) of CIT services supplied to independent ATM deployers is likely to result in:
- (a) increased ATM surcharges (i.e. increased costs to consumers for accessing cash);
 - (b) reduced rebates to merchants (decreasing merchants' incentives to maintain an ATM on their premises and reducing the likelihood of renewal of deployment contracts); and
 - (c) the removal of ATMs through deployers rationalising their ATM fleets.
- 4.8 As the cost of CIT services tends to be significantly higher in remote and regional areas, ATMs in these areas are likely to be removed first, and more often, than those in metropolitan areas.¹⁹
- 4.9 Similarly, in relation to ATMaaS, the merged entity will have the ability and incentive to pursue bundling strategies to avoid competition from other providers. A decline in competitive offerings for ATMaaS to financial institutions may influence decisions regarding the number of cash access points to be maintained, and where such cash access points are maintained, with country and remote locations likely to be rationalised first given the higher cost of maintaining a presence in those locations.
- 4.10 NCR Australia Group submits that a decline in access to cash would disproportionately affect members of the community who are experiencing financial vulnerability. The Final Report for the Regional Banking Taskforce, in reference to the RBA's 2019 Consumer Payments Survey, states that "the majority of high cash users indicated they would suffer major inconvenience or genuine hardship if they could no longer withdraw cash or if retailers stopped accepting cash".²⁰ The Consumer Payments Survey itself found that:
- (a) nearly half of high cash users stated that their most important reasons for preferring cash were for budgeting purposes and as a means of using their own (rather than borrowed) funds; and
 - (b) the most common reasons cited as the most important reason for holding cash outside of the consumer's wallet were for emergency transactions and budgeting.²¹
- 4.11 NCR Australia Group therefore considers that a reduction to access to cash (or an increase in the costs of accessing cash) may impact vulnerable consumers (especially high cash users) by:
- (a) reducing their ability to use their preferred budgeting method;
 - (b) reducing or removing a method for ensuring they use their own funds;
 - (c) limiting the available means of payment in the event of emergency; and
 - (d) increasing general costs of living (not only through direct costs such as surcharges, but through increased costs to travel greater distances to access withdrawal facilities).

¹⁹ NCR Submission, [3.50].

²⁰ Commonwealth Treasury, *Regional Banking Taskforce Final Report*, September 2022, p 15.

²¹ James Caddy, Luc Delaney, Chay Fisher and Clare Noone, *Consumer Payment Behaviour in Australia*, March 2020, pp 11–12.