Linfox Armaguard Pty Ltd and Prosegur Australia Holdings Pty Ltd merger authorisation application (MA1000022)

The ACCC's reasons pursuant to section 90(4) of the Act are contained in a separate document. This summary accompanying the determination is not intended as a substitute for the ACCC's reasons provided pursuant to section 90(4).

Executive summary

Summary

The Australian Competition and Consumer Commission (**ACCC**) has decided, pursuant to section 88(1) of the *Competition and Consumer Act 2010* (the **Act**), to authorise the proposed merger of Linfox Armaguard Pty Ltd (**Armaguard**) and Prosegur Australia Holdings Pty Limited (**Prosegur**) (together, the **Applicants**). The ACCC has granted authorisation on the condition, pursuant to section 88(4) of the Act, that the Applicants give, and comply with, an undertaking (in the form at **Attachment A**) to the ACCC under section 87B of the Act (the **Undertaking**).

The Applicants applied for authorisation to engage in the conduct described in application MA1000022, namely to merge their cash distribution and management services (cash-in-transit services), device monitoring and maintenance and ATM services businesses in Australia (the **Proposed Acquisition**). The Applicants are the 2 major suppliers of cash-in-transit services in Australia.

The ACCC is satisfied in all the circumstances that, provided the Applicants give, and comply with, the Undertaking, the Proposed Acquisition would be likely to result in a public benefit that would outweigh the public detriment likely to result from the Proposed Acquisition.

The cash-in-transit industry is in structural decline due to decreasing use of cash as a payment method. The ACCC has formed the view that if the Proposed Acquisition does not proceed it is highly probable that one of the Applicants would cease to supply cash-in-transit services in Australia, within the short term. The ACCC accepts that the Applicants are not likely to continue to supply cash-in-transit services as separate, competing businesses.

The ACCC considers that one of the Applicants ceasing to supply cash-in-transit services would be likely to significantly disrupt the supply of cash-in-transit services and may affect the availability of cash-in-transit services and customers' access to cash. The consequences for customers and the broader public could be significant, although their nature and extent would depend largely upon the manner and timing of this exit.

In respect of competition, the ACCC considers that if one of the Applicants were to cease suppling cash-in-transit services this would likely create opportunities for smaller cash-in-transit suppliers, including potential new entrants, to expand by contesting for customers and acquiring cash-in-transit-related assets of the exiting Applicant. The potential expansion of existing smaller cash-in-transit suppliers, and entry by new suppliers, may materially increase the competitive threat posed to the remaining Applicant, albeit not at a national level of coverage.

If one of the Applicants were to cease supplying cash-in-transit services, the threat of expansion, including customer sponsored expansion, of smaller suppliers would be the most important remaining competitive constraint on the remaining Applicant. Because there may be a material increase in the competitive threat of entry or expansion in the absence of the Proposed Acquisition, the ACCC is not satisfied that the Proposed Acquisition would not have the effect or be likely to have the effect of substantially lessening competition.

While the ACCC considers that competitive opportunities may arise if one of the Applicants ceased to supply cash-in-transit services, a disorderly exit of one of the Applicants, whereby the supplier ceases supply with no notice or transition period to its customers, would also be highly detrimental to customers and the public. The ACCC considers that the Proposed Acquisition would result in a public benefit by avoiding the detriments associated with a disorderly exit.

Recognising concerns raised about the Proposed Acquisition during the ACCC's consultation process, the Applicants proposed an undertaking to the ACCC. The ACCC has concluded that the Proposed Acquisition, on the condition that the Applicants must give, and comply with, the Undertaking (which reflects matters raised during public consultation), would be likely to result in a public benefit that would outweigh the public detriment likely to result from the Proposed Acquisition.

The ACCC considers that the commitments in the Undertaking ensure that the Proposed Acquisition would result in a sufficient public benefit. By reducing uncertainty over price and non-price terms for both competing CIT suppliers and customers of CIT services throughout the term of the Undertaking, the Undertaking will increase the public benefit associated with avoiding the likely dislocation costs, uncertainty and customer impacts associated with the exit of one of the Applicants. In addition, the ACCC considers that the commitments in the Undertaking avoid the need for government to consider a potentially urgent response to maintain access to cash and would allow adequate time for consideration of any policy or regulatory response in the longer term. Finally, the ACCC considers the Undertaking may reduce some of the public detriments arising from the loss of competition.

The authorisation application

On 27 September 2022, the Applicants lodged an application for merger authorisation of the Proposed Acquisition. If granted, merger authorisation provides statutory protection from legal action under section 50 of the Act, which prohibits the acquisition of shares or assets if the acquisition would have or be likely to have the effect of substantially lessening competition in a market.

The Applicants have entered into transaction agreements to combine their cash-in-transit service and ATM-related service businesses in Australia, including through a merger implementation deed, the creation and/or transfer of shares (as set out in a shareholders' deed), and various transitional arrangements (as set out in a shared services agreement).

Following completion of the Proposed Acquisition, Linfox Proprietary Limited (**Linfox**, which is Armaguard's parent company) would hold 65% and Prosegur would hold 35% of the total issued share capital of Armaguard. In addition, Linfox would hold 85%, directly and indirectly in aggregate, and Prosegur would hold 15%, indirectly through Armaguard, of the total issued share capital of Armaguard's ATM and related services business.

Information before the ACCC

The ACCC received more than 80 submissions, 13 witness statements and 4 expert reports.

The ACCC has used its compulsory evidence gathering powers to require the Applicants and third parties to provide information and documents. To test the information before it, and to gather further information to assist the ACCC's understanding of the issues, the ACCC also conducted compulsory examinations of several individuals.

In assessing this information, the ACCC has considered a range of plausible scenarios when forming its views.

The statutory framework

Under section 90(7) of the Act, the ACCC must not make a determination granting a merger authorisation unless it is satisfied in all the circumstances that the Proposed Acquisition would:

- not have the effect, or would not be likely to have the effect, of substantially lessening competition, OR
- result, or be likely to result, in a benefit to the public, and that benefit would outweigh the detriment to the public that would result, or be likely to result, from the Proposed Acquisition (the **authorisation test**).

To be 'satisfied' requires an affirmative belief. The reference to 'all the circumstances' underscores that the ACCC is to have regard to anything known to it that bears upon the making of its decision.

In considering whether it is satisfied that the authorisation test is met, the ACCC seeks to understand the likely effects of the Proposed Acquisition. This is an evaluative judgment. The ACCC informs this judgment by analysing what is likely to occur in a future in which the Proposed Acquisition proceeds (the **factual**, or **future with**) compared to the state of affairs if the Proposed Acquisition does not occur (the **counterfactual**, or **future without**). By using the factual-counterfactual analysis, the ACCC is able to identify the effects that are likely to flow from the Proposed Acquisition, and to evaluate the likely size of those effects.

Future without the Proposed Acquisition

As noted above, if the Proposed Acquisition does not proceed, it is highly probable that one of the Applicants would cease to supply cash-in-transit services in Australia within the short term. The ACCC considers that there is limited prospect of both Applicants continuing to supply cash-in-transit services beyond the short term.

While there would continue to be a base level of demand for cash-in-transit services because of the preferences of certain groups of end-consumers, the cash-in-transit industry is in structural decline as a result of decreasing use of cash as a payment method. Largely due to this declining volume, and the high fixed cost nature of providing cash-in-transit services, the Applicants have recorded significant trading losses in recent years and are unlikely to return to profitability as separate, competing businesses. Given these factors, it is highly unlikely there would be an alternative purchaser for the whole, or a major part of, the Australian business of either of the Applicants. Further, alternative arrangements to the Proposed Acquisition, including subcontracting, partnerships and joint ventures, have either proved ineffective or are unworkable for the Applicants.

The ACCC does not consider that there is a realistic prospect that *both* Applicants would cease to supply cash-in-transit services in the foreseeable future. If one of the Applicants ceased supplying cash-in-transit services, the ability and incentives for the remaining Applicant to continue to do so would improve substantially.

Competition assessment

As noted above, the ACCC considers that, in the absence of the Proposed Acquisition, it is highly probable that one of the Applicants would cease to supply cash-in-transit services in the short term. Consequently, the ACCC has focused its analysis on the state of competition in the future with the Proposed Acquisition compared to the period where one of the Applicants would otherwise cease to supply cash-in-transit services.

The Applicants are the 2 largest suppliers of wholesale and retail cash-in-transit services, and of full-service retail cash-in-transit services, and the only suppliers that offer national coverage of these services. If one of the Applicants ceases to supply cash-in-transit services, this would remove the closest and strongest competitive constraint to the remaining Applicant. The ACCC has therefore focused its analysis on the closest *remaining* competitive constraint(s) and whether there would be any material difference between the strength of these in the future if one Applicant ceases supplying cash-in-transit services, compared to the future if the Proposed Acquisition proceeds.

The ACCC has formed the view that the next closest competitive constraint would be the threat of entry and/or expansion of alternative suppliers to compete with the remaining Applicant, even if this entry and/or expansion (or threat thereof) is limited in its volume, geographic scope or otherwise. Although the ACCC does not consider that this threat of entry and/or expansion would completely constrain the market power the remaining Applicant could exercise, it would provide an ultimate competitive constraint. The difference between the strength of this constraint in the future with and without the Proposed Acquisition would be material.

One of the Applicants ceasing to supply cash-in-transit services is likely to create competitive opportunities for potential entrants or other suppliers (particularly smaller suppliers) to win customers and/or purchase the assets of the exiting Applicant and expand in certain locations. At a sub-national scale, particularly in certain cities or regions and for small or medium cash-in-transit customers, there is credible evidence that some alternative cash-in-transit suppliers have an interest and the ability to enter or expand their businesses, including through the acquisition of assets of the exiting Applicant.

The ACCC considers that, by limiting these opportunities, and thereby reducing the potential competitive constraint that alternative suppliers might otherwise apply to a single major cash-in-transit supplier, the Proposed Acquisition would be likely to increase barriers to rivals and lessen competition in the supply of full-service retail cash-in-transit services and, to a lesser extent, integrated wholesale and retail cash-in-transit services. The extent of any lessening of competition would depend on the nature and scale of competitive opportunities following the exit of one of the Applicants, which may be impacted by the manner and timing of exit, for example, if exit is quick and/or disorderly.

Further, entry or expansion of alternative suppliers following the exit of one of the Applicants may also increase the strength of countervailing power of some customers as the threat of sponsoring further expansion of alternative suppliers may become more credible.

The ACCC further considers that the Proposed Acquisition may increase the ability for the merged entity to foreclose competitors or otherwise harm competition in the supply of ATM services and ATM maintenance services, because cash-in-transit services are a key input to the supply of these ATM-related services.

The ACCC considers that both with and without the Proposed Acquisition, there will be a significant increase in the level of market power in the supply of cash-in-transit services, which may increase the ability and incentive to foreclose or otherwise harm competition in ATM-related services. Therefore, any increase in competitive threats in relation to the supply of cash-in-transit services in the absence of the Proposed Acquisition may also help to limit competitive harm in the supply of these ATM-related services. The opportunities arising from one Applicant ceasing to supply cash-in-transit services, discussed above, could result in greater competitive constraints on the remaining Applicant from engaging in any vertical foreclosure strategies by increasing the threat that ATM suppliers will switch to expanded third-party cash-in-transit suppliers, or by enabling ATM businesses to vertically integrate into cash-in-transit services.

For these reasons, the ACCC is not satisfied in all the circumstances that the Proposed Acquisition would not have the effect, or would not be likely to have the effect, of substantially lessening competition.

Public benefits and detriments

In applying the 'net public benefit test', the ACCC examines the benefits and detriments that would result, or be likely to result, from the Proposed Acquisition. In deciding whether it is satisfied that the likely public benefits of the Proposed Acquisition would outweigh the likely public detriments, the ACCC conducts an essentially qualitative assessment. The public detriments to which the ACCC will have regard in undertaking this balancing exercise include but are not limited to any reduction in competition likely to result from the Proposed Acquisition. To evaluate the likely extent of the benefits and detriments, the ACCC compares the likely futures with and without the Proposed Acquisition.

While it is not possible to be precise about the quantum of benefits, the most significant public benefit the ACCC considers is likely to arise from the Proposed Acquisition is avoiding disorderly disruption to the supply of cash-in-transit services and the flow-on effects for access to cash for the community. The ACCC considers that ensuring continued access to cash is an important objective, particularly in regional Australia and for vulnerable consumers who are reliant on cash payments.

The ACCC considers that the Undertaking increases this public benefit by further reducing uncertainty and the impacts on customers and competitors. Namely, uncertainty for customers regarding pricing and service levels, and uncertainty for competitors regarding third-party access to the facilities of MergeCo (the merged entity, as described in the Undertaking). Further, the commitments may avoid the need for government to consider an urgent response to assist in maintaining access to cash, allowing adequate time for consideration of any policy or broader regulatory response in the longer term.

Against this, the ACCC has weighed the public detriments it considers are likely to arise from the Proposed Acquisition, which are the likely effects on competition outlined above and reduced resilience in wholesale cash distribution.

The ACCC considers that the Undertaking may reduce some of the public detriment that would otherwise occur from the competitive effects of the Proposed Acquisition, by increasing opportunities for third party cash-in-transit suppliers to access excess sites, personnel and equipment which may increase their opportunities to enter the supply of cash-in-transit services or expand their existing cash-in-transit service offering. The ACCC considers that the commitment to continue offering ATM specific services to independent ATM deployers as per their existing contractual arrangements, and the commitment to continue providing these services in line with the pricing commitment, reduces the ability of MergeCo to foreclose independent ATM deployers for the term of the Undertaking.

For these reasons, the ACCC considers it appropriate to specify a condition in the authorisation, pursuant to section 88(4) of the Act, that the Applicants must give, and comply with, the Undertaking to the ACCC.

In these circumstances, the ACCC is satisfied in all the circumstances that, provided the Applicants give, and comply with, the Undertaking, the Proposed Acquisition would be likely to result in a public benefit that would outweigh the public detriment likely to result from the Proposed Acquisition.