

FIRST Security Guard Services Limited: Submission on Statement of Preliminary Issues

Application for clearance or authorisation for
Evergreen NZ Holdings to acquire ACM
New Zealand Limited

FIRST Security Guard Services Limited (**FIRST Security**)

29 May 2024

PUBLIC VERSION

1 Executive summary

- 1.1 FIRST Security submits that the Commission should not clear or authorise the Proposed Acquisition as it will create:
- 1.1.1 an entity with a high degree of market power;
 - 1.1.2 significant reduction in competition in the CiT, ATM Maintenance, Guarding and ATM operating markets;
 - 1.1.3 major public detriments, especially danger to the resilience of wholesale cash distribution; and
 - 1.1.4 risk to the cash system and those who rely on it.
- 1.2 The above reasons are explained in this submission with specific reference to the Commission's Statement of Preliminary Issues on the Proposed Acquisition (the **Statement of Preliminary Issues**) and the notice seeking clearance or authorisation (the **Application**) for the Proposed Acquisition by Evergreen NZ Holdings (**Evergreen** or the **Applicant**) of 100 per cent of shares in ACM New Zealand Limited from ACM Holdings (NZ) Ltd (**ACMNZ**).
- 1.3 Any defined terms used and not defined in this submission have the meaning given to them in the Commission's Statement of Preliminary Issues.

2 Background

- 2.1 FIRST Security is a security service provider. FIRST Security is the leading nationwide provider of manned Guarding services and the majority of FIRST Security's business is comprised of Guarding services and patrol and ATM Maintenance services.
- 2.2 FIRST Security's full service offering includes:
- 2.2.1 Guarding services;
 - 2.2.2 patrol services;
 - 2.2.3 ATM Maintenance services;
 - 2.2.4 electronic monitoring field services;
 - 2.2.5 prisoner escorts & court custodial services; and
 - 2.2.6 integrated security services.
- 2.3 FIRST Security was most recently acquired by Wilson Group in 2014. Since then, FIRST Security has heavily invested in the company and its people, focusing on innovation and competitive service quality to grow its market share substantially in the last few years. Among other things, FIRST Security is deeply concerned that the Proposed Acquisition could unfairly impact FIRST Security's market position in key sectors and its ability to continue to deliver top-quality services and benefits to its clients and its people.
- 2.4 FIRST Security competes with Armourguard (Evergreen's fully-owned subsidiary) in Guarding services, patrol services and ATM Maintenance services.
- 2.5 FIRST Security does not compete with ACMNZ and provides ATM Maintenance services to ACMNZ as a subcontractor.

3 Market Definition

- 3.1 *Inclusion of FLM in CiT:* FIRST Security notes that Evergreen has submitted that the definition of CiT services includes ATM Maintenance services such as First Line Maintenance services (**FLM**).¹ FIRST Security disagrees and considers CiT services and ATM Maintenance services are provided in distinctly separate markets. FIRST Security considers that FLM should be considered to be in a market for ATM Maintenance services, separate from CiT services. This definition is important as ATM Maintenance services is an important market in its own right; especially with a growing number of ATM machines providing non-cash essential services.
- 3.2 CiT involves the scheduled transportation of cash to and from locations such as banks, ATM machines and other large users of cash (such as large retailers), whereas FLM refers only to maintenance services on an ATM machine.
- 3.3 CiT customers such as banks, ATM operators and retailers typically require collection and/or supply of cash. Cash collections may include cash processing and settlement or cash banking services (i.e., delivering the cash to the customer's financial institution for deposit). These services are similar and are (and should be) provided together.
- 3.4 First Line Maintenance is a form of ATM Maintenance. ATM Maintenance is categorised into FLM and Second Line Maintenance (**SLM**). FLM focuses on basic maintenance tasks (requiring no tools) to quickly address common issues and ensure operational continuity. Depending on the fault type, this may only require a trained staff person or technician to attend, for example, to a paper jam. FLM services do not necessarily require access to the cash held in an ATM. FLM is, by nature, responsive.
- 3.5 SLM involves more complex maintenance tasks and typically involves having to open or get access to the cash handling parts of ATM machines to deal with faults. SLM is also responsive but involves more advanced maintenance activities to diagnose and resolve complex problems, improve performance, and maintain the overall health of the ATM network. These services require the attendance of an SLM technician and a guard. It typically takes longer to arrange and carry out SLM tasks, with machines requiring SLM services being out of service for longer than machines requiring FLM services. SLM services include planned and project maintenance.
- 3.6 ATM operators (both banks and non-banks) procure ATM Maintenance services as they are critical to optimizing the ATM's uptime or availability which is a key driver of profitability for the ATM operator and cash utility for consumers.
- 3.7 Comparatively, CiT is fundamentally different in nature. CiT is planned according to forecast demand, rather than reactive like FLM. CiT can be described as a logistics business that drives outcomes based on its density in vehicle runs, the volume of cash processed and physical storage capabilities. Other functions that may support CiT operations include cash management and forecasting. These services may or may not be delivered by the CiT provider.
- 3.8 The equipment and resources required to provide CiT and ATM Maintenance services also differ. The most significant difference is that CiT requires purpose built or configured vehicles for the transportation of cash, secure storage and vault facilities and specialised cash processing equipment, whereas these, whereas these are not required for ATM Maintenance services. The level of staff training also differs.

¹At 5.43(e) and 5.48(e).

- 3.9 There are key distinctions in successful service provision between ATM Maintenance services and CiT: a CiT provider can be very efficient by locating crews in a few regional centres and driving weekly routes to collect and deliver cash. Comparatively, an ATM Maintenance provider needs a large, well-resourced and regional network of staff to be able to respond quickly to a fault (as ATM uptime/availability is important to the banks). For example, FIRST Security operates out of 27 locations across the country and is measured by the banks on response and restoration times (11).
- 3.10 ATM Maintenance services do not need to be provided by providers of CiT services. As noted below, FIRST Security provides ATM Maintenance services but does not provide CiT services. FIRST Security estimates it provides around 11% of ATM Maintenance services in New Zealand based on the numbers of ATMs it services. Armourguard is the only other nationwide provider of ATM Maintenance services to the major bank ATM fleets providing around 11%. Other providers of ATM Maintenance services include Next Payments for its own non-bank ATMs.
- 3.11 FIRST Security estimates that the size of the ATM Maintenance services market is around \$11.
- 3.12 *Guarding services:* FIRST Security considers that the Guarding market would also be significantly affected by the Proposed Acquisition. This is further explained at paragraph 5.2.13. Guarding services include:
- 3.12.1 static guarding, roving patrols, access control, event security, concierge services and logistics;
 - 3.12.2 external and internal property checks; and
 - 3.12.3 opening/closing of premises and/or arming/disarming security systems.
- 3.13 Competitors in this market include Armourguard, Allied, Red Badge, Simply and P4G. FIRST Security estimates that market shares are approximately:

Company	Revenue (est. or actual)	Market Share (estimate)
FIRST Security	11	11
Allied	11	11
Armourguard	11	11
Red Badge	11	11
Simply	11	11
P4G	11	11
Other	11 ²	11
Total	11	11

² The market includes a large number of small operators. This figure also includes non-govt internal guarding services (e.g. by TWG in house team).

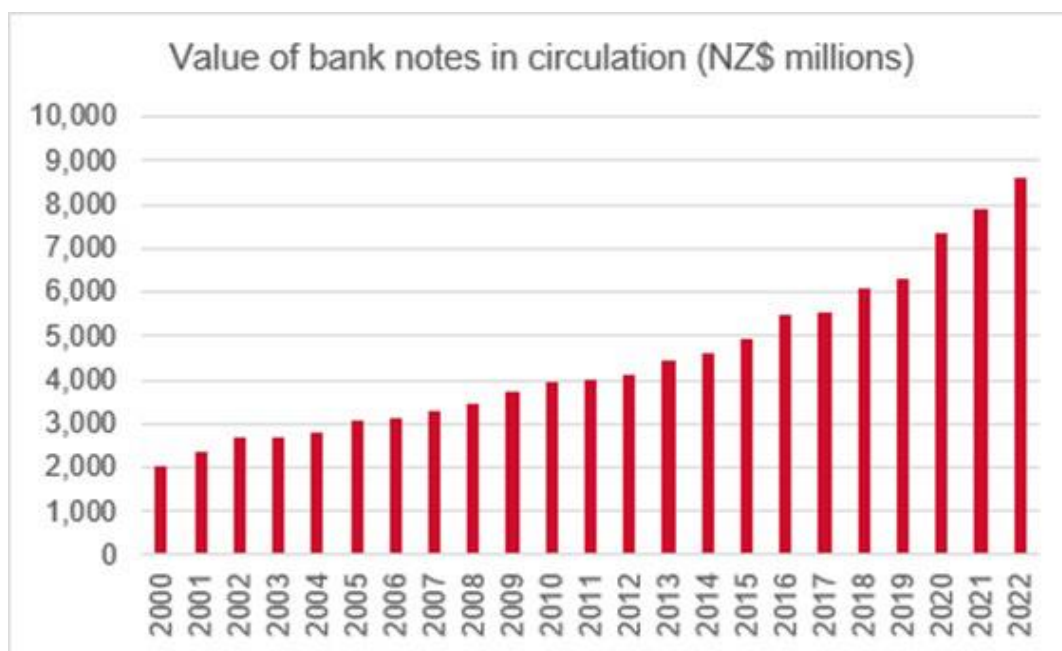
- 3.14 FIRST Security estimates a total Guarding market size of almost [redacted]. This includes both permanent and casual static guarding. Guarding services are provided to a range of different kinds of customers and on both a nationwide and local basis.
- 3.15 *Separation of wholesale and retail CiT services:* FIRST Security submits that the most appropriate approach to understanding & analysing the cash services ecosystem is to separate the wholesale and retail CiT markets. The wholesale market involves the provision of CiT services and closely related services to banks and ATM operators. This largely involves the movement of cash between banks, between banks and central vaults, and between banks and the Reserve Bank. In the retail market, CiT services are provided to other businesses and businesses who use cash in their businesses and operations, for example, large retailers, supermarkets, hospitals, casinos, quick service restaurants and local government.
- 3.16 FIRST Security agrees with Evergreen's description of the wholesale and retail levels of cash distribution at paragraphs 5.28 to 5.31 of the Application.
- 3.17 This separation is reflected in the way that companies operate. Separating wholesale and retail CiT services allows for more tailored, efficient, and secure operations. This specialisation addresses the unique needs and challenges of each segment, ensuring better service quality, cost management, and sustainability of the CiT industry.
- 3.18 This market structure represents the flow of cash through the economy. Additionally, the higher risk of loss (e.g. due to theft or natural disaster) and the processing requirements imposed by the RBNZ become higher and more stringent at the wholesale level than at the retail level, thus generally requiring a far more robust level of service and investment at the higher level. The wholesale level also requires access to vaults, which is not necessarily required at the retail level. As a result, at the retail level, smaller regional and local operators are more able to operate (e.g. Direct Security Services Limited).
- 3.19 This identification of the different levels of the CiT market is important as there are slightly different effects on competition in the two market levels. In particular, in the wholesale market, there will only be one CiT provider post-merger as there is no existing competitive restraint from smaller competitors. This additionally reduces any countervailing power from banks in the wholesale market as discussed at paragraph 5.1.14. However, the impact in the retail market will also be significant for the reasons set out in paragraph 5.1.6.

4 Counterfactual without the Proposed Acquisition

- 4.1 FIRST Security considers the counterfactual without the acquisition is either:
- 4.1.1 Evergreen and ACMNZ continuing in operation for at least the next five years with their current ownership, improving their operations and becoming more efficient; or
- 4.1.2 one or both of Evergreen and ACMNZ being acquired by another party or parties not currently operating in the CiT markets in New Zealand. We consider it is more likely that ACMNZ would be acquired as its limited offering is less likely to be viable as a standalone business. An acquiring party or acquiring parties are likely to be current providers of Guarding and/or security services in New Zealand or overseas due to the synergies that can be realised by providing services in both markets. Possible overseas purchasers include Brinks, Streamcorp, Prosegur or G4S.
- 4.2 Evergreen has submitted that without the Proposed Acquisition, one or both of the parties would likely cease to operate as the market cannot sustain two national CiT providers, and

therefore the counterfactual is a single national provider of CiT services with Direct Security Services Limited and Security North Limited staying in the market.

- 4.3 Claiming that a market can support only one provider (which the Application seems to do) seems to be a failing firm argument, but that argument and the evidence provided by the Applicant (to the extent it is not redacted) does not seem to meet the Commission’s standards for a failing firm counterfactual (See Appendix E of the merger guidelines).
- 4.4 FIRST Security considers that the size of the CiT market is around \$63M to \$67M. It does not seem credible that a market of that size would support only one operator.
- 4.5 Further, FIRST Security disagrees that the use of cash is declining to such an extent that only one firm can be supported in the market. While the use of cash as a percentage of transactions is declining, the total cash in the market has been steadily increasing (see the chart below from the Application) and will continue to increase.



- 4.6 The retail cash distribution market will continue to require CiT services and the market participants willing to drive operational efficiencies will benefit. ³ Going forward, if the Proposed Acquisition is not authorised, Evergreen will be driven by necessity to find efficiencies. Authorisation of the Proposed Acquisition would ¹.
- 4.7 FIRST Security encourages the Commission to look carefully at the Applicant’s claims about trends in the volume and value of cash. While the Application (Figure 1) shows a % decline in cash users, this doesn’t necessarily imply cash volumes are falling, since the % is being applied to an increasing base (i.e., the total value of cash is increasing). The reasons for any changes should also be examined (e.g. the percentage drop in 2021 may simply be an aberration due to the COVID lockdowns).
- 4.8 FIRST Security considers that the market is strong enough to support two national providers operating at the necessary level of operating efficiency, particularly if policy measures to lower the cost of cash and support use of cash are implemented, such as those recommended in

³ ¹

the Reserve Bank of New Zealand's (RBNZ) Future of Money – Cash system redesign Issues Paper, referenced in the Application.⁴ The total value of cash in circulation continues to increase year-on-year.⁵

- 4.9 Additionally, the ATM market is undergoing changes, especially through the emergence and growth of independent ATM operators, such as NCR, and also in the functionality and utility that machines offer including retail deposits and substitute cash servicing. Independent ATM operators are effectively alternatives to traditional branches. As a result, the network of ATMs will increase in the counterfactual. This will ensure that demand for CiT services remains.
- 4.10 FIRST Security points out that the Application references the abovementioned RBNZ paper to say that “consolidation within the wholesale cash sector, and in particular in relation to CiT services, seems inevitable in the absence of a policy response”, and that said policy response is likely to involve consolidation in the CiT industry and is likely to be some time away. FIRST Security submits in response that:
- 4.10.1 A policy response does not necessarily involve consolidation. The RBNZ suggests 15 other policy measures that would assist the cash industry and its resilience, with consolidation (and, notably, not distinct consolidation by merger) being only one of 16 policy proposals, which includes measures like broadening access to wholesale cash, mandating acceptance of cash by merchants and government entities, remunerating merchants for cash quality checking, campaigning to increase public awareness of cash issues, and financial incentives to use cash.
- 4.10.2 If any regulatory solution involving consolidation in the CiT industry were to be imposed, it would not be comparable to consolidation by merger. Instead, the RBNZ proposes the creation of entirely new regulated “utility entities”, which would be regulated and created to avoid the detriments associated with a private single nationwide supplier.⁶ In fact, the RBNZ expressly does not endorse consolidation by merger or one party ceasing to operate: it describes consolidation in this way as a poor outcome, and that it would result in “a continuation of the recent past, namely, a self-reinforcing downward spiral in access to cash, acceptance of cash, and system resilience.” The RBNZ certainly does not promote consolidation in the form of an unregulated single or very large provider as an answer to resilience in the cash industry.
- 4.10.3 In any case, it is much more likely that the other policy measures mentioned at paragraph 4.10.1 would be implemented first, as they are far less costly and disruptive.
- 4.11 Accordingly, a CiT offering would be an attractive complementary business to many existing security service providers, and an acquisition of either party is a very likely counterfactual.
- 4.12 FIRST Security notes that the Commission will consider trends in cash use in New Zealand, including the extent to which volumes and revenues have changed, and the impact this may have on the viability of CiT providers. While there are challenges in this regard, we consider cash will be around in considerable volume for a considerable amount of time. There is a viable business to be run and we do not think that will change in the time frame that the Commission considers when looking at the impacts of an acquisition.

⁴Reserve Bank of New Zealand (RBNZ) Future of Money – Cash system redesign (1 November 2021).

⁵Reserve Bank of New Zealand (RBNZ) Bank notes in the hands of the public (30 April 2024).

⁶Reserve Bank of New Zealand (RBNZ) Future of Money – Cash system redesign (1 November 2021) at page 35.

- 4.13 Evergreen cites, and attaches, a report from RBB Economics with some analysis of the market which it says supports its counterfactual. FIRST Security is concerned that there are several flaws in the approach taken in the report, namely:
- 4.13.1 Mischaracterisation of the CiT/FLM Market. We refer the Commission to our discussion of these markets above.
 - 4.13.2 RBB has used a whole entity approach and implied that the reduction in profitability for Armourguard is due to the drop in CiT revenue whereas FIRST Security believes it is actually, or largely, due to the drop in guarding revenue.
 - 4.13.3 RBB should have used a CGU (Cash Generating Unit) approach to the analysis.
 - 4.13.4 Among other things, these flaws mean that the RBB Economics report ignores the possibility of efficiency gains and innovation, as an alternative to merger.
- 4.14 RBB has also stated that the banks are a countervailing force. FIRST Security disagrees that this will be the case if the merger proceeds, as set out elsewhere in this submission.
- 4.15 FIRST Security submits that the Commission should not give any weight to the RBB Economics report unless and until the Commission itself reviews the report and satisfies itself as to those findings. It should also open any such analysis it conducts up for review by interested parties, including FIRST Security. Until and unless that occurs, the RBB Economics report should be ignored.

5 Substantial lessening of competition in the market for CiT services

- 5.1 Unilateral effects
- 5.1.1 FIRST Security submits that the merged entity would certainly be able to profitably raise prices and reduce service quality. As the Commission has noted in the Statement of Preliminary Issues, the parties are the only two national providers of CiT services in New Zealand and, in terms of closeness of competition, compete directly with one another.
 - 5.1.2 With the absence of the other party, the merged entity will no longer have to compete with another nation-wide competitor on price and service level and will therefore charge pricing that is close to or at monopoly pricing.
 - 5.1.3 FIRST Security also submits that service quality is likely to reduce, as customers experiencing poor service quality would not be able to procure services from an alternative provider. Examples of reduced service quality include:
 - (a) less regular servicing or filling of ATMs, particularly in rural areas; and
 - (b) less frequent collection of cash from retailers in provincial and remote areas, increasing the security risk associated with keeping quantities of cash on premises; and
 - (c) an erosion of resilience in the cash system particularly impacting regional communities.
 - 5.1.4 As noted below, FIRST Security also expects there to be a reduction in innovation in the market, or at least the incentives for that to occur if the merger proceeds (see paragraphs 6.3.2 to 6.3.6 below). While neither Armourguard or ACMNZ have shown particularly strong innovation tendencies in recent years, FIRST Security considers

that innovation is a key component to competition in that market and would occur under the counterfactual.

- 5.1.5 *Counterfactual:* Evergreen has submitted that the Proposed Acquisition would not result in much reduction in competition as the counterfactual involves one party exiting and therefore does not have materially different competitive restraints. As outlined at paragraph 4, FIRST Security does not consider that this is the correct counterfactual to use to analyse the Proposed Acquisition. Both of the two counterfactuals described in paragraph 4.1 above are likely. Both of those counterfactuals will result in substantially more competitive markets for CiT than the Proposed Acquisition.
- 5.1.6 *Remaining competitive constraints:* FIRST Security agrees with Evergreen's submission that the two other CiT providers, Security North Limited and Direct Security Services Limited, are unlikely to provide material competitive restraint on the merged entity post-merger in the retail CiT market.
- 5.1.7 Indeed, FIRST Security further submits that these two parties are unlikely to provide any competitive restraint at all post-merger, for a number of reasons:
- (a) Those two providers lack networks and processing capacity to compete against the merged entity and the market power it will gain from the Proposed Acquisition.
 - (b) Direct Security Services operates without armoured vehicles and does not have any cash processing capability (of commercial scale). It is only a retail provider with limited coverage. Critically, it is dependent on agreements with Evergreen and ACMNZ for the delivery to and receipt and processing of cash banking deposits from its commercial customers. Similarly, as a retail CiT provider it must source supply of bulk notes and coin from Evergreen and ACMNZ.
 - (c) If the Proposed Acquisition processes, the support provided by Evergreen will likely be withdrawn or the price for those services increased so that Direct Security cannot compete. At the very least, the merged entity will have the incentive and the means to do so.
 - (d) FIRST Security understands that Security North operates only as a contractor to ACMNZ, and is likely to be limited to that role, if at all, post-merger. Its services are, in any case, limited to a small geographic area. FIRST Security understands that, like Direct Security Services, Security North relies on ACMNZ's services to support its own services.
- 5.1.8 Under the Proposed Acquisition, the merged entity will therefore likely become the only provider of CiT Services in New Zealand.
- 5.1.9 FIRST Security considers that at present, Direct Security Services provides some constraint on Evergreen and ACMNZ in the retail cash distribution segment in which they operate. This competitive constraint would continue under the counterfactual set out at paragraph 4.1 above.
- 5.1.10 *Entry and expansion:* With the merged entity having such a high degree of market power, it is extremely unlikely that there would be new entry from a CiT provider in New Zealand. FIRST Security considers that new entry requires investment in cash processing equipment, vaulting, and armoured distribution and estimates costs into the tens of millions of dollars to build national scale. No new business would be prepared to risk the costs of establishing a CiT Service in New Zealand, when faced with the substantial market power of the merged entity, the possibility of the merged

entity using that market power to make market entry and growth difficult, and the deterrence that creates to any new entrant.

- 5.1.11 Although FIRST Security acknowledges that any new entry, even under its counterfactuals, would be challenging because of the costs of that entry, it notes that this deterrence effect would not exist under either of the counterfactuals.
- 5.1.12 FIRST Security also notes that both the counterfactuals in paragraph 4.1 above effectively involve entry into the market via acquisition of one of the two parties rather than de novo entry. This will introduce new capital, management and innovation into the CiT markets.
- 5.1.13 In terms of expansion, this will not occur under the merger, as there will be no other parties in the CiT markets in a position to do so and the same deterrence effect will also apply. Even if Direct Security and Security North continue in business post-merger for any meaningful length of time in the retail CiT market, they will not have the resources and market strength to expand in the case of the market power held by the merged entity.
- 5.1.14 *Countervailing power:* Evergreen has submitted that major banks have substantial countervailing power, as banks account for approximately 53.3% of CiT services and often have unfavourable supply agreement terms. FIRST Security submits that:
- (a) Banks would have little countervailing power against a single supplier in the wholesale CiT market after the Proposed Acquisition.
 - (b) In the last three years, non-bank ATM operators, such as NCR, have entered the New Zealand market, purchasing ATMs from banks. The expectation in the industry is that this will increase, reducing the countervailing power of banks.
 - (c) The CiT supply and service agreements with the banks will progressively expire over the next three years and be renegotiated under a market with a single supplier resulting in significantly more favourable terms to the merged entity and inevitably higher costs of cash to consumers.
 - (d) Absent new government regulation, the RBNZ may also be unable to require the merged entity to maintain adequate wholesale cash capability.

5.2 Effects on other markets

- 5.2.1 FIRST Security is also very concerned about the effect of the Proposed Acquisition on other markets. FIRST Security submits that the merged entity will leverage its very high degree of market power in the CiT markets to reduce competition in the ATM Maintenance, guarding and ATM operating markets.
- 5.2.2 **ATM Maintenance:** The CiT markets share very similar customers with the FLM market, as further specified at paragraph 5.2.16. For example, the same customer may engage FIRST Security for FLM services and ACMNZ or Armourguard for CiT services. As a result, the merged entity could reduce competition in the ATM Maintenance market in three key ways:
- (a) using profits gained from high prices in the CiT markets to cross-subsidise below-cost pricing in the FLM market;
 - (b) providing exclusionary bundling of prices on CiT services to customers that also engage the merged entity for FLM services; and

- (c) using third line forcing/tying strategies, providing CiT services on the condition that the purchaser also engages the merged entity for FLM services;
- 5.2.3 FIRST Security also sees the request made by Armaguard in Australia for financial support from the banking industry as an example of the kind of market power that could result from the Proposed Acquisition⁷.
- 5.2.4 **Existing evidence of third line forcing in existing CiT/FLM contracts:** FIRST Security submits that examples of third line forcing occur under the status quo. An example of this is that Armourguard and ACMNZ⁸ (when it provided ATM Maintenance services) used to insist on supplying both CiT and ATM Maintenance to banks/ATM operators. It was considered a 'non-negotiable' to question separation when entering any service agreement and the banks essentially accepted this.
- 5.2.5 The primary reason for this vertical integration or exclusive dealing related directly to the perceived risk of cash loss at the hands of multiple parties accessing an ATM safe, i.e. multiple CiT and/or FLM crews.
- 5.2.6 This risk was justified historically due to the type of locks used on the ATM, which effectively required a set of top and bottom codes and that lacked any digital audit trail or robust controls to prevent unauthorised access or insider theft.
- 5.2.7 More recently, some banks and ATM operators have adopted the 'Cencon lock system' across their national ATM fleets.
- 5.2.8 The 'Cencon ATM Cash Vault Security System' is designed to combat insider theft from ATMs through the combined use of lock hardware, systems software and Smart Keys™. Cencon offers total access control and accountability with its One Time Combination™ feature. The One Time Combination is dispatched from a central location and cannot be reused at a later date, thus eliminating the opportunity for an untraceable theft.
- 5.2.9 A key design feature of this Cencon system is that it offers three independent modes of operation – one for CiT; one for ATM Maintenance; and one for Bank staff.
- 5.2.10 This system fully promotes the separation of functions between CiT and ATM Maintenance, and also means that any efficiency gains for banks from procuring both CiT and ATM Maintenance together have disappeared. It has been implemented by FIRST Security.
- 5.2.11 In FIRST Security's case, ATM Customers include [] who procure CiT and ATM Maintenance separately.
- 5.2.12 Armourguard, however, still continues to provide CiT and ATM Maintenance Services to a number of banks ([]). FIRST Security would expect the merged entity to insist on CiT customers also using its ATM Maintenance services or developing other strategies to ensure that occurs, foreclosing the ability of FIRST Security to compete in that market.
- 5.2.13 **Guarding:** Similar to ATM Maintenance services, the market for guarding services has similar customers (banks, large retailers) to the market for CiT services and has

⁷ See [ABA statement on financial support for Linfox Armaguard - Australian Banking Association \(ausbanking.org.au\)](http://ausbanking.org.au)

⁸ ACMNZ provided ATM Maintenance in the past [].

synergies between the services, such as common account management, combined welfare and monitoring infrastructure, and cross-trained staff. Therefore, reduction in competition is likely to occur in similar ways to those outlined in paragraph 5.2.2. The effect of the proposed acquisition on this market should be of significant concern given the size of this market (I).

5.2.14 The CiT markets share very similar customers with the Guarding market, as further specified at paragraph 5.2.16. For example, the same customer may engage FIRST Security for Guarding services and Evergreen/ Armourguard for CiT services. As a result, the merged entity could reduce competition in the Guarding market in three key ways:

- (a) using profits gained from high prices in the CiT markets to cross-subsidise below-cost pricing in the Guarding market;
- (b) providing exclusionary bundling discounts on CiT services to customers that also engage the merged entity for Guarding services; and
- (c) using third line forcing/tying strategies, providing CiT services on the condition that the purchaser also engages the merged entity for Guarding services.

5.2.15 Any reduction of competition in this market will have significant effects across a wide number of customers, resulting in increased costs and reduced services for those customers. There will be less incentives to innovate. For itself, FIRST Security sees that it would be very challenging to compete against Armourguard post-merger, where Armourguard is able to leverage its power in the CiT market to improve its position in the Guarding market.

5.2.16 **Shared customers:** Of Armourguard Security's types of CiT customers listed in the Application,⁹ the following are shared by FIRST Security in the ATM Maintenance and Guarding markets:

- (a) commercial banks (ATM Maintenance and Guarding);
- (b) government departments (Guarding);
- (c) commercial customers such as both large and small retailers (Guarding);
- (d) local governments (Guarding);
- (e) supermarkets (Guarding);
- (f) fast food outlets (Guarding); and
- (g) independent ATM operators (ATM Maintenance and Guarding).

5.2.17 FIRST Security estimates that the customers who use CiT Services who also utilise ATM Maintenance and Guarding services (by revenue value) and the ratio of the spend on CiT to each of those services is as follows:

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⁹ At 5.44.

- 5.2.18 As the use of market power in the CiT market is not regulated and there is no likely prospect of this occurring, there is a risk that the new merged entity could cross subsidise Guarding services or (possibly claiming apparent safety or other seemingly legitimate concerns or claimed efficiencies), require customers to only use them for guarding, use bundled pricing to achieve the same outcome, or otherwise leverage its market power in the CiT market, thus reducing competition in the manned security market.
- 5.2.19 There will therefore be significant effects on the ATM Maintenance markets and substantial parts of the Guarding market.
- 5.2.20 Guarding contracts are won on both service and price. A price differential of more than 1% in a bid for a guarding contract is very likely to be of material consideration for a procurement team. It is quite clear how a combined CiT and guarding services provider could use their market dominance in CiT to extract several percentage points price increase and profitability and apply this to a price cut in the guarding offering to a customer who is purchasing both CiT and Guarding. The procurement of CiT and Guarding services does not need to be done as a single exercise or done by the same procurement teams for this type of subsidisation to be effective.
- 5.2.21 The Application attempts to dismiss Evergreen and ACMNZ's competitors in these related markets, claiming that "Armourguard Security and ACMNZ, as the two main providers provide all of these services, and those suppliers who do not are very small."¹⁰ This is not true in the case of ATM Maintenance, which both parties have listed in the Application as a part of their CiT offering, with FIRST Security holding a reasonable share of the FLM market. The claim that suppliers who do not provide the full offering are very small creates the false impression that there is not much competition in the counterfactual to be affected by the Proposed Acquisition, which FIRST Security disagrees is the case.
- 5.2.22 The Application also claims that customers "generally procure CIT services from a single provider, despite the individuals services (cash transport, cash processing, cash administration and other ancillary services) not being demand-side substitutes." This is also not true in the case of FLM as an "other ancillary service". FIRST Security provides ATM Maintenance services to approximately 10% of the bank-operated ATM market, demonstrating that ancillary services like ATM Maintenance are not necessarily procured by a customer from the same provider that its CiT services are procured from. As noted above this has been facilitated by the Cencon system. Again, this claim minimises the extent to which competition exists under the counterfactual that would be compromised by the Proposed Acquisition.
- 5.2.23 **ATM operating market:** FIRST Security also asks the Commission to check that there are no terms or understandings being entered into in the Proposed Acquisition between Evergreen and Linfox, as the ultimate owner of ACMNZ, that (when combined with the market power of Armourguard post-merger) could reduce competition in the event that Linfox enters the ATM operating market. Any such arrangement or understanding could even be a cartel provision.
- 5.2.24 FIRST Security is aware that banks are looking to sell more ATMs to independent ATM retailers and believes that Linfox is interested in entering the New Zealand ATM operating market. Linfox/Prosegur are significant ATM operators in Australia. It is thus very likely that they extend their reach into the New Zealand market.

¹⁰ At 5.58(a).

5.2.25 FIRST Security would be concerned if, as part of the sale, Linfox has agreed to use Armourguard exclusively for CiT, ATM Maintenance or other guarding services for any ATMs it buys or installs and its New Zealand cash operations. Similarly, any special arrangements with Linfox for obtaining those services could favour Linfox over other ATM operators. When combined with the merged-entity's substantial market power, the effect on competition in the ATM operation market could be significant.

6 Whether the benefits of the Proposed Acquisition would be likely to outweigh the detriments

6.1 Benefits of the Proposed Acquisition

6.1.1 In response to the alleged benefits of the Proposed Acquisition claimed by the Applicant, FIRST Security makes the following submissions:

- (a) *Improving productive efficiencies by reducing duplication of fixed costs:* FIRST Security submits that any productive efficiencies that might arise from the merger are likely to be very limited, especially as the merged entity will not face any incentive to pass on the benefits of efficiency to customers. Any costs savings from reduced duplication of fixed costs that does occur will simply result in increased profits for the merged entity, which will be taken by the offshore owners of the merged entity. Further, FIRST Security queries the extent to which the infrastructure under the merged entity would be more productively efficient than under FIRST's counterfactuals. FIRST Security considers that the optimal infrastructure would more likely be achieved in a competitive market.
- (b) Finally, there appears to be a logical inconsistency in the Applicant's position. If it was correct that only one operator is sustainable under the Applicant's counterfactual, then (to the extent there are any duplicated fixed costs), these would be avoided anyway. If so, there would be no net benefit relative to the Applicant's counterfactual.
- (c) *Avoiding the likely dislocation costs, uncertainty and customer impacts associated with a disorderly exit by one or both national CiT service providers:* A disorderly exit is not inevitable. FIRST Security considers that it is more likely in the counterfactual that either both of the parties will improve efficiency or one or both will be acquired, and it is in the interests of both the acquiring and acquired party to affect a smooth transition. The RBNZ requires the banks to adhere to the RBNZ BS11¹¹ outsourcing policy that obligates banks and their CiT providers to an orderly provision of services and leaves no room for a disorderly exit.
- (d) *Increasing the efficiency of interbank trading:* As mentioned above, the merged entity will have no incentive to operate efficiently. More incentives for efficiency exist under the status quo and the counterfactuals considered by FIRST Security.
- (e) *Reducing the Parties' carbon footprint:* FIRST Security considers that the greatest pressure to reduce carbon footprint will exist under the two counterfactuals proposed in this submission, as reduced carbon footprints become more highly demanded by consumers. There will be no incentive on the merged entity, with its high market power and the lack of competition in the

¹¹ <https://www.rbnz.govt.nz/regulation-and-supervision/oversight-of-banks/standards-and-requirements-for-banks/banks-outsourcing-policy>

CiT markets, to reduce its carbon footprint. This proposed benefit is unsubstantiated, and the Commission should not consider it.

- (f) *Increasing the resilience in wholesale cash distribution, and related benefits from facilitating cash as a method of payment:* As explained further at paragraph 6.2.3, resilience in wholesale cash distribution will decrease under the Proposed Acquisition, especially compared to the counterfactual.

6.2 Detriments submitted by Evergreen

- 6.2.1 FIRST Security disagrees with the characterisation of the detriments of the Proposed Acquisition in Evergreen's submission.
- 6.2.2 *Competition effects:* Evergreen submits that any impact on competition will be negligible. As outlined above at paragraph 5, FIRST Security considers that the Proposed Acquisition will result in a substantial lessening of competition.
- 6.2.3 *Less resilience in wholesale and retail cash distribution:* FIRST Security submits that resilience in the wholesale and retail cash distribution segment will drastically decrease when there is only one national provider of CiT services. As identified by the ACCC in its Determination of the merger between Linfox Armaguard Pty Ltd and Prosegur Australia Holdings Pty Ltd (**Armaguard/Prosegur Merger**), this is because having a single CiT provider responsible for wholesale cash and retail distribution could increase risks associated with disruptions such as natural disasters, employee strikes or disruption to IT services.¹² The CiT markets need multiple national CiT providers, with their different infrastructure and operations, to be able to provide resilience in times of disruption.
- 6.2.4 In the Application, Evergreen submits that cash is an essential method of payment in New Zealand, especially in times of emergency¹³. FIRST Security submits that this is precisely why having competing CiT providers is so crucial: to ensure there are multiple options to be able to guarantee access to cash. The Applicant's other statements that only one operator is feasible in the CiT market also seems inconsistent with this statement.

6.3 Additional detriments to be considered by the Commission (as mentioned in the Statement of Preliminary Issues)

- 6.3.1 *Level of price increases or reductions in service quality:* As outlined in paragraph 5.1, FIRST Security considers there is a very high chance of increases in price (including because of the reduced incentive on the merged entity to reduce its costs) and reduction in service quality. This is likely to occur across at least the three distinct markets – first in CiT, and then through the effect of third line-forcing, in the ATM Maintenance and Guarding markets as discussed above. The increases in price and reduction in services in the CiT market will also impact on costs and service delivery in the ATM operating market, which could also impact competition in that market, especially if those effects are uneven in that market.
- 6.3.2 *Degree to which the acquisition would reduce the extent of innovation in the relevant markets in the future:* FIRST Security submits the Proposed Acquisition would substantially decrease innovation in all the relevant markets. In the CiT, Guarding and ATM Maintenance Services markets, two of the key areas of competition are

¹² At 6.93.

¹³ At 5.9.

through service deliver and cost, both of which rely to a large degree on operational efficiencies, which involves constant innovation to continue to drive those operational efficiencies.

- 6.3.3 Potential Innovations that could be taken in CiT, for example, include [redacted].
- 6.3.4 In ATM Maintenance, innovations (which FIRST Security has implemented), [redacted]. Also, as discussed above, the benefits from the use of the Cencon system will be lost.
- 6.3.5 In Guarding services, innovations that FIRST Security has undertaken include [redacted].
- 6.3.6 FIRST Security considers that the Proposed Acquisition and the lack of a competing national provider as a competitive constraint will remove any incentive to innovate and increase efficiency and service quality in the CiT markets, and also reduce those same incentives on Armourguard in other markets. With the market position that the merged entity will achieve in ATM Maintenance and Guarding markets through leveraging its position in the CiT markets, the level of innovation in those markets will sharply drop.
- 6.3.7 *Effect of the Proposed Acquisition on resilience on wholesale cash distribution:* FIRST Security submits the reasoning at paragraph 6.2.3 for the Commission's consideration on this point.
- 6.3.8 *Particularly affected groups:* FIRST Security submits that in addition to the areas of detriment discussed above, there would be particular effect on certain groups that may be more reliant on cash as a form of payment. Reductions in service level and frequency as outlined in paragraph 5.1.3 will impact these communities more due to their sole reliance on cash, and therefore lack of access to cash is extremely detrimental.
- 6.4 In addition, FIRST Security notes the repatriation of higher profits from the merged entity to its overseas owners should be considered a detriment.
- 6.5 Summary of public benefits and detriments
- 6.5.1 In summary, FIRST Security submits there are no public benefits of the Proposed Acquisition (or any public benefits are likely to be small), while the detriments are very significant, and significantly outweigh the benefits, including:
- (a) significant competition effects in the CiT markets, ATM Maintenance market, Guarding market and ATM operating market;
 - (b) less resilience in wholesale cash distribution;
 - (c) price increases and service quality reductions;
 - (d) loss of innovation in operational efficiency;
 - (e) specific detriment to rural and isolated communities;
 - (f) transfer of wealth to overseas owners of Evergreen; and
 - (g) the merged entity will control the entire wholesale cash infrastructure, and will be able to hold all customers to ransom.

- 6.5.2 FIRST Security considers it is clear that the Commission cannot be satisfied that there are public benefits that arise from the Proposed Acquisition that would outweigh the potential detriments.
- 6.5.3 FIRST Security strongly agrees that the resilience and health of the CiT markets is extremely important and provides a lifeline for many vulnerable communities in New Zealand, including in times of natural disaster. That resilience will be worsened by the creation of an inefficient, offshore-owned monopoly with no incentive to innovate to provide efficient and high-quality service to those who need it.
- 6.5.4 At the very least, FIRST Security submits that the merged entity should be required to divest the guarding services. This is a very sizeable market and the detrimental effects of the merger on that market will be substantial. FIRST Security submits that this is the only way to avoid those detrimental effects, should the two parties wish the merger to proceed. (This, of course, will not avoid the effects of the merger on other markets, which the Commission would still need to consider).
- 6.6 Comparison to Armaguard/Prosegur Merger
- 6.6.1 FIRST Security notes that there are important comparisons to make between the Proposed Acquisition and the Armaguard/Prosegur Merger.
- 6.6.2 In the Armaguard/Prosegur Merger, the ACCC was not satisfied that the proposed acquisition in that case would not have the effect or be likely to have the effect of substantially lessening competition, particularly because it considered that if one of the two applicants exited the market in the counterfactual, either an existing or new competitor would acquire its assets.
- 6.6.3 The Armaguard/Prosegur Merger was authorised on the basis that behavioural undertakings were made to reduce the public detriments of the proposed merger, which included competition effects and reduction in wholesale cash resilience. The Undertaking had the primary intended effect of reducing uncertainty in pricing and service quality, both of which FIRST Security submits will become worse under the Proposed Acquisition.
- 6.6.4 FIRST Security considers that the same detriments exist from the Proposed Acquisition here. However, unlike the ACCC, the Commission cannot impose behavioural undertakings, and the balance of benefits to detriments of the Proposed Acquisition cannot be reconciled. Accordingly, FIRST Security submits that the Commission should not authorise the Proposed Acquisition.
- 7 Confidentiality for specific information contained in or attached to this submission**
- 7.1 Confidentiality is sought in respect of the information in this submission that is highlighted and contained in square brackets. Confidentiality is sought for the purposes of section 9(2)(b) of the Official Information Act 1982 on the grounds that:
- 7.1.1 the information is commercially sensitive and contains valuable information which is confidential to FIRST Security; and
- 7.1.2 disclosure would be likely to unreasonably prejudice the commercial position of FIRST Security as the party providing the information.
- 7.2 FIRST Security also requests that it be notified of any request made to the Commerce Commission under the Official Information Act 1982 for the confidential information, and that

the Commission seeks FIRST Security's views as to whether the information remains confidential and commercially sensitive at the time those requests are considered.

- 7.3 The foregoing applies equally in respect of any additional information provided to the Commission that is expressed to be confidential.