

Statement of Preliminary Issues

Evergreen/ACM

7 May 2024

Introduction

1. On 10 April 2024, the Commerce Commission (the Commission) registered an application (the Application) from Evergreen NZ Holdings (Evergreen) seeking clearance or authorisation to acquire 100% of the shares in ACM New Zealand Limited (ACMNZ) from ACM Holdings (NZ) Limited (ACM) (the Proposed Acquisition).¹
2. The Commission will give clearance if it is satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.
3. If the Commission is not satisfied that the Proposed Acquisition is unlikely to substantially lessen competition, then it would apply a ‘public benefit test’ to determine whether the Proposed Acquisition should be authorised. The Commission will grant authorisation if it is satisfied that the Proposed Acquisition will result, or would be likely to result, in such a benefit to the public that it should be permitted.
4. This statement of preliminary issues sets out the issues we currently consider to be important in deciding whether or not to grant clearance or authorisation.²
5. We invite interested parties to provide comments on the likely competitive effects, benefits and detriments of the Proposed Acquisition. We request that parties who wish to make a submission do so by **21 May 2024**.

The parties and the Proposed Acquisition

Evergreen

6. Evergreen is a private unlimited liability company incorporated in New Zealand and is owner of 100% of the shares in Armourguard Security (Armourguard), a provider of manned guarding, patrol and associated services.

¹ A public version of the Application is available on our website at: <https://comcom.govt.nz/case-register/case-register-entries/evergreen-nz-holdings-and-acm-new-zealand-limited>.

² The issues set out in this statement are based on the information available when it was published and may change as our investigation progresses. The issues in this statement are not binding on us.

7. Relevant to the Proposed Acquisition, Armourguard also operates cash-in-transit and precious cargo services (CiT)³ throughout New Zealand from seven processing centres.

ACMNZ

8. ACMNZ, a private limited liability company established in New Zealand, is part of the Linfox Group (an Australian transport, logistics and supply chain business) and also provides CiT and precious cargo services throughout New Zealand.

Cash-in-transit and precious cargo services

9. Evergreen explains that CiT services includes any service related to the transportation, storage and processing of cash on behalf of clients⁴ and that this can be broken down into four main services:⁵
 - 9.1 cash collection and delivery services;
 - 9.2 cash processing services;
 - 9.3 cash and valuables vaulting services; and
 - 9.4 cash administration services.
10. We understand precious cargo services involve the collection and delivery of precious cargo (such as bullion).

Rationale for the Proposed Acquisition

11. In terms of rationale for, and background to, the Proposed Acquisition, Evergreen submits that the New Zealand CiT industry, in which both parties are active, is in a state of decline and can no longer sustain two national providers. Evergreen further submits that this decline has been driven by a number of factors including:⁶
 - 11.1 the continuing decline in the use of cash as a form of payment, with cash payments comprising 13% of payments in 2019, compared to 30% in 2007;⁷
 - 11.2 the COVID-19 pandemic, which increased the use of contactless payments and accelerated the decline in the use of cash as a form of payment;⁸ and

³ For ease of reference, throughout this document we refer to CiT services as also including precious cargo services, unless the context requires otherwise.

⁴ The Application at [5.28].

⁵ The Application at [5.32].

⁶ The Application at page 4.

⁷ The Application at [6.7].

⁸ The Application at [6.10].

- 11.3 the rationalisation (of branches and ATM services) pursued by banks and other financial institutions with the number of bank branches operated by the major banks falling from 1,245 in year 2000, to 795 in year 2022.⁹
12. Evergreen submits this decline in cash usage and decrease in demand and volume of CiT services means that, absent the Proposed Acquisition, it is likely that one or both of Evergreen or ACMNZ would not be able to continue to survive.¹⁰ Hence, Evergreen states that the Proposed Acquisition is the best means of ensuring the “long-term financial health, viability, sustainability and resiliency of the New Zealand cash economy”.¹¹

Our framework

13. Our approach to analysing the competition effects of the Proposed Acquisition is based on the principles set out in our Mergers and Acquisitions Guidelines¹² and Authorisation Guidelines.¹³
14. As required by the Commerce Act 1986, we assess authorisation applications using a two-step analytical process. Firstly, we assess whether the Proposed Acquisition is likely to amount to a substantial lessening of competition, and, if so, secondly, we apply the public benefit test.

Substantial lessening of competition assessment

15. When we receive an application for merger authorisation, we must first assess whether the acquisition would be likely to substantially lessen competition in a market. If we are satisfied that the acquisition would not be likely to have that effect, then we would clear the acquisition.
16. We determine whether an acquisition is likely to substantially lessen competition in a market by comparing the likely state of competition if the acquisition proceeds (the scenario with the acquisition, often referred to as the factual), with the likely state of competition if the acquisition does not proceed (the scenario without the acquisition, often referred to as the counterfactual).¹⁴ This allows us to assess the degree by which the Proposed Acquisition might lessen competition. When making that assessment, we consider, among other matters:
- 16.1 constraint from existing competitors – the extent to which current competitors compete and the degree to which they would expand their sales if prices increased;

⁹ The Application at [6.17] – [6.20].

¹⁰ The Application at [6.2].

¹¹ The Application at page 5.

¹² Commerce Commission, *Mergers and Acquisitions Guidelines* (May 2022). Available on our website at www.comcom.govt.nz

¹³ Commerce Commission, *Authorisation Guidelines* (June 2023). Available on our website at www.comcom.govt.nz

¹⁴ *Commerce Commission v Woolworths Limited* (2008) 12 TCLR 194 (CA) at [63].

- 16.2 constraint from potential new entry – the extent to which new competitors would enter the market and compete if prices increased; and
- 16.3 the countervailing market power of buyers – the potential constraint on a business from the purchaser’s ability to exert substantial influence on negotiations.

Public benefit test

17. For authorisation applications, if we are not satisfied that the lessening of competition is not likely to be substantial and therefore we cannot grant clearance, we then apply the public benefit test to determine whether to authorise the acquisition.
18. We must authorise an acquisition where we are satisfied that the acquisition will result, or would be likely to result, in such a benefit to the public that it should be permitted. The public benefit test requires us to balance the public detriments that may result from the proposed acquisition against the public benefits that the acquisition may bring about.
19. In our assessment we regard a public benefit as any gain to the public of New Zealand that would result from the proposed acquisition. We also take into account any costs that might be incurred in achieving those benefits. The benefits that we take into account must result from the acquisition and we do not take into account any benefits that would occur without the acquisition. For example, we may consider a reduction in operating costs resulting from the removal of duplication as a benefit, so long as this reduction is a direct result of the acquisition.
20. The Commission is required to consider all detriments that it is satisfied would likely arise from the proposed acquisition. Our assessment of detriments arising from a lessening of competition is informed by our competition analysis. A lessening of competition is typically associated with a decrease in allocative efficiency and may also lead to productive and dynamic inefficiencies.¹⁵ We assess detriments based on the facts of each case, rather than assuming inefficiency based on economic theory alone. Detriments can also include wider losses to the New Zealand public as well as efficiency losses wherever they occur.¹⁶

Market definition

21. Market definition is a tool that helps identify and assess the close competitive constraints a merged entity is likely to face. We define markets in the way that we

¹⁵ A lessening of competition can also result in transfers between different participants in markets and these may also constitute detriments in some circumstances. See Commerce Commission, *Authorisation Guidelines* (June 2023) at [88] – [91].

¹⁶ *NZME Ltd v Commerce Commission* [2018] 3 NZLR 715 (CA) (NZME) at [126]. While we cannot exhaustively identify these types of detriments, examples include: loss of media plurality as a result of a merger between two media firms, adverse effects on the environment, impacts on privacy interests, and adverse social welfare impacts or other impacts on the community generally. See Commerce Commission, *Authorisation Guidelines* (June 2023) at [61].

consider best isolates the key competition issues that arise from the proposed acquisition. In many cases this may not require us to precisely define the boundaries of a market. A relevant market is ultimately determined, in the words of the Commerce Act, as a matter of fact and commercial common sense.¹⁷

Evergreen's submissions

22. Evergreen submits that the relevant markets for assessing the Proposed Acquisition are:¹⁸
 - 22.1 The supply of cash-in-transit services in New Zealand; and
 - 22.2 The supply of precious cargo services in New Zealand.
23. In the report prepared by RBB economics in support of the Application (the RBB report), RBB submits that it is not necessary to split CiT services into their component services (cash transport, processing, maintenance etc) as these are not substitutable from a customer's perspective, and that these component services are typically procured together from a single provider.¹⁹
24. RBB also submitted that it was not necessary to consider wholesale and retail CiT services separately.²⁰ This is because the only two national suppliers of wholesale CiT services (the parties) are also suppliers of retail CiT services. RBB noted that wholesale CiT services are not procured separately from retail CiT services.

What we will consider

25. We will consider whether the markets submitted by Evergreen are the relevant markets for the purposes of assessing the Proposed Acquisition, or whether other markets (including narrower markets) may be relevant to our assessment. In particular, we will consider:
 - 25.1 whether it is appropriate to consider different product markets to reflect the different aspects of CiT services, such as point-to-point cash transport and cash processing;
 - 25.2 whether it is appropriate to consider the different functional levels of CiT services, (being wholesale and retail) separately;
 - 25.3 whether it is appropriate to consider a separate retail CiT services market, encompassing CiT services to retail customers, and whether this market should be further narrowed between larger "full service" CiT retailer customers (such as the major grocery retailers) and smaller retail customers;

¹⁷ Section 3(1A). See also *Brambles v Commerce Commission* (2003) 10 TCLR 868 at [81].

¹⁸ The Application at [5.1].

¹⁹ The Proposed Acquisition of ACM by Armourguard, a competitive effects and public benefits assessment. RBB Economics, 27 March 2024 at [32].

²⁰ The Proposed Acquisition of ACM by Armourguard, a competitive effects and public benefits assessment. RBB Economics, 27 March 2024 at [33].

- 25.4 whether to segment market(s) by customer type; and
- 25.5 whether to delineate between national and regional operators of CiT services.

Without the acquisition

- 26. We will consider what the parties would do if the Proposed Acquisition did not go ahead. We will consider the evidence on whether the without-the-acquisition scenario is best characterised by, for example:
 - 26.1 the status quo;
 - 26.2 ACMNZ finding an alternative purchaser;
 - 26.3 one or both of Evergreen and/or ACMNZ ceasing to operate (and if so, when); or
 - 26.4 an alternative scenario.
- 27. Evergreen submits that absent the Proposed Acquisition, one or both of the parties would likely cease to operate.²¹ It asserts that a change in market structure from two national CiT suppliers to one would be inevitable both with and without the Proposed Acquisition and hence the relevant counterfactual involves a single national provider of CiT services.²²
- 28. In considering the appropriate without the acquisition scenario, we will also consider:
 - 28.1 trends in cash use in New Zealand, including the extent to which volumes (and revenue) in the industry have changed, and the impact this may have on the viability of CiT providers; and
 - 28.2 any regulatory or other changes that may impact on the CiT industry.

Preliminary issues: Whether the Proposed Acquisition would be likely to substantially lessen competition

- 29. We will investigate whether the Proposed Acquisition would be likely to substantially lessen competition in the relevant market(s) due to unilateral and/or vertical effects.

Unilateral effects: would the merged entity be able to profitably raise prices by itself?

- 30. Unilateral effects arise when a firm merges with a competitor that would otherwise provide a significant competitive constraint (particularly relative to remaining competitors) such that the merged firm can profitably increase price above the level that would prevail without the merger without the profitability of that increase being thwarted by rival firms' competitive responses.

²¹ The Application at page 5.

²² The Application at [3.28].

31. The parties overlap in the provision of CiT services throughout New Zealand and are the only national providers, although there are smaller entities catering to specific regional areas.

What Evergreen submits

32. Evergreen submits that the Proposed Acquisition would not result in any substantial lessening of competition because the declining use of cash, and the significant decrease in the demand and volume of CiT services means that absent the Proposed Acquisition, the number of national CiT competitors would reduce from two to one.²³
33. Evergreen also submits that major banks have substantial countervailing power.²⁴ It contends this flows from banks accounting for approximately 53.3% CiT services revenue combined with unfavourable terms of the supply agreements between the CiT providers and the banks.²⁵
34. Regarding the constraint provided by other CiT providers, Evergreen notes that there are two other CiT providers in New Zealand (Security North Ltd and Direct Security) and a number of contractors who provide CiT for hire services. Evergreen does not consider that CiT providers other than itself and ACMNZ are likely to provide material competitive constraint, in part due to their lack of processing capabilities and national network.²⁶

What we will consider

35. To facilitate our assessment of unilateral effects, we will consider in the with the merger scenario as compared to the without the merger scenario:
- 35.1 closeness of competition: the degree of constraint that Evergreen and ACMNZ would impose upon one another.²⁷ To the extent that any constraint is material, we will assess whether the lost competition between the merging parties could be replaced by rival competitors;
- 35.2 remaining competitive constraints: the degree of constraint that existing competitors would impose on the merged entity;
- 35.3 entry and expansion: the ability and incentive for rivals to enter and/or expand, the likelihood of them doing so and the likely timeframe in which entry or expansion might occur; and
- 35.4 countervailing power: whether customers have special characteristics that would enable them to resist a price increase by the merged entity.

²³ The Application at [6.1]-[6.2] and [6.4].

²⁴ The Application at [6.55].

²⁵ The Application at [6.54]-[6.55].

²⁶ The Application at [6.43] – [6.47].

²⁷ Including how this might differ between the with and without the merger scenarios.

Coordinated effects: would the Proposed Acquisition make coordination more likely?

36. An acquisition can substantially lessen competition if it increases the potential for the merged entity and all or some of its remaining competitors to coordinate their behaviour and collectively exercise market power or divide up the market such that output reduces and/or prices increase. Unlike a substantial lessening of competition which can arise from the merged entity acting on its own, coordinated effects require some or all of the firms in the market to be acting in a coordinated way.²⁸

What Evergreen submits

37. Evergreen did not submit in the Application on coordinated effects.

What we will consider

38. We will assess whether any of the relevant market/s are vulnerable to coordination, and whether the Proposed Acquisition would change the conditions in the relevant market/s so that coordination is more likely, more complete or more sustainable, when compared to the without the merger scenario.

Vertical or conglomerate effects: would the merged entity be able to foreclose rivals?

39. A merger or acquisition between parties which operate in related markets can result in a substantial lessening of competition due to vertical effects where a merger or acquisition gives the merged entity (or a related entity) a greater ability or incentive to engage in conduct that prevents or hinders rivals from competing effectively (which we refer to as ‘foreclosing rivals’).²⁹

What Evergreen submits

40. Evergreen did not submit in the Application on vertical effects.

What we will consider

41. Both Evergreen and ACMNZ provide CiT services to independent ATM owners.³⁰ We will therefore consider the extent to which CiT services may be a key input into ATM services and also whether (and if so, the extent to which), the merging parties also compete with these independent ATM owners in any relevant market(s). We will accordingly assess whether the merged entity would have the ability and incentive to engage in foreclosure.

²⁸ *Mergers and Acquisitions Guidelines* above n 10, at [3.84].

²⁹ *Mergers and Acquisitions Guidelines* above n 10, at [5.1] – [5.5].

³⁰ The Application at [5.44] and [5.49].

Preliminary issues: Whether the benefits of the Proposed Acquisition would be likely to outweigh the detriments

Public benefit test - Evergreen's submissions

42. Evergreen submits that if the Commission does not accept there is no likelihood of a substantial lessening of competition, there are also public benefits that arise from the Proposed Acquisition that would outweigh any potential detriments.³¹

Benefits

43. In terms of the benefits of the acquisition, Evergreen submits that these include (but are not limited to):³²
- 43.1 improving productive efficiencies by reducing duplication of fixed costs;
 - 43.2 avoiding the likely dislocation costs, uncertainty and customer impacts associated with a 'disorderly exit' by one or both of the two national CiT service providers;
 - 43.3 increasing the efficiency of interbank trading;
 - 43.4 reducing the Parties' carbon footprint; and
 - 43.5 increasing the resilience in wholesale cash distribution, and related benefits from facilitating cash as a method of payment.

Detriments

44. In terms of detriments, Evergreen refers in the Application to two detriments identified by the Australian Competition and Consumer Commission (ACCC) in *Linfox/Prosegur* which may be relevant, being:³³
- 44.1 competition effects; and
 - 44.2 less resilience in the wholesale cash distribution segment (in other words, greater difficulties in managing supply disruptions) arising from a reduction in the ability of alternative CiT suppliers, who could provide assistance in times of disruption, to expand or enter.
45. Evergreen has not attempted to quantify the potential detriments resulting from the Proposed Acquisition but asserts that:

³¹ The Application at [7.1].

³² The Application at [7.5].

³³ The Application at [7.32].

ACCC "Reasons for Determination Application for merger authorisation lodged by Armaguard and Prosegur in respect of the merger of their respective cash-in-transit and device monitoring and maintenance and ATM businesses Merger authorisation number: MA1000022" ("Reasons for Determination MA1000022") (13 June 2023) at [6.86].

- 45.1 any adverse competition effects would be insignificant;³⁴ and
- 45.2 concerns the ACCC found in *Linfox/Prosegur* pertaining to less resilience in wholesale cash distribution are not applicable to the Proposed Acquisition, because there is no real potential for alternative CiT providers to materially enter or expand, as the market will not sustain more than one CiT provider.³⁵ Rather, Evergreen states that the Proposed Acquisition would instead increase resilience in wholesale cash distribution by “creating a stronger and financially sustainable CiT provider, that is better equipped to meet customer demands and respond to emergencies.”³⁶

Public benefit test - what we will consider

46. We will investigate and assess whether the benefits that would result from the Proposed Acquisition are likely to outweigh the detriments that would result from the Proposed Acquisition. As explained in the framework section above, we determine these benefits and detriments by comparing the respective scenarios with and without the Proposed Acquisition.
47. In assessing detriments, a key part of our investigation will be to understand the likely magnitude of harm that would result from the Proposed Acquisition. In assessing detriments we will specifically consider:
- 47.1 the level of price increases (or reductions in service quality) that would be likely to occur post-acquisition and how customers are likely to respond to price increases (or reductions in service quality);
- 47.2 the degree to which the acquisition would reduce the extent of innovation in the relevant markets in the future;
- 47.3 the effect the Proposed Acquisition would have on resilience in wholesale cash distribution; and
- 47.4 any other category of detriments we identify.
48. Our assessment of the public benefits that the Proposed Acquisition may bring about will consider the potential improvements in allocative, productive and dynamic efficiency, as well as other benefits. In assessing public benefits, we will specifically consider:
- 48.1 whether there is a clear link between the Proposed Acquisition and the benefit (ie, is the benefit a direct result of the Proposed Acquisition, or might it occur both with and without the Proposed Acquisition);
- 48.2 whether the benefit is one-off or recurring;

³⁴ The Application at [7.33].

³⁵ The Application at [7.35].

³⁶ The Application at [7.36].

- 48.3 how and when the benefit would arise;
 - 48.4 the likelihood and magnitude of the benefit; and
 - 48.5 any costs that might be incurred in achieving the benefit; and
 - 48.6 who would receive the benefit (we will disregard any benefits to the extent they are ultimately received by non-New Zealanders).
49. We will also assess whether it would be appropriate to weight the benefits and detriments that may result from the Proposed Acquisition to reflect that certain groups of New Zealand consumers may be more reliant on cash as a form of payment. For example, a more resilient and sustainable CiT industry may ensure that relatively more widespread and ready access to cash is maintained for longer.
- 49.1 In the Application, Evergreen submits that cash is relied on as a method of payment by vulnerable members of society such as people in rural areas, low income earners, elderly people and those experiencing “digital exclusion”.³⁷
 - 49.2 Evergreen also submits that Maori and Pacific people are more likely to use cash as a form of payment than non-Maori and Pacific people.³⁸
50. As part of our investigation, we will consider the likely extent of cash use in Zealand in the future and how this may affect outcomes with and without the Proposed Acquisition.

Next steps in our investigation

51. The Commission is currently scheduled to make a decision on whether or not to grant clearance or authorisation to the Proposed Acquisition by **8 July 2024**. However, this date may change as our investigation progresses.³⁹ In particular, if we need to test and consider the issues identified above further, the decision date is likely to extend.
52. As part of our investigation, we will be identifying and contacting parties that we consider will be able to help us assess the preliminary issues identified above.

Making a submission

53. If you wish to make a submission, please send it to us at registrar@comcom.govt.nz with the reference “Evergreen/ACM” in the subject line of your email, or by mail to The Registrar, PO Box 2351, Wellington 6140. Please do so by close of business on **21 May 2024**.

³⁷ Digital exclusion is defined by the Citizens Advice Bureau as situations in which people face barriers to participating fully in society because of information and services being online.

³⁸ The Application at [7.30].

³⁹ The Commission maintains a register on our website at <https://comcom.govt.nz/case-register/case-register-entries/evergreen-nz-holdings-and-acm-new-zealand-limited> where we update any changes to our deadlines and provide relevant documents.

54. If you would like to make a submission but face difficulties in doing so within the timeframe, please ensure that you register your interest with the Commission at registrar@comcom.govt.nz so that we can work with you to accommodate your needs where possible.
55. Please clearly identify any confidential information contained in your submission and provide both a confidential and a public version. We will be publishing the public versions of all submissions on the Commission's website. If you make a submission and we do not acknowledge receipt of that submission within two working days, you should resubmit your submission.
56. All information we receive is subject to the Official Information Act 1982 (OIA), under which there is a principle of availability. We recognise, however, that there may be good reason to withhold certain information contained in a submission under the OIA, for example in circumstances where disclosure would unreasonably prejudice the supplier or subject of the information.