

Summary of Expert Economic Opinion

In relation to the Application to the Australian Competition and Consumer Commission for Authorisation of the Proposed Amalgamation of BPAY Group Pty Limited and BPAY Pty Ltd, eftpos Payments Australia Limited and NPP Australia Limited

Confidential to BPAY

Confidential to eftpos

Confidential to NPPA

Confidential – derived from confidential information of BPAY, eftpos and NPPA

Confidential to others

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1. INTRODUCTION AND OVERVIEW

1. I have been engaged by King & Wood Mallesons, acting for Industry Committee Administration Pty Ltd (**ICA**), to provide an expert economic opinion on the application to the Australian Competition and Consumer Commission (**ACCC**) for authorisation of the amalgamation of BPAY Group Pty Ltd and BPAY Pty Ltd (together, **BPAY**), EFTPOS Payments Australia Limited (**eftpos**) and NPP Australia Limited (**NPPA**). Specifically, I have been asked to provide an expert economic opinion on:
 - a. The boundaries of the affected markets;
 - b. The likely effects of the proposed amalgamation on competition; and
 - c. The likely synergies and other benefits to the public of Australia as well as the likely detriments to the public of Australia, using a counterfactual analysis, from the proposed amalgamation.
2. This is a summary report that has been prepared for submission with the Application. It is based on my review of the Application, my communications with industry participants, my review of factual statements of industry participants and the industry expert opinion of Mr Lance Blockley, as well as information available on the public record such as publications of the RBA. A more detailed report will be prepared to be submitted to the ACCC by 2 April 2021.

1.1. Qualifications

3. I am a Vice President of Charles River Associates (CRA), a global consulting firm comprised of a range of experts in economics, finance and strategy, with offices in Australia and throughout Europe and North America. I live in Sydney and manage CRA's Sydney office.
4. I have been employed by CRA since October 2004. From then until January 2014 I was based in CRA's London office within CRA's European Competition Practice. I became a Vice President in 2011. Since January 2014 I have been based in Sydney.
5. Prior to joining CRA, I worked in 1997 and 1998 as an economist for the Australian Competition and Consumer Commission (the ACCC) and in 1999 and 2000 as a competition lawyer with Mallesons Stephen Jaques (now King & Wood Mallesons), before studying and earning a Masters degree in Economics and a PhD in Business Administration from the University of California, Berkeley. I also hold a Bachelor of Economics (with first class honours) and a Bachelor of Laws (with first class honours) from the Australian National University.
6. My roles with CRA have involved advising firms and authorities, preparing expert reports and giving expert testimony in the context of a wide variety of competition law matters (including market investigations, merger proposals and reviews, authorisation applications, allegations of anti-competitive behaviour and damages claims) across a range of jurisdictions including the European Union and European Member States as well as Australia. My experience has involved many sectors of the economy, including retail, manufacturing, mining, banking, transport, health, telecoms, broadcasting and post. I have also published numerous papers and presented at many forums on competition matters. My CV is included as Attachment 1 to this report.

7. By reason of the above I have particular expertise in two sub-fields of economics: (i) industrial organisation; and (ii) competition economics (i.e. the economics of competition law).

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

8. I have read, understood, complied with and agree to be bound by the Federal Court of Australia's Expert Evidence Practice Note (GPN-EXPT). I have also read, understood, complied with and agree to be bound by the Harmonised Expert Witness Code of Conduct (Annexure A to the GPN-EXPT). In particular, I understand that I am not an advocate for either party and that I have a paramount duty, overriding any duty to any party to the proceedings or other person, to assist the ACCC (and on appeal the Tribunal) impartially on matters relevant to my area of expertise.
9. All the opinions and views expressed in this report are my own and are based wholly or substantially on specialised knowledge arising from my training, study or experience.
10. I have made all inquiries that I believe to be desirable and appropriate (save for any matters identified explicitly in this report) and no matters of significance that I regard as relevant have, to my knowledge, been withheld from the ACCC.

1.3. Outline of this summary report

11. This summary report is structured as follows.
- a. In Section 2, I begin by explaining a couple of key features of the payment services industry for the ACCC's assessment of the proposed amalgamation: the existence of network externalities and coordination challenges for the adoption of new payment services and initiatives.
 - b. In Section 3, I present my views on relevant markets (i.e. useful frameworks for assessment of the proposed amalgamation).
 - c. In Section 4, I discuss the likely counterfactuals to the proposed amalgamation that I use as comparators in my assessments of the likely effects of the proposed amalgamation on competition and the likely public benefits and detriments of the proposed amalgamation.
 - d. In Sections 5 - 9, I provide my views on the likely effects on competition of the proposed amalgamation (or, more precisely, with reference to Section 90(7) of the Competition and Consumer Act (CCA), whether the proposed amalgamation would not have the effect, or would not be likely to have the effect, of substantially lessening competition);
 - e. In Section 10 and 11, I consider in turn, the likely public benefits and detriments of the proposed amalgamation; and
 - f. In Section 12, I provide my conclusion. In brief, I find that the proposed amalgamation is not likely to substantially lessen competition and that it is likely to deliver net public benefits.

2. NETWORK EXTERNALITIES AND COORDINATION ISSUES IN PAYMENT SERVICES

12. In economics, a network effect arises when the value of a service to an individual or entity increases in the number of other individuals/entities that have access to the service. Phone networks are a classic example. A phone is only useful if other people have phones, and phones become more valuable the more that other people have phones and can be contacted over telephone networks.¹
13. Same-side (direct) and cross-side (indirect) network effects are often distinguished. Phone networks and social media networks are examples of networks with same-side network effects: the more people that have phones or that use a particular social media service, the more valuable each network is to each of them. Many platforms, however, exhibit cross-side network effects, where the value to participants on one side of the platform (e.g. advertisers) increases with the number of participants on the other side of the platform (e.g. viewers of audio-visual content).
14. Cross-side network effects are a key feature of the payments landscape in any country, and indeed globally. Payment networks are two-sided networks, with payers/consumers and their financial institutions on one side and payees/merchants and their financial institutions on the other side. Payer/consumer choices among payment alternatives depend on what alternative payment services payees/merchants accept. Currently, paying a physical merchant with a card is almost always possible, whereas few merchants offer the option of paying directly into their account over the NPP using a PayID. Cards therefore currently enjoy strong cross-side network effects, while PayID does not. At the same time, merchant choices as to which payment alternatives to accept depend on the extent to which consumers have ready access to those alternatives. This is because there are costs to merchants of setting themselves up to accept a new payment method, and those costs will only be justified if a sufficient number of consumers will use the method.
15. A successful payment service will therefore, typically, be one that achieves a high degree of ubiquity – i.e. widespread adoption – among payers and payees. A payment service that fails to achieve widespread adoption, on one side or the other, is likely to struggle for volume and scale in competition with alternatives that do.
16. Payment service providers including Visa, Mastercard, eftpos, BPAY and the NPP supply their services mainly to financial institutions, not to payers/consumers or payees/merchants directly.² Those financial institutions then on-supply these payment services to their customers – payers/consumers and payees/merchants – as part of packages of financial

¹ The concept was clearly stated by Theodore Vail, President of the American Telephone & Telegraph Company (AT&T) in AT&T's Annual Report of 1908 (at page 21):

A telephone – without a connection at the other end of the line – is not even a toy or a scientific instrument. It is one of the most useless things in the world. Its value depends on the connection with the other telephone – and increases with the number of connections.

See https://beatriceco.com/bti/porticus/bell/pdf/1908ATTar_Complete.pdf.

² See ANZ statement, paragraph 7, Westpac statement, paragraphs 7(a), 9 and 12, BPAY statement, paragraph 22, Coles statement, paragraph 13 and the Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, paragraphs 81-83 and 97.

services including bank accounts, lending and other services.³ It is important for financial institutions, in order to serve their customers well and compete with other financial institutions, to provide their customers with convenient and efficient ways to make and receive payments. The demand from financial institutions for payment services is therefore a derived demand that reflects the demand of payers and payees – i.e. the customers of those financial institutions – for effective, efficient, reliable and secure payment services.⁴

17. The demand from financial institutions for payment services reflect the same network effects just described. If a payment service has limited adoption among financial institutions, it will lack a high degree of ubiquity among payers and payees. It will therefore be less attractive to each financial institution than an alternative payment service that enjoys greater ubiquity of adoption.⁵
18. To adopt a new payment service or initiative, a financial institution will typically have to commit scarce capital and IT and managerial resources to developing the capability of the financial institution to interface with the new service or initiative.⁶ A payment scheme will therefore typically rely on financial institutions allocating scarce capital and staff to “roll out” its initiatives within the IT systems of those institutions.⁷ When multiple new payment services or initiatives seek adoption by financial institutions, they often must “compete” for these scarce resources (including in situations where the payment services or initiatives are not substitutes and do not compete in any payment services market).⁸ In this situation, network effects create multiple potential adoption outcomes (equilibria) and, therefore, coordination problems.⁹
19. As Farrell and Klemperer (2007) explain, “coordination is especially difficult – and the institutions to aid it work less well – when [...] the incentive for coordination coexists with conflict over what to coordinate on”.¹⁰ Farrell and Klemperer go on to observe that “coordination ‘breaks down’ when adopters choose incompatible options but would all prefer to coordinate,” and that this can happen due to uncertainty (“confusion”) over what others are doing and even when there is certainty over what others plan to do (as long as there is sufficient differentiation between the services).¹¹ In each case, the outcome will

3 See NAB statement, paragraph 12.

4 See Westpac statement, paragraphs 7(a), 9 and 12.

5 These considerations are captured well in the ANZ statement, paragraphs 69-71. See also the NPPA statement, paragraph 46.

6 See, for example, CBA statement, paragraphs 69-71 and **[CONFIDENTIAL TO OTHERS]**. See also the NAB statement, paragraph 21.

7 See CBA statement, paragraphs 69-71.

8 See CBA statement, paragraph 13.

9 For a good overview of the coordination problem with network effects, see section 3.4.1 in Joseph Farrell and Paul Klemperer (2007), “Coordination and Lock-in: Competition with Switching Costs and Network Effects”, Chapter 31 in the *Handbook of Industrial Organization*, volume 3, edited by Mark Armstrong and Robert H. Porter, Elsevier North-Holland.

10 Above note 9, page 2022.

11 Above note 9, page 2022.

by dysfunctional: an equilibrium with small and unsuccessful networks rather than large and successful networks.¹²

20. Farrell and Klemperer refer to the latter situation (where there is certainty, but differentiation in the services) as “splintering”. Without coordination, and with scarce resources within financial institutions, different financial institutions will prioritise different initiatives.¹³ Where the services are sufficiently differentiated for splintering to occur (including where the services are not substitutes in any market, but vie for scarce resources within each adopter), even certainty over the plans of each adopter is not sufficient to avoid the coordination problem. As Farrell and Klemperer put it: “[the] solution requires a leadership-like ability to focus on ‘let’s all do X instead’”.¹⁴
21. Even where multiple initiatives from different payment service providers serve different needs and all may be expected to be adopted eventually, resource constraints within financial institutions may preclude their simultaneous adoption,¹⁵ and differences in investment priorities and sequencing chosen by different financial institutions are likely to result in the “confusion” and “splintering” problems just described.¹⁶ The consequence is likely to be delays in achieving the widespread adoption needed to generate significant network effects, for all initiatives.¹⁷
22. Coordination uncertainty also gives rise to a “wait and see” problem for new payment services and initiatives.¹⁸ When there is uncertainty regarding whether a new payment services or initiative will achieve widespread adoption among other financial institutions, each financial institution will have incentives to “wait and see” until a sufficient number of financial institutions have adopted the service or initiative and greater certainty has

12 Farrell and Klemperer refer to a number of products that either never made it to market or were significantly delayed due to coordination problems of this kind, including quadraphonic sound in the 1970s, a delay for over a century in the commercialisation of fax systems due to incompatibility between competing systems, and delays in the adoption of 56K modem technology, Unix operating systems and AM stereo: above note 9, pages 2023-2024. In the AM stereo case there appears to have been a concern among radio stations to avoid explicit coordination due to antitrust fears.

13 See, for example, CBA statement, paragraphs 13-15 and 85, [CONFIDENTIAL TO OTHERS]. The NAB statement also observes that resource capacity varies by financial institution: NAB statement, paragraph 29. See also the NPPA statement, paragraph 52, which refers to differing commercial strategies, investment cycles and available funding of different financial institutions.

14 Above note 9, page 2023.

15 [CONFIDENTIAL TO OTHERS]. More generally, [CONFIDENTIAL TO OTHERS].

16 See NAB statement, paragraph 31 (“outcomes can vary significantly between participants across the ecosystem”) and paragraph 29 (“[e]ach participant, scheme and regulator acts in its own customer, community and commercial interests. This has the practical effect of the industry lacking a coherent and aligned high level strategic roadmap designed to foster efficient innovation and implementation”).

17 This is well captured in the ANZ statement: see paragraph 83. See also paragraph 84 of the NPPA statement, which describes delays in the development of the MPS associated with coordination issues among a fragmented industry.

18 Farrell and Klemperer briefly touch on this “wait and see” problem in their chapter, referring to it as a “fear of breakdowns” and observing that it “can inefficiently slow adoption through strategic uncertainty”: above note 9, page 2024. An illustration of this kind of thinking in the payments industry is given in the CBA statement, [CONFIDENTIAL TO OTHERS] and 113(d).

developed.¹⁹ The benefit of a “wait and see” approach in the context of uncertainty is that it avoids the chance of the financial institution making investments that ultimately become stranded if the initiative is ultimately not widely adopted by others.

23. The consequence of delayed investments by financial institutions is that, at best, new payment services and initiatives will be delayed in reaching the market, and at worst they may never make it to market and may need to be abandoned due to the failure to achieve the necessary investments and adoption by a critical mass of financial institutions.
24. In summary, network externalities can result in market failures in the payment services industry, whereby the inability to coordinate investments across autonomous financial institutions to achieve network effects in a timely fashion may lead to inefficiently delayed and/or low adoption of payment services and initiatives. As will be explained in my main report, this is not just a theoretical possibility, but a reality that has manifested in delays and/or abandonment of a number of domestic payment services in recent years.
25. Solving these coordination problems is therefore a key challenge facing many new payment services and initiatives. Payment schemes and regulators often resort to non-market solutions such as mandates that require the necessary investments by financial institutions by certain dates, with financial penalties for institutions that fail to invest and be ready to interface with the new services within the required timeframes.²⁰ These solutions are far from ideal. I understand that due to limited IT resources and many demands internally for those resources, financial institutions will often choose to pay (or face down) the penalties rather than make the investments within the mandated timeframes, and on the other side of the mandates, payment schemes would generally prefer not to be in the position of having to impose penalties on their customers and their threats to do so may not be credible.²¹

3. FRAMEWORKS FOR ASSESSMENT

3.1. Approach to Market Definition

3.1.1. Useful frameworks

26. I view the market definition task in a competition law matter as to identify a *useful framework* or *useful frameworks* for assessing the issues in question.²² The issues in question in the context of an application for authorisation of a proposed amalgamation are:

¹⁹ See, for example, [CONFIDENTIAL TO OTHERS].

²⁰ See, for example, the NPPA statement, paragraph 47.

²¹ Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, paragraph 464 and 505.

²² This follows the “purposive” approach to market definition: markets that are defined as “relevant” competition law markets should provide *useful frameworks* for the assessment of the particular questions being asked by the legal provision. Relevant markets for competition law purposes may therefore differ from markets defined by economists or business people for other purposes, such as when referring more generally to an industry as a whole (e.g. “the insurance market”) or specifically to a location where sellers and buyers interact (e.g. “farmers’ markets” or “spice markets”). As Norman and Williams explained, the question is: “what definition of market will best assist in analysing the processes of competition relevant to the case?”: Neville R. Norman and Philip L. Williams (1983), “Analysis of Market and Competition under the Trade Practices Act: Towards the Resolution of Some Hitherto Unresolved Issues,” 11 *Australian Business Law Review* 396 at 400.

- a. whether the proposed amalgamation would not have the effect or be likely to have the effect of substantially lessening competition; and
 - b. whether the proposed amalgamation would 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.²³
27. Market definition is typically not a precise science, and there may be a number of useful frameworks for assessing the issues in question. Moreover, it follows from its nature as an economic concept in the social (rather than physical) sciences that market boundaries are often blurred rather than sharp. Brunt has explained that it is therefore important when attempting to define relevant markets not to lose sight of the wood for the trees: market definition is not an end in itself – it is only a tool for the analysis of other questions.²⁴

It must constantly be borne in mind that market definition is but a tool to facilitate a proper orientation for the analysis of market power and competitive processes – and should be taken only a sufficient distance to achieve a legal decision. The elaborateness of the exercise should be tailored to the conduct at issue and the statutory terms governing breach (or authorisation).

28. Indeed, it will often be possible to conclude on whether an amalgamation would not have the effect or be likely to have the effect of substantially lessen competition (and on the likely net direction of public benefits/detriments of an amalgamation) without settling on a single precise relevant market.
29. Therefore, in this section I propose a number of relevant markets that I consider to be useful frameworks for assessment of the issues in question, without suggesting that these are the only possible useful frameworks, nor that their boundaries are sharp.
30. I consider that this approach is consistent with the approach laid out in the ACCC's Merger Authorisation Guidelines (paras 6.12-6.13), which state:

Market definition is a tool to assist in assessing an authorisation application. Defining the relevant areas of competition identifies the range of buyers and sellers that could be affected by the proposed acquisition, and the nature of the competitive environment in which the proposed acquisition will occur. It assists in identifying the likely competition effects, benefits and detriments, and the extent to which other factors might constrain such effects.

However, it is rarely possible to draw a clear line around the market, and it is often sufficient to identify the relevant areas of competition in which the proposed acquisition or its effects will occur, without precisely defining the boundaries of the relevant market.

31. The ACCC's Merger Guidelines similarly state (para 4.4):

It is rarely possible to draw a clear line around fields of rivalry. Indeed, it is often possible to determine a merger's likely impact on competition without precisely defining the boundaries of the relevant market. For example, if the consolidation of the merger parties' activities is unlikely to substantially lessen competition in a narrow product and geographic area, then it is also unlikely to do so in a more broadly defined product and geographic area and, therefore, a conclusive view on

²³ Section 90(7) of the *Competition and Consumer Act* (CCA).

²⁴ Maureen Brunt (1990), "Market Definition Issues in Australian and New Zealand Trade Practices Litigation," 18 *Australian Business Law Review* 86 at pages 126-127.

the relevant market may not be necessary. Similarly, when a merger is likely to substantially lessen competition in any number of potential markets, it may be unnecessary to define the precise market boundaries.

3.1.2. Starting points and close substitutes

32. The starting points for a market definition assessment in the context of an application for authorisation of a proposed amalgamation are the products or services supplied by the entities in question or that the entities in question plan to provide in the future. These are the “focal” products and services that we identify as our initial “candidate” markets.
33. After identifying these starting points, the key consideration when defining relevant markets is an assessment of close substitutes (i.e. good alternatives) to the focal products that act or will act as effective constraints on the prices and quality of the focal products. Close substitutes should be included within the relevant market together with the focal product.

3.1.3. Market definition dimensions

34. Market definition analyses typically consider at least two dimensions: the product dimension and the geographic dimension.
 - a. The product dimension is the set of products that represent close substitutes and constraints on the focal product for the analysis.
 - b. The geographic dimension is the geographic area over which products supplied in or from different geographic locations represent close substitutes and constraints on the focal product supplied in or from its location.
35. Sometimes other dimensions are also considered, including functional and time dimensions.
 - a. The functional dimension refers to the level or levels of the supply chain that are relevant to the analysis. For example, in some cases it may be appropriate to distinguish “final” retail markets from “intermediary” wholesale markets, while in other cases it may be appropriate to define a single market that includes sales at both the retail level and the wholesale level. Different functional market dimensions are likely to be relevant when a proposed amalgamation involves one or more vertically integrated firms or where the proposed amalgamation brings together firms that operate at different levels of a supply chain.
 - b. The time dimension may be important when the assessment of a proposed amalgamation needs to be forward looking and where the close constraints on a focal product may change over time. Market boundaries may evolve over time as the closeness of substitutes – i.e. the strength of constraint from alternative products – evolves.

3.2. Useful frameworks for assessing the Application for Authorisation

36. The three amalgamating entities each supply low value payment services to financial institutions (and in some cases directly to merchants and consumers) and also operate low value payment infrastructures, that are or could be, at least in principle, supplied to third

party payment service providers.²⁵ Therefore, there appear to be at least two functional levels of relevance for assessment of the likely effects and likely benefits and detriments of the proposed amalgamation:

- a. Low value payment infrastructures; and
- b. Low value payment services.

37. In the remainder of my analysis I take the geographic dimension of useful frameworks for assessing the Application to be national (i.e. Australia-wide). There seems no reason to differentiate on a more regional basis and the payment services in question principally supply services to Australian financial institutions only for on-supply to Australian payers and payees.

3.2.1. Low-value payment infrastructures

38. The main low-value payment infrastructures in Australia are the card-based infrastructures of Visa, Mastercard and eftpos (as well as American Express and Diners Club), the Direct Entry (DE) direct account-to-account infrastructure (a system of bilateral arrangements between financial institutions that follow the rules of the Bulk Electronic Clearing System or BECS), the BPAY Payments infrastructure for bill payments and the New Payments Platform (NPP) infrastructure for real-time account to account payments.

39. These infrastructures all facilitate the “clearing” of payments, by which I mean the communication of payment information between financial institutions so that one account is debited and another is credited the same amount. Some infrastructures, such as the card-based infrastructures, also include procedures for the “authorisation” of payments, meaning the processes by which funds are authorised to leave accounts (which requires sufficient funds to be in those accounts) and the communication of that authorisation to the payee’s financial institution. Authorisation procedures are required for debit (i.e. “pull”) payments initiated by a payee that is seeking to have a payer’s account debited.²⁶

40. Settlement is a separate (though related) process where money is moved between financial institutions, either in real-time for each payment or in the form of net settlement at the end of the day or at specific times during the day. The main infrastructure that is used to settle payments is owned by the RBA and is therefore distinct from the authorisation and clearing infrastructures of the amalgamating entities.²⁷

41. Each of the amalgamating entities and the ICS is vertically integrated downstream, providing payment services that make use of their own clearing infrastructures (to financial institutions in most cases). Some of these infrastructure operators also make their infrastructure available to third party payment services that operate over the infrastructure (like train carriages over “rails”). The following are some examples.

²⁵ The distinction between the infrastructure or “rails” and services provided over those rails is apparent in the expert industry opinion of Mr Blockley and also a number of the factual statements (e.g. see Westpac statement, paragraph 6).

²⁶ The NPP is adding an authorisation infrastructure with its mandated payment service that will facilitate debit (“pull”) payments from payer accounts.

²⁷ Regarding the distinction between clearing and settlement, see, for example: <https://www.rba.gov.au/payments-and-infrastructure/payments-system.html>. Also see Coles statement, paragraphs 17-18, and the CBA statement, paragraph 67.

- a. PayPal and a number of BNPL services have established themselves as intermediary merchants in the ICS systems, interposing themselves between the card schemes and final merchants.
 - b. Any fintech or BigTech player could, similarly, at least in principle, access eftpos rails by becoming a merchant.
 - c. BeemIt (when independent of eftpos) initially accessed both the ICS rails (for withdrawals) and eftpos rails (for deposits).
 - d. BeemIt, owned by eftpos, now provides a BPAY Payments service to BeemIt users, making use of the eftpos card network for one leg of the transaction (the “funding” transaction from the account of the customer initiating the BPAY payment to a BeemIt holding account) with the other leg provided in the normal way by BPAY.
 - e. The NPP’s open access arrangements allow overlay services to be provided over the NPP infrastructure, the first of which is BPAY’s Osko Service 1. In the future there may be other overlay services over the NPP, such as Osko Services 2 and 3 and, potentially, a BPAY bill payment service. In principle, any entity may access the NPP to provide an overlay service, including Visa, Mastercard or BigTech players.
 - f. Any fintech or Big Tech player can access the NPP rails via a directly connected ADI or via an Identified Institution sponsored into the NPP via an ADI. Examples are Monoova, Assembly Payments, AzuPay and Split Payments.²⁸ Moreover, according to NPPA, **[CONFIDENTIAL TO NPPA]**.²⁹ And with the commencement of the MPS, payment initiation requests can either be submitted via an ADI or directly as a Connected Institution.³⁰
42. My assessment of and conclusions on the likely effects on competition and of public benefits and detriments do not turn on how broadly or narrowly this market is defined. I therefore have not formed a view on the boundaries of this upstream infrastructure market. In particular I have not formed a view on whether there is a single market that includes all the low value payment infrastructures listed above, or separate relevant markets for card-based infrastructures on the one hand and for direct account-to-account infrastructures on the other. It seems possible that for some third-party payment services, such as PayPal and BNPL schemes, there may be no close substitute for the infrastructures of the ICS, while for other third parties, which may seek to differentiate themselves by offering real-time settlement and rich data messages, there may be no close substitute for the NPP infrastructure. There may also be other third parties that view card-based infrastructures and direct account to account infrastructures such as the NPP as substitutable to some extent, and this may be more likely to be the case over time, as the NPP grows its volume and its average costs fall, reducing its per transaction price, and as retail payments trend from in-store to online (including online payments for in-store purchases such as Woolworth’s “Scan and Go” service).

28 NPPA statement, paragraph 98.

29 **[CONFIDENTIAL TO NPPA]**.

30 NPPA statement, paragraph 99.

3.2.2. Low-value payment services

43. In addition to operating clearing infrastructure for low value payments, each of the three amalgamating entities provide payment services in the context of low value payments, meaning that they facilitate the exchange of payment information between financial institutions that allow accounts to be debited and credited according to the intentions of payers and payees. These services are supplied, principally, to financial institutions, which make use of them in order to facilitate the making and receiving of payments by their customers (payers and payees).³¹
44. I understand that in its 2017 determination in relation to NPPA's applications for authorisation for NPP regulations concerning eligibility requirements and settlement provisions, and suspension and termination of NPP participants,³² the ACCC identified an area of competition for assessment as "the clearing and settlement of low value payments". This was a broad framework for assessment, without further segmentation by type of payment.
45. I consider that a broad market for "low value payment services" or for "clearing of low value payments" – without further segmentation – may provide a useful framework for the assessment of the issues in question for the current Application. A broad market of this kind would reflect that ultimately all three of the amalgamating entities, and all of their main competitors (including the ICS and the DE system) provide ways in which payment information can be exchanged between financial institutions, and ultimately they all facilitate payments by connecting accounts to accounts, whether directly or indirectly, albeit with different technologies, equipment, speed and richness of data. It would also reflect that, although degrees of closeness of substitution differ, all three of the amalgamating entities (and their main competitors) either already do or could potentially supply payment services across the range of payment use cases.
46. Having said this, the conditions of competition and the strengths and weaknesses of different payment services differ in different payment contexts.³³ For example, card-based payment services have dominated retail payments for many years, both in-store and online, whereas direct A2A payment services such as the Direct Entry system have historically dominated bill payments, P2P payments (other than by cash), and B2P and G2P disbursements. And while all three of the amalgamating entities (and their main competitors) already do or could potentially supply payment services across the range of payment use cases, this comes with varying degrees of difficulty and expense for themselves and financial institutions, and with varying degrees of appeal to payers and payees in each use case. Pricing also differs between segments,³⁴ which likely reflects differences in cost conditions, differences in the value of the services to customers and differences in competitive conditions. For example, the ICS tend to set higher fees for

31 See ANZ statement, paragraph 7, Westpac statement, paragraphs 7(a), 9 and 12, BPAY statement, paragraph 22, [CONFIDENTIAL TO OTHERS] and the Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, paragraphs 81-83 and 97.

32 ACCC, *Determination, Applications for Authorisation lodged by NPP Australia Limited in respect of certain provisions of the New Payments Platform Regulations*, Authorisation numbers A91560 – A91562, 5 April 2017: see <https://www.accc.gov.au/system/files/public-registers/documents/D17%2B43242.pdf>.

33 See, for example, [CONFIDENTIAL TO EFTPOS]

34 See the eftpos statement, paragraph 28, [CONFIDENTIAL TO OTHERS] and the NAB statement, paragraph 14.

- online retail payments than for in-store retail payments,³⁵ and BPAY's pricing for BPAY Payments (for bill payments) is very different from the pricing of its Osko overlay services over the NPP (for "pay anyone" direct credits).³⁶
47. For these reasons, narrower frameworks around different segments of payments may also provide useful frameworks for assessment of the issues in question for the current Application. Industry participants and analysts frequently refer to the following segments of payments (although not always using the exact same terminology):
- a. In-store (also sometimes called point of sale or "POS") retail payments;
 - b. Online (also sometimes called "remote") retail payments (which includes irregular recurring payments such as Uber fares and Apple App Store purchases as well as online payments for purchases made in-store);
 - c. Bill/invoice payments (which includes all regular recurring payments including subscriptions to online and in-app services such as Netflix);
 - d. P2P payments; and
 - e. B2P/G2P payments.
48. In its (earlier) decision not to grant an interim authorisation to the Australia Payments Clearing Association (APCA) in relation to an agreement to coordinate the implementation of 3D Secure as a security measure for online purchases,³⁷ the ACCC referred on a number of occasions in a general sense to a "payments market", but also to an "online payment market" and included as an area of competition for assessment "the supply of payments systems in Australia that can be used to make online purchases (i.e. payment schemes)". This is an example of a narrower focus, although of course the context of the APCA application for authorisation was also narrower, being limited to an agreement to coordinate over implementation of a technology for online payments.
49. Similarly, the UK Competition and Markets Authority, in its assessment of Visa's proposed acquisition of Plaid,³⁸ assessed the impact of that merger in a market for "the supply of services enabling C2B payments (including card-based payments and PIS-enabled payments but excluding cash and cheques) in the UK". This is much like an "online payment market". The CMA found some demand-side substitution between card-based payments and payment initiation service (PIS) enabled payments (i.e. real-time account to account payments without a user having to leave the third party application or website interface) and that this was likely to increase in the future, as well as a segmentation within

³⁵ See eftpos statement, paragraphs 28 and 153(d)(ii) [CONFIDENTIAL TO OTHERS]. See also the Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, paragraph 244, which provides a number of cost-based reasons for higher online fees.

³⁶ [CONFIDENTIAL TO OTHERS].

³⁷ ACCC, *Draft Determination and Decision on Interim Authorisation, Applications for Authorisation A91525 & A91526, lodged by the Australian Payments Clearing Association Limited, in respect of an agreement to coordinate the implementation of 3D Secure as a security measure for online purchases*, 20 May 2016: see <https://www.accc.gov.au/system/files/public-registers/documents/D16%2B63944.pdf>.

³⁸ Competition and Markets Authority, *Anticipated Acquisition by Visa International Service Association of Plaid Inc., Decision on relevant merger situation and substantial lessening of competition*, ME/6886/20, 24 August 2020.

the supply of services enabling C2B payments.³⁹ Again, however, the CMA was dealing with a narrower issue, which was a merger that concerned a player – Plaid – with a business focus on services enabling C2B payments.

50. As can be seen in the table below, each of the amalgamating entities provides a range of services, and each is currently or may potentially in the future offer payment services in each of these five segments. Therefore, payment services that facilitate payments in each of these segments may represent candidate relevant markets in the sense of useful frameworks for assessment.⁴⁰

Table 1: Existing and potential future overlapping services of the amalgamating entities (existing services shown in bold; potential future services shown in italics; services with significant presence (>5%) in a segment shown with shading)

SEGMENT	BPAY	eftpos	NPPA
Retail in-store	Osko 1 (via bank app) <i>Osko 3 (request to pay)</i>	Card present (insert and tap) Mobile card tokens <i>Beemlt (using QR codes)</i>	SCT (via bank app) <i>MPS (e.g. "Scan and Go" using QR codes)</i>
Retail online	BPAY (e.g. airline bookings) Osko 1 (e.g. Azupay; Monoova) <i>Osko 3 (request to pay)</i> <i>BPAY (over NPP)</i>	Card on file <i>Key in card number</i> <i>Mobile in-app (using card tokens)</i> <i>Beemlt (using QR codes)</i>	SCT (e.g. Azupay; Monoova) <i>MPS</i>
Bill/invoice	BPAY (via bank app or desktop portal) Osko 1 (via bank app or desktop portal) <i>Osko 3 (request to pay)</i> <i>BPAY (over NPP)</i>	Card on file <i>Beemlt (BPAY Payments on Beemlt)</i>	SCT (via bank app or desktop portal) <i>MPS</i> <i>CATSCT (e-invoicing)</i>
P2P	Osko 1 (via bank app or desktop portal) <i>Osko 3 (request to pay)</i>	Beemlt (using Deposits and Withdrawals)	SCT (via bank app or desktop portal)
B2P/G2P (disbursements)	Osko 1 <i>Osko 2 (pay with document)</i>	<i>Deposits and Withdrawals</i>	SCT <i>CATSCT (e.g. payroll; superannuation)</i>

51. There is unlikely to be any substitution on the demand side between payment services that facilitate payments in some of these segments. For example, retail payment services in general are unlikely to be seen by businesses or governments as close substitutes for B2P and G2P payment services, and vice versa.

52. There may be degrees of substitution between payment services in other pairs of segments, at least from the perspective of payers (e.g. consumers) and payees (e.g. merchants). For example, in the retail sector there has been a trend from in-store to online

³⁹ Above note 38, paragraph 9.

⁴⁰ Note that B2B payments are, essentially, of three kinds: first, bill/invoice payments, which are included within the bill/invoice payment segment together with P2B bill/invoice payments, second, commercial card payments and third, superannuation payments between businesses. Commercial card payments have not been identified as a separate candidate relevant market because none of the amalgamating entities have any meaningful presence in that segment of payments: commercial card payments are predominantly made using ICS payment services. See Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, footnote 40. It is also my understanding that the amalgamating entities do not overlap to any material extent in superannuation payments between businesses.

purchases, and no doubt for some transactions consumers (payers in the retail context) make a choice between shopping in-store or online. In addition to this, a trend that might accelerate in the future is for payments for purchases made in physical stores to be made using online payment services, an example of this being Woolworths' "Scan and Go" shopping service (where payments are made in-app rather than the customer engaging with an in-store payment terminal).

53. However, it is not clear that the degree of substitution is currently or likely in the foreseeable future to warrant a broadening of relevant markets beyond the candidate segments listed above. Regarding the trend in retail payments from in-store to online, there appears to have been a stabilisation in the share of consumer payments conducted online in recent years (at least prior to the extraordinary circumstances of Covid19).⁴¹ It also seems unlikely there would be significant substitution from in-store to online payments, or in the other direction, in response to a small increase in payment costs for one type of payment, given that even if financial institutions and merchants were to try to incentivise consumers to change their behaviours to avoid the higher cost service, payment service costs are usually a small percentage of the value of transactions and consumer behaviours take a long time to change.⁴² This may, of course, change over time, particularly if the trend to online payments for in-store purchases accelerates.
54. From the perspective of financial institutions, which are the direct customers of payment services in most cases, there is in general limited scope for substitution in response to an increase in the costs of payment services in any of these segments. To offer attractive payment services to their customers (payers and payees), financial institutions need to provide their customers with convenient ways to make and receive payments, whether their customers wish to engage in a retail transaction in-store or online, to pay or be paid a bill, or make a P2P transaction.⁴³ While there may be the ability to incentivise payees and payers to change their behaviours – e.g. to shift from in-store payments to online payments, should the former become relatively more expensive – this sort of change is likely to take place glacially rather than rapidly, again as consumer and merchant habits take time to change.⁴⁴
55. Within some of the payment segments listed above, there may be narrower segments between which there may be limited substitutability, and where, consequently, an even narrower frame of reference may be useful. For example, within the online retail segment there are distinct use cases for one-off "guest checkout" payments and "seamless" online payments using stored payment details (e.g. Uber payments). Competitive conditions differ

⁴¹ See RBA, *Consumer Payment Behaviour in Australia: Evidence from the 2019 Consumer Payments Survey, Research Discussion Paper*, RDP 2020-06, Table 6, which reports the online share of consumer payments as 13% in each of the last three surveys (2013, 2016 and 2019), although online payments using mobiles as a share of online payments has grown from 6% in 2013 to 40% in 2019. See <https://www.rba.gov.au/publications/rdp/2020/pdf/rdp2020-06.pdf>.

⁴² Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, paragraphs 113-114.

⁴³ See CBA statement, paragraph 3 ("CBA is committed to providing customers with choice and flexibility when it comes to how they are paid and want to pay") and NAB statement, paragraph 20 ("[b]ecause of the variety of schemes and payment methods available, the diversity of its customer base and its role as a full service bank in Australia, NAB generally prefers to invest in and maintain all mainstream payment types").

⁴⁴ Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, paragraphs 113-115 and 306.

between these use cases. For example, eftpos has recently launched its “card on file” service for “seamless” payments, but it is likely to take at least another [CONFIDENTIAL TO EFTPOS] before eftpos “key in card number” is ready for launch and to be an alternative for “guest checkout” payments.⁴⁵ There may also be limited substitutability between these narrower segments, for users and financial institutions. For example, “guest checkout” services are unlikely to be a good substitute for seamless payments from the perspective of Uber, Uber drivers or Uber passengers, since one of the attractive features of Uber’s business model is the seamless nature of recurring payments based on stored payment details. Equally, “guest checkout” services are unlikely to be a good substitute for seamless payments from the perspective of financial institutions: a financial institution that wants to facilitate its account holders using Uber needs to provide those account holders with ways they can pay Uber seamlessly, and a financial institution that wishes to acquire Uber transactions will need to offer Uber a payment service that allows for payment details to be stored on file.

56. It is therefore possible that narrower sub-segments within some of the segments listed above may also be useful frameworks for assessment. However, the precise boundaries of relevant markets do not matter for my assessment of the proposed amalgamation because I consider that the proposed amalgamation is not likely to result in a substantial lessening of competition and is likely to deliver net public benefits on any market definition. To arrive at this view, I have examined the likely effects on competition within each of the segments listed above, giving close consideration also to narrower sub-segments (e.g. seamless online payments using stored payment details) where appropriate.

4. LIKELY COUNTERFACTUALS TO THE PROPOSED AMALGAMATION

57. In order to assess the likely effects on competition of the proposed amalgamation and the likely public benefits and detriments, it is necessary to compare a future situation in which the proposed amalgamation proceeds with one or more likely counterfactuals in which the proposed amalgamation does not proceed.
58. As the future is inherently difficult to predict, I focus in this section on identifying what I consider to be likely counterfactuals, in the sense of counterfactuals with a real chance of occurring, rather than mere possibilities.

4.1. Likely counterfactual for BPAY

59. The future of the BPAY Payments service seems reasonably secure. According to the expert industry opinion, while competition from the ICS may increasingly constrain the BPAY Payments service as billers move to more frequent billing cycles making the percentage of transaction value fees charged by the ICS more competitive, the BPAY

⁴⁵ eftpos refers to its “key in card number” service for guest checkout online payments as “pay-as-you-go (PAYG)”: eftpos statement, paragraph 22(a). There is also a variant of this for third party online wallets like PayPal (which eftpos refers to as “Guest Checkout providers”): see eftpos statement, paragraph 22(c) and paragraph 23. According to the eftpos statement that it will be nine months before eftpos will have the capabilities to process these “key in card number” transactions: eftpos statement, paragraph 23. However, in the same paragraph eftpos refers to April 2022 as the date when it will be full ready to support riskier transactions, [CONFIDENTIAL TO OTHERS].

Payments service is likely to remain a significant part of the bill payment segment of payments in Australia.⁴⁶ My report therefore proceeds on the basis of a likely counterfactual for the BPAY Payments service of more or less the status quo, which is also reflected in the forecast volumes of BPAY included in the share tables in the expert industry opinion.

60. The future of BPAY's Osko overlay services over the NPP may be less promising. I understand that originally there was an expectation that the NPP's core SCT service (without an Osko Service 1 overlay) would only be used in exceptional circumstances. However, even today a number of financial institutions have not set themselves up to make or receive Osko Service 1 payments, meaning that payments initiated or received by them over the NPP will be SCT payments without the Osko Service 1 overlay.⁴⁷ Moreover, **[CONFIDENTIAL TO BPAY]**.⁴⁸
61. Osko Service 2 ("pay with document") is not a mandated service, and although it appears to have some support from the RBA, **[Confidential to BPAY]**.⁴⁹ Osko Service 3 ("request to pay") **[Confidential to BPAY]**.⁵⁰
62. I consider it likely that in the counterfactual future BPAY initiatives in the payments space will face similar challenges in achieving widespread adoption by financial institutions as Osko Service 2 and Osko Service 3 have, including the challenges of coordinating investments across the various financial institutions with multiple non-sequenced investment demands. Reflecting these challenges, **[Confidential to BPAY]**.⁵¹
63. I understand that there has been a suggestion that, instead of the proposed amalgamation, BPAY and NPPA might be amalgamated, leaving eftpos independent.⁵² It is not clear to me whether this is a likely counterfactual and the remainder of my report proceeds on the basis of a likely counterfactual without such a transaction. Should the ACCC consider such a transaction to be likely in the counterfactual, then the ACCC may still make use of my report by disregarding those parts of my report that deal with overlaps between BPAY services and NPP services and reading my analysis of benefits and detriments in the context of a proposed amalgamation of eftpos with a merged BPAY/NPPA.

46 See more generally the Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, paragraphs 472-480.

47 See NPPA statement, paragraph 45.

48 BPAY statement, paragraph 54(f).

49 According to the BPAY statement (paragraphs 42 and **[CONFIDENTIAL TO BPAY]**), Osko Service 2 is in "proof of concept" stage and "BPAY Group has impaired some its Osko assets **[CONFIDENTIAL TO BPAY]**. **[CONFIDENTIAL TO OTHERS]**."

50 BPAY statement, paragraphs 43 and 58. I also note that Westpac has expressed doubts over whether Osko Service 3 will become a live service and explained that it has no plans to support implementation of Osko Service 3: Westpac statement, paragraph 45.

51 See **[CONFIDENTIAL TO BPAY]**.

52 See Application, Section 14.3. A number of the factual statements refer to an alternative to the proposed amalgamation of this nature.

4.2. Likely counterfactual for NPPA

64. I consider the likely counterfactual for the NPP to include the continued development of the category code SCT services and the MPS service and the migration of bulk credit (mainly B2P and G2P payments) and direct debit volumes from the DE system, although the pace of these migrations is not likely to be rapid for a number of reasons.
65. First, the NPP is likely to continue to encounter delays in the necessary investments by financial institutions for these services to achieve widespread deployment (including the NPP's MPS), due to the large scale of investments required and coordination challenges.⁵³
66. Second, while the vast majority of "pay anyone" direct credit payments have already migrated to the NPP,⁵⁴ migrating a large proportion of bulk credit B2P/G2P payments and direct debit volumes will take some time as businesses, governments and billers will need to be persuaded to switch from their existing services (over the DE system) and this will likely require some investment in their own systems.⁵⁵ Until this occurs, the NPP's average transaction costs will remain high, which will limit its ability to gain significant volumes in other segments such as retail payment segments.
67. The NPP will also face a number of other barriers to entry and expansion in retail payment segments, which I will deal with in detail in my main report.

4.3. Likely counterfactuals for eftpos

68. The likely counterfactual for eftpos is less clear than the likely counterfactuals for BPAY and the NPP. I consider that there are at least two likely counterfactuals, in the sense of having a real chance of occurring. My report proceeds by considering each of these as likely counterfactuals, which has consequences for the likely effects and likely benefits and detriments of the proposed amalgamation, but does not alter my overall conclusions.

4.3.1. First likely counterfactual

69. The first counterfactual that I consider to be likely, in the sense of having a real chance of occurring, is that eftpos remains a viable payment service in the long-term, meaning for at least the next ten years, and continues to act as an important constraint on the pricing and other terms of the ICS.
70. There certainly seems to be scope for eftpos to increase its volumes of card-based payments in the future and remain viable for at least the next ten years, with debit card-

53 Although NPPA has mandated that financial institutions implement MPS and other NPP services, timeframes for mandated services are often unrealistic and financial institutions will often fail to meet those timeframes: see the Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, at paragraphs 464 and 505. For example, the **[CONFIDENTIAL TO OTHERS]**. **[CONFIDENTIAL TO NPPA]**.

54 AusPayNet (2020), *Future State of Payments Action Plan: Conclusion from AusPayNet's Consultation*, August 2020, page 6: see https://www.auspaynet.com.au/sites/default/files/2020-08/APN_Future_State_Conclusions_Consultation_Paper_Aug20_0.pdf.

55 See Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, paragraph 476.

based payment volumes significant today⁵⁶ and forecast to continue to grow both in absolute terms and in terms of shares of both in-store and online retail payments for at least the next five years.⁵⁷ As eftpos has stated: “[c]ard’ use is not declining” and “[t]he fundamental attributes of the card [...] remain a crucial part of the payments landscape.”⁵⁸

71. It also appears that eftpos has – at least for the moment – arrested the decline in its volumes and share of in-store card-based payments through increased merchant use of merchant choice routing and consumer adoption of eftpos mobile card tokens.⁵⁹ This can be seen in eftpos’ market shares in the in-store retail segment: **[CONFIDENTIAL TO EFTPOS]**⁶⁰ **[CONFIDENTIAL TO EFTPOS]**⁶¹ **[CONFIDENTIAL TO EFTPOS]**.
72. Moreover, financial institution investments in eftpos’ digital services (“card on file” for recurring online payments and “key in card number” for “guest checkout” one-off online payments) were mandated by the eftpos board in December 2020. With these mandates in place, while the speed of roll-out will vary across financial institutions, and some may not meet the deadlines, it seems likely that these services will ultimately become sufficiently widely deployed across financial institutions for eftpos to be positioned to compete with the ICS for at least some online volumes. This will give eftpos the potential to address its exposure to the trend in payments from in-store to online, including online payments for in-store purchases, an example of which is Woolworths’ “Scan and Go” service. While in-store payments will remain a significant share of total retail payments for some time, it is likely to be important for eftpos to offer equivalent services to the ICS for online retail payments – both for eftpos’ long-term viability, and for eftpos to play a role effectively constraining the ICS.
73. However, without amalgamation I anticipate a continuation of the ambivalence and limited commitment from financial institutions to eftpos initiatives described in the expert industry opinion.⁶² This ambivalence likely arises from a tension between two considerations.
- a. On the one hand, eftpos initiatives tend to simply match (“catch up” to) the range of services the ICS already provide financial institutions and their customers

56 As can be seen in the segment share tables prepared by Mr Blockley, debit card payments represented around 56% and 66% of in-store and online retail payment volumes, respectively, in FY2020. The card dominance in retail payments is also evident from the Coles statement. All of the payment methods currently supported by Coles, apart from cash, are card-based (including PayPal, which runs mainly on the ICS card rails): Coles statement, paragraph 25. **[CONFIDENTIAL TO OTHERS]**.

57 See the Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, paragraph 517, which explains that card-based payments (in their various formats) “will be around for many, many years to come”. Consistent with this, the share tables included in Appendix V to the expert industry opinion forecast that debit card payments will represent 75% and 78% of in-store and online retail payment volumes, respectively, in FY2025. See also the Westpac statement, paragraph 31, which states that “card-based payments are very likely to continue to grow and remain a very large proportion of retail point-of-sale (POS) payments for at least the next 10 years”.

58 eftpos statement, paragraph 37(b). See also paragraph 79(a)(ii), which refers to a trend of “material sustained growth in cards volume” and paragraph 128.

59 See eftpos statement, paragraph 43.

60 **[CONFIDENTIAL TO EFTPOS]**.

61 See Section 25.4 of the Application.

62 Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, paragraphs 457 and 518.

(consumers and merchants) and may add little value.⁶³ At the same time, the ICS offer broader functionality than eftpos (including international and online acceptance) and significant incentives.⁶⁴

- b. On the other hand, some financial institutions consider that a viable and effective eftpos as an alternative to the ICS is important for them when they renegotiate their multi-year agreements with the ICS.⁶⁵
74. This ambivalence means that financial institutions are likely to continue to exhibit some reluctance to investing in eftpos' payment service initiatives. The speed at which financial institutions undertake the investments required to roll out eftpos' digital services is therefore likely to be slower than eftpos has mandated as financial institutions balance eftpos' demands with other priorities. More generally, looking into the future, time to market for eftpos' payment initiatives is likely to continue to significantly lag the ICS, not only due to inherent ICS advantages,⁶⁶ but also due to financial institution ambivalence.
75. The challenges of coordinating investments among a large number of financial institutions that have differing investment priorities, in order to achieve timely network effects for payment services and initiatives, are also likely to persist for eftpos in the counterfactual, as for BPAY and the NPP. Contributing to this appears to be the lack of an appropriate forum for the industry to discuss and agree on the best solution to an industry problem, which is likely to limit eftpos' ability to successfully "pitch" solutions based on its card-based infrastructure in this counterfactual.⁶⁷

4.3.2. Second likely counterfactual

76. The second counterfactual I consider to be likely, in the sense of having a real chance of occurring, is one in which the eftpos card-based payment system will cease to operate within ten years unless there is proactive intervention by the RBA to maintain a domestic card-based payment infrastructure.
77. In this counterfactual, eftpos may encounter renewed competition from the ICS for in-store volumes and fail to successfully transition to online payments or find ways to differentiate

63 Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, paragraphs 444-457. Also see the NAB statement, paragraph 25.

64 Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, at paragraphs 444-457 and 518. The eftpos statement acknowledges these issues, including observing that while eftpos made the specifications for contactless technology available in 2012, its implementation by members took a long time: see eftpos statement, paragraph 44. See also the CBA statement, paragraph 83, which explains that "the international cards schemes are able to put forward strong business cases for investment, having tested and proven their innovations in other markets globally. In contrast, investment requests from the domestic schemes often do not have the same supporting track record and are disadvantaged because of the uncertainties associated with their proposals."

65 See, for example, the Westpac statement, paragraph 31, and the CBA statement, paragraph 119. Coles' perspective as an acquirer is also relevant here: see Coles statement, paragraph 28, which refers to eftpos as "critical in the short to medium term", and see also paragraphs 68, 110 and 38-41, where again eftpos is referred to as "critical" for a number of reasons including [CONFIDENTIAL TO EFTPOS].

66 See eftpos statement, paragraph 144(d).

67 [CONFIDENTIAL TO OTHERS].

its offerings sufficiently from the offerings of the ICS.⁶⁸ With volumes then declining rapidly – as they did from 2016 to 2019 – eftpos may find financial institutions and the RBA unwilling or unable to justify continuing to support it.⁶⁹ The expert industry opinion of Mr Blockley is that eftpos is likely to continue to lose market share to the ICS and that within ten years the eftpos system will no longer exist unless there is some “highly proactive intervention” by the RBA.⁷⁰ There is also the potential for BigTech firms to disintermediate the card rails (including eftpos’ rails) to an extent.⁷¹

78. In reaching his opinion, Mr Blockley emphasises the strengths of the global ICS, including their large scale R&D efforts and track record of leading card-based payment innovations, their superior offerings to the card-based offerings of eftpos (including cross-border payments, online payments, fraud management and marketing spends), and their aggressiveness in competing for volume, using price and non-price means.⁷²
79. I understand that, like BPAY, **[CONFIDENTIAL TO EFTPOS]**.⁷³ eftpos may well follow that strategy and find a viable path outside of payments. However, in this second likely counterfactual the eftpos’ card-based payment infrastructure and services would still cease to exist within ten years.
80. As Mr Blockley acknowledges, should eftpos’ volumes decline, and should support for eftpos from financial institutions not be forthcoming, the RBA would need to actively intervene in order to maintain the domestic card-based payment system. It may do so with a view to maintaining the constraint that eftpos has provided on the pricing and other terms of the ICS, or it may do so from a domestic security perspective. The RBA has acted in recent years, on a number of occasions, in support of eftpos in its competition with the ICS.
- a. The RBA has for some time actively encouraged financial institutions to offer merchants the choice of how in-store contactless payments will be routed, allowing merchants and consumers to benefit from lower eftpos fees.⁷⁴ This has addressed the historical disadvantage eftpos has experienced of the ICS being the default rails for contactless payments in-store. This became a more and more acute issue for

68 **[CONFIDENTIAL TO OTHERS]**. See also the CBA statement, paragraph 83.

69 See, for example, Westpac statement, paragraph 56. The eftpos statement also refers to “low and slow member support”, at least historically (paragraph 81), although eftpos claims that this has changed following the introduction of eftpos’ higher fees with rebates pricing structure (see paragraph 90). **[CONFIDENTIAL TO OTHERS]**.

70 See the Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, at paragraphs 444-471 and 495.

71 See paragraph 117.c and note 113 below for details of BigTech threats for eftpos in P2P and retail payment segments. I also note that, while the eftpos statement observes the risk for Australian financial institutions of being disintermediated by the BigTech firms (eftpos statement, paragraph 76), there is presumably, at the same time, a risk of disintermediation for eftpos if the BigTech firms divert payment volumes to other infrastructures (e.g. their own stored value systems).

72 See, for example, the discussion of ICS pricing and ICS tokenisation in the Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, at paragraphs 458-461. **[CONFIDENTIAL TO OTHERS]**.

73 See eftpos statement, paragraphs **[CONFIDENTIAL TO EFTPOS]**, 82(b)-(e), 91 and **[CONFIDENTIAL TO EFTPOS]** and 153(b). **[CONFIDENTIAL TO EFTPOS]**.

74 See, for example: <https://www.rba.gov.au/payments-and-infrastructure/debit-cards/least-cost-routing.html>. See also Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, paragraph 152.

eftpos as the contactless share of in-store payments increased to more than 80% of card payments in-store in 2019, with eftpos volumes experiencing a steep decline from 2016 to 2019. In June 2020 the RBA reiterated its expectation that all acquirers offer least cost routing to all their merchants, noting that mandating that they do so remains an option that the RBA will consider.⁷⁵

- b. In 2017, the RBA gained commitments from financial institutions not to take any steps that would prevent the use of the eftpos network in mobile wallets,⁷⁶ and this has resulted in consumers being able to choose for payments made using mobile wallets like Apple Pay to be routed via the eftpos network rather than the ICS networks.
- c. In March 2019, the RBA emailed all major schemes and issuers in the context of ICS tokenisation of cards-on-file in terms that made clear the RBA's support for DNDCs and for MCR in card not present contexts, expressed a concern that ICS tokenisation of cards-on-file may marginalise eftpos and encouraged issuers to ensure that merchants will not be limited in their ability to adopt MCR for card not present transactions. The main part of the RBA's email reads as follows.⁷⁷

The Reserve Bank understands that there are discussions in the industry regarding the tokenisation of cards-on-file as part of the initiative to reduce card-not-present fraud. The Bank supports this broad initiative.

The Bank has been made aware of potential issues regarding the process of tokenisation of dual-network debit cards. Accordingly, I am sending this email to all major schemes and issuers to note the Bank's support for the long-standing practice of issuing such cards in Australia, because they are convenient for cardholders and allow stronger competition between networks at the point of sale. For example, the Payments System Board has previously welcomed some undertakings in relation to contactless technology and other matters (August 2013) and mobile wallets (May 2017).

Accordingly, the Bank would be concerned if, as plastic cards are supplemented by a variety of other means of accessing a customer's account, any actions were taken by schemes or scheme participants that had the purpose or effect of diluting or preventing competition between networks, by removing choices previously available to cardholders and merchants. Specifically, the Bank would be concerned if scheme rules or policies on tokenisation limited the ability of merchants to choose to route card-not-present transactions through their preferred network.

⁷⁵ Michele Bullock (2020), *Panic, Pandemic and Payment Preferences*, Keynote Address at the Morgan Stanley Disruption Evolved Webcast, 3 June 2020, accessed at <https://www.rba.gov.au/speeches/2020/sp-ag-2020-06-03.html>.

⁷⁶ See <https://www.rba.gov.au/publications/annual-reports/psb/2017/pdf/retail-payments-regulation-and-policy-issues.pdf>. See also the eftpos statement, paragraph 144(f).

⁷⁷ eftpos, *Effect of RBA email dated 5 March 2019: Information for Issuers & Acquirers*, Advice Number 004-19, 7 March 2019.

- d. In late 2020, in an address to AusPayNet, the RBA Governor, Philip Lowe, reiterated the RBA's support for dual network debit cards (DNDCs) and merchant choice routing.⁷⁸
81. I understand Mr Blockley's view to be that the challenges eftpos is likely to face will require more significant intervention by the RBA than these sorts of measures. If the RBA is not willing to intervene to that extent, an alternative may be that the Government may intervene under the *Security of Critical Infrastructure Act 2018*.⁷⁹

5. OVERVIEW AND SUMMARY OF ASSESSMENT OF THE LIKELY EFFECTS OF THE PROPOSED AMALGAMATION ON COMPETITION

82. I understand that under Section 90(7) of the Competition and Consumer Act (CCA), the ACCC must not grant authorisation of the proposed amalgamation unless it is satisfied that either:
- the proposed amalgamation would not have the effect, or would not be likely to have the effect, of substantially lessening competition; or
 - the proposed amalgamation would 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.
83. I also understand that the applicants are applying for authorisation of the proposed amalgamation under both of these limbs.
84. In this Section and in Sections 6-9, I consider the likely effects on competition of the proposed amalgamation with a view to reaching an opinion on the first limb of the Application: whether the proposed amalgamation would not have the effect or would not be likely to have the effect of substantially lessening competition. In sub-section 5.1, I present the principles I have applied in my assessment of whether the proposed amalgamation would not have the effect, or would not be likely to have the effect, of substantially lessening competition. In sub-section 5.2, I provide a summary of the findings of my assessment. In sub-section 5.3, I outline the structure of the remainder of this report.

5.1. Principles for assessment of likely effects on competition

85. In this Section and in Sections 6-9, I compare the likely future with the proposed amalgamation with the likely future without the proposed amalgamation (i.e. the likely counterfactual described in Section 4 above).
86. I interpret the terms "likely", "substantially" and "competition" as follows.
- I take "likely" to mean that there is a real chance or possibility of an effect that is commercially relevant or meaningful. That does not encompass a mere possibility or require that the effect be more likely than not.

⁷⁸ Philip Lowe, *Innovation and Regulation in the Australian Payments System*, Address to the Australian Payments Network, 7 December 2020. See: <https://www.rba.gov.au/speeches/2020/pdf/sp-gov-2020-12-07.pdf>.

⁷⁹ See <https://www.legislation.gov.au/Details/C2018A00029>.

- b. I take “substantial” to mean “real or of substance, as distinct from nominal, insubstantial or ephemeral” and a substantial lessening of competition to represent a significant and sustainable worsening of the competitive process.⁸⁰
 - c. I interpret “competition” as a process of rivalry between firms whether in terms of price, service, technology and/or quality. A “lessening” of competition is therefore a reduction in the extent of rivalry between firms in these dimensions.
87. Rivalry is a process that can be expected to lead to better outcomes for customers and consumers, whether in terms of lower prices, higher quality or more innovation and better technology. In my view it is important to assess whether there is a likelihood of a substantial lessening of competition in the sense of a substantial *lessening of rivalry*, rather than focus solely on structural matters such as the number of competitors. A transaction may result in fewer competitors in some area of commerce, but at the same time it may enhance rivalry among the competitors that remain in that area, and be likely to enhance customer and consumer welfare, rather than damage it. In such a case I would *not* consider there to be a substantial *lessening of competition*.

5.2. Summary of my views on the likely effects on competition

88. I consider that the proposed amalgamation would not be likely to have the effect of substantially lessening competition for the following reasons.
89. First, standard unilateral merger effects on prices and quality are not likely to be substantial, even if we ignore the fact that there will be a high degree of common ownership even in the counterfactual. This is for the following reasons:
- a. The services offered by the amalgamating entities are largely complementary rather than close substitutes and merger increments are small or otherwise immaterial in each segment of payments;
 - b. The closest competitors of the amalgamating entities are not each other, but much larger players with significant competitive advantages;
 - c. The payment services landscape is dynamic, particularly in retail payment segments with payment methods evolving continually driven by a stream of ICS innovations. These challenges for the amalgamated entity maintaining its share of retail payments will continue as the globally resourced ICS continue to innovate. New entry is also possible, including from BigTech players, with the potential for disruptive payment services that leverage their large installed user bases and may eventually disintermediate card rails; and
 - d. The largest customers of the amalgamating entity will be its shareholders and thereby enjoy significant countervailing power and influence regarding prices, quality and innovation decisions of NewCo.
90. While there are today a number of overlaps in segments between the services offered by the three entities, and there are likely to be more overlaps in the future, careful consideration of these overlaps and of competition in each segment reveals that any loss

⁸⁰ See *Rural Press Limited v Australian Competition and Consumer Commission* [2003] HCA 75 [41] where the word “substantial” was used “in the sense of being meaningful or relevant to the competitive process”.

of competition would be marginal at worst, and a *substantial* lessening of competition is not likely.

91. The high degree of common ownership in the likely counterfactual should not be ignored. In the likely counterfactual the four major financial institutions will hold significant shares of both eftpos and NPPA and 100% of BPAY. It follows that, to the extent there may be some (less than substantial) unilateral incentives to increase prices or reduce quality of overlapping services compared to a “no common ownership” counterfactual, the incremental effect of the amalgamation will be even smaller when common ownership in the counterfactual is taken into account. Indeed, the shareholdings of the four major financial institutions will all be diluted by the amalgamation, rather than concentrated.
92. Second, I do not consider any of the existing services of the three entities or any of the main services in the current roadmaps of the three entities to be more likely to be withdrawn, abandoned or significantly degraded in their quality under amalgamation compared to the likely counterfactuals.
93. Third, for future initiatives of the amalgamating entities (beyond the current roadmaps) that may compete closely in the counterfactual, financial institution support would be needed for successful widespread deployment. That support is not likely to exist for more than one such initiative in the counterfactual. Since competition between future initiatives of the domestic schemes (beyond the current roadmaps) is unlikely in the counterfactual, a lessening of competition if the proposed amalgamation proceeds is also unlikely. The proposed amalgamation is also not likely to result in weaker future initiatives beyond the current roadmaps, including because one of the likely benefits of the proposed amalgamation is an improvement to domestic innovations from combining R&D teams and payment scheme specific knowledge.
94. Fourth, harmful exclusionary vertical effects (i.e. input foreclosure) are not likely. NewCo will lack the ability to foreclose third party payment providers due to the NPP’s open access regime as well as the availability for third parties of alternative infrastructures outside of NewCo. It is also unlikely that foreclosure incentives will arise given the limited extent of overlaps between the amalgamating entities in payment service segments.
95. Finally, NewCo will not be a profit maximising entity⁸¹ and will be owned and operated and overseen by its main customers (including many financial institutions and the two largest retailers). Given this, a substantial lessening of competition seems unlikely.⁸²
96. The above reasoning is the basis for my view that the proposed amalgamation is not likely to result in a substantial lessening of competition in the Australian payments sector overall or for any particular payment segment or sub-segment. Moreover, as I explain in more detail in Section 10 (Benefits) below, rather than lessen competition, the proposed amalgamation is likely to *enhance* competition in an overall sense compared to the likely counterfactual, including by:

⁸¹ I understand the purpose of NewCo is not to maximise profits but “to provide globally competitive payment services which are resilient, safe, efficient, fair, accessible and cost effective and which meet the present and future requirements of the users of the Australian payments system, including financial institutions, payment services providers, while facilitating the provision of low cost solutions for retailers, other businesses and their customers”: Memorandum on NewCo’s potential governance and operating model, 16 October 2020, page 3.

⁸² Consistent with this, see NAB statement, paragraph 49.

- a. Enhancing coordination of adoption of domestic payment initiatives and thereby providing the foundations for more dynamic and effective developments in domestic payment systems in competition with the ICS and potential entrants such as the global technology firms; and
- b. Increasing and improving domestic payments innovation as a result of combining R&D teams and payment scheme specific knowledge.

5.3. Outline of the remainder of this report

97. In this Section I have summarised the findings of my assessment of the likely effects of the proposed amalgamation on competition and whether the proposed amalgamation is likely to substantially lessen competition. In Sections 6 to 9, I provide further details of that assessment, including:
 - a. Why unilateral effects on prices and quality are not likely to be substantial (Section 6);
 - b. Why the existing services of the three entities and the main services in their current roadmaps are likely to be preserved as long as they are of value to their customers (Section 7);
 - c. Why future domestic initiatives beyond the current roadmaps are not likely to be fewer or weaker (Section 8); and
 - d. Why the amalgamation is not likely to produce harmful vertical effects in the form of input foreclosure (Section 9).
98. Following this, in Sections 10 to 12, I turn to my assessment of the second limb of the Application, which is an assessment of the public benefits and public detriments of the proposed amalgamation and whether there are likely to be net public benefits or net public detriments.

6. UNILATERAL EFFECTS ON PRICES AND QUALITY ARE NOT LIKELY TO BE SUBSTANTIAL

6.1. Principles and relevant matters for analysis of unilateral effects

99. As the ACCC's Merger Guidelines explain, one of the ways in which an amalgamation may lessen competition is by removing or weakening competitive constraints with the result that the amalgamated entity finds it profitable unilaterally (i.e. without coordinating with other

firms) to “raise prices, reduce output or otherwise exercise market power it has gained” (ACCC, Merger Guidelines, paragraph 5.1).⁸³

100. The Merger Guidelines contemplate three ways in which unilateral effects may arise in differentiated product markets. The first is an amalgamation to monopoly where no rivals remain post-amalgamation, and the second is where an amalgamation creates a single firm with market power competing to only a limited extent with smaller firms that can only supply a small portion of total market demand. The proposed amalgamation does not fit either of these circumstances.
101. The third way the Merger Guidelines contemplate that unilateral effects may arise is where an amalgamation brings together firms that supply close substitutes. Pre-amalgamation, if one of the firms were to increase price or reduce quality, it would lose some sales to the other firm and all of the margins on those sales. Post-amalgamation, by contrast, the amalgamated entity will retain sales that divert to the second firm and the margins on those sales. This “internalisation” (i.e. recovery) of the margins on sales diverted to the second firm produces incentives for the amalgamated entity to increase prices or lower quality compared to the pre-merger situation.

6.1.1. Closeness of competition between the services of the amalgamating entities

102. Whether or not incentives to raise price or lower quality are sufficient to represent a substantial lessening of competition will depend on the extent of diversion of sales between the services of the amalgamating entities. In general, the greater the diversion of sales between the amalgamating entities the greater the concern. The extent of diversion will depend on how closely substitutable the services of the amalgamating entities are relative to how substitutable the services of other players are to the services of the amalgamating entities. Closeness of competition is therefore a key consideration in a unilateral effects assessment. This is captured in paragraphs 5.9 and 5.13 of the Merger Guidelines:

5.9 ... in markets where competition between firms selling differentiated products is based on price, unilateral effects may arise where a merger between firms previously supplying close substitutes is able to increase the price of either or both of the close substitutes. In this case, consideration will be given to the proportion of substitution that would occur.

...

5.13 ... Merger parties are likely to have an incentive to increase the price of one or both products if the sales lost due to the price increase would be recaptured by an increase in sales of the other product. That is, the greater the number of

⁸³ Another way in which an amalgamation may lessen competition is if, following the amalgamation, the conditions of competition in the industry become more conducive to the remaining firms coordinating on prices, output or other dimensions of competition (e.g. service quality or innovation). These are called “coordinated effects”, in distinction from “unilateral effects”. I do not consider there to be any likelihood that the proposed amalgamation would give rise to coordinated effects in this case. The remaining major players in the industry (NewCo, the ICS and the DE system) would be very different in their market shares and cost structures, and the amalgamated entity itself, as a relatively small player in both retail and non-retail payments and with an imperative to increase volumes on the NPP to cover costs at competitive price levels, is likely to be an aggressive competitor to the ICS and the DE system. The potential for entry from significant well-resourced players such as Google, Apple, Facebook and PayPal, among others, is also likely to constrain any attempt by the existing players in the industry to coordinate.

customers that regard the merger parties as particularly close competitors (for example their first and second choices), the greater the potential for the merger parties to impose a unilateral increase in price post-merger.

103. Paragraph 5.13 continues by clarifying that “[u]nilateral effects may arise even where the merger parties are not one another’s ‘closest’ competitor pre-merger or would not be the dominant firm post-merger based on market shares”. While this is true – and economic theory predicts that in any differentiated products merger there will be upward pricing pressure as long as there are positive margins and positive diversions between the products – what matters is whether the unilateral effects will be sufficiently large to represent a *substantial* lessening of competition, which will depend, in large part, on the closeness of competition between the merging parties and the proportions of their sales that would divert to each other and the proportions that would divert to other players. The Merger Guidelines reflect this in paragraphs 7.41 and 7.43:

7.41 ... unilateral effects in differentiated product markets are more likely if the merger parties are relatively close competitors pre-merger and other market participants, while providing alternatives to consumers, are relatively more distant competitors for the products of the merged firm.

...

7.43 ... if the merger parties are relatively distant competitors in the relevant market pre-merger, and several of the merged firm’s remaining rivals would be close competitors to the merged firm, the merger is less likely to result in a substantial lessening of competition in that market.

6.1.2. Significance of the amalgamating entities and the extent of remaining constraints

104. Whether or not unilateral incentives to raise price or lower quality are sufficient to represent a substantial lessening of competition will also depend on other factors, such as the significance of the amalgamating entities for customers in the market⁸⁴ and whether constraints from other services are sufficient to constrain the amalgamated entity from substantially raising prices or lowering service quality relative to the counterfactual.
105. The importance of an assessment of the remaining constraints on the amalgamating entity is reflected in paragraphs 7.4 and 7.38 of the Merger Guidelines:

7.4 The likely presence of effective competitive constraints post-merger is a key indicator that a merger is unlikely to result in a substantial lessening of competition.

...

7.38 In assessing the competitive implications of a merger, the ACCC considers both the range of available or potentially available substitutes in each relevant market and the relative intensity of rivalry between different products within those markets. The existence of comparable alternatives to the merged firm that are available in plentiful supply to the entire market can, in the absence of coordinated effects, indicate that a merger is unlikely to substantially lessen competition.

⁸⁴ For example, a 5% increase in price by a firm that has a 1% share of a market is arguably much less of a competition concern than a 5% increase in price by a firm that supplies 50% of the market.

6.1.3. Dynamic market characteristics

106. The ACCC's Merger Guidelines (para 7.54) recognise that "[i]n general, a merger is less likely to substantially lessen competition in a market that is rapidly evolving". The guidelines (para 7.55) also explain that the ACCC will place more weight on "robust evidence about likely future developments" and significantly less weight on "predictions about the future state of competition that are speculative or have little chance of developing for some considerable time in the future".

6.1.4. Countervailing power of customers

107. The ACCC's Merger Guidelines (para 7.48) explain that in addition to considering constraints from competitors, the ACCC "also considers whether one or more buyers would have sufficient countervailing power to constrain any attempted increase in market power".
108. The guidelines explain (para 7.48) that countervailing power exists "when buyers have special characteristics that enable them to credibly threaten to bypass the merged firm, such as by vertically integrating into the upstream market, establishing importing operations or sponsoring new entry". The guidelines also explain that countervailing power exists "when the specific characteristics of a buyer – such as its size, its commercial significance to suppliers or the manner in which it purchases from suppliers – provide the buyer with additional negotiating leverage".
109. The guidelines further explain that important considerations for assessing whether countervailing power is likely to prevent a substantial lessening of competition include (i) the credibility of a threat to bypass the merged entity, which will depend on whether the size of the buyer's demand is sufficient to support entry at an efficient scale of production, and (ii) whether the buyer is likely to bypass the supplier, which will be informed by previous instances in which the buyer or other buyers have sponsored entry or vertically integrated.

6.2. High-level assessment

110. The amalgamating entities each offer or plan to offer in the future a range of payment services that overlap to varying degrees. Moreover, the Australian payments landscape is complex and the conditions of competition vary from use case to use case.
111. For the purposes of this summary report, I provide a high-level consideration of the main factors that are relevant for assessing the likelihood of substantial unilateral effects and my conclusion based on that high-level consideration. My main report will include a detailed examination of the extent and significance of the most significant overlaps between these services and of the likely effects of the proposed amalgamation on competition in each segment and sub-segment of payments.

6.2.1. The amalgamating entities offer largely complementary services and merger increments are small or otherwise immaterial in each segment

112. The first thing I observe in my high-level assessment is that the amalgamating entities have been established with very different purposes, their services are largely complementary

and their primary attention in terms of competition is not each other.⁸⁵ The amalgamating entities are therefore, in a general sense, far from being each other's closest competitors.

- a. eftpos operates a card-based payments infrastructure similar to the card-based infrastructures of Visa and Mastercard, with almost all of its volumes coming from the retail in-store payment segment, and with a primary focus on competing with the ICS for in-store retail payments and in the future also for online retail payments.⁸⁶ This is evidenced by eftpos' main initiatives over past years and in its current roadmap being initiatives that seek to match the capabilities of the ICS in retail payments.⁸⁷
- b. The NPP was established for the main purpose of transitioning Australia's direct account to account payment system to modern real-time infrastructure and with a primary focus on migrating direct credit (P2P, P2B, B2P and G2P) and direct debit volumes from the DE system to the NPP's real-time, 24/7, rich data platform. The NPP's primary competition is therefore with the DE system. While NPP's MPS, which is currently in development, will have retail payment capability, its main purpose is to attract direct debit volumes from the DE system. Moreover, while the MPS may ultimately compete to an extent for retail payment volumes, it will face considerable challenges entering and expanding in retail payment segments, and its main competitors and the main constraints on its ability to grow in retail payments will be the ICS.⁸⁸
- c. The BPAY Payments service has a relatively specific role with a focus on a service that allows billers to efficiently reconcile bill payments when customers "push" payments to them (i.e. for credit payments). While the main alternatives to the BPAY Payments service for billers and payers include direct credits and direct debits (which are migrating to the NPP) as well as the ICS, the unique characteristic of the BPAY Payments service – providing efficient reconciliation for billers of "push" credit payments – sets it apart from both direct credits (which do not provide similar reconciliation efficiency) and direct debits (which are less attractive for customers that wish to remain in control of their payments and also come with the risk for billers of dishonoured payments) as well as from card-based payment services.⁸⁹ Consequently, from the perspective of financial institutions that wish to offer customers (billers and payers) a range of payment options with different features and

85 This is a theme appears often throughout the factual statements and in the expert industry opinion of Mr Blockley. To give one example, see Westpac statement, paragraph 11.

86 eftpos statement, paragraph 40, which explains that "[f]or EPAL, Mastercard and Visa are the most significant current competitors" and paragraph 153(b)(ii), which expresses eftpos' future focus as being to compete with Visa and Mastercard. See also paragraphs 153(c) and (d).

87 Including chip and PIN, contactless, merchant choice routing, mobile tokenisation and eftpos digital (card on file and key in card number). See also the eftpos statement, paragraph 24, which explains that eftpos' pricing is aligned with Visa and Mastercard.

88 See Westpac statement, paragraph 25, in which Westpac explains its view that MPS does not offer any material new functionality compared to the card on file services already provided by the ICS (as well as eftpos).

89 See BPAY statement, paragraphs 24 and 48. See also the NPPA statement, paragraph 31, regarding the differences between BPAY Payments and direct debits. See also the Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, paragraphs 472-476.

functionality, the BPAY Payments service, direct credits and direct debits as well as card-based payment services are more in the nature of complements than close substitutes. Further considerations are that the majority of BPAY billers have no particular need for real time processing and settlement or the rich data feature of the NPP, many prefer the batch nature of BPAY payments, and a number would need to undertake significant system changes in order to be able to receive NPP payments.⁹⁰

113. In recent years there has been some convergence of the offerings of card-based and direct account-to-account infrastructures and the three entities are starting to or are planning to offer services that may be used to achieve similar functionality for payers and payees. However, these are at the edges of their offerings rather than at their cores, and competition between them is and will remain limited. This will be explained in more detail in my main report. However, for the purposes of this summary report I make the following observations.

114. For in-store retail payments:⁹¹

- a. eftpos has a significant share of in-store retail payments today, but this share has declined substantially over the past decade and remains under threat particularly from the ICS,⁹² but also in the longer-term from BigTech players.⁹³
- b. Meanwhile, the NPP and BPAY are small players with services based on consumers entering BSB and account numbers or PayIDs into apps. These services are “clunkier”, differentiated from and not close substitutes to and constraints on eftpos’ card-based services.
- c. In the medium to long-term future, there is the potential for the NPP’s MPS to be used for in-store retail payments, however this is likely to require widespread adoption by consumers and merchants of QR code technology for in-store payments. QR code-based payments will be differentiated from card-based payments, and for a number of reasons I do not expect QR code-based payments to significantly displace card-based payments.⁹⁴ Even if QR code-based payments become common, there are likely to be other players making use of this technology for retail in-store payments, including PayPal and potentially other BigTech players.⁹⁵
- d. The amalgamation is therefore not likely to create an entity with a significantly larger share in this segment than in the counterfactual.

⁹⁰ See Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, paragraph 476.

⁹¹ References to “in-store payments” in this report exclude online payments for purchases in-store, such as payments made in-app such as Woolworths’ “Scan and Go” service.

⁹² See, for example, [CONFIDENTIAL TO OTHERS]. See also the Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, paragraphs 444-471.

⁹³ See paragraphs 125-126 of this report.

⁹⁴ For a similar view, [CONFIDENTIAL TO EFTPOS]. [CONFIDENTIAL TO OTHERS]. See also the Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, paragraphs 214-227, 321 (observing the more cumbersome interface of QR codes compared to NFC), 437, 470 and 523.

⁹⁵ See eftpos statement, paragraphs 38-39 and the accompanying table. Also see paragraph 117.c of this report and note 113 below, which apply equally here.

115. For online retail payments:⁹⁶
- a. BPAY is barely present and unlikely to grow in this segment, the NPP is only present to a limited extent (e.g. Azupay payments for liquor and gambling licenses in NSW),⁹⁷ and eftpos is only a recent entrant with a very small presence via its “card on file” service, and no presence at all today in “guest checkout” services.
 - b. In the short to medium-term future, eftpos is likely to gain some volume in this segment, both through its “card on file” service for recurring online payments, and through a “key in card number” service for guest checkouts, although the latter seems likely to be at least 12 months away from launch.⁹⁸ These are both mandated services. However, eftpos’ growth in online retail payments will be constrained by the offerings and strategies of the ICS, which offer services with equivalent, if not considerably superior functionality,⁹⁹ enjoy an incumbency and multi-service advantage¹⁰⁰ and benefit from being the preferred rails of a number of significant intermediary online “merchants” (e.g. PayPal and BNPL providers).¹⁰¹
 - c. In the medium to long-term future, the NPP’s MPS may enter this segment, however this is likely to take some time and the MPS would need to overcome a number of significant challenges to win substantial volumes.¹⁰² Not least of these is that, like eftpos, it will face intense competition from the established incumbent offerings of the ICS (and the same intermediary online merchants that make use of the ICS rails):

96 References to “online payments” in this report include payments made online (using internet portals or in-app interfaces) for purchases in-store.

97 See <https://www.itnews.com.au/news/nsw-govt-pilots-npp-for-liquor-gambling-transactions-548803>.

98 See note 45 above.

99 See Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, paragraph 444 and, more generally, paragraphs 444-471. Also see CBA statement, paragraph 83.

100 See the Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, paragraphs 458-462 and 535, including the discussion of ICS tokenisation of online debit card payments. See also **[CONFIDENTIAL TO OTHERS]**.

101 **[CONFIDENTIAL TO OTHERS]**.

102 Among these challenges are the size of the spend required by financial institutions to adopt MPS in their systems, the complexity of these builds, and the challenge of persuading customers to migrate from services that are already serving them well. See, for example, Westpac statement, paragraph 29. See also Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, paragraphs 476 and 523. **[CONFIDENTIAL TO EFTPOS]**. Regarding latency, the NPPA statement observes that under the NPP funds are transferred in “less than 10 seconds” although it is not clear from this how long authorisation would take under the MPS: NPPA statement, paragraph 25(d).

the MPS will not offer material new functionality compared to what the ICS already offer online merchants¹⁰³ and will be at a disadvantage in a number of respects.¹⁰⁴

- d. Therefore, considerable speculation and optimism would be required to predict that the amalgamation will create an entity with a significant future share in this segment in the counterfactual, let alone an entity with a significantly larger share than in the counterfactual (i.e. that *both* eftpos *and* the NPP will become significant players in this segment in the counterfactual).

116. For bill/invoice payments:

- a. As explained above, the BPAY Payments service has distinct characteristics that set it apart from the direct credit and direct debit services of the NPP (the SCT service and the MPS, respectively)¹⁰⁵ as well as from card-based payment services (including the existing card-based payment services of the ICS and, in the future, eftpos' "card on file" service).¹⁰⁶
- b. For bills paid using direct credits, the NPP's SCT service on its own is an alternative to BPAY's Osko Service 1. However, Osko Service 1 is an NPP overlay service, which means that it is a technical complement to the SCT service (i.e. to purchase a unit of an Osko Service 1 a financial institution must also purchase a unit of the NPP's SCT service).¹⁰⁷ This means that the proposed amalgamation is likely, if anything, to produce incentives to *lower* prices for both Osko Service 1 and the SCT service, due to a Cournot complements effect.
- c. The potential future Osko Service 3 ("request to pay") may never be developed by BPAY in the counterfactual,¹⁰⁸ and in any event, although it was originally contemplated as a way to migrate direct debits from the DE system,¹⁰⁹ it is not a close substitute for the NPP's MPS service or card-based payment services. Osko Service 3 is a "push" payment overlay, whereas the MPS is a "pull" payment service that will function very similarly to direct debits over the DE system, and card-based bill payment services are also "pull" payment services. Push payment services retain

103 See note 88 above. Also see the Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, paragraph 486.

104 See eftpos statement, [CONFIDENTIAL TO EFTPOS] and also 147(f), 149 and 162. Also see paragraph 79(b)(iv), where eftpos observes that real time account to account platforms "have not as yet been successful, other than in a few instances, in taking share from cards but are taking share from traditional non real time payments globally" and paragraph 150, which observes that even in Sweden, where Swish is one of the world's leading examples of a successful direct account to account based app for retail payments, Swish's volumes are still relatively small. [CONFIDENTIAL TO OTHERS].

105 The NAB statement suggests that the BPAY Payments service is at risk from reduced demand due to the move to PEPPOL invoicing: NAB statement, paragraph 53. My main report will give consideration to the potential future overlap of the BPAY Payments service and the NPP's planned CATSCT invoicing service.

106 As also explained above, for the majority of BPAY billers the real-time and rich data features of the NPP are not important, and significant system changes would be needed in order for them to be able to receive NPP payments.

107 See NPPA statement, paragraphs 66 and 88-90.

108 Westpac has expressed doubts over whether Osko Service 3 will become a live service and explains that it has no plans to support implementation of Osko Service 3: Westpac statement, paragraph 45.

109 See ANZ statement, paragraph 34.

control over the payment including the timing of the payment with the payer, and there is no risk of dishonoured payments for the payee, whereas pull payment services cede control of the payment to the payee (but come with a risk for the payee of dishonoured payments).¹¹⁰

117. For P2P payments:

- a. The NPP's MPS service is not expected to play a role here.
- b. BPAY's Osko services (Osko Service 1 and Osko Service 3 if the latter were developed) are overlay services that are technical complements to the NPP's SCT service. Again, their nature as complements means that if anything the amalgamation is likely to produce incentives to *lower* prices for the Osko services and the SCT service.
- c. According to the expert industry opinion, eftpos' BeemIt app service has not managed so far to realise a significant share of P2P payments, despite being launched in 2018.¹¹¹ growth in the counterfactual may be constrained both by incentives that some financial institutions may have to keep account holders conducting their finances through the financial institutions' own apps and portals,¹¹² and competition from other apps, which in the future may include apps from BigTech players (including Apple, Google, Facebook / Whatsapp and PayPal) making use of either the ICS rails or the NPP.¹¹³ The expert industry opinion also suggests that payment apps will need to do more than just P2P payments in order to realise scale in the P2P segment,¹¹⁴ so whether BeemIt is ultimately a significant competitor in P2P seems likely to depend on it becoming widely used for retail payments.

118. Finally, for B2P/G2P payments, there is currently only very limited presence of the NPP (via the SCT service) and BPAY (via Osko Service 1), and the potential future overlap is limited to these services and a potential eftpos "Deposits and Withdrawals" service.¹¹⁵ Again, as Osko services are technical complements for the SCT service, there should be no concern that the amalgamation might produce upward pricing pressure in relation to

110 See BPAY statement, paragraphs 24 and 56.

111 See Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, paragraph 319 and Appendix V, where BeemIt's share in FY20 in the P2P segment is estimated to be 2%. I also note that **[CONFIDENTIAL TO EFTPOS]**.

112 See Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, paragraph 323.

113 See eftpos statement, paragraphs 38-39 and the accompanying table. Also see the table below paragraph 52, which lists a number of P2P competitors in Australia now (Splitr, Splitwise, Groupee and Visa Direct) and in the future (PayPal.ME and Venmo, ApplePay, GooglePay, FacebookPay, and MastercardSend), and paragraph 72, which details innovations in P2P payments driven by BigTech companies including PayPay and Apple. Also see paragraphs 60-61, where eftpos explains that it is seeing competition either already or becoming significant in the future from the likes of PayPal, Apple Pay, Google Pay and others, and "competition from these organisations is likely to be significant as: (a) there are low barriers to entry as they sit above the rails utilising the existing two-side markets; (b) they can often leverage large existing customer bases (Apple, PayPal) with embedded relationships beyond the payment; (c) they have global scale of investments and learnings and deep pockets; and (d) they are the experts at recognising core millennial need (and merchant) shifts and delivering compelling seamless experiences". According to **[CONFIDENTIAL TO EFTPOS]**.

114 Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, paragraph 319.

115 See eftpos statement, paragraph 20(e)(iv).

these services. The eftpos “Deposits and Withdrawals” service faces a number of barriers to growth in this space, which I will explain in main report. In any event, the main competition that the NPP, BPAY and eftpos will face in this space for a long time will be the low cost incumbent DE system.

119. In summary, the three entities primarily offer services that are complementary to each other, rather than competing with each other, and merger increments in each segment are and will remain either minor or otherwise immaterial (e.g. because the services are complements).

6.2.2. The closest competitors of the amalgamating entities are much larger players with significant competitive advantages

120. The second thing I observe is that the closest competitors of each of the amalgamating entities are much larger incumbent players in each segment with significant competitive advantages. Therefore, not only will there be limited competition between the amalgamating entities in the counterfactual, but there will be far more significant competition with and between other players. These other players will continue to act as significant constraints on the amalgamating entities, both if amalgamation proceeds and in the likely counterfactual.
- a. eftpos’ closest competitors are the incumbent, better-resourced, globally-connected ICS, which supply essentially the same services as eftpos and more, with eftpos continually playing “catch up” to match the range and quality of their offerings to financial institutions and merchants.¹¹⁶
 - b. The NPP’s closest competitor is the DE system, which offers comparable direct credit and direct debit services to the current and planned future services of the NPP (SCT and MPS, respectively) at close to zero marginal cost for financial institutions. To the extent that the MPS will compete with card-based services for bill/invoice payments and online retail payments, its closest competitors in that respect will again be the ICS, which will continue to enjoy incumbency advantages and other advantages from their global scale and relationships.
 - c. The unique characteristics of the BPAY Payments service means that it does not have a particularly close competitor. To the extent that there are alternatives to the BPAY Payments service for bill payments, the most significant of these at the moment are the ICS and the DE system, not eftpos nor the NPP.¹¹⁷

116 See eftpos statement, paragraph 40, which explains that “[f]or EPAL, Mastercard and Visa are the most significant current competitors”, and paragraph 144(d), which explains that the ICS have inherent timing advantages regarding new payment services and initiatives. See also paragraph 112.a of this report and note 87 above.

117 In time, the NPP’s MPS is likely to enter and start to attract some direct debit volumes, however I expect it to win those volumes mainly from the DE system, which is its most direct competitor in respect of “pull” payments, rather than from the BPAY Payments service, which is a “push” service. Even then, doubts have been raised over the attractiveness of the MPS to billers and the speed and extent to which direct debits will migrate to the MPS: see Westpac statement, paragraph 29, and [CONFIDENTIAL TO OTHERS]. The DE system will likely be lower cost for financial institutions and merchants than the NPP, migration to the NPP is likely to be expensive for a number of billers, and direct debits do not typically need to be “pulled” in real-time. For these reasons, migration to the NPP is unlikely to be rapid and the DE system is likely to retain a significant presence in direct debits for some time: see the Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, paragraphs 476 and 482. In relation to the NPP’s planned CATSCT invoicing service, see note 105 above.

121. To paraphrase paragraphs 7.4 and 7.38 of the ACCC's Merger Guidelines, post-amalgamation there will be effective competitive constraints on the amalgamated entity in the form of significant comparable alternative services that will remain "available in plentiful supply to the entire market".

6.2.3. Dynamic market and significant constraints from new technologies and potential entrants

122. Retail payment segments, in particular, are highly dynamic,¹¹⁸ characterised by continual evolution as new technologies are developed that enhance the ease, convenience and functionality of payments for consumers and merchants. The ICS have tended to lead this innovation, taking advantage of their global scale to fund significant R&D efforts.¹¹⁹ Innovations in retail card-based payments have included (among others):¹²⁰
- a. Centralised hubs versus bilateral links;
 - b. Cross-border functionality with foreign exchange capability;
 - c. Integrated circuit (chip) technology for security, replacing magnetic stripe;
 - d. Network fraud monitoring;
 - e. Online payments capability;
 - f. 3D Secure for two-factor authentication in online guest checkout payments;
 - g. Contactless (NFC) card payments;
 - h. Mobile card tokenisation for mobile wallets;
 - i. Online card tokenisation for increased security in recurring payments and linkage of tokenisations to overcome expired and lost/stolen card issues; and
 - j. Online "wallets" such as "Click to Pay", enabling consumers to sign in and check out with stored payment credentials.

BPAY's Osko services are direct credit overlay services over the NPP's SCT service and the NPP's SCT service on its own (without an Osko overlay) may be a close substitute. However, for some time the DE system will remain a far more significant (and lower cost) alternative. Moreover, the complementary nature of Osko services and the SCT service (i.e. the fact that the SCT service must be used in order to use an Osko overlay service) means that the proposed amalgamation is likely to provide incentives to *lower* the prices of each service, rather than result in upward pricing pressure.

118 See eftpos statement, paragraphs 37(a) and (c).

119 Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, paragraphs 444-447.

120 See Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, paragraph 445.

123. The pace of this innovation and ICS leadership is likely to continue,¹²¹ with initiatives increasingly focused toward online payments, including online payments for in-store purchases as well as seamless in-app payment services.¹²²
124. Against this backdrop, domestic Australian payment systems will face significant challenges maintaining their relevance for financial institutions, merchants and consumers.¹²³ Since its formation in 2009, eftpos has found itself in “catch up” mode, trying to imitate the range of services offered to financial institutions by the ICS.¹²⁴ This is likely to continue both in the counterfactual and if the proposed amalgamation proceeds, constraining the ability of the amalgamated entity to establish itself in online retail payments.¹²⁵ For domestic payment services to remain relevant they are likely to need to bring similar initiatives to market in a timely fashion or develop services that differentiate themselves from the ICS (e.g. services tailored to local market needs or hybrid services that make use of a number of domestic payment infrastructures to provide services that the ICS are not able to provide).
125. Adding to this is the possibility of disruptive entry and competition from BigTech players such as Facebook/Whatsapp, Google, Apple, PayPal and Samsung, leveraging their large installed user bases and deep relationships with consumers.¹²⁶ Apple, Google and Samsung already offer mobile wallet services in Australia, with Apple maintaining exclusivity over the NFC chips in its iOS devices, which has inserted Apple as a revenue earner in the Australian payments ecosystem. While these mobile wallets currently make use of card rails for payments, there is the future potential for them to offer stored value services, which would disintermediate those rails. I understand that Apple already operates a stored value service overseas (Apple Cash),¹²⁷ FacebookPay is already available in

121 See Westpac statement, paragraphs 48-49. See also eftpos statement, paragraph 144(d), which explains that:

“[d]omestic schemes have been slower than Visa and Mastercard to implement EMV based changes and this has been partly because Visa and Mastercard have a head start given they are equity owners of and second staff as developers to EMV Co, with each development giving the BIN owner (ie ICS) primacy. As such, domestic schemes (as “business associates” but not owners of EMVCo) get delayed access to every new standard/specification and typically there has been no thought given to how a multi-network debit card or form factor would function within a specification. Nonetheless the ability to quickly follow Visa and Mastercard, at a relatively low cost is becoming increasingly more possible as global suppliers support card-based platforms”.

122 The ICS are also developing their own offerings in adjacent services to payments such as Digital ID.

123 See Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, paragraphs 448-451.

124 Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, paragraphs 451-456. This is also clear from the eftpos statement.

125 See, for example, CBA statement, paragraph 83.

126 The eftpos statement anticipates entry and competition in P2P payments from these BigTech players and also from fintechs before 2023, and also in the longer term (beyond 2023) in retail payment segments (in-store and online), with PayPal to enter in-store retail payments before 2023: eftpos statement, paragraphs 38-39 and the accompanying table. See also eftpos statement, paragraphs 58-61.

127 See <https://support.apple.com/en-us/HT207883>. According to the eftpos statement, paragraph 72(b), Apple Cash is expected to be a vigorous competitor to eftpos’ Beem It app, easily leveraging its capabilities and embedded user base.

Australia based on card rails,¹²⁸ and Google and Facebook are developing their payment service capabilities beyond mobile wallets linked to card rails and are engaging in a number of activities overseas that if applied in Australia would disintermediate those rails.¹²⁹ The introduction of Open Banking (i.e. the Consumer Data Right (CDR)) is likely to further reduce barriers to entry for BigTech and fintech players and further enhance the dynamism of the payment segments in Australia.¹³⁰

126. While it is difficult to predict how and the extent to which these players will compete in and disrupt the Australian payments landscape in the future, there is considerable potential for major disruption, particularly as mobile devices become more prevalent as form factors for payments and the share of retail payments that occur online (using mobile devices) increases.

6.2.4. The largest customers of NewCo will enjoy significant countervailing power

127. In addition to the constraints on NewCo from the current services of the ICS and the DE system, and dynamic constraints from further developments by the ICS and also potential entrants such as the BigTech firms, NewCo is likely to be constrained by its largest customers following amalgamation.
128. As can be seen in the following table, the four largest financial institutions and the two largest retailers in Australia (Coles and Woolworths) together represent around [CONFIDENTIAL – DERIVED FROM CONFIDENTIAL INFORMATION OF BPAY, EFTPOS AND NPPA] of the transaction volumes and around [CONFIDENTIAL – DERIVED FROM CONFIDENTIAL INFORMATION OF BPAY, EFTPOS AND NPPA] of the revenues of each of the amalgamating entities. The commercial significance of these players is, if anything, understated by these shares of volume / revenue figures. No payment service or initiative in Australia has become successful without the support of the largest financial institutions, and retail payment services in particular tend to rely on adoption by Coles and Woolworths in order to habitualise the payment service and kickstart widespread adoption by consumers and merchants (contactless card payments being an example of this).

128 See <https://pay.facebook.com/au/> and <https://pay.facebook.com/au/how-it-works/>.

129 According to the NPPA statement, Facebook (WhatsApp) recently launched an account to account P2P payment solution in Brazil, and Google Pay in India has been built entirely on India's Immediate Payment Service: see NPPA statement, paragraph 100 and also paragraphs 101-102, which discuss the potential for similar developments in Australia. See also the Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, paragraphs 228 and 310.

130 See eftpos statement, paragraph 37(c).

Table 2: Customer Shares of Transaction Volumes and Revenues (FY20)

	Transaction Volumes (%)				Revenues (%)			
	eftpos	BPAY	Osko	NPP	eftpos	BPAY	Osko	NPP
CBA	X	X	X	X	X	X	X	X
Westpac	X	X	X	X	X	X	X	X
NAB	X	X	X	X	X	X	X	X
ANZ	X	X	X	X	X	X	X	X
Coles	X	X	X	X	X	X	X	X
Woolworths	X	X	X	X	X	X	X	X
Sum of Big Six	X	X	X	X	X	X	X	X
Others	X	X	X	X	X	X	X	X
Total	100	100	100	100	100	100	100	100

Sources: EPAL, BPAY and NPPA

129. While vertical integration by these customers into the supply of payment services is more than a theoretical possibility (it is how eftpos, Bankcard and BPAY were all founded, and also, more recently, Beemlt),¹³¹ it is unlikely that these customers would contemplate “bypassing” NewCo by sponsoring an entirely new set of low-value payment rails at this point in time.
130. However, the major customers of NewCo (the largest four financial institutions, the two largest retailers in Australia, and a number of other financial institutions and payment service providers such as Tyro and FirstData) will enjoy countervailing power of a more fundamental and direct nature. A feature of the proposed amalgamation is that these customers together will own NewCo and therefore have influence over pricing, quality and innovation decisions by NewCo and its constituent payment schemes. Any attempt by the management of NewCo or a particular amalgamated scheme to “give less or charge more” is therefore likely to be directly constrained within NewCo by its own shareholder customers.

6.2.5. Summary

131. My high-level assessment of the main factors that are relevant for assessing the likelihood of substantial unilateral effects has produced the following observations:
- The amalgamating entities offer largely complementary services and merger increments are small or otherwise immaterial in each segment;
 - The closest competitors of the amalgamating entities are not each other, but much larger players with significant competitive advantages;
 - The Australian payments landscape is dynamic with significant constraints on domestic payment infrastructures and services from innovations of the ICS and potential entry of BigTech players; and
 - The largest customers of the amalgamated entity will enjoy significant countervailing power in the fundamental and direct sense that they will be its shareholders with

¹³¹ Beemlt was founded in 2018 by CBA, NAB and Westpac.

influence regarding prices, quality and innovation decisions and with both the incentives and ability to prevent any attempt by NewCo to “give less or charge more”.

132. For these reasons, in my opinion the proposed amalgamation is not likely to result in substantial unilateral effects on prices or quality. My main report will provide further explanation in support of this opinion, including more detailed analysis of a number of the overlaps between current and future services of the amalgamating entities, including the overlaps between eftpos’ in-store and online payment services and the NPP’s MPS, and the overlaps between BPAY’s overlay services over the NPP and the NPP’s SCT service.

7. THE EXISTING SERVICES OF THE THREE ENTITIES AND THE MAIN SERVICES IN THEIR CURRENT ROADMAPS ARE JUST AS LIKELY TO BE PRESERVED

133. I do not consider any of the existing services of the three entities or any of the main services in the current roadmaps of the three entities to be more likely to be withdrawn, abandoned or significantly degraded in their quality under amalgamation compared to the likely counterfactuals.¹³²
134. First, even large coalitions of shareholders of NewCo are unlikely to have the *ability* to withdraw, abandon or significantly degrade these services and initiatives, as NewCo governance arrangements are likely to protect them. These protections are detailed in the Application and include a procedure that provides that if any NewCo Board decision in respect of a payment service attempts to make a fundamental change in the nature, scale or operation of the payment service, the manner of funding the operating costs of providing the payment service, or the roadmaps agreed for the development of the payment services as at the date of the implementation agreement up to June 2022, then any two directors can call for the decision to be ratified by an extraordinary resolution (75%) of shareholders classified as participants in that payment service at that time.¹³³
135. In addition to this, the most significant future payment services in the eftpos and NPP roadmaps (including the eftpos digital services and the MPS) are services that have been mandated by the eftpos and NPPA boards.¹³⁴

132 [CONFIDENTIAL TO EFTPOS]

133 See Section 7.4 of the Application. I understand that this would require at least 15 out of the 19 NewCo shareholders that are users of eftpos services to vote in favour of such change, meaning that a counter-coalition of just five would be required to defeat the proposed change. [CONFIDENTIAL TO OTHERS].

134 There may be penalties for members of these schemes that fail to implement mandated these services in the required timeframes. These services and a number of other services, including BPAY’s Osko Service 2 (pay with document), are also included as Prescribed Services in the Transition Plan of the Implementation Agreement. Prescribed Services are services set out in the “Transition Plan” (Schedule 3 of the Implementation Agreement). These may or may not be mandated services. They have been determined by the Industry Committee, not by the boards of BPAY, eftpos or NPPA. Industry Committee members are required to use “reasonable endeavours” to implement Prescribed Services in the required timeframes and no penalties or further incentives apply. As explained in the BPAY statement at paragraph 73, the Implementation Agreement does not require BPAY’s shareholder financial institutions to implement any Prescribed Service or govern how the Prescribed Services will be implemented. [CONFIDENTIAL TO OTHERS].

136. Second, incentives to withdraw, abandon or significantly degrade these services are also likely to be lacking. In particular, I have given consideration to a potential concern that eftpos' digital services may be under-invested in and/or degraded specifically in order to drive retail volumes from eftpos to the NPP (e.g. via the MPS, which has the potential to become a service for some types of retail payments as well as for direct debit bill payments).¹³⁵ In addition to the constraints on ability set out above, there are unlikely to be incentives to engage in such conduct.
- a. First, the major retailers, other non-ADI shareholders and at least some financial institutions are likely to have incentives to ensure that eftpos is able to provide an effective alternative to and constraint on the ICS in relation to in-store and online retail payments.¹³⁶
 - b. Second, a degrading of eftpos' retail services would be likely, overwhelmingly, to benefit the ICS rather than the NPP, given that the ICS are eftpos' closest competitors and the dominant players in the segment, and the challenges facing the NPP in entering and growing in retail payments for many years at least.¹³⁷
137. For these reasons I consider a strategy of materially favouring the MPS over eftpos for retail payments is unlikely to be adopted (even if there were the ability to engage in such a strategy).

8. THE AMALGAMATION IS NOT LIKELY TO RESULT IN FEWER COMPETING INITIATIVES OR WEAKER INITIATIVES BEYOND THE ROADMAPS

8.1. The amalgamation is not likely to result in fewer competing initiatives beyond the roadmaps

138. It is possible that, in the counterfactual, the amalgamating domestic entities may develop initiatives beyond their current roadmaps that would compete closely if both were widely adopted by financial institutions.
139. However, any such future initiatives would require widespread support from financial institutions for successful deployment. The factual statements that I have reviewed reveal a reluctance of financial institutions to support two or more domestic initiatives that will deliver more or less the same functionality.¹³⁸ The likelihood is therefore that the best

135 [CONFIDENTIAL TO EFTPOS]

136 The importance for Coles and Woolworths of maintaining an effective eftpos as a constraint on the ICS is apparent in their statements: see Woolworths statement, paragraphs 16-19 and 31, and Coles statement, paragraphs 28 and 86. [CONFIDENTIAL TO OTHERS] It is also apparent from the statements of financial institutions that a number of them regard eftpos as important to maintain as a constraint on the ICS: see the CBA statement, paragraph 119 and the Westpac statement, paragraph 31.

137 See paragraph 115.c above, and the associated footnotes there.

138 See for example the "direct debit" case study in the ANZ statement: ANZ statement, paragraphs 32-68. Similarly, the eftpos statement refers to a proposal by EPAL for a "quick to market low investment cost real-time direct credit solution for bulk credits over eftpos' rails, which would have competed with the NPP", which was not chosen because the NPPA proposal was preferred: eftpos statement, paragraph 55.

outcome that can be expected in the counterfactual is one in which ultimately only one of the domestic initiatives is widely supported.¹³⁹

140. Since competition between future initiatives of the domestic schemes (beyond the current roadmaps) is unlikely in the counterfactual, a lessening of competition if the proposed amalgamation proceeds taking the form of fewer competing domestic initiatives is also unlikely.

8.2. The amalgamation is not likely to result in weaker future initiatives beyond the roadmaps

141. Although in the counterfactual there may only be – at best – one domestic initiative widely adopted by the industry to address a need, in principle there might be value in the “rivalry” between the three entities to have their alternative adopted in preference to the others. The argument would be that when the three separate entities vie among each other to win the support of the industry, they may “sharpen their pencils” and enhance the functionality of their proposed solutions.
142. This argument is worth consideration. However, for two reasons I consider that it is not likely that initiatives developed within NewCo will be significantly weaker due to a loss of this form of rivalry.
- a. First, even if one or more alternatives were enhanced by this form of rivalry in the counterfactual, it is not obvious that there would be materially less rivalry or development of alternatives if the three entities were amalgamated within NewCo, nor that the service ultimately favoured by NewCo would be of lower quality or offer less functionality. It may be that the same “competition for ideas” and alternatives would occur in deliberations within NewCo, with proponents of each possible alternative equally keen to have their alternative preferred by the NewCo board.
 - b. Second, there is the likelihood that, within NewCo, a management level that benefits from deep knowledge and expertise in relation to the capabilities, strengths and weaknesses of all three infrastructures, and an innovation centre that can draw on experts with an understanding of the infrastructures and capabilities of all three entities, as well as enhanced understanding of customer needs, will produce solutions that will be superior to the solutions that would be proposed by each separate entity in the counterfactual. For further discussion of the benefits of amalgamation from combining R&D teams and payment scheme specific knowledge, see Section 10.2 below.

¹³⁹ This “best outcome” is an outcome in which the network effects realised by the “winning” initiative are likely to be considerably delayed compared to an initiative that has been “pre-coordinated” within the proposed amalgamated entity and one in which one of the entities, and potentially also some financial institutions, may find themselves with stranded assets. Another possible outcome is one in which neither of the initiatives manages to realise sizeable network effects and initiatives of other players such as the ICS or BigTech firms are successful instead. But the important observation here is that there is only likely to be, at best, one successful initiative in the counterfactual.

9. NO LIKELIHOOD OF VERTICAL EFFECTS (INPUT FORECLOSURE)

143. In this Section I consider whether there the proposed amalgamation is likely to increase the ability or incentives of the amalgamating entities to foreclose access to low-value payment infrastructure.
144. In principle, amalgamations can give rise to foreclosure concerns when they involve one or more firms that are vertically integrated, operating at more than one level of a supply chain, or two firms that operate at different levels of the supply chain. In these situations, input foreclosure concerns may arise because the amalgamated entity may have increased incentives to foreclose access at one level of the supply chain – for example, at an “upstream” infrastructure level – in order to realise a greater increase in its sales at the other level – for example, at the “downstream” services level.¹⁴⁰ In order for the amalgamated entity to have incentives to foreclose access to its infrastructure, the gains the amalgamated entity would make from foreclosing third parties at the service level would need to outweigh the losses it would incur from not supplying infrastructure services to those third parties.
145. The potential for input foreclosure needs to be considered in this case because, as explained in Section 3.2, all three of the amalgamating entities are vertically integrated, operating low-value payment infrastructures and providing low-value payment services. However, I limit my attention in this Section to the infrastructures of eftpos and the NPP, because I do not consider it likely that any third party would be interested in accessing the BPAY clearing infrastructure.¹⁴¹
146. It is standard when assessing the likelihood of vertical effects to consider both ability and incentives. Starting with ability, in my opinion the amalgamated entity would lack the ability to foreclose third parties seeking to provide competitive payment services from access to infrastructure, for a number of reasons.
- a. With respect to the eftpos infrastructure, NewCo would lack the ability to foreclose third parties because of the alternative card-based infrastructures provided by the ICS that third parties may use instead. Indeed, the ICS infrastructures are likely in general to be more attractive to third parties than the eftpos infrastructure, as they have greater reach,¹⁴² offer greater functionality (including international and online acceptance) and enjoy global scale, which may be an advantage for the ICS in negotiations over access with global third-party access seekers. I understand that many third parties already make use of the ICS infrastructures to provide payment services, including PayPal and BNPL schemes.

140 I do not consider that any customer foreclosure concerns arise in this matter as suppliers to the amalgamating entities (e.g. Swift) tend to be global players with many other customers.

141 See BPAY statement, paragraph 32, which observes that BPAY’s infrastructure was designed and built for BPAY’s specific use and there is no known instance of a third-party seeking access to the BPAY infrastructure to provide a new payment service.

142 I understand that some financial institutions only issue single network debit cards and that this may become more common in the future. See Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, paragraphs 455-456.

- b. With respect to the NPP infrastructure, the ICS may again be an alternative for some third parties. In addition, there is the further significant consideration that the NPP was conceived as an open access infrastructure and I understand that it will continue to be subject to an open and non-discriminatory access regime.
 - c. Even if these matters were not determinative, NewCo's ability to foreclose third party access to its infrastructure is likely to be further limited by its fragmented governance structure in which there will be 13 directors, four of which will be independent with the other nine representing various types of participants. Reaching agreement among a fragmented group to engage in a foreclosure strategy is likely to be challenging.¹⁴³
147. Turning to incentives, recall that both eftpos and the NPP are already vertically integrated and would be in the counterfactual. Let us assume they would not have incentives to foreclose in the counterfactual.¹⁴⁴ In order for the proposed amalgamation to be likely to give rise to incentives to foreclose, there would need to be a downstream segment of payment services in which the amalgamation would result in a significant increase in downstream share compared to the counterfactual, so as to "shift the dial" sufficiently for the (downstream) gains from foreclosure to outweigh the (upstream) losses. However, as explained in Section 6.2.1, the amalgamating entities offer largely complementary payment services and overlap only to a limited extent in most segments.
148. In any event, if at some future point there is a concern that lack of access is stifling competition, the RBA has explained that it has the power to designate and establish an access regime.¹⁴⁵
149. For all of these reasons in my view there should be no concern that the proposed amalgamation may result in foreclosure of third parties from access to infrastructure.

10. PUBLIC BENEFITS OF THE PROPOSED AMALGAMATION

150. I consider that the proposed amalgamation is likely to give rise to the following public benefits compared to the likely counterfactuals.
- a. Improved coordination of adoption of domestic scheme initiatives by financial institutions;
 - b. Increased and improved domestic innovation from combining R&D teams and payment scheme specific knowledge;

143 Those directors should also have in mind NewCo's purpose "to provide globally competitive payment services which are resilient, safe, efficient, fair, accessible and cost effective and which meet the present and future requirements of the users of the Australian payments system, including financial institutions, payment services providers, while facilitating the provision of low cost solutions for retailers, other businesses and their customers": Memorandum on NewCo's potential governance and operating model, 16 October 2020, page 3.

144 It is of course possible that they may have incentives to foreclose in the counterfactual. In that event, there should be no concern that the proposed amalgamation might generate incentives to foreclose. Given that the NPP is subject to open access arrangements, it is difficult to say whether the NPP already has incentives to foreclose.

145 Michele Bullock (2018), *Fast payments in Australia*, Address to Seamless Payments 2018, Sydney, 13 March 2018: accessed at <https://www.rba.gov.au/speeches/2018/sp-ag-2018-03-13.html>.

- c. Enhanced competition with and constraints on international payment schemes;
 - d. Reduced domestic security risks and increased government policy influence;
 - e. Reduced barriers to entry for financial institutions and fintechs; and
 - f. A number of amalgamation-specific synergies.
151. The remainder of this Section elaborates. My main report will provide further details.

10.1. Improved coordination of adoption of domestic scheme initiatives by financial institutions

152. The importance of network effects for payment services – i.e. widespread adoption by financial institutions – was explained in Section 2. The challenges for payment services of coordinating the necessary investments by financial institutions to realise those network effects were also explained there. To recap, even when two or more initiatives from different payment service providers serve different needs, and financial institutions may wish to adopt all if they were not capital or capacity constrained, those constraints exist and tend to preclude simultaneous adoption, and differences in investment priorities and sequencing is then likely to result in confusion and splintering, as well as “wait and see” strategies. Some financial institutions will favour prioritising one initiative while others will favour prioritising another, and others again will sit on the fence until it is clear which initiative will prevail, so as to avoid stranded investments.
153. The results are likely to be inefficient levels of adoption of each service, precluding each from realising timely widespread deployment. At best, new services will be delayed in reaching the market and at worst they may never make it to market and may have to be abandoned due to the failure to realise adoption by a critical mass of institutions.
154. The issue was highlighted by the Governor of the RBA, Philip Lowe, in an address to AusPayNet in late 2019:

The layered architecture of the system was designed to promote competition and innovation in the development of new overlay services. Notwithstanding this, one of the consequences of the slower than-promised rollout of the NPP by some of the major banks is that there has been less effort than expected on developing innovative functionality. Payment systems are networks, and participants need to know that others will be ready to receive payments and use the network. Some banks have been reluctant to commit time and funding to support the development of new functionality given that others have been slow to roll out their ‘day 1’ functionality. The slow rollout has also reduced the incentive for fintechs and others to develop new ideas. So we have not yet benefited from the full network effects.¹⁴⁶

¹⁴⁶ Philip Lowe, *A Payments System for the Digital Economy*, Address to the 2019 Australian Payments Network Summit, 10 December 2019. See <https://www.rba.gov.au/speeches/2019/pdf/sp-gov-2019-12-10.pdf>.

155. The issue is also a recurring theme in the factual statements of industry participants that accompany the Application.¹⁴⁷ It appears from these statements that the industry has already experienced a considerable degree of conflict and coordination problems regarding adoption of initiatives of the three domestic entities by financial institutions.
156. The proposed amalgamation is likely to overcome these coordination issues by removing these conflicts. Rather than uncoordinated decisions being made across financial institutions with differing priorities, NewCo will be able to deliberate internally and then provide financial institutions with a single roadmap for future developments, with a sequenced plan to navigate their resource constraints. *Conflict* between initiatives of three entities each seeking to be favoured in the allocation of scarce resources within financial institutions will likely be replaced by *coordination* over a sequenced roadmap of initiatives to be developed synchronously by all financial institutions.
157. By improving coordination, amalgamation is likely to deliver the following benefits for the Australian public.
- a. Enhanced speed to market of domestic payment initiatives,¹⁴⁸ enhancing the competitiveness of the domestic payment schemes with international competitors that tend to be first to market due to their global scale and significantly greater resources.
 - b. More and more successful (i.e. more widespread) rollouts by financial institutions of domestic payment initiatives, further enhancing the competitiveness of the domestic payment schemes with international competitors.¹⁴⁹
 - c. More and more successful (i.e. more widespread) rollouts by financial institutions of payment initiatives tailored to the local demands of Australian financial institutions and payees and payees, which international competitors are unlikely to develop due to their global focus and relationships.¹⁵⁰

147 See, for example, the BPAY statement, paragraphs 37-38 in which BPAY explains the importance for the Osko services of achieving a “critical mass” of NPP participants (including ANZ, CBA, NAB and Westpac) implementing all three Osko services. Many other statements explain the importance for payment services of coordination to achieve widespread deployment among financial institutions and realise sufficient network effects, in the context of scarce resources within financial institutions: see for example, the ANZ statement, paragraphs [CONFIDENTIAL TO OTHERS] and 69-71, the CBA statement, paragraphs 13-15 and 70 and the NAB statement, paragraphs 29-33. And a number of the statements emphasise the need for the domestic Australian payment entities to develop a single coordinated roadmap and sequencing of activity in order to achieve widespread deployment of each initiative: see, for example, the Westpac statement, paragraphs 17 and 43-44, the ANZ statement, paragraphs [CONFIDENTIAL TO OTHERS] and 79-84, the CBA statement, paragraph 15 and the NAB statement, paragraphs 29-33 and 46. The ANZ statement explains that, not only is coordination of the actions of the various financial institutions challenging, but even internally within financial institutions there are barriers to reaching a coordinated position due to confidentiality obligations imposed by BPAY, eftpos and NPPA: ANZ statement, paragraph 31.

148 See CBA statement, paragraph 113(c), and Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, paragraphs 503-506.

149 See CBA statement, paragraph 113(d).

150 See CBA statement, paragraph 112.

- d. Better solutions for industry problems, by providing an appropriate forum for consideration of alternative solutions that make use of the various assets of the three entities.¹⁵¹
 - e. Fewer instances of wasted investments and stranded assets.
158. According to some of the factual statements, one future field in which the amalgamated entity might deliver a better, more locally tailored, more widely adopted service, all in a quicker time to market compared to the counterfactual, is QR codes.¹⁵²
159. The benefit anticipated in this sub-section is not inconsistent with my earlier assessment that the services and initiatives of the three entities are largely complementary and that competition between them is and is likely to remain limited. It is important to distinguish between two forms of “competition”. First, there is the contest between initiatives to be favoured in the allocation of scarce resources within financial institutions. Second, there is the potential for competition between those initiatives in payment service markets. Importantly, the first contest will occur in the counterfactual regardless of whether the initiatives would ultimately compete in payment service markets. My expectation is that under amalgamation better coordination and planning (including coordinated sequencing of investments by financial institutions) is less likely to result in situations where initiatives have to be abandoned following investment in them by one of the entities, and is likely to result in more successful deployments of domestic payment initiatives and faster speed to market of those initiatives.
160. I understand that the challenges and difficulties of coordinating investments among many financial institutions have led both BPAY and eftpos to explore a number of initiatives that do not require the same extent of coordination of significant investments by financial institutions such as [CONFIDENTIAL TO BPAY] and eftpos’ planned QR orchestration role, as well as the [CONFIDENTIAL TO BPAY]. These initiatives are, by choice of BPAY and eftpos, initiatives that are perhaps not likely to benefit as much from the greater ability of the amalgamated entity to coordinate investments by financial institutions in their own systems. This, however, does not diminish the “coordination of financial institution investment” benefit of the proposed amalgamation: while BPAY and eftpos are seeking to diversify into services that do not require the same amount of coordination of widespread investments by financial institutions, the amalgamation offers the potential for payment service initiatives involving BPAY and eftpos that *do* require that amount of coordination.

10.2. Increased and improved domestic innovation from combining R&D teams and payment scheme specific knowledge

161. It is well-understood that intra-organisational boundaries tend to be more permeable for information flows than market boundaries, in particular because secrecy – stemming from the desire to preserve the value of firm-specific knowledge – raises a barrier to the sharing of information across market boundaries.¹⁵³ Firm-specific terminologies and

151 The ANZ statement ([CONFIDENTIAL TO OTHERS] and in particular paragraphs 38-39 and) explains the challenges and inefficiencies that arise from the lack of an appropriate forum for all potential solutions to be discussed and the optimal solution chosen.

152 [CONFIDENTIAL TO OTHERS] and the Woolworths statement, paragraph 30(c).

153 See, for example, David J. Teece (1988), “Technological Change and the Nature of the Firm,” in *Technical Change and Economic Theory*, G. Dosi, C. Freeman, R. Nelson, G. Silverberg and L. Soete (eds), Pinter, 256-281 at 263.

- understanding of user needs can also raise barriers to R&D coordination between different firms.
162. As Teece has observed, one of the fundamental characteristics of technological development is the role of uncertainty.¹⁵⁴ Drawing on earlier literature, Teece identifies three categories of uncertainty. Primary uncertainty refers to random acts of nature beyond the knowledge or control of any firm. Secondary uncertainty arises due to the limits of communication between firms just discussed. A third kind of uncertainty is behavioural uncertainty: i.e. the potential for opportunistic behaviour by other firms, which can lead to ex post surprises.
163. Amalgamation can address both the second and third kinds of uncertainty and thereby lower barriers to innovation. By combining the R&D divisions of the three entities, as well as their marketing divisions, information barriers will be lowered and the result is likely to be both additional innovations compared to the likely counterfactual (e.g. hybrids that make use of two or more of the infrastructures of the different entities) and innovations that are better targeted to local Australian user needs and that differentiate better domestic payment services from the services of the ICS.¹⁵⁵
164. For example, a single entity with no barriers to communication between NPP staff and eftpos staff should enable NPP staff, who are specialists in the capabilities of the NPP, to better understand the capabilities of the eftpos infrastructure and how it might be used in conjunction with the NPP infrastructure. It will also enable NPP staff to better understand the needs of merchants and consumers in the retail payments space as well as the competitive dynamics and regulatory requirements in that space (eftpos' area of specialisation).¹⁵⁶ This is likely to result in retail payment initiatives under amalgamation

154 David J. Teece (1996), "Firm organization, industrial structure, and technological innovation," 31 *Journal of Economic Behaviour and Organisation* 193-224 at 194-195.

155 As the ANZ statement observes, "[t]he ability to look across the systems enables the entity to determine the right solution for the customer problem": ANZ statement, paragraph 93. See also the Coles statement, paragraph 122, in relation to selecting the "right vehicle" for solving a need. See also CBA statement, paragraphs 4, 9, 110 (which explains that CBA sees one of the key benefits of the proposed amalgamation to be "the combination of the three schemes' expertise to enable product differentiation from the international card schemes"), 111 ("[i]nstead of replicating existing solutions, CBA anticipates that the combination of the resources of the three schemes will enable new and enhanced payment options for both merchants and consumers across card and non-card rails"), 112 ("niche local solutions that are tailored to the needs of consumers and stakeholders of the Australian payments system") and 113.

156 Coles and Woolworths have also both observed as a benefit the ability following amalgamation for them – retailers who will become shareholders of an entity that owns the NPP and BPAY) – to input into solutions of relevance for retailers that may make use of the NPP and BPAY infrastructures: Coles statement, paragraph 124; Woolworths statement, paragraphs 30(a)-(c).

that are better tailored to the needs of retail payment customers.¹⁵⁷ Related to this, [CONFIDENTIAL TO EFTPOS].¹⁵⁸

165. There is a further reason that hybrid services are more likely to develop under amalgamation. When separate firms contemplate combining their assets to develop hybrid products, contractual challenges arise, including the problem of how to contract to share the proceeds of the hybrid products when the benefits and costs may initially fall unevenly on the hybrid partners, and the need for one or both firms to invest in specialised assets, which brings with it the risk of subsequent hold up by the hybrid partner.¹⁵⁹ A big part of the problem here is that all relevant contingencies cannot be known at the time a contract needs to be written, and contracts must inevitably be “incomplete”.¹⁶⁰ By internalising the hybrid development within a single entity, common ownership removes these contractual complications and is likely to open and/or speed up paths to the development of hybrid products.
166. As I am an economic rather than industry expert, it is not within my expertise to predict future “hybrid” innovations that may emerge, or enhancements to new initiatives of the three entities that may occur under amalgamation compared to the likely counterfactual. All I can say is that the economic theory of the firm suggests that amalgamation can be expected to bring improvements to the process of innovation by the domestic payment schemes, and that this is likely to result in hybrid products and domestic payments initiatives better targeted to user needs.
167. The expert industry opinion contains a number of examples of hybrid domestic payment services that Mr Blockley considers to be more likely under amalgamation than without amalgamation, including the following:¹⁶¹
- a. Coordination of the eftpos and NPP infrastructures could produce an in-store retail payment service that combined the speed and convenience of card-based payment initiation with the real-time settlement feature of the NPP so that a merchant can receive funds in real-time. This may be of value to many (particularly small) merchants; and
 - b. A set of BPAY services over the NPP infrastructure, such as an overnight batch file service similar to the BPAY Payments service today, but over the NPP, and suitable for large utility-type billers who prefer batch processing, and an instant bill by bill services for small billers that can manage individual payment processing and would

157 As Teece observed, “[t]he available evidence indicates that successful attempts at innovation are distinguished frequently from failures by greater attention to the understanding of user needs”: David J. Teece (1988), “Technological Change and the Nature of the Firm,” in *Technical Change and Economic Theory*, G. Dosi, C. Freeman, R. Nelson, G. Silverberg and L. Soete (eds), Pinter, 256-281 at 263. See, in this respect, the Coles statement, paragraphs 122-124, which emphasise the benefit of having Coles’ perspective and input, as a retailer, in the development of BPAY and NPPA’s services.

158 eftpos statement, paragraph 113(e).

159 See, David J. Teece (1988), “Technological Change and the Nature of the Firm,” in *Technical Change and Economic Theory*, G. Dosi, C. Freeman, R. Nelson, G. Silverberg and L. Soete (eds), Pinter, 256-281 at 269.

160 See, for example, Oliver Hart (2017), “Incomplete Contracts and Control”, *American Economic Review* 107(7): 1731–1752.

161 See Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, paragraphs 499-502 and specifically 500.

like real-time access to funds while still enjoying the benefits of BPAY's customer reference numbers for straight through processing.¹⁶²

168. In addition to these hybrid payment service possibilities, it has been suggested in several factual statements that effective QR code orchestration is more likely to be realised within the amalgamated entity than in the counterfactual of a more fragmented domestic industry.¹⁶³
169. It has also been suggested that the amalgamated entity would be more effective in assisting the industry deal with resilience issues in connections between financial institutions and their customers and that it might be well-placed to develop a centrally coordinated resilience capability for the Australian payments system.¹⁶⁴

10.3. Enhanced competition with and constraints on international payment schemes

170. The proposed amalgamation is likely to enhance the competitiveness of the domestic payment system with international payment schemes such as the ICS, particularly compared to the second counterfactual.
171. In both likely counterfactuals, in the short, medium and long-term, eftpos initiatives to keep up with and differentiate its offerings from the ICS are likely to continue to struggle for support from financial institutions. At least in the first counterfactual, financial institutions are likely to make the necessary investments eventually, but there are likely to be delays as they juggle various priorities.¹⁶⁵ If eftpos does not manage to develop a strong online payment service offering as a counter to the ICS, higher retail payment costs are likely.¹⁶⁶
172. There are suggestions in the factual statements that, under amalgamation, there would be greater appreciation of and support among financial institutions for eftpos' infrastructure and initiatives including the digital services in its roadmap.¹⁶⁷ Whether or not this is likely, I do not see any reason for financial institutions to support eftpos less under amalgamation.
173. I do consider it likely that, particularly in the medium and longer term, there will be more successful and more timely deployment of domestic payment initiatives and a more innovative domestic payments entity with a greater ability to develop hybrid and localised services that differentiate eftpos' services from the services that the ICS offer and that more firmly intertwine the eftpos infrastructure in the payments landscape (see Sections 10.1 and

162 See also the BPAY statement, paragraph 76(a).

163 [CONFIDENTIAL TO OTHERS] the Woolworths statement, paragraph 30(c) and the Cuscal statement, paragraph 50. See also the CBA statement, paragraph 97.

164 [CONFIDENTIAL TO NPPA]. See also NAB statement, paragraph 40.

165 See the Coles statement, paragraphs [CONFIDENTIAL TO OTHERS] and 165-168. Similarly, see the Woolworths statement, paragraphs 32 and 39. As the eftpos statement explains, while eftpos made contactless technology available in 2012, its implementation by financial institutions took a long time: see eftpos statement, paragraph 44. eftpos has also had to mandate development by financial institutions of its digital initiatives.

166 See Coles statement, paragraph 87, and [CONFIDENTIAL TO OTHERS] 54. Also see the eftpos statement, paragraph 106.

167 See, for example, [CONFIDENTIAL TO OTHERS]. The eftpos statement also lists as a "potential certain benefit" of the proposed amalgamation "retention of member support in the short term through mandates albeit that the heavy lifting on digital has been done in the absence of mandates to date": eftpos statement, paragraph 112(c).

10.2 above). Overall, this is likely to produce a domestic payments system that is more dynamic and capable of providing stronger competition to the ICS and other global players, particularly compared to the second counterfactual.¹⁶⁸

10.4. Reduced domestic security risks and increased government policy influence

174. A stronger domestic payments system – which the proposed amalgamation is likely to deliver, particularly compared to the second counterfactual – will reduce Australia’s exposure to cyber-attacks and foreign government interference. By enhancing the competitiveness and long-term viability of the domestic payment system in competition with international payment schemes, the amalgamation is likely to enhance Australia’s ability to navigate a potential future scenario in which international payment schemes experience down-times due to cyber-attacks or are barred by other governments from delivering services in Australia. While this may sound alarmist and unlikely, specific organisations and even other countries have experienced shut downs of the ICS networks in recent years due to US government intervention,¹⁶⁹ and it is prudent for governments to plan for such events in an ever-unpredictable world.¹⁷⁰

175. A stronger domestic payments system is also likely to provide the Australian government with greater payments policy influence. As the government has recently experienced in its negotiations with Google and Facebook over legislation relating to the news media bargaining code, foreign corporations can be motivated by concerns of setting global precedents and can be difficult to influence. There is therefore a benefit from a payments policy perspective of a strong and sustainable domestic payment service provider.

10.5. Reduced barriers to entry for financial institutions and fintechs

176. The proposed amalgamation has the potential, over time, to reduce barriers to entry for both financial institutions and fintechs, by streamlining the number of contact points and APIs that entrants need to engage with to deliver payment services to their customers.¹⁷¹

10.6. Synergies

10.6.1. Operational efficiencies

177. A number of the factual statements and the expert industry opinion suggest that operational efficiencies are likely to be realised through the proposed amalgamation, both across the entities (e.g. rationalisation of managerial oversight)¹⁷² and within the various financial

168 See [CONFIDENTIAL TO OTHERS] the Woolworths statement, paragraph 33 and the CBA statement, paragraph 119. A similar view is expressed in the Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, paragraphs 512-513 and 515.

169 Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, paragraph 469.

170 I note the view of Coles that the ICS are “not necessarily solely focussed on (or regulated by) the Australian jurisdiction” and that “Coles would be very concerned there was a sovereignty risk to Australian Acquirers, merchants and customers if the Australian payments industry was solely reliant on these foreign companies”: Coles statement, paragraph 41.

171 See also the Cuscal statement, paragraphs 51-52, and the NPPA statement, paragraphs 122(iii) and (iv).

172 See NAB statement, paragraph 38.

institutions.¹⁷³ For example, [CONFIDENTIAL TO OTHERS].¹⁷⁴ Section 27.12 of the Application also sets out anticipated synergies in labour, marketing and other operating expenses from rationalising common functions.

10.6.2. De-duplication of spending on R&D

178. There is the potential for the proposed amalgamation to reduce duplication of efforts and spending on certain initiatives, while still getting the benefit of drawing on the expertise of each R&D team and the knowledge and capabilities of each entity with respect to each infrastructure and payment segment.¹⁷⁵ Possible examples here include [CONFIDENTIAL TO BPAY] and QR code initiatives.

10.6.3. Long-term rails rationalisation

179. A number of the factual statements suggest a long-term benefit of the proposed amalgamation taking the form of greater industry coordination over and a greater likelihood of long-term rails rationalisation.¹⁷⁶ It does seem more likely that long-term rails rationalisation would be realised sooner under amalgamation, should it be in the interests of the industry and have the support of more than 75% of the users of any infrastructure to be rationalised. [CONFIDENTIAL TO BPAY].¹⁷⁷ [CONFIDENTIAL TO BPAY]. This would represent an amalgamation-specific benefit.

11. PUBLIC DETRIMENTS OF THE PROPOSED AMALGAMATION

180. In this Section I consider a number of potential detriments of the proposed amalgamation, compared to the likely counterfactuals, specifically:

- a. Loss of competition and choice;
- b. Loss of focus on roadmaps and other initiatives of individual entities; and
- c. Reduction in competitive pressure on the international card schemes.

11.1. Loss of competition and choice?

181. The amalgamating entities overlap to some extent in a number of segments and are likely to overlap to a greater extent in the future (particularly once the MPS is launched and if it starts to be adopted for retail payments). A potential public detriment to consider is therefore a loss of competition between the amalgamating entities. There is also the potential that the amalgamation might result in the side-lining of future initiatives of the amalgamating entities that would address similar needs, and that might potentially compete closely in the counterfactual. There is further the potential that the proposed amalgamation may eliminate a productive degree of rivalry between initiatives of the three amalgamating

173 See the Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, paragraphs 507-508.

174 Cuscal statement, paragraph 43.

175 See CBA statement, paragraphs 13(a) and 113(a).

176 See, for example, the NAB statement, paragraph 45.

177 BPAY statement, paragraph 76(a).

entities to be favoured for adoption by financial institutions, resulting in initiatives that are weaker due to the use of “blunter” pencils.

182. I have given consideration to all of these potential public detriments in Sections 5 to 9 above. For the reasons I provide there, I consider that, while there may be some loss of competition, a *substantial* lessening of competition is not likely (see Section 5.2 for a summary). In particular, substantial unilateral effects on prices and quality are not likely (see Section 6), the existing services of the three entities and the main services in their respective current roadmaps are just as likely to be preserved (see Section 7), there is no basis for a concern of future side-lining of closely competing initiatives (see Section 8.1), on balance the proposed amalgamation is likely to enhance the quality of future domestic payment initiatives rather than weaken them (see Section 8.2) and foreclosure of access to infrastructure for third parties is not likely (see Section 9).
183. I also note [CONFIDENTIAL TO OTHERS].¹⁷⁸

11.2. Loss of focus on roadmaps and other initiatives of individual entities?

184. I understand concerns have been raised that within a single larger entity, some initiatives of the three schemes may be de-prioritised and not developed due to limited management attention.¹⁷⁹
185. There is certainly the potential for the proposed amalgamation to reduce the focus on some initiatives of the three entities compared to the counterfactual. A larger organisation with more initiatives to consider resourcing may rationalise or overlook some, and the act of amalgamation itself may divert management attention for a period of time.¹⁸⁰
186. However, at the same time, a larger organisation brings the potential for initiatives to be improved through combining R&D teams and entity-specific knowledge and the likelihood that initiatives will benefit from certain and quicker paths to market via coordinated industry adoption (see Sections 10.1 and 10.2 above). The concern that some initiatives of each entity may be side-lined within the amalgamated entity must therefore be weighed with the promise that other initiatives of the same entity are likely to be of higher quality and are more likely to realise timely widespread industry adoption under amalgamation.
187. Specifically in relation to existing services and the main services in the current roadmaps of the three entities, as explained in Section 7, there is limited ability for these to be de-prioritised within NewCo (due to protections in NewCo’s governance arrangements and the mandated nature of the main services of eftpos and the NPP) and incentives to deprioritise eftpos are not likely to exist.
188. In relation to other initiatives, such as [CONFIDENTIAL TO BPAY] and eftpos’ planned QR orchestration role, as well as [CONFIDENTIAL TO BPAY], there is the potential that within amalgamation there may be less focus on some of these. However:
- a. I understand [CONFIDENTIAL TO BPAY].

178 [CONFIDENTIAL TO OTHERS] and the Woolworths statement, paragraphs 34, [CONFIDENTIAL TO OTHERS].

179 See, for example, BPAY statement, paragraph 76(b), [CONFIDENTIAL TO EFTPOS].

180 The NPPA statement refers to execution risk as a potential detriment of the proposed amalgamation: NPPA statement, paragraphs 129-130.

- b. In relation to eftpos' Digital ID initiative, I understand that this is relatively advanced **[CONFIDENTIAL TO BPAY]**, and if it is of compelling quality, there seems a good chance that it would be an initiative that NewCo would pursue.
- c. In relation to eftpos' QR code orchestration role, while there is a possibility that this may be de-prioritised, there is also the possibility that QR code orchestration will be achieved more quickly and effectively within NewCo than in the counterfactual.¹⁸¹

11.3. Reduction in competitive pressure on the international card schemes?

- 189. I understand that there may be a concern expressed by some industry participants that the proposed amalgamation may compromise eftpos as a competitor to the ICS. In particular, this may be a fear held by some merchants that value the role eftpos has historically played in constraining the fees of the ICS.
- 190. For the reasons that I have provided in Sections 7 and 10.1-10.3 above, in my view this is not likely and in fact the very opposite is likely. I consider that the proposed amalgamation is likely to *strengthen* eftpos and the domestic payment system generally, in competition with the ICS. I also note that **[CONFIDENTIAL TO OTHERS]**.¹⁸² **[CONFIDENTIAL TO OTHERS]**.¹⁸³ The expert industry opinion also observes that diluting the influence of the four major Australian banks will be important "due to the potential ambivalence of the banks regarding the maintenance of a domestic card scheme".¹⁸⁴

12. CONCLUSION

- 191. As explained in Sections 5-9, in my view the proposed amalgamation is not likely to result in a substantial lessening of competition. Moreover, and largely for related reasons, I consider that the proposed amalgamation is likely to result in net public benefits.
- 192. The main public benefits I anticipate from the proposed amalgamation, compared to the likely counterfactuals are the following:
 - a. Improved coordination of adoption of domestic scheme initiatives by financial institutions;
 - b. Increased and improved domestic innovation from combining R&D teams and payment scheme specific knowledge;
 - c. Enhanced competition with and constraints on international payment schemes;
 - d. Reduced domestic security risks and increased government policy influence;
 - e. Reduced barriers to entry for financial institutions and fintechs; and

181 I understand that **[CONFIDENTIAL TO OTHERS]** and Woolworths consider that eftpos' QR code orchestration role is likely to be more effective within a single entity. **[CONFIDENTIAL TO OTHERS]** and the Woolworths statement, paragraph 30(c).

182 See the Coles statement in general and in particular, paragraphs 110-172, and the Woolworths statement, paragraphs 30-42.

183 See Cuscal statement in general and in particular, paragraphs 5, 12-17 and 36-58.

184 Expert Industry Opinion of Lance Sinclair Blockley, 18 March 2021, paragraph 518.

- f. A number of amalgamation-specific synergies.
193. I consider these benefits to be significant collectively and that they are likely to significantly outweigh the potential detriments. I also expect these benefits to accrue not only to the shareholders of NewCo, as NewCo's largest customers, but also to payers and payees broadly, including consumers and small, medium and large merchants.¹⁸⁵
194. While there may be some loss of competition between the amalgamating entities, I do not consider this likely to be substantial: overlaps between them are and are likely to remain limited and following amalgamation they will continue to be constrained by more significant competitors that will remain outside of the amalgamation. Moreover, I consider that any loss of competition between the amalgamating entities is likely to be outweighed by the creation of a stronger domestic payments system that is likely to compete more effectively with the ICS and with other global payment service providers in the future and enhance the domestic security of Australia's payment system.
195. And while there may be some loss of focus on specific initiatives currently in development within each of the amalgamating entities, I consider this potential detriment to be outweighed by the likely benefits of improved coordination of adoption of domestic initiatives and increased and improved domestic innovations from combining R&D teams and payment scheme specific knowledge.
196. The **[CONFIDENTIAL TO OTHERS]** reflect their expectations that the amalgamation is not likely to substantially lessen competition in payment services, and that the amalgamation is, rather, likely to enhance competition and bring net public benefits. My general impression from their factual statements is that they do not want to continue to navigate multiple uncoordinated roadmaps from three independent domestic schemes and would prefer a single coordinated roadmap of domestic payment initiatives, to improve certainty, ubiquity and speed to market of domestic initiatives. They also do not anticipate a substantial loss of competition, but rather a likely enhancement of the ability of the domestic payment schemes to compete with and constrain the dominant international card schemes of Visa and Mastercard and react effectively to future payment initiatives of global technology firms like Apple, Google and Facebook.

¹⁸⁵ See in this respect the Cuscal statement, paragraphs 12-17 and 44.

ANNEX: CURRICULUM VITAE OF DR GEOFF EDWARDS

Dr Geoff Edwards

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

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

Prior to joining CRA in 2004, Dr Edwards worked as an economist in the mergers and telecommunications branches of the ACCC and as a competition lawyer at Mallesons Stephen Jaques (now King and Wood Mallesons), before earning a Masters in Economics and a PhD from the University of California, Berkeley.

Experience Summary

2011 – present *Vice President*, CRA International, London and Sydney

2007 – 2010 *Principal*, CRA International, London

2005 – 2006 *Associate Principal*, CRA International, London

2004 – 2005 *Senior Consultant*, Lexecon Ltd, London (acquired by CRA in 2005)

2001 – 2004 *MEc and PhD*, Haas School of Business, University of California, Berkeley

1999 – 2000 *Lawyer*, Mallesons Stephen Jaques Solicitors, Sydney

1997 – 1998 *Economist*, ACCC, Canberra and Melbourne

Competition and Regulatory Consulting Experience (2013 – 2021)

- Advice and support including expert reports for Liberty Global in the context of the proposed joint venture between Liberty Global's Virgin Media and Telefonica's O2 in the United Kingdom (2020 – ongoing).
- Advice to a mobile network operator (MNO) in relation to an investigation of alleged abuse of collective dominance concerning wholesale mobile access services (2017 – ongoing).
- Advice to an African broadcaster in the context of an inquiry into the broadcasting sector (2017 – ongoing).
- Advice to an MNO in relation to an investigation concerning the effects of the pricing of a national roaming agreement on the network roll out of another MNO (2016 – ongoing).
- Advice to an MNO in relation to allegations that it has abused a dominant position by engaging in customer lock-in practices (2015 – ongoing).
- Advice to an MNO in the context of an investigation into alleged margin squeeze between its retail prices and its wholesale charges for national roaming and for mobile virtual network operator (MVNO) access (2013 – ongoing).

- Two expert reports submitted to the ACCC on behalf of NewsCorp Australia in the context of consultation over the ACCC's proposed News Media Bargaining Code. The CRA reports recommended bilateral negotiations over collective negotiations and proposed final offer arbitration (FOA) as a way to resolve negotiation breakdowns. Both bilateral negotiations and FOA were recommended to Parliament by the ACCC and included in legislation passed by Parliament in 2021 (2020).
- Advice to two MNOs in the context of a proposed merger in Denmark (2020).
- Support to Telenor and the Nordic Entertainment Group (NENT) in the context of the European Commission's investigation of their proposed joint venture bringing together their direct-to-home (DTH) satellite television distribution assets. CRA's work has included GUPPI and vertical arithmetic modelling submitted to the Commission (2019 – 2020).
- Analysis and advice on the prospects for merger clearance of a proposed transaction in the pathology sector (2019).
- Advice to a private equity group in relation to a contemplated merger of software providers (2019).
- Support to an integrated fuel supplier in the context of the NZCC's market investigation of retail fuel in New Zealand (2019).
- Advice to a shipping company in relation to the competition risks of a contemplated acquisition of another shipping company (2019).
- Advice and support to an online hotel booking platform operator in the context of an ACCC investigation of narrow MFN clauses in agreements with hotels (2018 – 2019).
- Expert reports and testimony in the context of proceedings before the Federal Court of Australia in *ACCC v Ramsay*. This matter concerned an alleged refusal by Ramsay to provide surgeons access to one of its private hospitals if the surgeons utilised, were involved in or had an interest in a rival private day surgery in Coffs Harbour (2018 – 2019).
- Advice to an African broadcaster in relation to its defence of a number of complaints concerning wholesale access to premium sports channels and exclusive agreements for sports rights (2012 – 2019).
- Expert reports prepared for Transurban and submitted to the ACCC in the context of the ACCC's investigation of Transurban's proposed acquisition of a majority interest in the WestConnex project (three significant toll road concessions in the Sydney region) (2018).
- Advice to a major malt producer on the competition law risks of a contemplated acquisition of another major malt producer (2018).
- Advice to the NZCC in relation to its investigation of a contemplated merger of quarries producing road and concrete aggregate products. The advice concerned relevant markets and whether harmful horizontal or vertical effects were likely (2018). The merger was abandoned once the NZCC's opposition was expressed.
- Advice to a major coal producer in relation to a proposed acquisition of a share of a further coal mine and marketing agreements for the output of that mine (2018).
- Advice to an online travel agent (OTA) on various competition issues (2018).
- Advice in relation to a contemplated merger in the marine engineering sector (2017 – 2018).

- Advice to a major integrated fuel supplier in the context of a proposed acquisition of a large number of retail fuel sites and authorisation of other commercial arrangements (2017–2018).
- Advice and reports on the treatment of certain costs in the context of a legislative requirement to price certain services at cost, and modelling of the costs of those services (2017-2018).
- Advice in relation to a gas joint marketing agreement (2017).
- Preparation of a report and testimony in the context of arbitration proceedings concerning an IP licensing agreement between Migrata and HemoCue in relation to technology for the testing of substances in fluids such as hemoglobin, and royalties claimed under that agreement (2017).
- Advice to a major coal producer in relation to contemplated acquisitions of further coal mines and interests in the coal supply chain (2016 – 2017).
- Advice to PMP (a major catalogue and magazine printer in Australia) in relation to its acquisition of IPMG (a rival printer) in the context of the ACCC's informal merger clearance process (2016 – 2017).
- Advice to MTN (an MNO in South Africa) in the context of an allegation of margin squeeze and other exclusionary abuses relating to on-net / off-net price differentials (2013 – 2017).
- Advice to an integrated coal producer and rail haulage supplier in relation to the competition law risks of a sale of its rail haulage business (2016)
- Advice to a number of financial institutions in relation to a proposal to collectively negotiate with mobile wallet providers, including two reports in support of an application to the ACCC for authorisation of collective negotiations (2016).
- Advice on rebate structures and alternatives in the manufacturing industry (2016).
- Advice to an Australian purchasing authority in relation to a Freedom of Information Act request that raised the issue of whether release of the information might adversely affect future competition by facilitating information exchange between competitors (2016).
- Advice to a company that had inadvertently acquired sole control of a vertically related entity, raising potential vertical concerns in relation to a planned divestment of part of its shareholding (2016).
- Advice to Telstra on international approaches to national roaming in the context of the ACCC's Consultation on National Roaming (2016).
- Advice to Sky UK in relation to Ofcom's consultation on "making (cross-platform) switching easier", including the preparation of a report that examined in detail Ofcom's estimates of the consumer benefits of the proposal (2016).
- Advice to a vertically integrated European pay TV channel producer and DTH platform operator/distributor on a contemplated merger with a cable operator (2016).
- Advice to a vertically integrated European pay TV channel producer and DTH platform operator/distributor on a contemplated acquisition of a DTT platform distributor (2016).
- Advice to a vertically integrated European pay TV channel producer and DTH platform operator/distributor on a contemplated acquisition by a major telecommunications supplier and IPTV platform operator/distributor (2016).

- Advice to a European sports channel producer in relation to wholesale channel pricing to comply with European competition law (2016).
- BT/EE and Three/O2: assistance to an interested third party in the context of the investigations of these significant mergers of UK telecoms operators by the CMA and the European Commission respectively (2015 – 2016).
- Tullet Prebon/ICAP: advice to the merging parties in a friendly merger of inter-dealer brokers (2015 – 2016).
- Assistance to a competition authority in the context of an investigation of a merger in the healthcare industry – the merger was abandoned (2015).
- Preparation of a report for the Australian Retail Credit Association (ARCA) in support of ARCA's application for authorisation by the ACCC of the Principles of Reciprocity and Data Exchange (PRDE), a multilateral framework agreement to govern the voluntary contribution of personal credit information by credit providers to credit reporting bureaus (2015).
- Advice to a payment card scheme concerning the implementation of the European Commission's Interchange Fee (ICF) Regulation, including issues surrounding non-circumvention of the ICF cap and separation of scheme and processing activities (2015).
- Research and advice for a confidential client on structural separation in various industries including telecommunications, energy, rail and airports (2015).
- MNO sale: Advising the owner of an African MNO on the prospects for merger clearance of a sale of the MNO to a number of alternative potential buyers and potential remedies (2015).
- Report for MTN (South Africa) in the context of review proceedings brought by Cell C in relation to ICASA's September 2014 Call Termination Regulations (2015).
- Report for ETNO on *Economic Replicability Testing for NGA Services*, published in March 2015, coinciding with ETNO's Let's get the Fibre Rolling event in Brussels. The report recommended a consistent and proportionate approach across Europe to the parameters and procedures of economic replicability tests with the aim of promoting investment in next generation access (NGA) services while safeguarding competition (2015).
- Advice to Channel Ten in the context of Foxtel's acquisition of 15% of Channel Ten, including the preparation of a report on the effects of the transaction (2015).
- Advice to an African pay TV operator in relation to an allegation of excessive pricing of channel bouquets (2015).
- Preparation of a report for a European channel supplier in the context of the defence of a damages claim concerning the pricing of sports channels (2015).
- Advice to a pay TV operator in relation to a contemplated acquisition of a Free-to-Air (FTA) channel (2015).
- Preparation of a report for Digita (Finland) commenting on a draft SMP Decision and remedies proposed by the national regulator (FICORA) concerning access to antenna locations and antenna capacity (2015).
- Reports for MTN (South Africa) concerning the level of mobile termination rates and asymmetric rates for small players (2014).

- Advice to a UK water utility on competition law compliance of its non-household retail and wholesale prices in the context of the UK *Water Act* and associated regulations (2014).
- Advice to BT in relation to a number of margin squeeze complaints concerning retail broadband offers before Ofcom (2012 – 2014).
- Advice over many years to a major European incumbent telecoms company on how to avoid margin squeeze complaints with regard to various services, including the building of detailed margin squeeze models for internal regulatory governance processes (2010 – 2014).
- Advice on a contemplated merger of two large full service banks in two European member states (2013).
- Advice to a major European incumbent telecoms company on: (i) alternative methods of regulating wholesale local access (WLA) services in a next generation access (NGA) environment to prevent margin squeeze, considerations; (ii) economically sensible approaches to conceptual and modelling issues in assessments of margin squeezes in the context of NGA services; and (iii) important considerations in addition to the technical margin squeeze test that may allay concerns of anti-competitive behaviour (2013).
- Benchmarking analysis for an African broadcaster to understand the relative performance of its various operations in different countries (2013).
- Advice to a vertically integrated European pay TV channel producer and DTH platform operator/distributor on a contemplated acquisition of a rival premium pay TV channel packager (2013).
- Advice to a cable operator and a premium sports channel packager on a proposed sale by the cable operator of 25% of the channel packager to a competitor of the cable operator (a fixed telecoms incumbent). The transaction would have left the cable operator with a 25% share, and a third party with 50%. The transaction raised potential vertical foreclosure concerns (input foreclosure and customer foreclosure) and our advice included consideration of non-compete clauses (2013).
- Advice to a European ferry operator on the potential to bring a complaint under Article 102 or under the State Aid laws against a competitor (2012 – 2013).
- Advice to Thomson Reuters in the context of a European Commission investigation concerning Reuters Instrument Codes (RICs) (2010 – 2013).
- Advice to BT in its defence of Ofcom's investigation of complaints by THUS plc and Gamma regarding BT's pricing of its Wholesale Calls product and its control of upstream call origination and call termination services (2009 – 2013).
- Advice to an African broadcaster in relation to investigations by the national broadcasting regulator concerning whether to establish an ex ante regulatory regime, including preparation of an international study of economic regulation of broadcasting and advice on arguments against regulatory intervention (2008 – 2013).

Publications

- "The Relevance of Economics in US, EU and Australian Competition Law," with Jennifer Fish, in D. Healy, M. Jacobs and R. Smith (eds.), *Research Handbook on Methods and Models of Competition Law*, Edward Elgar, Chapter 4 (2020).

- “Veering Left in Retail Merger Enforcement”, *Competition & Antitrust Law 2020: Expert Guide*, CorporateLiveWire, pages 8-10 (2020).
- “The Market for Legislative Influence over Regulatory Policy,” with Rui J P de Figueiredo, Jr. 34 *Advances in Strategic Management* (Strategy Beyond Markets), 193 – 232 (2016).
- “When is a Margin Squeeze not an Abuse?” with Mike Walker, 34(10) *European Competition Law Review*, 509-511 (2013).
- “Dominance and Market Power in EU Competition Law Enforcement,” with Andrea Coscelli, in Geradin D. and I Lianos (eds.), *Research Handbook in European Competition Law*, Cheltenham, UK and Northampton, MA, US, Edward Elgar, Chapter 6 (2013).
- “Margin Squeezes and the Inefficient ‘Equally Efficient’ Operator,” 32(8) *European Competition Law Review*, 402-405 (2011).
- “Parallel Trade in Pharmaceuticals: More Harm than Good?” with Andrea Coscelli and Alan Overd, 29(8) *European Competition Law Review* 490-492 (2008).
- “Does Private Money Buy Public Policy? Campaign Contributions and Regulatory Outcomes in Telecommunications,” with Rui J P de Figueiredo, Jr. 16(3) *Journal of Economics and Management Strategy* 547-576 (2007).
- “Efficiency and Anti-Competitive Effects of Tying,” with Andrea Coscelli, in C.D. Ehlermann and M. Marquis (eds.), *European Competition Law Annual 2007: A Reformed Approach to Article 82 EC*, Hart Publishing, Oxford (2007).
- “Small Business Reforms to Section 46: Panacea, Placebo or Poison?” 34(4) *Australian Business Law Review* 255 (2006).
- “The Effects of Public Ownership and Regulatory Independence on Regulatory Outcomes: A Study of Interconnect Rates in EU Telecommunications,” 29(1) *Journal of Regulatory Economics* 23 (2006).
- “The Hole in the Section 46 Net: The *Boral* Case, Recoupment Analysis, the Problem of Predation and What to do About it,” 31(3) *Australian Business Law Review* 151 (2003).
- “The Perennial Problem of Predatory Pricing,” 30(3) *Australian Business Law Review* 170 (2002).
- “Melway – a TCE Perspective,” 10(2) *Trade Practices Law Journal* 77 (2002).

Presentations

- “SLC Assessments in the Context of Disruptive Technologies”, Law Council of Australia’s Competition and Consumer Committee Workshop, Melbourne, Australia (August 2017).
- “Use and Misuse of Section 46”, Comments on Luke Woodward and Matt Rubinstein’s presentation to the 2016 Competition Law Conference, Sydney, Australia, (May 2016).
- “The Use of Economic Expert Evidence in Europe”, ACCC/UNISA 13th Annual Competition Law and Economics Workshop, Adelaide, Australia (October 2015).
- “Developments in Europe: The End of Economics?”, ACCC/UNISA 13th Annual Competition Law and Economics Workshop, Adelaide, Australia (October 2015).
- “The Economics of Online Geographic Price Discrimination”, International Competition Network (ICN) Annual Conference, Sydney, Australia, (May 2015).

- “Economic Replicability testing for NGA Services”, ETNO’s *Let’s get the Fibre Rolling* Event, Brussels, Belgium, (March 2015).
- “Margin Squeeze Developments and Bundling of Telephony and Pay TV”, IBC Conference on Competition Law and Regulation in the Telecoms, Internet and Broadcasting Sectors, Brussels, Belgium (November 2013).
- “Access to Content in the Context of Bundled Offers: When to Worry and What to Do”, 4th Workshop on the Economics of ICTs, Evora, Portugal (April 2013).
- “Competition Law versus Sector Regulation: Pay TV Broadcasting in the UK”, UCL Global Competition Law and Economics Series Conference, Competition Law and the State: International and Comparative Perspectives, Hong Kong (March 2011).
- “Australian Competition Law from 10,000 Miles Away”, CRA International Asia-Pacific Annual Summit, Canberra, Australia (December 2005).
- “Predatory Pricing and Margin Squeezes”, Ofcom Workshop Series in Intermediate and Advanced Competition Economics, London, UK (February 2005).
- “Does Regulatory Independence Matter?”, London Business School Global Communications Consortium, London, UK (October 2004).
- “Predatory pricing and the interpretation of the unilateral anti-competitive conduct provision in Australian law”, 2003 Trade Practices Workshop of the Business Law Section of the Law Council of Australia, Melbourne, Australia (August 2003).