



Our ref: MA1000020
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4 June 2021

Dear Madam/Sir

Application for merger authorisation MA1000020 – ACCC’s preliminary views and issues about which it is seeking further information

On 22 March 2021 Industry Committee Administration Pty Ltd (**ICA**) lodged an application for merger authorisation for an amalgamation of ownership of BPAY Group Pty Ltd and BPAY Pty Ltd (**BPAY**), eftpos Payments Australia Limited (**eftpos**) and New Payments Platform Australia Limited (**NPPA**) by way of share acquisition (the **proposed amalgamation**).

The ACCC has released the attached document providing a summary of the issues raised during the consultation process. The attached document also outlines the ACCC’s preliminary views about the proposed amalgamation and issues about which it is seeking further information.

Making a submission

Under the current statutory timeframe, as agreed to by ICA, the ACCC must issue a determination in relation to ICA’s merger authorisation application by 30 July 2021.

Therefore, if you wish to make a submission about any of the issues discussed in the attached outline of the ACCC’s preliminary views, we request that you provide your submission by no later than 18 June 2021. Under the *Competition and Consumer Act 2010* the ACCC may, but need not, take into account submissions received after this date.

Submissions should be emailed to mergerauthorisations@acc.gov.au with the subject [your company name]: MA1000020 – submission.

Alternatively, if you would like to provide comments orally, please email us to organise a suitable time.

Your submission will be placed on the ACCC’s public register unless you request and provide reasons for us to exclude part or all of the submission from the public register.

Refer to the [ACCC’s Guidelines](#) for excluding information from the public register for further information.

Next steps

The ACCC must issue a determination in relation to this merger authorisation application by 30 July 2021, unless ICA agrees to extend this timeframe.

This letter will be published on the public register. You can forward this letter to anybody who may be interested.

Yours sincerely

A handwritten signature in black ink, appearing to read 'DM McCracken-Hewson', with a long horizontal flourish extending to the right.

Daniel McCracken-Hewson
General Manager
Merger Investigations Branch

Application for merger authorisation – ACCC’s preliminary views

Key points

- The ACCC is considering an application for merger authorisation for amalgamation of ownership of BPAY, eftpos and NPPA. This document provides a summary of the issues raised in submissions and provides the ACCC’s preliminary views about key issues, including identifying matters on which it is seeking further information.
- The ACCC is considering how the proposed structure and governance of NewCo changes the ownership and control, and consequently the incentives, objectives and decision-making of eftpos, BPAY and NPPA. This will inform the ACCC’s assessment of the likely competitive effects of the proposed amalgamation, as well as some of the claimed public benefits of the proposed amalgamation.
- The ACCC is considering, and seeks further information on, whether the proposed amalgamation would result in a substantial lessening of competition arising from:
 - reduced incentives to compete, or reduced incentives to invest in new services that could compete, where BPAY, eftpos and NPPA’s payments services overlap or are likely to do so in the future
 - a reduction or the removal of competition between BPAY, eftpos and NPPA in relation to their payments infrastructure
 - a reduction in eftpos’ capability, or
 - third party access to the NPP being denied or frustrated.
- At this stage, the ACCC is not satisfied that the proposed amalgamation will not result in a substantial lessening of competition in a market or markets relating to payments services or infrastructure.
- The ACCC is assessing concerns raised by interested parties that the Least Cost Routing initiative may be neglected or abandoned under NewCo, and that this would reduce competition.
- The ACCC’s preliminary view is that the proposed amalgamation is likely to result in some of the claimed public benefits, but the extent and significance of those claimed public benefits is unclear. The ACCC is seeking further information to substantiate the public benefit claims and invites submissions on its preliminary views.

1. Background

- 1.1. The ACCC is considering an application for merger authorisation from Industry Committee Administration Pty Ltd (**ICA**) for an amalgamation of ownership of BPAY Group Pty Ltd and BPAY Pty Ltd (together **BPAY**), eftpos Payments Australia Limited (**eftpos**) and New Payments Platform Australia Limited (**NPPA**) by way of share acquisition. The amalgamation would consist of two related acquisitions of shares which would cause a new entity (**NewCo**) to own BPAY, eftpos and NPPA.

- 1.2. This document provides a summary of the issues raised in submissions and provides the ACCC's preliminary views about the key issues, including identifying matters on which it is seeking further information.

The legal test for merger authorisation

- 1.3. The ACCC may grant authorisation if it is satisfied, in all of the circumstances, that either:
- The proposed acquisition would not have the effect, or be likely to have the effect, of substantially lessening competition, or
 - The proposed acquisition is likely to result in a public benefit, and this public benefit outweighs the likely public detriment, including from any lessening of competition.
- 1.4. The ACCC may grant merger authorisation subject to conditions including, but not limited to, a condition that a person must give and comply with an undertaking under section 87B of the Competition and Consumer Act (2010) (the **Act**).

Public consultation

- 1.5. The ACCC tests the claims made by an applicant in support of an application for authorisation, and by others who may support or oppose authorisation, through an open and transparent public consultation process.
- 1.6. In response to the application for authorisation of the proposed amalgamation, the ACCC sought the views of a range of interested parties, including financial institutions and financial services businesses, small business and retailer representatives, academics and consultants, transaction solution providers and other regulatory and industry bodies.
- 1.7. The ACCC has received a range of market feedback through public and confidential submissions and market inquiries undertaken with interested parties. This market feedback is summarised below. Public submissions are available on the [merger authorisations register](#). ICA has provided two responses to public submissions which are also available on the public register. ICA has also provided a supplementary report from Dr Edwards on 31 May 2021, which the ACCC will take into account in its further consideration of the proposed amalgamation.
- 1.8. The ACCC has also received a range of information and documents from a range of relevant parties through the use of its statutory information gathering powers and through voluntary requests for information.

2. ACCC's preliminary views

Changes in structure, ownership and control of the amalgamation entities

- 2.1. The ACCC is continuing to assess how the proposed structure and governance of NewCo will change the ownership and control, and consequently the incentives, objectives and decision-making of eftpos, BPAY and NPPA to compete and to invest in new services/innovations. In particular, the ACCC is considering how the major banks' control of the three payment schemes will change as a result of the proposed amalgamation. Understanding the proposed structure and governance of NewCo is also relevant to assessing some of the public benefit claims made by ICA. The ACCC

is accordingly seeking further information from ICA to understand the proposed governance arrangements of NewCo.

- 2.2. ICA submits that NewCo's governance arrangements will allow users of each payments service who are shareholders of NewCo to determine the future direction of the service and offer comprehensive protections for each of the three payment schemes as they currently exist. ICA submits that a single board representing the three schemes will be more open and inclusive and represent a broader range of stakeholders than the current boards. Further, ICA submits that the major banks will have less influence over the payments schemes, holding 4 of 13 seats on the NewCo Board, and will therefore not be able to, individually or collectively, control the Board of NewCo.
- 2.3. Some stakeholders, including from Curtin University (Submission by Dr Lien Duong and Dr Baban Eulaiwi) and Australian Retailers Association (**ARA**), consider that the proposed governance structure of NewCo ensures that all users will have some degree of control or influence over the payments schemes and highlighted that fundamental changes can be vetoed by relevant participants (outlined below). However, the ACCC has also heard concerns that decisions will be dominated by the major banks and retailers and that small businesses will have limited voice or influence.
- 2.4. Visa considers that without appropriate governance systems, NewCo may be incentivised to favour outcomes of key shareholders at the expense of smaller business groups and other competitors. Mastercard, SuperChoice and Controlabill also expressed concern that under the proposed structure of NewCo, the major banks may be able to act in concert and Mastercard recommended that conditions be imposed to maintain separation and independence of the amalgamation entities.
- 2.5. Some submissions (including those of the Australian Convenience and Petroleum Marketers Association (**ACAPMA**) and Benchmark Analytics) noted that while the current eftpos Board will pursue its mandate of offering low-cost low value payment services, this may change following the proposed amalgamation. In particular, eftpos may be deprioritised or at least be subject to some dilution as the NewCo Board will need to balance these investment proposals with the objectives of NPPA and BPAY.

Ownership structure

- 2.6. Shareholdings in NewCo are determined by the capital investment made by (or membership rights of) each shareholder in any of the three payments systems. The ACCC understands that, following the proposed amalgamation, each of the major banks will hold a smaller proportion of the shares in NewCo than they hold in BPAY but that Australia and New Zealand Banking Group Limited, National Australia Bank Limited and Westpac Banking Corporation will have larger shareholdings in NewCo than they currently have in eftpos and NPPA. Each shareholder of NewCo will have their own class of redeemable preference shares and will have one vote at shareholders' meetings irrespective of the number of shares they hold.

Governance regime

- 2.7. In addition to the ownership structure, the ACCC is examining the proposed governance of NewCo.
- 2.8. NewCo will have a board of 13 directors, comprised of 4 independent directors (including the Chair) and 9 shareholder-nominated directors. ICA states that each director on the NewCo Board will have one vote (and all decisions of the Board will require the vote of a simple majority). This is intended to ensure that Board directors

who represent larger shareholders (i.e. the major four banks) will not have significant influence over Board deliberations.

- 2.9. The governance of NewCo will provide that if the Board makes a decision which would result in a fundamental change to a service provided by eftpos, BPAY or NPPA then this can be subject to an extraordinary resolution. Any two of the 13 directors can call for the decision to be ratified by an extraordinary resolution (75%) of the shareholders who are classified as participants in that payment service. ICA submits that the major banks will not hold a majority with respect to these resolutions and will not have any veto power. The ACCC is seeking further information from ICA in relation to the precise requirements for an extraordinary resolution.

Role of the operating companies

- 2.10. In considering whether the proposed amalgamation would further consolidate or entrench the influence of the major banks into the future, the ACCC is examining the decision-making processes within the proposed governance structure and the role of the three operating companies (**Opcos**) in NewCo.
- 2.11. While the Opcos will continue to have their own operating governance and manage their respective payments schemes, operations and infrastructure (including pricing), the ACCC's preliminary view is that the proposed governance and decision-making structure of NewCo results in each Opco having limited influence or control over its future investment roadmap.

Potential horizontal effects – payments services

- 2.12. The ACCC seeks further information on whether the amalgamation could remove incentives to compete (or for NewCo to invest in new/innovative services that could compete) where payments services overlap, or are likely to overlap in the future, between eftpos, NPPA and BPAY. These include:
- (a) Person-to-business point-of-sale electronic payments
 - (b) Online retail, bill and invoice payments (including one-off and recurring payments)
 - (c) Person-to-person, person-to-business and business-to-business payments, and
 - (d) Business-to-person and government-to-person payments.
- 2.13. At this stage, the ACCC is not satisfied that the amalgamation would not have the effect, or be likely to have the effect, of substantially lessening competition in a market or markets relating to payment services.
- 2.14. Several stakeholders commented on the level of existing and potential future competitive overlap between the amalgamating entities.
- 2.15. ICA submits that the three Australian payment schemes own and operate largely complementary assets and do not offer services that are close substitutes for each other, while acknowledging that a degree of marginal competition has occurred between the three schemes as payment mechanisms and habits have changed.
- 2.16. ICA submits:
- (a) eftpos' core service is debit card derived payments through most channels including at the point of sale, in-app and online.

- (b) BPAY's core services are a bill payment service and Osko for fast payments which BPAY runs over NPPA's infrastructure.
 - (c) NPPA's core service is fast account-to-account payments. BPAY's Osko service is complementary to NPPA's core fast account-to-account service and is not a substitute for it.
- 2.17. ICA submits that the payment schemes' closest competitors are global payments schemes, such as Visa and Mastercard. ICA submits that the amalgamation will enhance competition by allowing innovations by the three Australian payment schemes to achieve the necessary ubiquity and network effects faster and more assuredly than in the counterfactual scenario, as demonstrated by a commitment to a minimum set of services that BPAY, eftpos and NPPA must provide and develop (the **Prescribed Services**).
 - 2.18. Stakeholders including the Australian Banking Association (**ABA**) and the Customer Owned Banking Association (**COBA**) are supportive of the application. The ABA submits that the proposed amalgamation would not substantially lessen competition between BPAY, eftpos and NPPA because their products are not close substitutes for each other. COBA submits that the proposed amalgamation would create more competition between payment schemes.
 - 2.19. By contrast, Mastercard submits that the ACCC should not be satisfied on the information provided by ICA that there will be no substantial lessening of competition as a result of the proposed amalgamation. eftpos considers that there are several areas of direct overlap across the three entities' roadmaps, which could be eliminated following the proposed amalgamation. Other stakeholders including the Australian Lottery and Newsagents Association (**ALNA**) and ACAPMA also suggest that NPPA, eftpos and BPAY compete now and/or will increasingly compete in the future. ARA is supportive of the proposed amalgamation, but submits that the commitment to preserving eftpos' roadmap is only until June 2022 and it is uncertain whether future funding would be diverted to eftpos.
 - 2.20. Mastercard submits that there are discrepancies in the application and the supporting materials relating to the counterfactual and to the reported closeness of competition expected in the counterfactual.
 - 2.21. The ACCC has identified existing and/or potential overlaps in the following low value payment segments.

Person-to-business point-of-sale electronic payments

- 2.22. The ACCC is considering the extent of current and likely future competitive overlap between point-of-sale payments services facilitated by eftpos and the NPPA.
- 2.23. There appears to be a degree of overlap between: a) the functionality of eftpos debit payments and Beem It (using a card, mobile/digital wallet or, in the future, a QR code); and b) point-of-sale payments using the NPPA's single credit transfer (**SCT**) service and, in the future, its Mandated Payments Service (**MPS**) (i.e. using a mobile phone such as via an app or by scanning a QR code).
- 2.24. The ACCC is also considering the degree of competitive constraint that would be imposed by the international card schemes (such as Mastercard and Visa) and the threat of new entry (including by international payment services providers) in this segment if the proposed amalgamation were to proceed.

Online retail, bill and invoice payments (including one-off and recurring payments)

- 2.25. The ACCC is considering the extent of current and likely future competitive overlap between one-off and recurring online payments services facilitated by BPAY, eftpos and the NPPA.
- 2.26. There appears to be some overlap between: a) the functionality of BPAY's BPAY Payments and BPAY View services; b) eftpos' card on file service and Beem It service (including Beem It BPAY); and c) the NPPA's SCT service (and BPAY's Osko overlay) and, in the future, the NPPA's MPS service.
- 2.27. The ACCC is also considering the degree of competitive constraint that would remain from the international card schemes, intermediaries such as PayPal and 'buy now pay later' providers, tech companies, the Direct Entry system, and the threat of new entry, if the proposed amalgamation were to proceed.

Person-to-person (P2P), person-to-business (P2B) and business-to-business (B2B) payments

- 2.28. The ACCC is considering the extent of current and likely future competitive overlap between the services offered by eftpos, NPPA and BPAY for person-to-person, person-to-business and business-to-business payments.
- 2.29. There appears to be some overlap between: a) the functionality of eftpos' services (including Beem It and the Deposit and Withdrawal messages) on the one hand; and each of b) services offered by NPPA (including NPPA's SCT service); and c) BPAY (including BPAY's Osko overlay) on the other, for these types of payments.
- 2.30. The ACCC is also investigating the degree of competitive constraint that would be imposed by the international card schemes, services such as PayPal.ME, Splitr, Splitwise, the Direct Entry system and the threat of new entry (including by international payments services providers), for these types of payments.

Business-to-person (B2P) and government-to-person (G2P) payments.

- 2.31. The ACCC is considering the extent of current and likely future competitive overlap between the services offered by eftpos, NPPA and BPAY for payments such as disbursements from businesses or government to individuals.
- 2.32. There appears to be some overlap between the planned functionality of eftpos' combined Deposit and Withdrawal messages and that of the NPPA SCT Category Purpose Code business service. There may also be additional overlap with BPAY's Osko 1 service or the NPPA's planned MPS service.
- 2.33. The ACCC is also considering the degree of competitive constraint that would be imposed by services relying on the Direct Entry system, and any other potential constraints including the threat of new entry (including by international payments services providers).

- i. **The ACCC welcomes comments on the existing and/or potential overlaps that it has identified, and the likelihood of the proposed amalgamation having the effect of substantially lessening competition in a relevant market(s) in connection with these overlaps, including the extent to which existing competing product or service providers and/or new entrants (including international payments service providers) are likely to impose competitive constraints.**

Potential horizontal effects – payments services infrastructure

- 2.34. Payments infrastructure allows for payments to be cleared, authorised and settled, which enables the provision of payments services.
- 2.35. The ACCC seeks further information on the extent to which the payments infrastructure of each of eftpos, BPAY and NPPA is currently being used or can be used by payments services providers to provide various payment services. For example, whether add-on services currently provided on point-of-sale transactions using the eftpos network could be alternatively provided on the NPP infrastructure, and the level of competitive constraint this provides.
- 2.36. Most submissions do not directly comment on competition in relation to payments infrastructure. However, Mastercard submits an economic assessment indicating that the amalgamation entities overlap in the market for the provision of upstream infrastructure, and that the Direct Entry system should not be expected to impose a competitive constraint on NewCo given that payments are expected to migrate to the NPP.
- 2.37. At this stage, the ACCC is not satisfied that the amalgamation would not have the effect, or be likely to have the effect, of substantially lessening competition in a market or markets relating to payments infrastructure.

ii. The ACCC seeks further information on:

- the extent to which the payments infrastructure of each of eftpos, BPAY and NPPA is currently being used or can be used by payments services providers to provide various payment services;
- the degree of competitive constraint that is likely to be imposed by remaining payments infrastructure such as the international card schemes, or through new entry;
- the likely level of ongoing investment in the payments infrastructure of each of eftpos, BPAY and NPPA, with and without the proposed amalgamation.

NewCo's ability or incentive to remove or diminish eftpos' capability

- 2.38. The ACCC is considering whether NewCo will have the ability and incentive to directly or indirectly remove or diminish eftpos' capability following the proposed amalgamation, and whether this is likely to have the effect of substantially lessening competition in a relevant market relative to the counterfactual. Several submissions raised concerns regarding eftpos' level of strategic independence following the proposed amalgamation. In particular: that eftpos will lose its ability to control its own roadmap; a lack of certainty regarding eftpos' future roadmap beyond the short term; and that eftpos transaction volumes could be shifted to the NPP (noting the NPP will require more volume and investment to be viable), inhibiting eftpos' ability to innovate.
- 2.39. eftpos considers that the proposed amalgamation poses a risk to eftpos' ability to continue with its current strategy, which may affect/weaken its ability to compete with the international card schemes in the medium to long term, potentially resulting in higher costs for merchants. Specifically, eftpos raises concerns about the possible elimination of competition in areas of overlap between the domestic payments entities, which could result in a reduction in eftpos transaction volumes (in online purchases, deposit and withdrawal use cases, and over time retail transactions) and

an inability to diversify into new services (e.g. Beem It, Connect ID). Eftpos is also concerned about the effectiveness of the governance arrangements within NewCo to protect eftpos' interests. Due to these risks, eftpos also does not agree with the Applicants' submission that the Proposed Amalgamation is necessary for eftpos to better compete with the international card schemes in the future.

- 2.40. ICA submits that there is no proposal to divert volume from eftpos to NPPA. Further, it considers the proposed amalgamation will enable eftpos to be more competitive with the international card schemes (due to pooling of resources and more efficient investment to enable innovations by eftpos and the two other schemes to achieve network effects faster than in any counterfactual scenario).

iii. The ACCC is considering whether NewCo has the ability and incentive to directly or indirectly diminish eftpos' ability to otherwise expand or introduce new service offerings following the proposed amalgamation and seeks submissions on this issue.

Least Cost Routing

- 2.41. Several retailer associations submitted that the Least Cost Routing¹ (**LCR**) initiative may be neglected or abandoned under NewCo. LCR allows merchants to route contactless dual network debit card (**DNDC**) transactions through the network they consider to be the lowest cost. The availability of LCR enables competition between eftpos and international card schemes at the point of sale.
- 2.42. Financial institutions may not have strong financial incentives to provide LCR. However, the major banks in recent years have offered LCR to merchants due to persuasion from the RBA. The ACCC considers that the RBA is likely to continue to support LCR initiatives.
- 2.43. ICA submits that the issue of LCR is not relevant to the ACCC's assessment of the Proposed Amalgamation, and that the deployment and take-up of LCR will be the same in any version of the scenario without the proposed amalgamation and the scenario with the proposed amalgamation.² The ACCC considers that LCR is relevant to its assessment of how consolidation of the three domestic payments systems is likely to affect competition, and affect the incentives to pursue LCR (as well as implementation of other eftpos initiatives).

Potential vertical effects – incentive and ability to foreclose

- 2.44. Following the proposed amalgamation, NewCo would control key payments infrastructure to which third party providers may seek access to provide payment services in Australia. Foreclosure of access to this infrastructure could result in higher barriers to entry, less innovation and less competition for payments services.
- 2.45. The ACCC is considering whether combining NPPA's infrastructure with BPAY and eftpos, which operate in downstream markets (in particular in relation to BPAY, whose Osko service is an overlay on the NPP infrastructure), could result in NewCo

¹ Also known as Merchant Choice Routing.

² They also submit, in the context of LCR, the proposed amalgamation is expected to lead to an increase in the volume of transactions, and in turn reduce overhead costs, which has the potential to lower transaction costs. However, it is unclear what transaction volumes the Applicants are referring to (eftpos, BPAY or NPP transaction volumes), and how such volumes would increase as a result of the proposed amalgamation.

having the ability and incentive to foreclose competition and reduce innovation in competing payments services that rely on the NPP infrastructure.

- 2.46. Parties including Mastercard, Visa and SuperChoice have raised concerns about NewCo's level of control over the value chain. Mastercard submits that combining the NPP infrastructure with BPAY and eftpos has the potential to foreclose competition in competing payments services that rely on this infrastructure, and that there should be operational separation of NPP from the rest of NewCo. Similarly, SuperChoice raises concerns about NewCo being a provider of retail services as well as of the infrastructure on which those services sit. In addition, Visa submits that control of the end-to-end value chain could reduce the motivation for NewCo shareholders to explore and offer alternative solutions to customers. Visa and SuperChoice both comment on the importance of non-discriminatory access to the NPP.
- 2.47. ICA submits that with the proposed amalgamation, each of the three payment schemes will continue to operate substantially in accordance with their current governing rules to June 2022, so the NPP will continue to be subject to an open and non-discriminatory access regime. ICA submits that this addresses any concerns raised about access and increased prices, particularly those raised by Mastercard.
- 2.48. ICA further submits that if overlay services applications are received, they would be dealt with by NPPA management and, if Board involvement was required, this would involve independent directors only.
- 2.49. The ACCC is continuing to assess the effects of the proposed amalgamation on third parties' access to payments infrastructure.

iv. The ACCC invites submissions on:

- **whether NewCo would have an incentive to foreclose access to the NPP infrastructure. In particular, whether NewCo would have an incentive to foreclose third-party payment service providers from accessing the NPP infrastructure to provide services that compete with the Osko payment service.**
- **whether third party payment service providers could use alternative infrastructure to the NPP infrastructure to provide payment services.**
- **whether there is scope for NPP's governing rules to change, particularly after 2022, to make the access regime less open than it would be without the proposed amalgamation.**
- **whether there is scope for NewCo to engage in indirect forms of discrimination, for example, frustrating or delaying access by third parties to the NPP infrastructure.**

Public benefits

- 2.50. The ACCC's preliminary views on public benefits are set out below. While the ACCC's preliminary view is that some public benefits are likely to arise from the proposed amalgamation, the extent and significance of those public benefits are unclear. The ACCC seeks submissions on the preliminary views outlined below.
- 2.51. Submissions from financial institution representatives (including the ABA and COBA) generally consider that the claimed public benefits are likely to arise. In contrast, submissions from small business and retailer representatives generally consider the

claimed benefits are either unclear or unlikely to arise. They also consider the proposed NewCo governance arrangements would not enable them to provide meaningful input into NewCo decision-making. Other submissions dispute the claimed transaction cost savings and efficiencies.

Reduced uncertainty allowing for more efficient deployment of capital, sooner

- 2.52. ICA submits that the proposed amalgamation will be likely to result in reduced uncertainty which allows for more efficient deployment of capital, sooner and with less risk of stranded assets, because NewCo will be able to co-ordinate and direct investments.
- 2.53. The four major banks provided statements that broadly support this claimed benefit. In particular, that the proposed amalgamation will remove silos and enable strategic coordination, assessment of options and sequencing of roadmaps to avoid duplication of investments targeting the same use cases, and pooling of resources to drive innovation and create scale.
- 2.54. On the other hand, Benchmark Analytics considers that the proposed amalgamation is not necessary because a body such as the Australian Payments Council could facilitate investment coordination.
- 2.55. The ACCC's preliminary view is that if the proposed amalgamation proceeds, a single overarching body (NewCo) could enable information sharing, coordination and alignment of roadmaps across the three entities to remove overlapping payment initiatives. This may result in a more unified roadmap for NewCo, and greater clarity of proposals for consideration by NewCo shareholders and these efficiencies may constitute a public benefit.
- 2.56. At this time, it is not clear to the ACCC that a more efficient process would result in NewCo shareholders investing to adopt payments initiatives sooner than they would without the proposed amalgamation, thereby increasing the likelihood of payments initiatives reaching network effect more quickly than without the proposed amalgamation for the reasons discussed below.
- 2.57. The ACCC considers there are other factors impacting on banks' willingness to support particular proposals from the three payment schemes. These include the commercial strategy for each financial institution, the investment cycles and availability of funding, consideration of other competing proposals (such as from the international card schemes), and other priorities such as technical development of the banks' own service offerings. Taken together, the ACCC's preliminary view is that these factors are likely to mean that there will continue to be challenges to the banks' coordination and adoption of payments initiatives, with or without the proposed amalgamation. While the proposed amalgamation may create a more certain environment for investment coordination among banks to occur (due to a unified roadmap and removal of contention for support from the three entities), it is not clear to the ACCC that the proposed amalgamation will likely enable the banks to reach decisions and commit to proposals sooner in all circumstances than without the proposed amalgamation.

v. The ACCC invites submissions on how the proposed amalgamation will enable the banks to reach decisions and commit to proposals to support payment initiatives sooner. The ACCC also seeks submissions on other means of coordination between the banks (e.g. through Australian Payments Council and AusPayNet), and how effective these would be.

Enhanced speed to market of innovations

- 2.58. ICA submits that the proposed amalgamation will enhance the speed to market of innovations by the three payments schemes, because it will remove information asymmetries and uncertainties, and NewCo will be able to consult with NewCo shareholders lawfully when making decisions regarding innovations.
- 2.59. For the reasons mentioned above, the ACCC's preliminary view is that it is unclear whether the proposed amalgamation is likely to lead to the banks individually reaching decisions and committing to proposals put to them by NewCo more quickly compared to what would occur without the proposed amalgamation.

Increased likelihood of hybrid and targeted local innovations

- 2.60. ICA submits the proposed amalgamation will enable flexibility to differentiate from the international card schemes by developing innovations across account-to-account and cards infrastructure, and provide access to combined data and technical expertise of the three payments schemes for innovative data services.
- 2.61. A number of interested parties submit that this claimed benefit does not necessarily arise as a result of consolidation, as collaboration is possible in the absence of consolidation. In response, ICA submits that the type of collaboration that is required to develop and execute a pipeline of payments innovations would not be possible, as a matter of law and for the other reasons outlined in the application without the proposed amalgamation. ICA also submits that previous attempts at coordination and collaboration through AusPayNet (e.g. QR code), have been unsuccessful. Dr Edwards and Mr Blockley both consider that while hybrid products could be developed across different schemes today, consolidation would be likely to result in more effective collaboration and hybrid products that would not be developed, or would not be developed as quickly, without the proposed amalgamation.
- 2.62. It is currently unclear to the ACCC that the benefit of collaborative innovation among competing payments rails (or between competing payments rails and payments service providers) could not be achieved without the merger. For instance:
- NPPA and BPAY have been in a commercial partnership due to the development and launch of BPAY's Osko 1 services on the NPP Basic Infrastructure (likely from 2015 to present).
 - eftpos indicates that regardless of the consolidation, it will continue to engage with other parties including competitors in non-competing activities that are of mutual commercial interest.
- 2.63. While ICA indicates that authorisation is sought in order to have a legal framework to plan for medium to long-term innovation projects across the three entities (rather than one-off projects), ICA has not provided any examples about the types of medium or long-term hybrid innovations that are likely to arise as a result of the proposed amalgamation (aside from one example of developing an interoperable QR code standard across the three payments schemes).³ Mr Blockley has provided a number of ideas regarding hybrid innovation products. However, as these ideas have not been considered by the three schemes and their participants, it is uncertain whether the types of hybrid products considered by Mr Blockley are likely to eventuate.

³ Based on current information, it appears that the NPP QR Code Standard is intended to facilitate development of QR codes that will be used to initiate a payment over the NPP platform. In contrast, eftpos' QR Orchestration is intended to facilitate acceptance of QR codes that will be used to initiate a payment over various different payment rails (i.e. it will be rail agnostic, rather than just directing payments over the eftpos rail).

Reduced risk of stranded payments assets

- 2.64. ICA submits that the proposed amalgamation will reduce the risk of payments innovations becoming stranded due to an inability to reach network effect in a timely manner, as has occurred with BPAY's Osko 3 Request to Pay innovation which is partially impaired.
- 2.65. Based on the current information available, the ACCC's preliminary view is that the partial impairment of Osko 3 appears to be attributable to a subsequent change in circumstances and the NPP participants' priorities, rather than to a lack of coordination among the participants or network effects.⁴
- 2.66. The ACCC's preliminary view is that it is not sufficiently clear that the proposed amalgamation is likely to reduce the risk of stranded assets.

vi. The ACCC seeks information on other examples of stranded payment assets which have occurred because participants in each of eftpos, NPP or BPAY have not been able to coordinate which functionality they invest in, and the extent to which the proposed amalgamation will reduce the risk of stranded assets.

Greater import substitution and reduced dependency on foreign payments service providers

- 2.67. ICA submits that the proposed amalgamation will enhance competition with the international card schemes, by ensuring eftpos continues to be a pricing wedge against the international card schemes and other global players, and result in NewCo being a viable alternative to the international card schemes.
- 2.68. The ACCC's preliminary view is that to the extent the proposed amalgamation results in import substitution, this constitutes a likely public benefit.
- 2.69. However, the ACCC is considering, and seeks further information on, the extent to which import substitution could be achieved, and is likely, without the proposed amalgamation. For instance, the ACCC notes that without the proposed amalgamation, eftpos submits it will continue with its current strategy to diversify into new areas of payments services in order to better compete with international card schemes and international technology companies.
- 2.70. The ACCC is also considering, and seeks submissions on, the extent to which eftpos is likely to be an effective competitor to the international card schemes with and without the proposed amalgamation. As noted above at 2.38-2.39, the ACCC is considering whether the proposed amalgamation will result in NewCo having the ability or incentive to reduce or remove eftpos' capability, which is likely to impact eftpos' ability to be an effective competitor to the international card schemes.

vii. It is unclear whether the proposed amalgamation is likely to result in greater import substitution by enhancing competition between eftpos and the international card schemes, relative to the counterfactual, and the ACCC invites submissions on this issue.

⁴ In around September 2015, BPAY secured commitment from NPP participants (including the four major banks) to fund all three Osko services. BPAY completed its design for Osko 3 in 2017, before the NPP went live. In 2018, numerous NPP participants withdrew their support to implement Osko service 2 and 3 due to: work associated with the initial NPP program, and later work on the MPS taking priority (NPS was mandated by the NPPA Board and supported by the RBA); overlapping capabilities of Osko 3 and MPS; and challenges in securing funding. Currently, Osko service 3 has been on hold pending the launch of MPS, with no current implementation date.

Creating policy benefits by ensuring Australia has a strong domestic payments company

- 2.71. ICA submits that consolidation will provide a greater ability for the Australian Government to influence the merged domestic entity (in the event of a financial crisis) and ensure payments system resilience (reducing over-reliance on the international card schemes).
- 2.72. It is unclear how consolidating three entities into a single entity will improve system resilience. In addition, and as noted above in relation to import substitution, it is not clear that the proposed amalgamation is likely to reduce reliance on the international card schemes relative to the counterfactual.
- 2.73. The ACCC notes that with or without the proposed amalgamation, the government and the RBA will have a role in managing broader policy objectives relating to sovereignty, security and resilience of Australia's domestic payments systems.

Reduced transaction costs for the three payments schemes and their participants and synergies

- 2.74. ICA submits that a unified roadmap will reduce time spent by the three domestic schemes and their participants assessing innovations which are unlikely to be successful.
- 2.75. ICA submits the proposed amalgamation will give rise to cost synergies through a range of shared services and functions.⁵
- 2.76. The ACCC's preliminary view is that it is likely that some transaction cost savings could arise, however it is not clear how significant such cost savings would be.
- 2.77. The ACCC also considers it is possible that some synergies from shared services could arise. However, such benefits may be limited to the extent each scheme and its infrastructure will be maintained separately following the amalgamation (due to each having different products and different operating rules). It is likely that any cost synergies would become significant if one or more schemes were to reduce its existing or future planned product offerings (for instance, to reduce overlapping products across the three schemes).

Reduced complexities associated with complying with three sets of compliance obligations

- 2.78. ICA submits the proposed amalgamation will provide an opportunity to reduce compliance burden, for example, standardising fraud reporting. It has not provided any other examples or details about the materiality of any compliance-related cost savings.
- 2.79. The ACCC understands that following the proposed amalgamation, each of the three payments schemes will continue to have separate compliance obligations as they have different operational and technical requirements. Accordingly, any reduction in compliance obligations arising from the amalgamation is likely to be minimal.

Enhanced ownership interests and voting rights of smaller participants in NewCo

- 2.80. ICA submits that enhanced interests and voting rights of smaller participants will enable them to have greater influence over the three payment schemes. The proposed governance structure of NewCo is discussed at 2.6-2.11 above. The ACCC

⁵ As indicated in section 27.12 of the Application, these include strategy functions (e.g. finance, legal, communications and 24/7 incident management), shared management of commercial relationships, shared scheme operations and administration, and shared technology (e.g. common API and middleware access to schemes).

will seek further information from ICA on the structure, control and governance of NewCo to inform its view on this public benefit claim.

Enhanced engagement with small businesses and other participants

- 2.81. ICA submits that end-user committees will be established to represent a range of views including those of small businesses. Feedback from interested parties is that such committees lack real influence, and have too many constituents to be workable.
- 2.82. The ACCC will seek further information from ICA on how the end-user committees will facilitate enhanced engagement with small businesses and other participants to inform its view on this public benefit claim.

Relevance of overseas payments consolidation experience

- 2.83. The Applicants' industry expert considers that the proposed amalgamation will enhance competition against the global payments players, as has occurred with the consolidation of domestic payments systems in the UK⁶ and in Singapore.⁷
- 2.84. Based on current information, it is not clear to the ACCC that the experiences of consolidations in those jurisdictions are directly comparable, because the overseas payments schemes do not supply the same products and services as those supplied by BPAY, eftpos and the NPP. Further, it is not clear that the outcomes of the UK and Singapore consolidations demonstrate benefits directly attributable to the consolidations.

viii. The ACCC seeks information on whether and how the experience of overseas payments consolidations is relevant to the proposed amalgamation.

⁶ The UK consolidation involved the consolidation of Bacs Payment Schemes Limited (the operator of the Bacs payment system), Faster Payments Scheme Limited (the operator of the Faster Payments Service payment system) and Cheque & Credit Clearing Company Limited (the operator of the Cheque & Credit Clearing system).

⁷ The Singaporean consolidation involved the consolidation of the NETS (the operator of the domestic debit scheme), Banking Computer Services Private Limited (the operator of the Singapore Automated Clearing House), and BCS Information Systems Pte Ltd (a systems integrator for Singapore's FAST real-time payment infrastructure).