

Summary - Payments Amalgamation - Application to the ACCC for Authorisation

1 Executive Summary

1.1 Application for authorisation to acquire shares to amalgamate Australia's three payment schemes

Industry Committee Administration (ICA) is applying to the Australian Competition and Consumer Commission for authorisation on behalf of its members who are shareholders of BPAY Holdco, members of eftpos and/or shareholders of New Payments Platform Australia (NPPA), and NewCo (once it is incorporated) for:

- (a) the existing shareholders and members of BPAY Holdco, eftpos and NPPA, as the case may be, to acquire shares in NewCo; and
- (b) NewCo to acquire shares in each of BPAY Group and BPAY Pty Ltd (together BPAY Opco), eftpos and NPPA (the acquisitions of shares being the Conduct).

The Conduct will result in NewCo owning BPAY Opco, eftpos and NPPA.

It will re-organise the current owners' interests in BPAY Opco, eftpos and NPPA.

BPAY Holdco, eftpos and NPPA own and operate different and largely complementary payment schemes in Australia, in competition with the ICS (Visa and Mastercard) and other global companies, including Big Tech and FinTech companies.

1.2 NewCo

NewCo will be owned by the current shareholders and members of BPAY Holdco, eftpos and NPPA. The Reserve Bank of Australia (RBA) is currently a shareholder of NPPA. However, the RBA will not become a shareholder of NewCo and is not, therefore, an Applicant.

NewCo will be economically self-sustaining, will not be profit maximising¹ and will be able to find the most efficient and least cost way of innovating across the three payment schemes.

1.3 Admitting new shareholders to NewCo

The Applicants have formulated a set of principles for NewCo's board of Directors to consider when admitting new shareholders to NewCo. The overarching guiding principle is that any expansion to NewCo's shareholder base adequately represents the community of stakeholders.

When doing so, it is envisaged that Directors will have regard to the *Foreign Acquisitions and Takeovers Act 1974* (Cth), the *Critical Infrastructure Act 2018* (Cth) and the takeovers provisions in the *Corporations Act 2001* (Cth), as well as to whether the potential new shareholder will be actively involved in the governance of NewCo, including with the roadmap and future direction for the development of payments services, promoting innovation in payments and enhancing the connectivity of BPAY, eftpos and NPPA.

New shareholders will need to be a user of the payment services of BPAY, eftpos or NPPA and will need to make a capital contribution which is not expected to be significant.

1.4 Rationale

The shareholders and members of BPAY HoldCo, eftpos and NPPA, who are represented on the Industry Committee, determined that the Conduct will allow the three payment schemes to:

- (a) co-ordinate their innovations, creating efficiencies for their customers (including by reducing transaction costs), businesses and consumers and reducing the risk of stranded assets from innovations that are not able to succeed due to their inability to achieve network effects in a timely manner; and
- (b) better compete against existing and future global payment companies, enhancing competition in domestic payments markets.

The Applicants believe the Conduct will overcome the network externalities and market failures that currently exist in the Australian payments industry where the significant challenges to co-ordinating investments in new payments services across Australia's banks and other financial services institutions has prevented new payment services from achieving network effects in a timely fashion.

The "splintering", confusion and "wait and see" approach that characterises investment decisions has meant new Australian payments services have not achieved high adoption rates, have been inefficiently delayed or abandoned (resulting in asset write downs).

The Conduct will provide the necessary leadership to allow participants in Australia's payments industry to co-ordinate their focus on an agreed roadmap of innovations.

1.5 Ancillary conduct

The Conduct will not result in any material change to NPPA's scheme rules, which are authorised by the Commission.² NPPA is satisfied that the immaterial changes will be covered by the existing authorisation.

eftpos' scheme rules are not authorised by the Commission. eftpos is considering whether the Conduct will result in any material change to its scheme rules and, if so, whether that would require an authorisation from the Commission.

Should the Conduct result in a need for eftpos to apply to the Commission for an authorisation of its scheme rules, the Applicants envisage that eftpos would apply for urgent interim authorisation and authorisation to avoid any delays in the Commission's assessment of the Application.

The Conduct will not involve any ancillary conduct by BPAY.

1.6 Counterfactual scenario

The Applicants' assessment of the likely counterfactual scenario, the Conduct's likely effects on competition and likely public benefits and detriments is supported by a report prepared by an expert economist, Dr Geoff Edwards of Charles River Associates. Dr Edwards' report is annexed to the Application.

² Please see: NPPA, Authorisation Numbers A91560 – A91562, the Final Determination of which was made on 5 April 2017, in perpetuity.

Based on the content of the confidential statements annexed to the Application, the counterfactual scenario is likely to involve a lesser form of amalgamation than the Conduct. That might comprise a combination of two of Australia's three payment schemes, a combination of one of the schemes with a part of another scheme, or some type of contractual arrangement, possibly between one of the schemes and one of its closest competitors.

The likely counterfactual scenario would be characterised by the factors described above which have created the rationale for the Conduct. A lesser degree of amalgamation would not remove those factors – the “splintering”, confusion and “wait and see” approach to investment decisions and the inefficiencies caused by them would persist in entirety or to a large extent in the counterfactual scenario.

The public benefits described below would not be realised in the counterfactual scenario or would be realised to a significantly lesser degree. For example, the enhanced ownership interests and voting rights of smaller participants and the policy benefits would not be realised at all in the counterfactual scenario. There would be less engagement with small business and other users of Australia's payments' ecosystem and a lower likelihood of hybrid products being developed in the counterfactual scenario.

The ICS, Big Tech and Fin Tech companies would continue to substantially constrain the Australian payments schemes. The threat of them causing disruption in Australia's payments industry would remain.

1.7 Likely effects on competition

The Conduct will not have the effect, or be likely to have the effect, of substantially lessening competition in any market, regardless of how the affected markets are defined.

Extent of complementarity

The three Australian payments schemes own and operate largely complementary assets and do not offer services that are close substitutes for each other - eftpos' core service is debit card derived payments through most channels including at the point of sale, in-app and online; BPAY's core services are a bill payment service and Osko for fast payments which BPAY runs over NPPA's infrastructure, and NPPA's core service is fast A2A payments. BPAY's Osko service is complementary to NPPA's core fast A2A service and is not a substitute for it.

The schemes are not each other's closest competitors

As payment mechanisms and habits have changed (in particular, due to the move to digitalisation and e-commerce), a degree of marginal competition has occurred between the three payments schemes.

However, the payment schemes are not, and are not likely to be, each other's closest competitors. Their closest competitors are global payments schemes which have significant competitive advantages over the three Australian payments schemes, including as a result of their substantially greater research development capabilities and their materially greater capacity to invest.

No substantial change to the concentration in any possible market

The Conduct will not have any substantial effects on the concentration in any possible market.

The Conduct's incremental change to the concentration in any possible market will be approximately 5% or less.

These are not changes in the concentration of suppliers that should concern the Commission. They would not normally concern the Commission.

Enhancing competition against the ICS and Big Tech

The Conduct 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.

The commitment to the Prescribed Services is demonstrative of how the Conduct will achieve this. The commitment was made during the decision-making process that led to the Application. It resulted in the Applicants committing to NewCo to bring to market a minimum set of services from BPAY Opco, eftpos and NPPA in an agreed sequence and over an agreed timeframe. Most of the Prescribed Services relate to online payments and will assist eftpos with its online payment capability. Others relate to real-time payments and some relate to QR Codes.

Some of the Prescribed Services which were near term and fully funded may have been implemented in time absent the Conduct but the timing of implementation of the Prescribed Services and the funding commitment to them is unlikely to have been as certain as it is under the Implementation Agreement.

Putting in place a corporate structure that will provide the necessary leadership to allow participants in Australia's payments industry to co-ordinate their focus on an agreed roadmap of innovations and avoid the "splintering", confusion and "wait and see" approaches to investment which characterise the status quo (and which would persist in the counterfactual scenario), will result in greater competition with international payment companies, including the ICS, Big Tech and Fin Tech companies (such as, Apple Pay, Google Pay and Samsung Pay).

The ICS, Big Tech and Fin tech companies are expanding their offerings within the payments landscape in Australia by leveraging their large installed bases and deep relationships with consumers. Those global companies will continue to exercise a powerful competitive constraint in Australia's payments landscape, including through their considerable potential to cause major disruption in Australian payments markets.

Enhancing competition by removing inefficiencies from the investment decision-making process

The current market structure, in which BPAY, eftpos and NPPA each operate as separate companies, has given rise to inefficiencies, as each company seeks to attract banks' support for their respective innovations.

For example, BPAY's request to pay service, eftpos' card on file service and NPPA's MPS are arguably overlapping to some extent because they offer solutions for recurring P2B payments, although the main targets of each differ.

BPAY's request to pay service is targeted at a broad range of customers including billers who want to request that payments be "pushed" to them by customers as well as small businesses and P2P; for eftpos' card on file service, the main target is customer and merchant initiated recurring in-app and online payments which is currently dominated by Visa and Mastercard, and for NPPA's MPS, the main target is billers who want authorisation from customers to "pull" payments from their accounts on a regular basis (a service currently provided by direct debits over the DE system).

Some of those innovations have similar use cases (albeit their specific targets are different). Any marginal competition between the solutions has not resulted in improved prices and/or services for customers (financial institutions) or end-users (businesses and consumers) or any other beneficial effect for consumers.

Rather, the different solutions for the same challenge have resulted in:

- (a) Increased overall transaction costs for domestic scheme customers;
- (b) Delays in the adoption of innovations within financial institutions which, in turn, have prevented the innovations from achieving the network effects and ubiquity they need for success. The success of a payment scheme is closely linked to the ability to achieve wide adoption by participants (achieving “ubiquity”) which is often assisted by providing a constant payer experience irrespective of a particular payment method; and
- (c) Impairments from stranded assets, as has occurred with BPAY’s Osko 3 (request to pay services).

The Conduct’s primary effect will be to remove or reduce these inefficiencies from the investment decision-making process through which innovations will be launched by Australia’s payment schemes. This will enhance competition among Payment Services. It will not remove future competition.

These inefficiencies can be understood as a species of market failure arising from incomplete information, of the kind that arises where consumers do not have accurate information about the market prices or product quality, such that producers have an incentive to supply too much of some products and too little of others.³

Preservation of existing rules of open and non-discriminatory access and strategic roadmaps to June 2022

Each of the three payments schemes will continue to operate substantially in accordance with their current rules – including rules that allow for open and non-discriminatory access to them and their existing strategic roadmaps to June 2022, as wholly owned subsidiaries of NewCo.

Checks on fundamental changes to the Schemes

Each shareholder of NewCo will have their own class of redeemable preference shares and will have one vote at shareholder’s meetings regardless of the number of shares they hold.

The classes of redeemable preference shares will be banded together differently for nominating directors and specified extraordinary resolutions related solely to individual Payment Services. The classes of redeemable preference shares will allow users of each Payment Service to prevent specified types of fundamental changes to the Payment Service.

If NewCo’s board were to make a decision which would result in one of the following fundamental changes to a Payment Service:

- (a) Changing the nature, scale, or operation of a Payment Service;
- (b) Ceasing to provide the Payment Service;
- (c) Changing the manner of funding the operating costs of providing a Payment Service (including any requirement for particular shareholders

³ R Pindyck and D Rubinfeld *Microeconomics* (9th edition) (Pearson, 2018) at p 611.

to fund new investment in the Service) or the manner in which funds generated by a payment service are utilised (including the use of funds generated by a payment service for investment in another service);or

- (d) Changing the agreed roadmap to June 2022 for the development of the Payment Service,

then any two directors will be able to call for the decision to be ratified by an extraordinary resolution (75%) of the shareholders who are participants in that Payment Service at the time.

For example, if a decision were to be made to change the manner of funding the operating costs of eftpos, or the manner in which funds generated by eftpos are utilised, and two directors called for shareholder ratification, it would be necessary for at least 75% of the shareholders who use eftpos' Payment Service to vote in favour of the resolution before it could be passed.

NewCo's governance arrangements will allow users of each Payment 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.

1.8 Likely public benefits

The Conduct is expected to deliver a number of benefits to Australian consumers, businesses (both small and large) and other members of the Australian public. The Applicants submit that each of the following likely benefits would not be realised in the absence of the Conduct:

- (a) Enhanced ownership interests of smaller participants, including non-ADIs, and non-bank acquirers.
- (b) Enhanced voting rights of smaller participants, including non-ADIs, and non-bank acquirers.
- (c) Enhanced engagement with small businesses and other participants in the Australian payments' ecosystem.
- (d) Reduction in uncertainty allowing for more efficient deployment of capital, sooner.
- (e) Enhanced speed to market of innovations developed by Australia's three payment schemes.
- (f) Increased likelihood of hybrid and targeted local innovations.
- (g) Reduction in the risk of stranded payments assets from innovations which fail to achieve network effects and ubiquity (both necessary for their success) in a timely way.
- (h) Reduction in transaction costs for the three Payments Schemes and their Scheme Members.
- (i) Greater import substitution.
- (j) Creation of policy benefits (including sovereignty over Australia's payments systems) and support for the Australian Government policy objective to ensure Australia is a leading digital economy by 2030.⁴

⁴ <https://pmc.gov.au/domestic-policy/digital-technology-taskforce>.

- (k) Increased ease for third parties to develop more payments innovation by allowing them to access A2A and cards infrastructure through a single commercial entry point with clearer connection points to the schemes and harmonised standards, including technology standards.
- (l) Potential for synergies.
- (m) Over time, the potential to:
 - (i) minimise the regulatory burden associated with complying with three separate sets of compliance obligations; and
 - (ii) adopt common standards across the three payment systems.

1.9 Any detriments to the Australian public will be outweighed by benefits to the Australian public

The Conduct is not expected to result in any discernible detriments to the Australian public.

Any potential detriments are expected to be avoided as a result of the checks and balances described above. Those checks and balances will preserve the strategic roadmaps of each the three payments schemes to June 2022; preserve the open and non-discriminatory access offered by each of the three payments schemes; ensure that only users of a scheme who are shareholders of NewCo can determine whether any fundamental change may be made to the operation of the payment scheme, and allow new shareholders to be admitted to NewCo.

Greater engagement with small businesses and other users

In addition, to allay any concern that the Conduct will be detrimental to small businesses and/or other participants in Australia's payments ecosystem, the Applicants are proposing to put in place mechanisms to ensure there will be greater engagement with small business and other users of Australia's payments schemes.

The greater engagement will occur through two committees to be established by NewCo. The first committee will be an end-user committee to represent the views of end-users of BPAY, eftpos and/or NPPA, being individual consumers, small businesses, big businesses, industry associations, charities, corporations, fintech operators and government departments. The second committee will be a payments service provider committee to represent the interests of the payment service providers and other organisations in the payments ecosystem (such as Token Servicers and Digital ID Service Providers).

The terms of reference for the committees will be developed by reference to the following objectives:

- (a) ensuring the board of NewCo has a strong understanding of the issues and concerns of end-users, payment service providers and other organisations in Australia's payments ecosystem;
- (b) effectively managing interaction between NewCo's board, end-users, payment service providers and other organisations in the payments ecosystem to ensure their voices are heard;
- (c) enabling end-users, payment service providers and other organisations in the payments ecosystem to provide input to NewCo's board on the general strategic context of payments, including:
 - (A) the roadmap for the development of payments services;

- (B) promoting innovation in payments; and
- (C) enhancing connectivity between, and integration of, BPAY, eftpos and NPP.

Each of the two committees will be independent, will have close links to each other to encourage a broader perspective and will include a senior representative from each of Australia's three payment schemes.

Further, NewCo's board will be required to take into consideration the committees' views to inform its decision making, including in relation to the roadmap for the development of services. The dialogue between the committees and NewCo's board will be two way.

eftpos

The Conduct will not diminish eftpos' ability to compete with the ICS and Big Tech.

There is consensus among the Applicants that eftpos is critical to their ability to negotiate against the ICS and Big Tech and there is a strong and unanimous desire to ensure eftpos continues to operate as a critical pricing wedge against the ICS and Big Tech.

The desire to ensure eftpos continues to operate as a critical pricing wedge against the ICS and Big Tech is reflected in commitments to preserve existing rules of open and non-discriminatory access and to preserve eftpos' strategic roadmap to June 2022 as well as the checks on fundamental changes to the schemes described above.

1.10 Commission should authorise the Conduct

In conclusion, the Applicants submit that the Commission should authorise the Conduct because:

- (a) the Conduct will not be likely to have the effect of substantially lessening competition in any market, however defined and irrespective of which counterfactual scenario is adopted; and/or
- (b) the Conduct will be likely to give rise to a net benefit to the Australian public.