Summary

The Australian Competition and Consumer Commission (**ACCC**) has decided, pursuant to section 88(1) of the *Competition and Consumer Act 2010* (the **Act**), to grant authorisation for the proposed amalgamation of BPAY Group Holding Pty Ltd (**BPAY HoldCo**),[1] eftpos Payments Australia Limited (**EPAL**) and NPP Australia Limited (**NPPA**) (referred to as the **amalgamation**), after accepting a court enforceable undertaking (the **Undertaking**) from Australian Payments Plus Ltd (**AP+**), which will be the holding company after the amalgamation.

In reaching the views set out in this determination, the ACCC has had regard to the submissions provided by a range of parties, and documents and information obtained under the ACCC's compulsory information gathering powers, as well as the Undertaking.

The ACCC must not grant authorisation for a proposed acquisition unless it is satisfied, in all the circumstances, that:

- the proposed acquisition would not have the effect, or would not be likely to have the effect, of substantially lessening competition (**'competition' limb**) or
- the proposed acquisition 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 (**'net public benefit' limb**).[2]

Taking into account the Undertaking, the ACCC is satisfied in all the circumstances that the amalgamation would not, or would not be likely to, substantially lessen competition.

While the ACCC is not required to assess the amalgamation under the 'net public benefit' limb of the authorisation test, the ACCC considers that the amalgamation is likely to result in a public benefit. The ACCC is satisfied that, in all the circumstances, including the Undertaking, this public benefit is likely to outweigh any likely detriment arising from the amalgamation, including from a lessening of competition.

Parties to the amalgamation and the transaction

BPAY, EPAL and NPPA, through their respective payment schemes, provide a number of payment services that are utilised every day by Australian consumers and businesses. After the amalgamation, they will be wholly owned subsidiaries of AP+. EPAL, NPPA and BPAY will operate as 3 separate companies, with AP+ determining a unified investment roadmap for the 3 payment schemes.

BPAY primarily operates a domestic electronic bill payment service that enables users to make payments through a financial institution's online, mobile or telephone banking facilities to organisations which are registered billers.

EPAL's main business is facilitating electronic payments from customer bank accounts to merchant bank accounts at the point of sale. EPAL owns and operates the eftpos debit card scheme and associated infrastructure (**eftpos**). eftpos is most commonly associated with the use of plastic debit cards as a payment method for the purchase of goods and services. However, eftpos also facilitates some online debit card payments and debit card withdrawals at automatic teller machines.

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1 BPAY HoldCo and its wholly owned subsidiaries, BPAY Group Pty Ltd and BPAY Pty Ltd, are collectively referred to as **BPAY**.

2 Section 90(7) of the Act.

The New Payments Platform (**NPP**) was launched in February 2018 and is open access infrastructure used to facilitate real-time payments between bank accounts within Australia. It is a more modern version of the existing Direct Entry infrastructure used in transferring money between bank accounts.[3]

While the ownership structure, control and voting rights are different for each of BPAY, EPAL and NPPA, there is a significant degree of existing common ownership across the payment schemes. In particular, Australia and New Zealand Banking Group Limited (**ANZ**), Commonwealth Bank of Australia (**CBA**), National Australia Bank Limited (**NAB**) and Westpac Banking Corporation (**WBC**) (the **major banks**) have a significant interest in each.[4] Under the amalgamation, the major banks' voting rights will be slightly diluted but they will continue to have significant influence in determining whether future payment services are implemented.[5]

Competition analysis

The ACCC has examined the possible impacts on competition as a result of the amalgamation. The key aspects of the ACCC's competition analysis are:

- the likely effect of the amalgamation on the future availability of eftpos and least-cost routing (**LCR**)
- the overlap between current BPAY, EPAL and NPPA services
- the loss of potential competition between BPAY, EPAL and NPPA in the future
- the likely effect of the amalgamation on third party access to the NPP.

Likely future with and without the amalgamation

If the amalgamation does not proceed, the ACCC considers the status quo is likely to prevail in the short to medium term. That is, each of BPAY, EPAL and NPPA would continue to operate as a separate business. The major banks would also retain significant common ownership interests in each entity, and would continue to have influence over which payment services are adopted in the future in their capacity as issuers and acquirers.[6]

Some interested parties have expressed doubts about the viability of eftpos and EPAL (with or without the amalgamation). The ACCC does not have a basis on which to conclude that EPAL is a failing firm or that it is likely to cease providing eftpos debit card payments services in the medium to long term without the amalgamation. The ACCC considers that if

[3] The Direct Entry system co-ordinates and facilitates the exchange and settlement of bulk electronic transactions. Direct Entry is used for such payments as internet banking transactions and direct debit and direct credit instructions. Direct Entry occurs over the Bulk Electronic Clearing System for electronic debit and credit payment instructions. More information about the Direct Entry system is available at paragraphs [1.34-1.35].

[4] In the case of BPAY, 100% control.

[5] The major banks' voting rights will be diluted under AP+ compared to the rights they variously hold in BPAY, EPAL and NPPA currently. However, the major banks will still have significant influence in determining whether future payment services under the AP+ roadmap are implemented. This is because the ability of the major banks to influence the success of future domestic payment services will not be limited to their role as shareholders of AP+. The major banks collectively account for around 75% of residential deposits and therefore, the payment services they decide to implement, offer and promote to consumers is a major factor in how successful a payment method is.

[6] Issuers are the financial institution that issued the debit cards or credit cards being used in a purchase transaction. Acquirers are the merchants' (e.g. retailers') financial institution – they are often but not always banks, and facilitate the processing of a card payment, including collecting payment from the issuers and paying the merchants.

the amalgamation does not proceed, EPAL would be likely to continue to attempt to diversify its business.

Effect of the amalgamation on eftpos and LCR

eftpos plays an important role in maintaining competition in the routing of debit card payments. It is the only domestic debit card scheme in Australia. It is an alternative to and is often lower cost for merchants than the 2 larger international debit schemes it competes against: Visa Debit and Debit Mastercard.[7]

A number of interested parties, particularly small business representatives, have raised concerns about the effect of the amalgamation on the independence of EPAL, the provision of eftpos as a low cost debit card service, and the availability of LCR to merchants. Box 1 below explains LCR.

The ACCC has considered the role that eftpos plays in maintaining competition in the routing of debit card payments and whether the amalgamation is likely to result in a reduction in support for eftpos from the major banks or AP+. Such a reduction in support may take the form of, for example, constraining the ability of EPAL to improve or expand its low cost service model through measures such as offering new types of payments and improving non-price aspects of its services.

The ACCC considers that the major banks have mixed incentives with respect to eftpos such that there is a risk that eftpos' role in the Australian payments system may be diminished in the future with the amalgamation, which may result in a substantial lessening of competition. In order to address these competition concerns, the ACCC has accepted the Undertaking, which obliges AP+ to procure that EPAL maintains eftpos and facilitates the availability of LCR for a period of 4 years.

The ACCC also notes that the Reserve Bank of Australia (**RBA**) has encouraged competition in debit card payments, for example by promoting the issuing of dual network debit cards (**DNDCs**) and the provision of LCR to merchants (see Box 1 below). Further, the RBA has indicated a willingness to take further steps in the event that eftpos' ability to exert competitive pressure in debit card payment services was to weaken.[8]

However, while such steps could be directed to maintaining DNDCs and LCR, they would be in response to a diminution of eftpos' ability to exert competitive pressure after it has occurred. The ACCC considered it appropriate to accept the Undertaking because it is likely to mitigate the risk of such a diminution occurring. By specifically requiring AP+ to maintain support for eftpos, the Undertaking, together with the role of the RBA, reduces the risk that the major banks as shareholders of AP+ will deprioritise support for eftpos following the amalgamation.

[7] RBA, *Review of Retail Payments Regulation: Consultation Paper*, May 2021, pp 8-9.

[8] RBA, *Review of Retail Payments Regulation: Consultation Paper*, May 2021, p 13; RBA, Submission to ACCC, 9 July 2021, pp 3-4.

Box 1: DNDCs and LCR

> DNDCs are debit cards that have point of sale functionality with 2 debit card schemes, usually eftpos and either Debit Mastercard or Visa Debit. The way the 2 card schemes are commonly organised on a DNDC means that, absent an instruction at the point of sale, payments made using that card are routed to Visa Debit or Debit Mastercard (as applicable) by default. Payments made using DNDCs are routed to eftpos if consumers choose the 'cheque' or 'savings' option when inserting or swiping their DNDCs at payment terminals. Where a card is not inserted or swiped, LCR gives merchants the choice of routing a contactless payments to eftpos. Contactless payments include the 'tap and go' functionality commonly available and used across Australia.
>
> Without LCR, DNDC payments would typically only be processed through the Visa Debit or Debit Mastercard schemes, for which many merchants may incur higher fees than payments processed through eftpos.

The amalgamation will result in the loss of an independent EPAL Board which could be expected to make decisions solely in the interests of EPAL and the eftpos scheme. EPAL will become a wholly owned subsidiary of AP+ and its Constitution will be amended so that directors acting in good faith in the interests of AP+ will be taken to be acting in the best interests of EPAL.[9]

Further, as one of 3 operating companies (**OpCos**) wholly owned by AP+, the unified roadmap developed by AP+ will apply to EPAL. In these circumstances, with AP+ making decisions on what new functionality is developed or services are invested in, the ACCC considers that the level and timeliness of support for and investments in the eftpos scheme may be lower than in the likely future without the amalgamation.

The major banks currently have considerable influence over the decisions made by EPAL because they each hold voting rights on the EPAL Board, proportional to the volume of transactions each bank accounts for. The ACCC does not consider that the change in the proportion of shares and voting rights held by the major banks as a result of the amalgamation will translate into them exercising greater influence or control over AP+ than they would exercise over the individual payment schemes without the amalgamation.

The major banks (as issuers and acquirers) currently have the ability to dilute the competitive influence of the eftpos network by deciding which payment services they will support; including which eftpos services they offer to their customers and how quickly the services are made available. Following the amalgamation, the major banks will continue to each independently decide whether they will implement the functionalities proposed by AP+, including those related to eftpos.

The major banks have mixed incentives (because of the different roles they have as issuers and acquirers) to support eftpos by issuing DNDCs and making LCR available to their merchant customers. The RBA has observed that the major banks are likely to have a collective incentive to support eftpos and LCR, though their individual incentive to do so may be relatively weak.[10]

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9 As provided for by s 187 of the *Corporations Act 2001*; see ICA, Non-confidential response to ACCC RFI, 18 June 2021, pp 4 and 11.

10 RBA, Discussion with the ACCC, 24 June 2021.

The ACCC considers that the mixed incentives of the major banks, and AP+ and the ability of the banks to materially affect AP+ investment decisions, give rise to some uncertainty with regard to the ongoing support of eftpos and LCR. As a result, there is a risk that the amalgamation may substantially lessen competition in relation to the routing of debit card payments.

The Undertaking imposes obligations on AP+ to support eftpos, including by procuring that EPAL will do all things in its control to make available and promote LCR for 4 years and develops certain services (the **Prescribed Services**), some of which facilitate eftpos online payment services. The development of eftpos' online payment services will assist in facilitating LCR for those payments. The ACCC considers that the Undertaking provides assurance that eftpos' payments services will be maintained for at least 4 years, and future functionalities relating to EPAL will be implemented.

The ACCC considers that the Undertaking will work alongside the role of the RBA to maintain eftpos' competitive position in the routing of debit card payments and ensures LCR continues to be available and promoted by eftpos for a period of 4 years, ameliorating the risk of a substantial lessening of competition.

Taking into account the Undertaking, the ACCC is satisfied that the amalgamation is unlikely to result in a substantial lessening of competition in relation to the routing of debit card payments.

Overlap between existing services

The amalgamation of BPAY, EPAL and NPPA will likely soften competition between their respective payment service offerings. However, it is not likely that there will be a resulting substantial lessening of competition in any market. This is because the extent of the likely competitive overlap between the parties without the amalgamation is limited in any event, and with the amalgamation the remaining competitive constraints are likely to be significant.

BPAY, EPAL and NPPA have not historically overlapped in the payment services they each deliver and therefore have not been close competitors. Rather, they have largely offered, in different segments, complementary payment services. More recently, the types of payments that BPAY, EPAL and NPPA's services support have expanded to the point where they have started to overlap at the margins, or may overlap in the future.

These areas of competition between the parties relate to situations where the services at the fringes of one or more of the parties' offerings may compete against the core business of another. It is not direct competition between the core offerings of each business, and the parties are not key competitors of each other.

There are varying levels of potential overlap between the parties' services across the following payment segments: point of sale payments; online retail payments; online bill and invoice payments; person-to-person payments; and government and business disbursements. However, the likelihood of the parties' service offerings becoming close substitutes in the future without the amalgamation is reduced by the ability of major banks (as issuers and acquirers, or as payer and payee institutions) to influence whether a domestic payment service can gain scale.

Further, the major banks do not have incentives to invest in and promote duplicative domestic payment services. The likelihood of BPAY, EPAL and NPPA becoming close competitors in any of their service offerings in the future without the amalgamation is therefore low.

In addition, there are differing levels and sources of competitive constraint in the different payment service segments. It is likely that the existence of these constraints in each segment will mean that the potential loss of competitive constraint between the amalgamating entities resulting from the amalgamation is unlikely to substantially lessen competition.

In particular, Mastercard and Visa are the closest competitors for services of the parties in some segments and will continue to provide a strong constraint. The presence of Mastercard and Visa, or the threat of entry or expansion by Mastercard and Visa, is likely to constrain AP+ for most payment use cases in the future. There is also scope for new entry and increased activity from large international technology companies in payment services (such as Apple or Google), noting that much of this would likely rely on Mastercard's and Visa's infrastructure, at least in the short to medium term. The Direct Entry system will be another competitive constraint in certain segments, at least in the short to medium term.

Competition for supplying new services

BPAY, EPAL and NPPA each currently compete to bring new ideas and services to the market. Two examples of this are: competition to bring new forms of payments services to the market, which may also facilitate new payments infrastructure; and competition to bring other ancillary services to the market.

The amalgamation reduces the incentives of BPAY, EPAL and NPPA to compete with each other to bring these innovations, such as quick-response (**QR**) code-based payment services, to the market. This is because AP+ will have an incentive to rationalise overlapping payment services to avoid duplicating investment spend. To the extent that any competition for innovation is lost, this will likely result in some lessening of competition in relevant markets.

The same issue around rationalising overlapping payment service arises for ancillary services that each of the payment schemes may currently compete to create. An example of this is the competing digital identity schemes being developed by eftpos and BPAY. This type of competition for duplicative services meeting the same demand will likely be consolidated by AP+ under the amalgamation.

An acquisition may substantially lessen competition if it results in the loss of potential future rivalry or competitive innovation. However, in the markets affected by the amalgamation, the following factors mitigate the risk of the amalgamation resulting in a significant loss of potential future rivalry or competition for innovation that would amount to a substantial lessening of competition.

First, any possible loss of potential future rivalry or competition for innovation must be considered in the context of the relevant markets, where competition for innovation and to bring new services to market will continue to be provided by Mastercard and Visa, as well as other potential future competitors for payment services. While some degree of competition for innovation will likely be lost, the ACCC considers that, with the amalgamation, AP+ will still have an incentive to invest in and deliver future payment service innovations due to potential or actual competition from other sources.

Second, the ACCC has considered the influence of the major banks (as issuers and acquirers, or as payer and payee institutions) in determining whether a domestic payment service offering is successful in achieving scale. The ACCC considers the major banks will be reluctant to support multiple payment service initiatives with overlapping use cases, either with or without the amalgamation. While overlapping investments and innovations between

BPAY, EPAL and NPPA may be pursued without the amalgamation, they are unlikely to be implemented or adopted to a sufficient degree to result in significant competition between actual services brought to market in the future.

Third party access to the NPP is unlikely to be materially affected

BPAY, EPAL and NPPA are currently all vertically integrated payments infrastructure and payment services providers. Each of their respective payments infrastructures could be used by third parties to provide payment services.

Following the amalgamation, AP+ will control multiple payments infrastructure to which third party providers may seek access to provide payment services in Australia. Foreclosure of access to this infrastructure[11] could result in higher barriers to entry, less innovation and ultimately less competition in payments services. The ACCC considered the potential for foreclosure of third party access to the NPP, noting that BPAY's Osko 1 service is an overlay service using the NPP infrastructure. This potential foreclosure would be a concern if the amalgamation sufficiently increased the ability and incentive of AP+ to engage in a foreclosure strategy.

AP+ will have some ability to foreclose third party access to the NPP, but this ability will not increase as a result of the amalgamation compared to NPPA's existing ability to foreclose access without the amalgamation. Importantly, post-amalgamation there will remain significant regulatory constraints which limit AP+'s ability and incentive to deny access, including the threat of intervention by the RBA.

AP+ may have an increased incentive to deny or limit access by new person-to-person overlay service providers, particularly those that would compete with the pre-existing Osko 1 service (or subsequent iterations of BPAY's overlay services). This is because, with the amalgamation, AP+ will have incentives to maximise payment volumes over the NPP, as well as to maximise the number of payments made via the Osko 1 overlay service. In comparison, without the amalgamation, NPPA's incentives relate to maximising payment volumes through its network, but it is less concerned about maximising the use of a particular overlay service.

However, the increased incentive for AP+ to deny access would be unlikely to substantially lessen competition. In practice, entry of an overlay service that closely competes with Osko 1 is unlikely in the future with or without the amalgamation. This is because the major banks (in particular) would be unlikely to support a new service offering similar functionality to BPAY's Osko 1 service given both their own investment costs and their current ownership of BPAY.

AP+ is unlikely to have strong incentives to foreclose potential third party NPP access for services with different use cases to the use cases of Osko 1 (for example, services that would allow for the provision of online retail payments or business to person/Government to person payments). This is because AP+ will be incentivised to provide access to any third party overlay services which are likely to lead to an increase in transactions over NPPA infrastructure and unlikely to lead to a decrease in transactions over Osko 1.

Finally, the ACCC does not consider that the amalgamation significantly changes the incentives of AP+ to allow participants or connected institutions to join the NPP, compared to the incentives currently faced by NPPA.

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[11] Noting that foreclosure can include denying or limiting access, for example in the form of higher prices.

Conclusion in relation to competition analysis

Taking into account the Undertaking from AP+, the ACCC is satisfied that the amalgamation is unlikely to result in a substantial lessening of competition in relation to the routing of debit card payments. The Undertaking imposes obligations on AP+ aimed at ensuring that eftpos services are maintained, that eftpos facilitates and promotes the availability of LCR for 4 years and requires investment in and the development of the Prescribed Services, some of which facilitate eftpos online payment services.

The amalgamation will soften competition to some extent between BPAY, EPAL and NPPA in relation to several services. The amalgamation may also lessen competition between the 3 parties to innovate and develop new infrastructure and services, because development decisions will be made centrally by AP+. However, it is important to consider these potential competitive effects in the context of the markets in which they may arise. In this regard, the ACCC considers that AP+ will continue to face significant competitive constraints, most significantly from Mastercard and Visa. Given the level of complementarity between the services provided by EPAL, NPPA and BPAY and the substantial constraints that would remain on the merged entity, the ACCC considers that any loss of competitive tension between the 3 entities is not likely to be substantial.

The ACCC is satisfied that third party access to the NPP is unlikely to materially change as a result of the amalgamation, and that there are sufficient constraints to mitigate the risk of third parties being foreclosed access following the amalgamation.

In all the circumstances, including the Undertaking from AP+, the ACCC is satisfied that the amalgamation would not have the effect, or would not be likely to have the effect, of substantially lessening competition, in any market.

Public benefits

The ACCC may grant an authorisation if satisfied in all the circumstances that no substantial lessening of competition is likely. Since the ACCC is satisfied that, having taken into account the Undertaking, no substantial lessening of competition is likely from the amalgamation, it is not required to consider whether public benefits are likely to arise from the amalgamation and would outweigh any public detriment. However, in light of the interest in and concerns raised by interested parties about the amalgamation and the fact that this is an application for merger authorisation, it is appropriate for the ACCC to provide its view on the 'net public benefit' limb of the authorisation test.

The ACCC considers that the primary benefit of the amalgamation is that a single overarching body could enable information sharing, coordination and alignment of roadmaps across the 3 parties. This is likely to result in a more unified roadmap for AP+, and greater clarity of proposals for consideration by AP+ shareholders. The efficiencies arising from the single roadmap will primarily benefit the banks, but more timely and efficient investment in new or innovative services is likely to constitute a public benefit.

The amalgamation will enable the 3 schemes to combine their respective strengths and work collaboratively to consider what hybrid products could be offered to a greater extent than would be the case without the amalgamation (as they will no longer be competing with each other). The amalgamation will also provide greater clarity and confidence for AP+ shareholders to agree to initiatives sooner, and with a greater degree of confidence that the other major banks will support that initiative, than what is possible without the amalgamation. Notwithstanding that the banks will continue to make their own decisions to implement payment initiatives, the amalgamation will likely enable the banks to better coordinate their own adoption of payment initiatives and this may reduce the risk of stranded payment assets.

The ACCC considers that improved coordination and alignment of payments initiatives through the amalgamation, together with AP+'s commitment to the EPAL Prescribed Services in the context of the Undertaking, are likely to result in increased ability for eftpos (as a part of AP+), or AP+, to compete against Mastercard and Visa and international technology companies. The ACCC considers that this represents a public benefit that is tangible, but also notes that any such benefit is not readily quantifiable.

The ACCC has considered a number of other public benefits the applicants (represented by Industry Committee)[12] claim are likely to result from the amalgamation. The Undertaking provided by AP+ includes a commitment that one of the 4 independent directors appointed to the AP+ Board will have substantial small business experience. The amalgamation, together with AP+'s commitment, is likely to result in some public benefit in the form of increased engagement with small business and other participants.

While the amalgamation is likely to result in some cost synergies, reduced transaction costs and reduced compliance obligations, they are not likely to be substantial. The ACCC is not satisfied, based on the information available, that the claimed public benefit of improving payments system resilience is likely to arise from the amalgamation.

The ACCC considers that the amalgamation is likely to result in a material public benefit.

Public detriments

The ACCC has considered the public detriments arising from the amalgamation in the context of a lessening of competition arising from the amalgamation (discussed in the 'Competition analysis' section above).

Overall conclusion

For the reasons set out in this determination, including the acceptance of the Undertaking, the ACCC is satisfied that the amalgamation would not have the effect, or would not be likely to have the effect, of substantially lessening competition in any market.

While the ACCC is not required to assess the amalgamation under the 'net public benefit' limb of the authorisation test, the ACCC considers that the amalgamation is likely to result in a public benefit. The ACCC is satisfied that, in all the circumstances, including the Undertaking, this public benefit is likely to outweigh any likely detriment arising from the amalgamation, including from a lessening of competition.

12 Industry Committee is an unincorporated association administered by Industry Committee Administration Pty Ltd. Industry Committee has applied to the ACCC for merger authorisation on behalf of its members who are shareholders of BPAY HoldCo and/or members of EPAL (who will become shareholders in EPAL) and/or shareholders of NPPA (see paragraphs [1.1]-[1.2] below).