16 April 2020

Ms Simone Warwick
General Manager (A/g)
Merger Investigations
Australian Competition and Consumer Commission
23 Marcus Clarke Street
CANBERRA ACT 2600

By email: mergerauthorisations@accc.gov.au

Dear Sir/Madam,

Australasian Convenience & Petroleum Marketers Association: MA1000020

Reference is made to your letter of 30 March 2021 inviting interested parties to make submissions on the proposed merger of BPAY, Eftpos and NPPA.

The below constitutes ACAPMA's letter of submission to this consultation.

1. About ACAPMA

ACAPMA is the national peak body representing fuel wholesale and fuel retail businesses in Australia. The Association is first and foremost an employer organisation that is formally recognised under Australian law as the industrial advocate for fuel marketing and fuel distribution businesses.

First established in 1976, the Association started operations as the Australian Petroleum Agents and Distributors Association (APADA) and subsequently changed its name to ACAPMA in 2007. The name change was accompanied by a change in the Association's Constitution to incorporate national representation of fuel retailers.

Today, the Association directly represents 95% of fuel distributors in the country and directly and indirectly (via franchisees and distributor-owned retailers) around 74% of the estimated 7080 service stations operating in Australia.

The scope of ACAPMA's membership extends from 'refinery gate' through to the forecourt of Australia's national network of service stations and petrol convenience outlets – including fuel wholesale, fuel distributors, fuel retailers, petroleum equipment suppliers and petroleum service providers.

ACAPMA's member businesses range from Australian-owned subsidiaries of international companies to Australian-owned businesses, to independently owned mid-cap Australian companies, and small single retail site family-owned businesses.

Given the diversity of its membership base, ACAPMA strives to assemble a position that reflects the views of most of its' members in accordance with Board-approved public policies. There are, of course, times when one or more of ACAPMA's members will have a dissenting view – either in part or in whole. Consequently, it is possible that one or more of ACAPMA's members may have elected to provide an individual submission that differs – either in part or as a whole – from the views presented in this paper.

2. Significance of electronic payments (and merchant fees) to the Australian Fuel Retail industry

The Australian Fuel retail industry comprises more than 2500 businesses operating an estimated 7080 retail sites across Australia. These sites retail an estimated 31 Billion litres of fuel (i.e. petrol and diesel) to private households and businesses. An approximation of the profile of these transactions (based on FY20) is provided in the table below:

Market descriptor	Petrol	Diesel
Annual volume sold through retail outlets in Australia	16.5 Billion litres	15.2 Billion litres
Average volume per transaction	47 litres	85 litres
Total no. of transactions per year	340M	176M
Estimated transaction value	$59	$116
Estimated number of electronic transactions per year (excludes cash and accounts)	204.3M	105.9M

Note: Data utilised in this table has been extracted from the *Australian Petroleum Statistics* data sets produced by the Australian Federal Government (Australian Petroleum Statistics | energy.gov.au) and information derived from ACAPMA's *Monitor of Fuel Consumer Attitudes* research series.

As evidenced by the above, Australian fuel retailers are large users of electronic payment services with an estimated 310M transactions processed each year. As a consequence, fuel retail businesses (and their customers) are heavily exposed to the Australian electronic payments market and are vulnerable to deficiencies in market competition.

ACAPMA's industry advocacy and direct engagement with key stakeholders in the Australian card payments agenda over the past 5 years has highlighted:

a) the importance of maintaining Australia's dual rail system for the processing of electronic payments.

b) the importance of the Least Cost Routing (LCR) mechanism in promoting competition within a national payments services market that is complex, oligopolistic, and populated by market offerings that are opaque in nature.

c) The limitations in the efficacy of national payment regulations, notwithstanding the current reviews of these Regulations being undertaken by Australian Treasury and the Reserve Bank of Australia.

3. Principal concerns

During 2017, fuel retailers reported a significant escalation in merchant fee costs and sought assistance from ACAPMA in seeking to better understand the drivers of this increase. ACAPMA's investigations revealed that the costs had 'quietly' increased as a result of 'tap and go' technology (see The silent debit transaction rort - ACAPMAg - The voice of downstream petroleum).

Further investigations revealed that debit transactions costs had increased markedly for processing these transactions via the international credit card gateways – and Australia's major banks had been complicit in routing payments via these gateways instead of the cheaper Eftpos network (which, at the time, did not have 'tap and go' functionality).

Individual investigations of the cost increases amongst a select number of retailers revealed that the cost of debit transactions increased three-fold as a result of: (a) Eftpos's inability to provide a competitive offering to 'tap and go' technology at the time and (b) the opaque nature of merchant fee offerings provided by banks to retailers.

Had these costs been replicated across all electronic payments, the cost to fuel retailers – and ultimately passed through to motorists in the form of higher fuel costs – could have been in the vicinity of $69M per year.

ACAPMA's 2017 investigation prompted the Association to join forces with the Master Grocers Association of Australia (MGAA) and the Council of Small Business Organisations of Australia (COSBOA), to advocate for greater transparency in merchant fee arrangements and the introduction of Least Cost Routing (or LCR).

Over the next 3 years, ACAPMA (and its' partners) were successful in raising awareness of the concerns surrounding merchant fees and securing the support of Eftpos to encourage the banks to introduce a simplified form of LCR.

Of most relevance to this merger, ACAPMA learned that the temporary 'loss' of Eftpos in the marketplace (due to a technology barrier) resulted in reduction in the intensity of market competition that, coupled with the opaque nature of merchant fee services, significantly increased the costs of processing card payments in Australia.

It therefore follows that the continued unencumbered operation of Eftpos – a uniquely Australian payment service provider that stands independent of the two international card payment services – is essential to the maintenance of competitive tension in the Australian payment services market.

Further, any weakening of Eftpos's position in the Australian electronic transaction services market exposes Australia's fuel retail businesses (and their customers) to the adverse consequences of a duopoly of international payment services providers (i.e. Visa and Mastercard) and risks the quiet and steady increasing of fees for electronic services in a market that is both opaque and complex.

4. Specific comments on the proposed merger

4.1 The proposed merger risks a reduction in competitive tension in the Australian payment services market as a result of the likely weakening of Eftpos market standing and engagement - with consequent adverse consequences for Australian businesses and their customers.

The net outcome of the proposed merger is that three stand-alone payment service offerings will be controlled by a single governance mechanism – albeit that the products will continue to be marketed separately. In effect, this means that the *same* entity will be controlling three products that currently compete in the Australian payment services market (and increasingly so).

Noting that the financial performance of two of these offerings (i.e. BPay and NPPA) has been sub-optimal in recent years, there is a significant risk that capital investment will be diverted away from the stronger financial performer (i.e. Eftpos) over time – and thereby lessen the current strong competitive capacity of this market participant to take on the international payment service providers (i.e. Visa and Mastercard).

Notwithstanding the suggestion that the new governance model will make provision for small business representation, the strategic and market decisions of the new entity are likely to be dominated by the large banks (and the large retailers). Further, strategic decisions made by the new entity are likely to be rightly focussed on *maximising* financial returns and *minimising* investment in ongoing product innovations (i.e. by spreading scarce capital across three entities) - instead of allowing a strong participant to emerge from a normal process of natural market survival.

4.2 The merger risks derailing the early momentum that has been developed in respect of the LCR agenda in Australia.

The role of Australia's major banks in the proposed major is vexed. Australia's major banks are arguably conflicted when it comes to Least Cost Routing (LCR) owing to the fact that these institutions realise commercial benefit from both Eftpos and the higher cost credit card gateways. ACAPMA suggests that this conflict of interest has resulted in a general level of Banking Industry inertia towards LCR, thereby constraining the ability of Australian businesses to better manage the cost of electronic transactions.

While there has been some progress on this issue, current LCR offerings utilise a binary approach that: (a) relies on the merchant having a detailed understanding of their payment architecture, (b) assessing the *level of fit* of their payment architecture relevant to complex and opaque merchant service offerings, and then (c) deciding which payment gateway will deliver the lowest transaction costs for their business. Such a proposition is simply unrealistic for most business owners – large and small alike.

Eftpos has been the *one shining light* in the market as a result of its promoting of LCR in the electronic transaction services market. Eftpos's LCR actions in this area have created a competitive tension that has seen a lowering in merchant fee costs by at least one of the credit card services providers (i.e. Mastercard) in recent years.

While noting the *short-term* commitments to LCR outlined in the applicant's submission, ACAPMA is concerned that the proposed merger will result in a *longer-term* reduction in the commitment to LCR that has been advanced by Eftpos – noting that Australia's banks have no commercial reason to promote this initiative given that they also benefit from the higher costs credit card gateways.

Within this context, it is interesting to note the timing of this merger application relative to the recent success of Eftpos's activities in promoting LCR.

4.3 The purported benefits of the merger cited by the Applicant are contestable and appear to be significantly outweighed by the downside risks for Australian small businesses and consumers alike.

(a) Scale benefits unlikely to translate into lower transaction costs for merchants in the future.

It is unlikely that the purported scale benefits cited by the applicant will result in lower merchant services costs for retailers driven by competitive tension in the payment services market. Rather, the economic value of any scale benefits will more likely be captured by shareholders of the merged entity and/or used to prop up the sub-optimal economic performance of the two underperforming payment platforms (i.e. NPPA and BPay).

(b) Applicant suggestion that innovation is not possible without the proposed merger is not supported by recent history.

The observation that the current payment platforms do not have sufficient scale to innovate is not supported by recent past innovations of individual payment platforms.

The Australian payment services sector has in fact experienced significant product innovation in recent years which include but are not limited to the emergence of Buy Now – Pay Later (BNPL) offerings with more than a dozen new market entrants over the past 5 years. Indeed, the competitive interplay of these 12 new market entrants has delivered a degree of market dynamism that would have been unlikely had there been one large national payment entity operating in Australia (in addition to the two international card services providers).

It is also suggested that Eftpos' *Product Roadmap 2021 Update* of March 2021 points to the existing capacity of this organisation to advance a range of product innovations and service enhancements (including online payments, enhanced fraud protection, a Digital Identity network, mobile wallets, QR Codes) while still operating as a stand-alone provider.

(c) Applicant suggestion that merger will reduce vulnerability of Australia's national payment market to takeover by the two international credit card providers is not plausible.

The applicant argues that the proposed merger will deliver a larger national payment services entity that will be less susceptible to hostile acquisition by one of the two international card payment services providers in the future. Such an assertion is advanced despite key stakeholders in the merger (i.e. the major banks) being conflicted by the realisation of commercial benefit that may arise from any such acquisition in the future.

Further, and given the relatively small size of the Australian payment services market relative to the global markets, the increased level of protection afforded by market consolidation is likely to be negligible. Analysis of recent annual payment data industry data (Payments Statistics | RBA and World Payments Report 2020) reveals the size of Australia's credit/debit card market (i.e. transaction volume) comprises just 1.7% of the current global market, suggesting the merger would afford negligible protection over the current market situation.

(d) The proposed single governance model for three existing stand-alone and competitive market offerings effectively reduces the number of market competitors and intrinsically lessens the intensity of market competition in the Australian payment services market over the longer term.

Contrary to the claims of the applicant, the three products that comprise this merger are not merely 'marginal competitors' – they are increasingly competing with each other as each innovates to remain relevant in a market that is increasingly being disrupted by *new age offerings (i.e. BNPL and Fintech)*. It therefore follows that any decision to merge the current providers at this time - when each are refining their offerings and reassessing their competitive footprints in the market - constitutes a lost opportunity to enhance competition in the Australian payment services market over the medium to long term.

5. Summary of position on merger

ACAPMA believes that the perceived benefits of the proposed merger are contestable, and that the merger presents significant downside risks to Australian fuel retailers (especially small fuel retail businesses) owing to a likely lessening of competition in the Australian payment services market - with likely adverse flow-on consequences for Australian fuel consumers.

Relative to Section 50 of the *Australian Competition and Consumer Act (2010),* ACAPMA believes that the proposed merger will have the likely *future effect* of lessening competition in the Australian Merchant Services market (by reducing the level of competitive tension in the current market and constraining the roll-out of the LCR agenda in Australia).

Should you require any clarification of the items discussed in this submission, please contact me directly.

Yours sincerely,

Mark McKenzie
Chief Executive Officer