



**Australian
Chamber of Commerce
and Industry**

ABN 85 008 391 795

T: +61 2 6270 8000

info@australianchamber.com.au

www.australianchamber.com.au

20 April 2021

Australian Competition and Consumer Commission
Merger Investigations Division
23 Marcus Clarke Street
Canberra, ACT 2601

Via: mergerauthorisations@acc.gov.au

RE: Proposed amalgamation of BPAY, Eftpos and NPPA

Dear Associate,

ACCI believes in a fairer, more transparent, competitive and innovative payments system that provides user choice and places merchants (customers) at the centre of the payments system. The central issue for small business merchants is the increasing cost of transacting and the ongoing barriers to accessing least-cost routing. A study by the RBA suggests that consumers are using cards more frequently for payments of all sizes, the strongest growth occurred for lower-value transactions.¹ The volume and frequency of these transactions at higher costs is driving significant administrative burden (or deadweight loss) between producers and consumers in society. The regulatory environment underpinning the Australian payments system must place downward pressure on transaction costs as these types of transactions are anticipated to escalate in volume and number as we move toward a more digital financial payments system. By reducing transaction costs, we allow more efficient financial flows to occur throughout the economy.

In order to reduce transaction costs in a more digital financial environment, we must consider the Australian payments platforms regulatory system. The existing regulatory environment does not encourage nor incentivise low transaction costs because the customer (merchant) is not a significant party to the overall design and makeup of the regulatory system. Reforms that allow the customer (merchants) to be at the centre of the regulatory system should be a primary consideration for government prior to a decision made the ACCC, on the proposed amalgamation of the payment platforms.

Attachment A – ACCI submission to Treasury on the Review of the Australian Payments System, we argue for reforms to the regulatory system that:

- Places merchants at the centre of the regulatory system
- Improves clarity of costs and pricing information for end-users
- Creates an even-playing field for businesses of all sizes
- Enables entrants that deliver for merchants
- Provides clear guidance on regulatory decisions and,

¹ <https://www.rba.gov.au/publications/bulletin/2020/mar/pdf/consumer-payment-behaviour-in-australia.pdf>

Canberra

Commerce House
Level 2
24 Brisbane Avenue
Barton ACT 2600
PO Box 6005
Kingston ACT 2604

Melbourne

Level 2
150 Collins Street
Melbourne VIC 3000

Sydney

Level 15
140 Arthur Street
North Sydney NSW 2060
Locked Bag 938
North Sydney NSW 2059



- Encourages competition by attracting new entrants and maintaining user choice

Without consideration for regulatory reforms to the Australian payments system, the proposed amalgamation of Australia's payment platforms is not expected to, nor guaranteed to, deliver *lower* transaction costs for customers, particularly small business merchants, because there is simply no incentive nor the regulatory parameters to do so.

Merchants must be represented at the table with advisory and regulatory bodies to prevent perverse outcomes including escalating merchant costs and associated service fees. By providing clearer guidance on regulatory decisions, small businesses can better understand the impacts to their business. And by improving clarity of costs and pricing information, merchants can make better informed decisions to access the options that fit their needs.

The proposed amalgamation will limit rather than increase user choice. User choice is an essential feature of an effective payment system, and a move to a single payment platform will risk the level of competition and the costs associated with added complexity to the payment system. Competition should be actively encouraged at all levels of the payments supply chain as the international experience suggests that early movers have experienced significant issues in transitioning to a single payment platform.

To make it easier for smaller merchants to navigate options and effectively compete with large national and international retailers, we must create a regulatory framework that delivers *genuine* competition in the domestic market as well as transparency and user-choice. This requires a payments system that is agile and innovative so that merchants can access the payment methods that work for them. It also requires effective competition at all levels of the payment system's supply chain that serves the interests of merchants and provides them and their customers with the option to make the transactions they need, both at point-of-sale and online.

In summary, ACCI recommends a thorough review of Australia's payments system regulatory framework prior to approval or further consideration of the proposed amalgamation of the payments platforms, as there is no guarantee that the proposed merger will lower and, in fact, may increase the transaction costs of digital payments across the economy.

Yours sincerely,

Dr. Ross Lambie
Chief Economist

Review of the Australian Payments System

Submission to the Treasury
December, 24, 2020

Introduction

The Australian Chamber of Commerce and Industry (ACCI) is Australia's largest most representative organisation of small businesses in Australia. ACCI represents over 70 national industry associations and all state and territory chambers of commerce. Our members are mostly SMEs spread across industries throughout all parts of Australia. ACCI is also the only peak body with influence and engagement on the international stage. We represent Australian employers at the UN, OECD and ICC.

Small business merchants are facing increasing payment service costs. Small businesses are under-represented in industry advisory bodies and in the ownership structure of payments infrastructure. For these reasons, we depend heavily on regulation to ensure small business interests are appropriately represented. Our members are of the view that the current regulatory frameworks should integrate the interests of small business merchants. The rise of digital payments and the increasing complexity of payment chains is increasing the risk of technology and other developments undermining the interests of merchants and small business generally.

Regulations overseeing the payment system must ensure merchants (as end users) are given appropriate weighting in decision making. In countries that do not take this approach, we observe very high merchant payment costs and considerable expenditure by merchants and business consortiums to recoup these costs through protracted court proceedings. This approach benefits no one. The system should be designed in a way that improves clarity of costs and pricing information. As a fundamental principle, there needs to be an even playing field. This can only be achieved when all participants are clear on the product benefits, costs and pricing information is comparable.

The payment system should also enable innovation and new entrants and be designed with merchants in mind. It is critical that our payment system encourages innovation and competition while safeguarding the interests of merchants. The need for a safe payment system is, of course, paramount. However, several issues are putting at risk a more efficient, cost effective and world-class payments system. In particular, decision making on issues such as access to infrastructure is too slow and there are poor incentives for incumbents to provide timely access. There is scope for business to have more input as it is business that stands to benefit from new products and innovations generally.

Of equal importance is the need to ensure competition amongst payments infrastructure and amongst the schemes which compete on top of that infrastructure. For example,

- The New Payments Platform (NPP) has the potential to provide some excellent new payments functionality, yet the direct entry (DE) system is still very cost effective and widely integrated into business processes. Both systems need to be retained and supported, at least in the medium term.
- The card payments system in Australia is composed of international card schemes and eftpos. Business is a major beneficiary of eftpos. It is low cost, low risk and increasingly extremely innovative, thereby supporting greater competition among schemes.
- The competitive tension between the NPP, DE and eftpos results in beneficial outcomes for consumers and businesses
- Across all infrastructure and payment schemes, we should be encouraging fintech to participate, improve processes and products, and generally promote competition.

We have observed an example of where insufficient competition has resulted in poor outcomes. In the UK, it is forecast that over 90% of the payments market will be dominated by two global credit companies, with significant risk to merchants through higher fees. In the UK, the cost of accepting card payments is 5 to 10 times greater than cash. The latest payments survey from the British Retail Consortium (BRC) shows card use continuing to rise steadily from 54% of transactions in 2016 to 61% in 2019. The cost to retailers in the UK of accepting payments reached over £1.1 billion pounds in 2019 of which 85% was from card payments. The BRC has stated that the overall increases were a clear demonstration of an abuse of market dominance. There is no question that international card schemes provide significant value to consumers and merchants. But it is in everyone's interest that these schemes face genuine competitive pressure.

For these reasons, ACCI is very concerned about the consolidation of a single payments platform as scheduled to take effect by July 2022. There is risk that the new governance structure may provide a strong incentive to shift more payment costs onto merchants. RBA regulation has done well to constrain this over the years, however RBA regulation has been effective because eftpos has supported low merchant costs in the payments system. Eftpos is a low-cost, high take-up payment solution. If an amalgamation of payment platforms were to proceed, merchants risk a governance structure that may result in similar circumstances that have arisen in the UK.

ACCI believes in a fairer, more transparent, competitive and innovative payments system that provides user choice and places merchants (customers) at the centre of payment system. To get there we must learn from international experience and prevent where possible similar mistakes from occurring domestically. We must drive competition, choice and innovation by placing merchants at the centre of the payments system.

We need to make it easier for merchants to navigate options and effectively compete with international retailers. And we must create a regulatory framework that is agile, drives innovation, competition, transparency and delivers user choice.

- A payments system that is agile and innovative so that merchants can access the payment methods that work for them
- Effective competition at all levels of the payment systems supply chain that serve in the interests of merchants
- Providing merchants and their customers the option to make the payments they need and want to make

Smaller businesses typically face higher payment costs than larger businesses. Credit card transactions are generally more expensive than debit cards, and debit card transactions tend to be more costly for most merchants when processed through the international card schemes compared with the domestic debit scheme.¹ Evidence suggests that merchant costs have increased for small

¹ <https://www.rba.gov.au/publications/bulletin/2020/mar/pdf/the-cost-of-card-payments-for-merchants.pdf>

businesses and these are having direct impact on businesses costs, or are being directly passed through to consumers limiting their ability to competitively price goods and services on the market.

The regulatory system

Place merchants at the centre of the regulatory system

The regulatory architecture should place the interests of merchants and customers front and centre. This should be driven through payment systems policy including legislative instruments and regulations including industry self-regulation and regulatory behaviour and decision making. It is worth making the importance of low payment costs and innovative products for merchants explicit in the *Payments Systems Regulation Act 1998* (PSRA). The central intent of legislative and regulatory frameworks and the regulators that are charged with administering should be based on principles that deliver the best payment services, methods and outcomes for merchant and consumers in terms of price and functionality.

Improve clarity of costs and pricing information

Merchants currently lack sufficient transparency in terms of payment costs and pricing information. While there has been some improvement, transaction costs continue to be complex and opaque. This is preventing merchants from making clear and informed decisions that is to the benefit of their business and customers. Regulations should ensure that merchants have full transparency in terms of costs and pricing in a way that is easy to understand and enables merchants to make informed decisions about the choices available to them. Where full transparency is not achievable, then regulation must ensure merchants do not pay for excessive payment costs due to making uninformed decisions. This is relevant to least-cost routing.

Create an even-playing field for businesses of all sizes

Least cost routing continues to be an issue, particularly for small business merchants. Regulations should ensure an even-playing field between large and small business in terms of payment choices, terms and functionality. Least cost routing has been made available to a number of larger businesses, while their small business counterparts are left to contend with complex and opaque advice. This legacy issue should not be a feature of a modern digital economy. ACCI recommends measures to protect the interests of SMEs.

Enable entrants that deliver for merchants

The regulatory environment should be designed in a way to drive competition and innovation from new entrants. Fintechs need the opportunity to introduce smart payment apps, that are focused on delivering in the best interests of merchants, in a way that integrates with existing payment platforms. This will enable them access to platforms on fair commercial terms and in a way that does not deter fintechs from entering the market due to unreasonable rules or technical constraints. Financial innovations must balance the interests of merchants and their customers. Some buy-now pay-later (BNPL) solutions have attracted increased popularity lately however services fees range from 3 to 7 per cent of the sales value which is driving a substantial increase in merchant fees. A regulatory system that places merchants at the heart of the regulatory system by recognising they bear the cost of payments, will act to prevent similar perverse outcomes. Further guidance in the PSRA may be warranted to keep a focus on merchant interests.

Provide clear guidance on regulatory decisions

ACCI is of the view that the RBA has done well within the constraints of the PSRA. The PSRA encourages a co-operative approach to achieving core outcomes. The RBA's use of suasion to achieve outcomes has been useful in avoiding protracted litigation. However, at times this approach

has resulted in delayed action that has cost merchants in higher than necessary fees. An example is least-cost routing.

The regulatory system requires further transparency and clarity. Regulatory decisions should be publicly announced and made in plain English so that merchants can understand how it effects their business. The regulatory architecture should provide clarity regarding regulatory responsibilities and ensure that regulators are working together with a thorough understanding of payment technologies. Greater clarity in terms of regulatory responsibility and the scope of their regulatory decisions and activities is required.

Competition

Encourage competition by attracting new entrants and maintaining user choice

Competition should be actively encouraged at all levels of the payments systems supply chain. Including competition via the maintenance of multiple payment platforms that include a balance between domestic and international card schemes, competition between payment rails including between cards and accounts and competition in products, services and applications that exist on top of payment rails such as through the offerings of fintechs and the incumbent banks.

Based on our observation of payment systems globally, the best outcomes are achieved by infrastructure that competes with other infrastructure, and a healthy diverse set of schemes that compete on top of that infrastructure.

As end-users who pay the transaction costs at the point of sale, merchants should have the highest priority in terms of choosing their preferred payments scheme to reduce their transaction costs and access the functionality that best suited to their business. To enable merchant choice, point of sale and digital payment systems should be required to accept dual network debit cards and issuing dual network functionality on all debit cards (or other debit form factors such as digital cards etc) should be requirement of all Australian Banks. Merchants should be able to route transactions through the lowest cost scheme as an opt-out feature. This issue is currently driving \$4 billion in merchant fees annually.

ACCI is particularly concerned by what appears to be a campaign to allow single network debit cards. With these cards, neither consumers or merchants can exercise choice over which network to complete a transaction. The payment system must continue to support dual network debit cards and we expect the RBA to take a hard line on this.

Summary

A regulatory framework underpinning the interests of end-users (merchants) should underpin the payments system. There is scope to have this made more explicit in the PSRA, albeit we acknowledge much of the good work the RBA has done over the years under the current Act.

Merchants must be represented at the table with advisory and regulatory bodies to prevent perverse outcomes including escalating merchant costs and associated service fees. Merchant costs by their nature will be passed on to consumers through increased costs to products and services or surcharging. By providing clearer guidance on regulatory decisions, small businesses can better understand the impacts to their business. And by improving clarity of costs and pricing information, merchants can make better informed decisions to access the options that fit their needs. The

regulatory system must also create an even playing field for business while enabling entrants to deliver fintech solutions for merchants.

User choice is an essential feature of an effective payment system, and a move to reduce the number of payment platforms risks the level of competition and the costs associated with added complexity to the payment system. Competition should be actively encouraged at all levels of the payments supply chain. International experience suggests that reducing competition by merging domestic platforms could have negative outcomes for merchants and consumers.

ACCI would like to see a regulatory system that more clearly identifies and defends the interests of businesses and merchants in payments policy and regulatory actions.

About the Australian Chamber

The Australian Chamber of Commerce and Industry speaks on behalf of Australian Businesses at home and abroad. The Australian Chamber represents hundreds and thousands of businesses in every state and territory and across all industries. Ranging from small and medium enterprises to the largest companies, our network employs millions of people. The Australian Chamber membership list can be viewed at www.australianchamber.com.au/membership/current-members/

Telephone | 02 6270 8000 Email | info@australianchamber.com.au Website | www.australianchamber.com.au

ABN 85 008 391 795 © Australian Chamber of Commerce and Industry 2018

This work is copyright. No part of this publication may be reproduced or used in any way without acknowledgement to the Australian Chamber of Commerce and Industry.