



29 April 2021
Simone Warwick
Alex Reed / Sophie Mitchell
ACCC
23 Marcus Clarke Street
Canberra ACT 2601
By email: mergerauthorisations@acc.gov.au

Dear Simone

Re: **Proposed amalgamation of BPAY, eftpos and NPPA**

This short supplementary submission is made by Dr Rob Nicholls. I am an Associate Professor at the UNSW Business School.

As part of its submission to the ACCC, the merger parties have submitted a "Final Economic Expert Report" by Dr Geoff Edwards of Charles River and Associates (CRA). I refer to this as the Edwards Report. The Edwards Report was made available in a redacted form on 29 April 2021.

In my view there are two major issues with the Edwards Report as the ACCC has published it.

The first is critical to the process of informal review associated with a markets inquiry. That is, the report relies on material that is not available to persons other than the ACCC and the merger parties. The effect is that the Edwards Report is unsuitable as a supporting document. At a minimum, in its current form any redacted paragraph or any paragraph that uses supporting references that are marked as "confidential" should be ignored for the purpose of merger assessment.

The second issue is one the use of misleading language. The Edwards Report (at paragraph 45) asserts that the NPP is "open access infrastructure". This is simply not true. The Edwards Report correctly identifies that overlay services provided by the merger parties have access (at paragraph 67(e)). It also correctly identifies that access can be gained via a directly connected ADI (at paragraph 67(f)). It does not point out that the ADIs that offer the connection are, in the main, the shareholders of the merger parties. The in the Edwards Report, Dr Edwards argues that there will be no vertical foreclosure on the basis that "the NPP was conceived as an open access infrastructure and I understand that it will continue to be subject to an open and non-discriminatory access regime" (at paragraph 281(b)). This is not the case, and the vertical foreclosure risk is high as implied by the Edwards Report.

As I submitted in my original communication, the vertical foreclosure risk can be minimised by having true open access infrastructure using an access regime such as the one that I proposed in that first submission.

If you would like to discuss the content of this letter with me, please email me on [REDACTED] or call me on [REDACTED].

Yours sincerely,

[REDACTED]

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