From:	Nick Hossack
Sent:	Friday, 18 June 2021 5:48 PM
To:	Merger Authorisations
Subject:	Benchmark Analytics: MA1000020 – submission

Thank you for the opportunity to comment on the ACCC's document setting out preliminary views and issues. Overall, **I agree and support** the ACCC's preliminary findings that a net benefit to the amalgamation has not been established.

My response to the Applicant's submission of 28 May titled 'Applicant's response to additional submissions from interested parties'

In response to my first submission, the Applicant's wrote:

(ii) Some of the Additional Submissions claimed that the banks have been ambivalent about promoting eftpos' transactions (and slow to offer LCR) because Visa/Mastercard transactions are more profitable for them than eftpos' transactions. The Applicants wish to make two points in response to those claims:

> ***(A) The claims ignore the fact that eftpos represents a "critical pricing wedge against the ICS and Big Tech" for the banks and large retailers (as well as the other Applicants), a point that was made in the Application and in the Initial Response.***
>
> ***(B) As noted in the Initial Response, the Expert Industry Opinion of Mr Lance Sinclair Blockley attributes eftpos' decline, in part, to the fact that it remains in 'catch-up mode' with the international card schemes. That is, investing in capabilities that have already been deployed by the international card schemes. These catch up capabilities add little to the consumer experience while imposing an investment burden on the Major Australian Banks who are asked, by eftpos, to enable the capabilities on their systems.***

My response to the Applicant's response is:

1. In their submission, it is noted that the Applicants have not denied that Visa and Mastercard transactions are more profitable for banks than eftpos transactions.
2. The Applicants have put emphasis on the "critical pricing wedge" benefit of eftpos but have provided little detail or explanation of how this works in practice. Does it mean banks can negotiate higher interchange fees, or lower scheme fees? How valuable is it in reality?
3. The Applicants use the word "critical" to describe eftpos' role as a pricing wedge but this seems contradicted by other statements and real world experience. eftpos is described by the Applicants as being in "catch-up mode" and that new capabilities add little to "consumer experience" and represent an "investment burden" on the major banks. Similarly, the word "critical" seems contradicted by the slow rollout of LCR capability and the issuance of single network cards (e.g. Macquarie Bank).
4. If eftpos plays the "critical" role claimed, then what would lead to the conclusion that it will dead in 10 years? If it no longer existed, then it would not be performing a "critical" role.
5. I reiterate my original concern. Given the relative profitability of ICS transaction, moving from a board with a singular focus of promoting eftpos to NewCo, will provide greater scope for banks to collectively underinvest in eftpos capability and drive transactions towards the more profitable Visa and Mastercard platforms. The cost of this will be higher merchant fees.

(iii) Timeframe for guaranteed support of scheme roadmaps is too short: Benchmark Analytics (Benchmark) raised a concern that the Proposed Amalgamation only guarantees the roadmaps of each of eftpos, BPAY and NPPA until mid-2022 which "[i]n the payments industry … is an extremely short timeframe".

In response, the Applicants submit that support for the roadmaps will be guaranteed for that period under the Proposed Amalgamation. In contrast, the guarantee for the three roadmaps does not exist in the status quo and is not likely to exist in any version of the counterfactual scenario unless mandated (on an unconditional basis).

My response to the Applicant's response:

1. The Applicant's response hints that the existing roadmaps are under threat. In the status quo, the three domestic schemes will continue to have roadmaps. It is not obvious why they should change if NewCo does not proceed.

2. To the extent that better roadmap coordination is needed, this can be achieved through the Australian Payments Council (see below).

(iv) The banks do not compete with the ICS and Big Tech: Benchmark asserts that is "patriotic, but … wrong" to argue that the Proposed Amalgamation "is needed so Australia can better compete against Visa and Mastercard (and Big Tech)", on the basis that the banks do not compete with Visa and Mastercard.

While it is correct to observe that the banks do not compete with the ICS and Big Tech (their services are complementary rather than substitutable), the Applicants' position is that the Proposed Amalgamation will allow the three payments schemes (not the banks) to better compete with the ICS and Big Tech.

My response to the Applicant's response:

1. As stated above, my view is that the greater profitability of Visa and Mastercard transactions will lead banks to underinvest in eftpos. The broader focus of NewCo will more easily facilitate this outcome compared to the singular focus of the eftpos board.

Other matters

The Australian Payments Council (APC)

The Australian Payment Council has a number of objectives and roles that would assist the industry in better coordination of payments system investments. The following information is taken from the APC website:

"The Australian Payments Council fosters the ongoing development of the Australian payments system to ensure it continues to meet the changing needs of Australian businesses and consumers with innovative, safe and competitive payment services…The Australian Payments Council is the strategic coordination body for the payments industry…The Australian Payments Council promotes industry collaboration. It encourages and facilitates strategic alignment between the payments industry and the Payments System Board on significant payments issues and initiatives.

The Australian Payments Council's role is to coordinate industry efforts to:

- ***Drive the strategic agenda for the Australian payments system***
- ***Engage with the Payments System Board on setting and achieving strategic objectives***
- ***Identify strategic issues and emerging trends through constant scanning of the payments environment***
- ***Generate common industry positions for action and adoption by the industry with the endorsement of the Payments System Board***

- ***Identify and remove any barriers to innovation through collaboration***
- ***The Australian Payments Council undertakes its activities with transparency and integrity."***

There may be a concern that the APC's strategic agenda is too high level. However, there seems no reason why the APC could not be more prescriptive when necessary. For example, it could advocate that domestic payment schemes adopt a common QR code infrastructure. It could easily provide guidance in regard to roadmap coordination.

The APC liaises with the Payments System Board in setting objectives. This means that when recommending new innovations and investments, the banks and other providers will know the APC's positions have been discussed with the RBA. That will increase the likelihood that banks make the investments as it carries an additional source of public interest authority compared to that of NewCo.

Amalgamation precedents in the UK and Singapore

In a media release on 4 June 2020 announcing the establishment of the Industry Committee to explore amalgamation, the NPPA cited amalgamations in the UK and Singapore as representing possible precedents. The NPPA media release noted:

"As indicated by the RBA in its Review, this kind of development is not without precedent, with similar consolidation of domestic payments infrastructure imposed by the UK Payment System Regulator in 2017, and a market led approach by Singapore in 2017 when NETS acquired BCS and BCIS."

My understanding is that the consolidations in the UK and Singapore resulted in governance arrangements materially different to that proposed by the Applicants.

For example, the UK body, called Pay.UK, is governed by a board of 12 of which there is only one bank representative.

In contrast, the Singapore NETS has a board of six people with all positions held by bank representatives. These differences make comparisons with NewCo difficult.

KWM seems to have a conflict of interest

King Wood Mallesons (KWM) made a submission to the ACCC stating that it does not have a conflict of interest in relation to the amalgamation. In my view, a conflict of interest does exist because a KWM partner is heading a review into the regulatory architecture of the payments system.

One issue is whether the architecture report to government will be overly implicitly or explicitly supportive of the Applicant's amalgamation proposal, or conversely, the amalgamation proposal is tailored to be consistent with the regulatory architecture report.

Having said this, even if there has been coordination of projects, it is hard to see how it will impact on the ACCC's assessment of the amalgamation, so there should be no problem in practice.

Regards,

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