SUPERCHOICE SUBMISSION TO ACCC

RE: Application by Industry Committee Administration Pty Ltd (ICA)
for Merger Authorisation
Authorisation Number: 1000020-1

Definitions:

In this submission, the term "**payment scheme**" references the eftpos and NPP platforms that enable electronic funds transfers, and the term "**payment services**" is used as a reference to services that are provided by utilising an underlying payment scheme.

Submission Summary

SuperChoice Services Pty Limited (ACN 109 509 739) ("**SuperChoice**") submits the ACCC should not permit the proposed merger of the BPay, eftpos and NPP because:

1. In doing so, there is a real risk that Newco will be structured in much the same way as Telstra was structured prior to the transitioning of its retail services to the NBN; and

2. The proposed merger entity, Newco, will be comprised of entities that include the 4 major banks which will act in concert rather than as competitors.

However, if the ACCC were minded to authorise any merger, then SuperChoice submits:

(a) BPay, as a payment services provider, should not be included in the merger and should not be permitted to hold any interest in Newco; and

(b) The ACCC should impose a condition on such authorisation to the effect that Newco's Constitution should:

(A) limit Newco's activities solely to the rationale offered by ICA for such merger as set out in section 1.4 of the document titled *Summary – Payments Amalgamation – Application to the ACCC for Authorisation*, namely the coordination of innovations of the BPay, eftpos and NPPA payment schemes to create efficiencies for their customers and to enable the three payment schemes to better compete against existing and future global payment companies ("**Rationale**"); and

(B) prohibit Newco from embarking on any activities other than those directly relevant to the Rationale, including prohibiting activities that develop and implement payment services that sit on the payment schemes; and

(C) not be able to be amended unless any such amendment is first approved by the ACCC.

Background to SuperChoice and its Market

SuperChoice's substantial undertaking is the provision of a software-as-a-service solution that facilitates the electronic clearing of superannuation contributions and rollovers.

SuperChoice has been involved in this undertaking since it was established in 1996, and has progressed to be one of the leading providers of a SuperStream compliant clearing house service. Included among SuperChoice's clients are ANZ (currently transitioning the SuperChoice services to IOOF) and NAB. In providing its services, SuperChoice utilises the BECS payment scheme by implementing direct debits and direct credits.

Another provider of a superannuation clearing house service is the product known as QuickSuper, which is operated by QValent, a wholly owned subsidiary of Westpac Banking Corporation. The SuperChoice and QuickSuper offerings, together with the ATO operated Small Business Clearing House and several other independent providers are providers of SuperStream compliant clearing house services in this market.

Concerns regarding the proposed merger application

In considering the application SuperChoice has been concerned with a number of aspects, including:

1. The lack of clarity, substance and detail as to how Newco proposes to implement the Rationale for the merger; and

2. The possibility of Newco, through eftpos and NPP, being a combination of payment infrastructure provider, and, through BPay, a payment service provider, thereby creating a structure much as Telstra's structure was prior to the ACCC extracting an undertaking that obligated Telstra to move its retail services to the NBN; and

3. The fact that not only will the 4 major banks have interests in Newco and therefore act jointly in carrying out its Conduct, Newco will also own BPay, eftpos and NPP, whereby the 4 major banks will not only act in concert in the operation of the currently competitive payment schemes, but they will also have the potential to act in concert in providing payment services that are layered on top of the payment schemes.

1. **Lack of clarity, substance and detail regarding implementation of the Rationale**

   Use of terms:
   One of the issues leading to a lack of clarity, substance and detail, is the failure to define with clarity, or in some cases at all, certain terms strewn through the application. For example, "Payment Service" is defined as "*the payment services facilitated by each of eftpos, BPAY Group and the NPP*". This circular definition provides no clarity as to what these services are and how they may differ from "Payment Schemes". It provides no clarity as to what future payment services may be.

   A "Payment Scheme" definition does not appear in the definition section, but, at paragraph 23.2 of the application, a "Payment Scheme" is said to be "*A network that allows for payment information to be exchanged between financial institutions (eg the Visa, MasterCard and American Express networks, eftpos' network, BPAY, PayPal)*".

As stated in the above Definitions section, in this submission, the term "**payment scheme**" references the eftpos and NPP platforms that enable electronic funds transfers, and the term "**payment services**" is used as a reference to services that are provided by utilising an underlying payment scheme. By way of example, SuperChoice provides a payment service of providing a non-cash payment facility to clear superannuation contributions. It provides this payment service by utilising the BECS payment scheme, but it could just as easily provide the payment service by utilising one or other of the other available payment schemes, such as BPay, eftpos, NPP, credit cards etc.

Vagueness and confidentiality:

At para 2.4, the applicant sets out its Rationale for the merger as follows:

The shareholders and members of BPAY HoldCo, eftpos and NPPA, who are represented on the Industry Committee, determined that the Conduct will allow the three payment schemes to:

(a) co-ordinate their innovations, creating efficiencies for their customers (including by reducing transaction costs), businesses and consumers and reducing the risk of stranded assets from innovations that are not able to succeed due to their inability to achieve network effects in a timely manner; and

(b) better compete against existing and future global payment companies, enhancing competition in domestic payments markets.

The Applicants believe the Conduct will overcome the network externalities and market failures that currently exist in the Australian payments industry where the significant challenges to co-ordinating investments in new payments services across Australia's banks and other financial services institutions has prevented new payment services from achieving network effects in a timely fashion.

There is no detail as to how Newco will implement this Rationale, apart from citing general statements such as reduced costs and reduced risk of stranded assets. When one tries to discern the details of any such Conduct, these details are either non-existent or are said to be confidential. While the ACCC may be in a position to test whether or not the proposed merger will, or is necessary to, achieve that Rationale, the community which may be impacted by the Conduct has no idea as to what the strategy is likely to be.

A scintilla of information may be found at paragraphs 10.1 and 10.2, which read:

(10.1) During a meeting of the Industry Committee held on 16 October 2020, the Industry Committee agreed that a new, stronger entity is needed to shape payments in Australia and provide sustainable competition to global payments companies.[42]

The Conduct will benefit users of the NPP, eftpos and BPAY systems. It is intended to further innovation and enable the realisation of efficiencies to improve the Payment Services of each of NPPA, BPAY Opco and eftpos.[49]

(10.2) The overarching rationale for the Conduct is to address the current shortcomings in the domestic payments industry, as identified by the RBA's review of retail payments regulation in 2011[50] *and, more recently in its 2019 review.*

Again, the alleged shortcomings of the payments industry are referenced, but there is no disclosed detail as to how these shortcomings will be addressed, or, more importantly, why a merger of the 3 payment schemes is necessary to address these perceived shortcomings. The most that is offered is a statement that the Payment Services of each of BPay, eftpos and NPPA will be improved. There is no detail as to what Payment Services will be improved or how they will be improved.

More importantly, at least BPay, and to some lesser extent, eftpos, have already undertaken providing some payment services. Will these payment services now be provided by NewCo, thereby lessening competition between these payment services providers, or will each service provider utilise a merged and innovated payment scheme to provide these services? The community is left to wonder.

Paragraph 10.2 goes on to say:

The Industry Committee's non-binding endorsement of the Conduct reflects an expectation that the Conduct will address a number of the critical deficiencies in the current domestic payments industry. These deficiencies, as identified by industry participants include, for example:[52]

(a) *A lack of appropriate infrastructure to support innovation, causing Australia to fall behind on the development of both innovative card and real-time A2A solutions.*

….

As a single entity, NewCo (through its Board of Directors) will be able to align strategies, investments and offerings to better and more efficiently meet consumer and business expectations and remain competitive in a rapidly evolving and increasingly competitive payments landscape, including against much larger global competitors such as Mastercard, Visa, and the technology giants like Apple, Samsung, Google and Facebook, Ant Group and Tencent. Ensuring a strong domestic payments company is central to meeting the competitive pressures from larger global companies.

The Conduct is consistent with the Federal Government's commitment to a modern payments system that meets the current and future needs of all Australians, as expressed by the Federal Government when commissioning a review into the regulatory architecture of the payments system to ensure it is fit- for-purpose and responsive to advances in payments technology. One aspect of the review will *involve undertaking an assessment of how to create more productivity-enhancing innovation and competition in the payments system, including in relation to the pace and manner in which the NPP is being rolled out and enhancements for both eftpos and NPP are supported by industry.*

When the reader of the application seeks to learn more of the proposed actions and strategies, the reader is met with confidentiality claims to an extent that nothing at all is learnt. See for example Section 8 (Implementing the Conduct) and Section 9 (Commitment to provide and develop the Prescribed Services). The definition of "Prescribed Services" that are to form part of Newco's Constitution offers no clue as to what these might be. The most that one learns is that BPay's Sypht will not form part of the Conduct.

2. The Telstra Issue

In its deliberations, the ACCC might reflect on the significant competition issues that arose through Telstra having ownership of the copper wires infrastructure that underlay its retail services and the retail services of its would-be competitors. These issues are being resolved, to some extent, only after an extended an expensive process pursuant to Telstra's 27 February 2012 undertaking to the ACCC to migrate its retail services to the NBN, which is a strict wholesaler that is mandated to not discriminate in respect of the retail service providers utilising the NBN network.

In many ways, the same issues are likely to arise if the ACCC sanctions a merger that includes BPay, which is the provider of payment services, rather than a provider of a payment infrastructure platform, or a payment scheme (as that term is used in this submission). If BPay were a merger partner, Newco would be, as Telstra was, a provider of retail services as well as a provider of the infrastructure on which those services sit. The competitive risks would be similar to those that induced the ACCC to extract the 27 February 2012 undertaking it ultimately received from Telstra.

Aligned to the above potential risks to competition in the payments services sector, is the fact that NPP offers a most efficient infrastructure for electronic payment services between financial and commercial entities. It is likely that, because of its efficiency and strategic roadmap, NPP will eventually emerge as the dominant provider of various payment schemes. At this time, NPP is utilised by many diverse overlay payment services providers, including BPay's Osko payment service.

It is submitted that if the Telstra/NBN situation is to be avoided, it is essential that NPP remain a wholesale provider that will deal with overlay payment service providers in a non-discriminatory fashion so as to ensure fair competition among all payment service providers which have a need to utilise an efficient payment scheme.

NPP is being adopted by diverse Fintechs as the preferred payment scheme for their constantly improving and innovative payment services. NPP should be restrained from evolving, through Newco, from its current role as a pure wholesale infrastructure provider for payment services providers, into a retail provider of payment services in competition with other payment services providers which rely on the NPP infrastructure to provide their services.

Accordingly, if the ACCC authorised any merger, it should extract an undertaking that Newco will not provide payment services. In the absence of such an undertaking, there is a real risk that the payment schemes partners, could through Newco, unfairly compete with those payment services providers who rely on the payment schemes held by those partners. This could result in the payment schemes providers acting in concert, through Newco, to block or impede the current dramatic and rapid growth in enhanced and innovative payment services by service providers other than Newco.

3. The 4 major banks acting in concert

Another primary concern of SuperChoice, and what SuperChoice anticipates would be the primary concern of the commercial community at large, is the potential power that will be vested in Newco, specifically through the interests of the 4 major banks which are currently members of one or other or all of BPay, eftpos and NPP, which seek to be shareholders in Newco.

In the past, the ACCC has rightly been extremely cautious not to permit the 4 major banks to collaborate in their activities or to venture too far outside their primary banking purposes. Such caution has been demonstrated when the ACCC refused to permit NBA, CBA and Westpac, as well as Bendigo and Adelaide Bank, to negotiate jointly with Apple and to boycott Apple Pay. The ACCC has also been wary of the banks' proclivity to bundle products with their loan products. In other words, the ACCC has always sought to ensure competition in the retail financial sector and to preclude any opportunity for the banks to engage in collaborative or cartel conduct.

Although SuperChoice finds itself unable to comment on ICA's asserted Rationale for the proposed merger, by reason of the vagueness and claims of confidentiality that litters the application, it and the community at large is confident the ACCC will, consistently with its past actions, carefully consider the possible ramifications of the 4 major banks entering into any collaborative conduct under the supposed umbrella of increasing efficiency in the non-cash payments sector.

Conclusion

If the ACCC, having the advantage of the details of Newco's proposed strategies that are redacted to the community, believes that some merger is in fact sufficiently beneficial to the community so as to outweigh the risks of a Telstra-like dilemma, and/or the risks arising from the 4 major banks acting in collusion rather than as competitors, then it should, at the very least, ensure that such collaboration and lack of competition does not extend past a collaborated effort to enhance the payment schemes, and that it ensures its authorisation does not enable the undertaking of in-concert, non-competitive efforts in providing payment services which are presently provided in a competitive framework. Permitting Newco, as a cartel vehicle, to compete with third party payment services providers, as opposed to third party payment schemes providers, would sound the death knell for those third-party service providers who find themselves able to compete with one major bank, but not with the 4 major banks.

One example of such likely extinction is SuperChoice, which has been able to compete with Westpac's QuickSuper, but which would find it far more difficult to compete with a QuickSuper operated by the 4 major banks.

SuperChoice accordingly submits that the ACCC should ensure that Newco remains a pure payment scheme infrastructure provider to payment services providers and not a competitor to those providers. To this end SuperChoice urges the ACCC to impose, on any authorised merger, those conditions set out in paragraphs (a) and (b) of the Summary section at the beginning of this submission.

Dated: 16 April 2021

Dr Ian Campbell
Chairman
SuperChoice Services Pty Limited.