



23 June 2021

Australian Competition & Consumer Commission
Your ref: MA1000020
Contact officer: Alex Reed / Sophie Mitchell
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Email: mergerauthorisations@acc.gov.au

Dear Alex Reed / Sophie Mitchell

Visa – MA100020 – Proposed amalgamation of BPAY, eftpos and NPPA – interested party consultation, submission in response to ACCC’s preliminary views and issues letter (Issues Letter)

Visa welcomes the opportunity to provide a submission in response to the ACCC’s Issues Letter regarding the application for authorisation for the proposed amalgamation of BPAY, eftpos and NPPA (**Proposed Merger**) dated 22 March 2021 (**Authorisation Application**).

Visa does not propose to provide a detailed submission, but wishes to address two key points arising from the Issues Paper:

1. That without adequate governance systems, NewCo will be incentivised to favour outcomes of key shareholders at the expense of smaller business groups and other competitors (Issues Paper 2.4); and
2. That post-merger the merged firm will control the value chain and could reduce incentives to explore and offer alternative solutions to customers (Issues Paper 2.46).

Potential competitive detriments from the changes in structure, ownership and control

Visa submits that in assessing whether the Proposed Merger will substantially lessen competition or give rise to public benefits that outweigh the anti-competitive detriments, it is important to consider the changes in structure, ownership and control of the merged firm and information flows that are likely to arise post-merger.

The changes in ownership and control of the three entities post-merger and the proposed structure of NewCo will impact on the incentives of a number of the NewCo shareholders to compete and, Visa submits, their incentives to invest in innovative products and services offered by competing payments services participants.

For example, Visa is concerned that NewCo shareholders may, in the course of decision making over third party products, innovations, and services, either use information derived from NewCo to prioritize or alter investment or implementation in favour of NewCo products or services, or delay investment or implementation of the new product innovation in favour of product developments and/or investment decisions by NewCo. The increased risk of product foreclosure by NewCo should be considered an anti-competitive detriment.

As a further example, Visa is concerned that due to the vertically integrated structure of the amalgamation, customers of Visa, who are also NewCo shareholders, will prioritize implementation and distribution of products and services provided under NewCo instead of competing Visa products and services, due to the shareholding interest in NewCo. The vertically integrated structure disincentivizes the adoption of products and services that compete with those under NewCo.

The ACCC should be concerned that replacing investment decision-making by the separate merger parties with a centralised process may lead to an incoherency or lack of focussed investment decision-making that could negatively impact product development and innovation. This in turn would likely have negative consumer outcomes. Whereas in the counterfactual, focussed product development and investment by the three separate entities is more likely to have positive consumer outcomes.

Visa considers that it is important to implement appropriate information and structural controls as a condition of any authorised conduct. Visa considers that it is not a sufficient organisational or operational control that the parties are aware of their obligations under the Competition and Consumer Act 2010 including in respect of competitively sensitive information as submitted by the merger parties.¹ In particular, auditable organisational and operational controls should operate as an effective measure, where there are employee, process and product changes.

Value chain concerns

The ICA submits that the merger is necessary in order to allow innovations by the three Australian payment schemes to achieve ubiquity and network effects faster than in the counterfactual situation.

Visa considers that there is a degree of competitive overlap between the merging parties such that there is a degree of competition that will be lost, post-merger. Based on the evidence before it, the ACCC should not be satisfied that there will not be competition lost, as a result of the amalgamation.

In dynamic markets like payment systems, the ACCC should consider carefully the likely state of future competition absent the merger and how that compares with competition in the factual. In dynamic markets, participants like the merger parties may, absent the merger, grow

¹ Applicants' response to submissions from interested third parties dated 19 May 2021 at pp 11

quickly, expand differently and partner with other market participants in ways that would not be the case in the merger scenario, giving rise to more innovation and better consumer outcomes which leverage technologies and opportunities available via other market participants – which have an overall positive benefit for consumers and competitors.

As noted in Visa's first response dated 23 April 2021, Visa is concerned that post-merger NewCo will have a dominant position from the perspective of control, access and service coverage in the Australian payments landscape relative to any other player. There is the potential that this will create a closed loop and fragmented payments system which will discourage the entry of new payments systems participants, potentially harm existing competitors and discourage the development of new and innovative services. There is not merely a question of access but also of incentives as shareholders of NewCo by virtue of the new structure may have an increased incentive to protect the business of NewCo and thereby limit customer access to third party products.

Visa has observed in the payment system landscape a number of recent examples where peer to peer; business to consumer and consumer to business products have been developed as innovations to the payments landscape but these products have not been taken up in preference for other domestically available services.

As noted above, the merger increases the risk of such an outcome, not due to any improvements associated with domestic originated services, but rather, due to the incentives of shareholders to limit the growth of alternative services.

Concluding remarks

Visa reiterates the position it put in its response to the Authorisation Application dated 23 April 2021. The ACCC is best placed to examine the Authorisation Application, including the Confidential Implementation Agreement and the Prescribed Services, to determine whether the Proposed Merger is likely to substantially lessen competition; whether any public benefits arise and whether the merged firm should be required to ensure that there is a governance framework in place for dealing with confidential and commercially sensitive information. Visa's views set out above draw on its extensive experience as a payment systems participant in Australia and in other jurisdictions.

Whilst Visa does not propose to make detailed comments on whether the Proposed Merger will either lessen competition or give rise to public benefits, it is undeniably the case that payment service markets are changing rapidly given technological advancements and changing consumer preferences. Visa expects that the ACCC will closely consider not only the current capabilities of the merger parties but, by reference to the parties' internal plans and public statements, the extent to which horizontal competition between them may increase in the future.

In connection with public benefits, Visa agrees that many public benefits appear to be either unspecified or capable of being achieved in the absence of the transaction. It is of particular note that Eftpos identified that the Proposed Merger poses a risk to its ability to continue with its current strategy which may affect competition.

Finally Visa notes the merger parties' and the ACCC's comments in respect of public benefit regarding import substitution. To the extent that these submissions suggest that Visa is not committed to Australian payments systems or that it will not continue to actively participate in the payments system in Australia to the benefit of the economy and consumers, Visa rejects any such position.

Visa would be pleased to discuss any aspect of this submission with the ACCC's case team. Visa's contact for this purpose is Linda Luu at [REDACTED].

Yours sincerely,

[REDACTED]

Brett Stapleton

For and on behalf of Group Country Manager – Australia, New Zealand and South Pacific