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1 April 2022

Dear Ms Reader and Ms Bond

**ACCC Digital Platform Services Inquiry 2020-2025**

1. The Commonwealth Bank of Australia (CBA) welcomes the opportunity to comment further on the ACCC's Digital Platform Services Inquiry 2020-2025 (**Inquiry**) in this response to the *Discussion Paper for Interim Report No.5: Updating Competition and Consumer Law for Digital Platform Services (Discussion Paper)*. The Discussion Paper has invited stakeholder views on options for potential regulatory reform for Australia to address the competition and consumer concerns identified by the ACCC in digital platform services markets to date.
2. As noted by the ACCC, there are increasing concerns about the ability of competition and consumer law enforcement action to address the systemic competition and consumer concerns identified in digital platforms markets.<sup>1</sup>
3. Only last month at the Australian Financial Review Business Summit, Reserve Bank Governor Philip Lowe noted that regulators require urgent new power to protect consumers as we see rapidly shifting trends in payments (including the traditional shifting of money between bank accounts, to digital 'tokens' created by non banks).<sup>2</sup> These changes, in parallel with the continued uptake of digital payments by consumers, mean it is time to look closely at the services and conveniences offered by digital platforms on the one hand, compared to new and complex competition and consumer protection issues on the other. In particular, it is timely to consider the way that big tech platforms are increasingly integrating payments functionality into their service offerings.<sup>3</sup>
4. CBA has previously submitted these important matters for consideration to the ACCC regarding digital wallets in the context of this Inquiry on 24 March 2021,<sup>4</sup> as well as the Inquiry by the

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<sup>1</sup> Rod Sims, "ACCC's enforcement and compliance policy update 2022-23" (Speech delivered at the CEDA Lunch) Sydney, 3 March 2022 <https://www.accc.gov.au/speech/acccs-enforcement-and-compliance-policy-update-2022-23>.

<sup>2</sup> James Eyers, "Phil Lowe, Joe Longo plead for urgent crypto powers" *The Australian Financial Review* (online), 11 March 2022 <https://www.afr.com/companies/financial-services/phil-lowe-joe-longo-plead-for-urgent-crypto-powers-20220311-p5a3uu>.

<sup>3</sup> See also Philip Lowe, "Address to the Australian Payments Network" (Speech delivered at the AusPayNet Annual Summit) Virtual event, 7 December 2020 < <https://www.rba.gov.au/speeches/2020/pdf/sp-gov-2020-12-07.pdf>>.

<sup>4</sup> See CBA Submission to the ACCC of 8 March 2021 <[Commonwealth Bank of Australia \(8 March 2021\).pdf \(accg.gov.au\)](#)>.

Parliamentary Joint Committee (PJC) on Corporations and Financial Services (into mobile payment and digital wallet financial services).<sup>5</sup> In particular, CBA has submitted:

- a. given the recent acceleration in adoption of mobile devices and digital wallets for a wide range of uses including making payments, establishing identity and in healthcare, it is important to ensure that consumers are guaranteed choice, safety and security when using mobile digital wallets; and
  - b. policy and regulatory settings should ensure consumers are protected and guard against market distortions that could adversely impact competition, innovation or the stability of the financial system.
5. To assist the ACCC in its consideration of options for regulatory reform, this response provides CBA's observations in relation to:
- a. the competition and consumer benefits, and harms, CBA observes arising from the expansion of digital platform services in Australia;
  - b. its views on overarching principles for the possible regulation of digital platforms; and
  - c. potential learnings from the ACCC's news media bargaining code.

#### **Benefits and harms arising from the expansion of digital platform services**

6. Digital platforms deliver substantial benefits to consumers, businesses and the broader community. Digital platforms have an expanding role in payments - through mobile payments, digital wallets, and mobile acquiring services, in addition to providing a platform for more traditional banking apps as well as other apps being developed by fintechs and other financial services and payment participants. In doing so, they have the capacity to encourage innovation in financial services and payment products, increasingly streamline the interactions between consumers and merchants, lower transaction costs for consumers and businesses, provide added convenience, and increasing access for consumers and merchants to a broad range of e-commerce solutions. Competition and digital innovation can also open up new avenues of product differentiation and can integrate a range of value-added, consumer targeted services into the payment mechanism (such as loyalty offers and more).
7. As digital platforms' role in payments and financial services continue to evolve, strong competition will be crucial to ensure that the many benefits that flow from these technologies result in better consumer outcomes.
8. For example, Australians increasingly make purchases through mobile devices with recent figures highlighting the popularity of digital wallets: as at March 2021, more than 40% of combined debit and credit card contactless transaction count was via a digital wallet, with the total dollar value of digital wallet transactions increasing by 110% (from \$1 billion to \$2.1 billion) in the 12 month period from March 2020 to March 2021.<sup>6</sup> As the ABA Chair observed at the Australian Banking Association Conference on 11 March 2022, "the phone is becoming the bank".<sup>7</sup>

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<sup>5</sup> Parliamentary Joint Committee on Corporations and Financial Services Inquiry into Mobile payment and digital wallet financial services (CBA submission dated 21 May 2021).

<sup>6</sup> 'CBA predicts digital wallets set to become the most popular contactless way to pay' CBA Newsroom (19 May 2021) <<https://www.commbank.com.au/articles/newsroom/2021/05/digital-wallets-contactless-soar.html>>.

<sup>7</sup> James Evers, "Phil Lowe, Joe Longo plead for urgent crypto powers" *The Australian Financial Review* (online), 11 March 2022 <https://www.afr.com/companies/financial-services/phil-lowe-joe-longo-plead-for-urgent-crypto-powers-20220311-p5a3uu>.



9. However, this surge in digital payment services coincides with incomplete and inconsistent regulatory treatment of these services, with some providers operating outside of the existing formal and self-regulatory frameworks that govern the payment systems in Australia.
10. Like many of the areas of the digital economy where proposals to ensure open and fair access are canvassed to unlock value for the economy as a whole,<sup>8</sup> fair, reasonable and open access to mobile device ecosystems will deliver increased value for Australians in the financial services and payments sectors. Competitive neutrality facilitates a competitive environment for providers of financial services and payments, which in turn will reduce barriers to innovative investments, leading to more consumer choice over time, increased efficiency and overall value, at reduced cost to the Australian economy.

## Regulation of digital platforms

### *Overarching principles and application to digital wallet services*

11. At CBA, our primary interest is in the policy and regulatory settings that will allow customers to maximise the benefits from digital innovation as it occurs across the economy. A responsive, agile, and fit-for-purpose financial services system, including the payments regulatory framework, can instil confidence and protect the security of the system while promoting innovation and competition in a way that enhances the user experience and provides consumer safeguards.
12. Setting aside the precise mechanics by which access to essential technology could be regulated, positive regulatory reform should have elements directed to:
  - a. access to essential digital platforms on fair and reasonable terms, including in relation to price, security, and technical standards;
  - b. enabling real and fair commercial negotiation and dealings between Australian businesses and large international digital platforms (eg digital platforms in a 'gatekeeper' role and other participants);
  - c. ensuring that participants are subject to consistent and equal regulatory settings and that all participants take responsibility for consumer protection and ensuring that consumers have clear and appropriate recourse to participants for fraud (eg, ePayments Code doesn't apply to digital platforms); and
  - d. transparency in relation to the costs of services so that consumers are making fully informed decisions.
13. As the ACCC recognises, significant attention internationally as well as regulators in Australia is directed to *'Apple delaying or denying access to certain functionality for third-party apps... For example, Apple denies third-party apps' access to the 'tap-and-go' payment functionality of the iPhone's near field communication (NFC) chip, which may restrict the ability of prospective rivals to supply payment apps or digital wallets on iPhones to compete with Apple Pay.'*<sup>9</sup>

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<sup>8</sup> See eg proposals in the UK and US that have identified the need to require open access to App Stores. "Discussion Paper for Interim Report No. 5: Updating competition and consumer law for digital platform services" *ACCC Digital Platform Services Inquiry* (February 2022) <https://www.accc.gov.au/system/files/Digital%20platform%20services%20inquiry.pdf>, pp110-115. (ACCC Discussion Paper)

<sup>9</sup> ACCC Discussion Paper, p 42.



### ***Reform will require coordination across regulators***

14. Critically, the regulation of digital platforms in Australia will require the ACCC to identify what regulation can be achieved within its existing powers, while other regulators work in parallel to identify adjacent areas of regulatory reform.
15. Given the convergence of digital platforms and payments, reform will require continuing consultation and coordination across regulators especially considering the parallel reviews currently in progress. In this age of digital reform, regulators will need to work more closely than they have before. As Rod Sims noted in his speech to the Committee for Economic Development of Australia on 3 March 2022, ACCC's working relationship with many of these regulators has "never been stronger".
16. There is already precedent for regulatory coordination in this area. CBA acknowledges the work undertaken in 2019 by the RBA with input and assistance from the ACCC in relation to the functionality of, and access to, the New Payments Platform.<sup>10</sup> Separately, CBA acknowledges the work underway by Treasury, in its Review of Australia's Payments Systems, the RBA's Payment System Board, the ACCC's digital platforms work, and the PJC Inquiry that ventilated many of these issues, in looking at whether the overall approach to regulation, consumer protection, and legislation of payments is appropriate. Moreover, a number of legislative models are under consideration by European competition regulators and we understand the ACCC is observing these jurisdictions closely.

### ***Responsibility for consumer protection and scams***

17. CBA also notes a further potential benefit of digital platform regulation, being as the regulatory requirement for digital platforms to take increased responsibility for scams, including:
  - a. proactively identifying and taking down ads/posts that promote scams;
  - b. reacting quickly to requests from banks and governments to take down scam ads/posts
  - c. working collaboratively with law enforcement to track and identify those posting scam ads and messages.
18. In a further example of coordination across regulators, CBA welcomes the recent formation of the Digital Platform Regulators Forum which seeks to increase cooperation and information sharing between digital platform regulators.<sup>11</sup> The increased cooperation between the ACCC, ACMA, Office of the Australian Information Commissioner and, crucially, the Office of the eSafety Commissioner means this group is well placed to consider the significant consumer impacts of online scams.

### ***Digital platforms and the Consumer Data Right ("CDR")***

19. A further area that should be explored is the role of the CDR when it comes to digital platforms. Given the popularity and broad product suite that is now offered by digital platforms, they collect an enormous amount of Australian's consumer and business data. Expansion of the CDR to digital platforms would unlock this data for consumers and businesses, allowing them to use this data (ensuring both read *and* write access) to drive better outcomes and accelerate the roll out of the CDR

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<sup>10</sup> See 'New Payments Platform Functionality and Access' (<https://www.rba.gov.au/payments-and-infrastructure/new-payments-platform/functionality-and-access-report.html>).

<sup>11</sup> ACCC Media Release, "Agencies form Digital Platform Regulators Forum", 11 March 2022, < <https://www.accc.gov.au/media-release/agencies-form-digital-platform-regulators-forum>>.



across the Australian economy. It will also encourage greater innovation and help to neutralise the competitive advantage that digital platforms have when it comes to data.

20. Of further interest, and potential application to digital platform regulation, is the internal dispute resolution process requirements in the CDR which require that all Data Holders and Accredited Data recipients be a member of a recognised external dispute resolution scheme in relation to CDR consumer complaints. The Australian Financial Complaints Authority is the only external dispute resolution scheme recognised by the ACCC for banking CDR data.<sup>12</sup>

#### Potential learnings from the ACCC's news media bargaining code

21. CBA supports a scalable and appropriate regulatory framework which is fit for purpose and can move quickly to keep pace with technology and ensure better outcomes for the Australian economy.
22. As Mr Comyn noted at the PJC Inquiry, *'In line with the findings of the ACCC, it appears likely to us that additional legislative powers may need to be conferred, possibly with a view to designating the largest platforms, or creating obligations or countervailing factors that reintroduce competitive tension. There may also be lessons that can be drawn from the experience of the media bargaining code in this context.'*
23. Valuable learnings from the Media Code include providence to fair commercial dealings; that the Code creates an equal playing field and evens out bargaining power; and that the process is fair.

#### Next steps

CBA understands that the ACCC expects to hold stakeholder forums during May and June 2022, ahead of the *Interim Report No 5* being provided to the Treasurer by 30 September 2022. CBA would welcome the opportunity to discuss any of the matters raised in this Response in more detail. Please contact Sunita Kenny, Senior Legal Counsel - Competition, on [REDACTED] should you have any questions.

Kind regards

[REDACTED]

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<sup>12</sup> *Competition and Consumer (External Dispute Resolution Scheme – Banking Sector) Instrument 2019.*

