



Determination

Application for merger authorisation

lodged by

Industry Committee

in respect of

the proposed amalgamation of ownership of BPAY Group Holding Pty Ltd, eftpos Payments Australia Limited and NPP Australia Limited

Authorisation number: MA1000020

9 September 2021

Commissioners:

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Glossary

ACCC	Australian Competition and Consumer Commission
Act	<i>Competition and Consumer Act 2010 (Cth)</i>
ADI	Authorised Deposit-taking Institution
ANZ	Australia and New Zealand Banking Group Limited
AP+	Australian Payments Plus Ltd
AusPayNet	Australian Payments Network Limited – a self-regulatory body and industry association for payments
BPAY	BPAY HoldCo and its wholly owned subsidiaries, BPAY Group Pty Ltd and BPAY Pty Ltd.
BPAY HoldCo	BPAY Group Holding Pty Ltd
BNPL	buy now, pay later
CBA	Commonwealth Bank of Australia
DNDCs	dual network debit cards
eftpos	eftpos debit card scheme and associated infrastructure owned and operated by EPAL
EPAL	eftpos Payments Australia Limited
ICA	Industry Committee Administration Pty Ltd – the administrator of Industry Committee which has applied for merger authorisation.
LCR	least-cost routing
major banks	ANZ, CBA, NAB and WBC
MPS	NPPA's Mandated Payment Service (also known as 'PayTo')
NAB	National Australia Bank Limited
NFC	near field communication
NPP	New Payments Platform
NPPA	NPP Australia Limited
OpCos	operating companies and wholly owned subsidiaries of AP+ after the amalgamation (i.e. BPAY HoldCo, EPAL and NPPA)
Osko	BPAY's Osko services, with 3 elements using the NPP infrastructure. Osko 1 is an overlay service on the NPP infrastructure which facilitates real-time account-to-account

	payments. Osko 2 is a potential future service that would allow customers to receive a payment with a document (for instance, a salary payment together with a payslip). Osko 3 is another potential future service that would allow a payment request to be sent to a payer, where the payer can choose which account to pay from, when and how much is paid.
Prescribed Services	The services listed in Schedule 1 to the Undertaking
QR	quick-response
RBA	Reserve Bank of Australia
SCT	NPPA's Single Credit Transfer service
SNDCs	single network debit cards
Undertaking	The court enforceable undertaking provided by AP+ to the ACCC under s87B(1A) of the Act
WBC	Westpac Banking Corporation

Summary

The Australian Competition and Consumer Commission (**ACCC**) has decided, pursuant to section 88(1) of the *Competition and Consumer Act 2010* (the **Act**), to grant authorisation for the proposed amalgamation of BPAY Group Holding Pty Ltd (**BPAY HoldCo**),¹ eftpos Payments Australia Limited (**EPAL**) and NPP Australia Limited (**NPPA**) (referred to as the **amalgamation**), after accepting a court enforceable undertaking (the **Undertaking**) from Australian Payments Plus Ltd (**AP+**), which will be the holding company after the amalgamation.

In reaching the views set out in this determination, the ACCC has had regard to the submissions provided by a range of parties, and documents and information obtained under the ACCC's compulsory information gathering powers, as well as the Undertaking.

The ACCC must not grant authorisation for a proposed acquisition unless it is satisfied, in all the circumstances, that:

- the proposed acquisition would not have the effect, or would not be likely to have the effect, of substantially lessening competition (**'competition' limb**) or
- the proposed acquisition would result, or be likely to result, in a benefit to the public, and that benefit would outweigh the detriment to the public that would result, or be likely to result, from the proposed acquisition (**'net public benefit' limb**).²

Taking into account the Undertaking, the ACCC is satisfied in all the circumstances that the amalgamation would not, or would not be likely to, substantially lessen competition.

While the ACCC is not required to assess the amalgamation under the 'net public benefit' limb of the authorisation test, the ACCC considers that the amalgamation is likely to result in a public benefit. The ACCC is satisfied that, in all the circumstances, including the Undertaking, this public benefit is likely to outweigh any likely detriment arising from the amalgamation, including from a lessening of competition.

Parties to the amalgamation and the transaction

BPAY, EPAL and NPPA, through their respective payment schemes, provide a number of payment services that are utilised every day by Australian consumers and businesses. After the amalgamation, they will be wholly owned subsidiaries of AP+. EPAL, NPPA and BPAY will operate as 3 separate companies, with AP+ determining a unified investment roadmap for the 3 payment schemes.

BPAY primarily operates a domestic electronic bill payment service that enables users to make payments through a financial institution's online, mobile or telephone banking facilities to organisations which are registered billers.

EPAL's main business is facilitating electronic payments from customer bank accounts to merchant bank accounts at the point of sale. EPAL owns and operates the eftpos debit card scheme and associated infrastructure (**eftpos**). eftpos is most commonly associated with the use of plastic debit cards as a payment method for the purchase of goods and services. However, eftpos also facilitates some online debit card payments and debit card withdrawals at automatic teller machines.

¹ BPAY HoldCo and its wholly owned subsidiaries, BPAY Group Pty Ltd and BPAY Pty Ltd, are collectively referred to as **BPAY**.

² Section 90(7) of the Act.

The New Payments Platform (**NPP**) was launched in February 2018 and is open access infrastructure used to facilitate real-time payments between bank accounts within Australia. It is a more modern version of the existing Direct Entry infrastructure used in transferring money between bank accounts.³

While the ownership structure, control and voting rights are different for each of BPAY, EPAL and NPPA, there is a significant degree of existing common ownership across the payment schemes. In particular, Australia and New Zealand Banking Group Limited (**ANZ**), Commonwealth Bank of Australia (**CBA**), National Australia Bank Limited (**NAB**) and Westpac Banking Corporation (**WBC**) (the **major banks**) have a significant interest in each.⁴ Under the amalgamation, the major banks' voting rights will be slightly diluted but they will continue to have significant influence in determining whether future payment services are implemented.⁵

Competition analysis

The ACCC has examined the possible impacts on competition as a result of the amalgamation. The key aspects of the ACCC's competition analysis are:

- the likely effect of the amalgamation on the future availability of eftpos and least-cost routing (**LCR**)
- the overlap between current BPAY, EPAL and NPPA services
- the loss of potential competition between BPAY, EPAL and NPPA in the future
- the likely effect of the amalgamation on third party access to the NPP.

Likely future with and without the amalgamation

If the amalgamation does not proceed, the ACCC considers the status quo is likely to prevail in the short to medium term. That is, each of BPAY, EPAL and NPPA would continue to operate as a separate business. The major banks would also retain significant common ownership interests in each entity, and would continue to have influence over which payment services are adopted in the future in their capacity as issuers and acquirers.⁶

Some interested parties have expressed doubts about the viability of eftpos and EPAL (with or without the amalgamation). The ACCC does not have a basis on which to conclude that EPAL is a failing firm or that it is likely to cease providing eftpos debit card payments services in the medium to long term without the amalgamation. The ACCC considers that if

³ The Direct Entry system co-ordinates and facilitates the exchange and settlement of bulk electronic transactions. Direct Entry is used for such payments as internet banking transactions and direct debit and direct credit instructions. Direct Entry occurs over the Bulk Electronic Clearing System for electronic debit and credit payment instructions. More information about the Direct Entry system is available at paragraphs [1.34-1.35].

⁴ In the case of BPAY, 100% control.

⁵ The major banks' voting rights will be diluted under AP+ compared to the rights they variously hold in BPAY, EPAL and NPPA currently. However, the major banks will still have significant influence in determining whether future payment services under the AP+ roadmap are implemented. This is because the ability of the major banks to influence the success of future domestic payment services will not be limited to their role as shareholders of AP+. The major banks collectively account for around 75% of residential deposits and therefore, the payment services they decide to implement, offer and promote to consumers is a major factor in how successful a payment method is.

⁶ Issuers are the financial institution that issued the debit cards or credit cards being used in a purchase transaction. Acquirers are the merchants' (e.g. retailers') financial institution – they are often but not always banks, and facilitate the processing of a card payment, including collecting payment from the issuers and paying the merchants.

the amalgamation does not proceed, EPAL would be likely to continue to attempt to diversify its business.

Effect of the amalgamation on eftpos and LCR

eftpos plays an important role in maintaining competition in the routing of debit card payments. It is the only domestic debit card scheme in Australia. It is an alternative to and is often lower cost for merchants than the 2 larger international debit schemes it competes against: Visa Debit and Debit Mastercard.⁷

A number of interested parties, particularly small business representatives, have raised concerns about the effect of the amalgamation on the independence of EPAL, the provision of eftpos as a low cost debit card service, and the availability of LCR to merchants. Box 1 below explains LCR.

The ACCC has considered the role that eftpos plays in maintaining competition in the routing of debit card payments and whether the amalgamation is likely to result in a reduction in support for eftpos from the major banks or AP+. Such a reduction in support may take the form of, for example, constraining the ability of EPAL to improve or expand its low cost service model through measures such as offering new types of payments and improving non-price aspects of its services.

The ACCC considers that the major banks have mixed incentives with respect to eftpos such that there is a risk that eftpos' role in the Australian payments system may be diminished in the future with the amalgamation, which may result in a substantial lessening of competition. In order to address these competition concerns, the ACCC has accepted the Undertaking, which obliges AP+ to procure that EPAL maintains eftpos and facilitates the availability of LCR for a period of 4 years.

The ACCC also notes that the Reserve Bank of Australia (**RBA**) has encouraged competition in debit card payments, for example by promoting the issuing of dual network debit cards (**DNDCs**) and the provision of LCR to merchants (see Box 1 below). Further, the RBA has indicated a willingness to take further steps in the event that eftpos' ability to exert competitive pressure in debit card payment services was to weaken.⁸

However, while such steps could be directed to maintaining DNDCs and LCR, they would be in response to a diminution of eftpos' ability to exert competitive pressure after it has occurred. The ACCC considered it appropriate to accept the Undertaking because it is likely to mitigate the risk of such a diminution occurring. By specifically requiring AP+ to maintain support for eftpos, the Undertaking, together with the role of the RBA, reduces the risk that the major banks as shareholders of AP+ will deprioritise support for eftpos following the amalgamation.

⁷ [RBA, Review of Retail Payments Regulation: Consultation Paper, May 2021](#), pp 8-9.

⁸ [RBA, Review of Retail Payments Regulation: Consultation Paper, May 2021](#), p 13; RBA, Submission to ACCC, 9 July 2021, pp 3-4.

Box 1: DNDCs and LCR

DNDCs are debit cards that have point of sale functionality with 2 debit card schemes, usually eftpos and either Debit Mastercard or Visa Debit. The way the 2 card schemes are commonly organised on a DNDC means that, absent an instruction at the point of sale, payments made using that card are routed to Visa Debit or Debit Mastercard (as applicable) by default. Payments made using DNDCs are routed to eftpos if consumers choose the 'cheque' or 'savings' option when inserting or swiping their DNDCs at payment terminals. Where a card is not inserted or swiped, LCR gives merchants the choice of routing a contactless payments to eftpos. Contactless payments include the 'tap and go' functionality commonly available and used across Australia.

Without LCR, DNDC payments would typically only be processed through the Visa Debit or Debit Mastercard schemes, for which many merchants may incur higher fees than payments processed through eftpos.

The amalgamation will result in the loss of an independent EPAL Board which could be expected to make decisions solely in the interests of EPAL and the eftpos scheme. EPAL will become a wholly owned subsidiary of AP+ and its Constitution will be amended so that directors acting in good faith in the interests of AP+ will be taken to be acting in the best interests of EPAL.⁹

Further, as one of 3 operating companies (**OpCos**) wholly owned by AP+, the unified roadmap developed by AP+ will apply to EPAL. In these circumstances, with AP+ making decisions on what new functionality is developed or services are invested in, the ACCC considers that the level and timeliness of support for and investments in the eftpos scheme may be lower than in the likely future without the amalgamation.

The major banks currently have considerable influence over the decisions made by EPAL because they each hold voting rights on the EPAL Board, proportional to the volume of transactions each bank accounts for. The ACCC does not consider that the change in the proportion of shares and voting rights held by the major banks as a result of the amalgamation will translate into them exercising greater influence or control over AP+ than they would exercise over the individual payment schemes without the amalgamation.

The major banks (as issuers and acquirers) currently have the ability to dilute the competitive influence of the eftpos network by deciding which payment services they will support; including which eftpos services they offer to their customers and how quickly the services are made available. Following the amalgamation, the major banks will continue to each independently decide whether they will implement the functionalities proposed by AP+, including those related to eftpos.

The major banks have mixed incentives (because of the different roles they have as issuers and acquirers) to support eftpos by issuing DNDCs and making LCR available to their merchant customers. The RBA has observed that the major banks are likely to have a collective incentive to support eftpos and LCR, though their individual incentive to do so may be relatively weak.¹⁰

⁹ As provided for by s 187 of the *Corporations Act 2001*; see ICA, Non-confidential response to ACCC RFI, 18 June 2021, pp 4 and 11.

¹⁰ [RBA, Discussion with the ACCC, 24 June 2021.](#)

The ACCC considers that the mixed incentives of the major banks, and AP+ and the ability of the banks to materially affect AP+ investment decisions, give rise to some uncertainty with regard to the ongoing support of eftpos and LCR. As a result, there is a risk that the amalgamation may substantially lessen competition in relation to the routing of debit card payments.

The Undertaking imposes obligations on AP+ to support eftpos, including by procuring that EPAL will do all things in its control to make available and promote LCR for 4 years and develops certain services (the **Prescribed Services**), some of which facilitate eftpos online payment services. The development of eftpos' online payment services will assist in facilitating LCR for those payments. The ACCC considers that the Undertaking provides assurance that eftpos' payments services will be maintained for at least 4 years, and future functionalities relating to EPAL will be implemented.

The ACCC considers that the Undertaking will work alongside the role of the RBA to maintain eftpos' competitive position in the routing of debit card payments and ensures LCR continues to be available and promoted by eftpos for a period of 4 years, ameliorating the risk of a substantial lessening of competition.

Taking into account the Undertaking, the ACCC is satisfied that the amalgamation is unlikely to result in a substantial lessening of competition in relation to the routing of debit card payments.

Overlap between existing services

The amalgamation of BPAY, EPAL and NPPA will likely soften competition between their respective payment service offerings. However, it is not likely that there will be a resulting substantial lessening of competition in any market. This is because the extent of the likely competitive overlap between the parties without the amalgamation is limited in any event, and with the amalgamation the remaining competitive constraints are likely to be significant.

BPAY, EPAL and NPPA have not historically overlapped in the payment services they each deliver and therefore have not been close competitors. Rather, they have largely offered, in different segments, complementary payment services. More recently, the types of payments that BPAY, EPAL and NPPA's services support have expanded to the point where they have started to overlap at the margins, or may overlap in the future.

These areas of competition between the parties relate to situations where the services at the fringes of one or more of the parties' offerings may compete against the core business of another. It is not direct competition between the core offerings of each business, and the parties are not key competitors of each other.

There are varying levels of potential overlap between the parties' services across the following payment segments: point of sale payments; online retail payments; online bill and invoice payments; person-to-person payments; and government and business disbursements. However, the likelihood of the parties' service offerings becoming close substitutes in the future without the amalgamation is reduced by the ability of major banks (as issuers and acquirers, or as payer and payee institutions) to influence whether a domestic payment service can gain scale.

Further, the major banks do not have incentives to invest in and promote duplicative domestic payment services. The likelihood of BPAY, EPAL and NPPA becoming close competitors in any of their service offerings in the future without the amalgamation is therefore low.

In addition, there are differing levels and sources of competitive constraint in the different payment service segments. It is likely that the existence of these constraints in each segment will mean that the potential loss of competitive constraint between the amalgamating entities resulting from the amalgamation is unlikely to substantially lessen competition.

In particular, Mastercard and Visa are the closest competitors for services of the parties in some segments and will continue to provide a strong constraint. The presence of Mastercard and Visa, or the threat of entry or expansion by Mastercard and Visa, is likely to constrain AP+ for most payment use cases in the future. There is also scope for new entry and increased activity from large international technology companies in payment services (such as Apple or Google), noting that much of this would likely rely on Mastercard's and Visa's infrastructure, at least in the short to medium term. The Direct Entry system will be another competitive constraint in certain segments, at least in the short to medium term.

Competition for supplying new services

BPAY, EPAL and NPPA each currently compete to bring new ideas and services to the market. Two examples of this are: competition to bring new forms of payments services to the market, which may also facilitate new payments infrastructure; and competition to bring other ancillary services to the market.

The amalgamation reduces the incentives of BPAY, EPAL and NPPA to compete with each other to bring these innovations, such as quick-response (**QR**) code-based payment services, to the market. This is because AP+ will have an incentive to rationalise overlapping payment services to avoid duplicating investment spend. To the extent that any competition for innovation is lost, this will likely result in some lessening of competition in relevant markets.

The same issue around rationalising overlapping payment service arises for ancillary services that each of the payment schemes may currently compete to create. An example of this is the competing digital identity schemes being developed by eftpos and BPAY. This type of competition for duplicative services meeting the same demand will likely be consolidated by AP+ under the amalgamation.

An acquisition may substantially lessen competition if it results in the loss of potential future rivalry or competitive innovation. However, in the markets affected by the amalgamation, the following factors mitigate the risk of the amalgamation resulting in a significant loss of potential future rivalry or competition for innovation that would amount to a substantial lessening of competition.

First, any possible loss of potential future rivalry or competition for innovation must be considered in the context of the relevant markets, where competition for innovation and to bring new services to market will continue to be provided by Mastercard and Visa, as well as other potential future competitors for payment services. While some degree of competition for innovation will likely be lost, the ACCC considers that, with the amalgamation, AP+ will still have an incentive to invest in and deliver future payment service innovations due to potential or actual competition from other sources.

Second, the ACCC has considered the influence of the major banks (as issuers and acquirers, or as payer and payee institutions) in determining whether a domestic payment service offering is successful in achieving scale. The ACCC considers the major banks will be reluctant to support multiple payment service initiatives with overlapping use cases, either with or without the amalgamation. While overlapping investments and innovations between

BPAY, EPAL and NPPA may be pursued without the amalgamation, they are unlikely to be implemented or adopted to a sufficient degree to result in significant competition between actual services brought to market in the future.

Third party access to the NPP is unlikely to be materially affected

BPAY, EPAL and NPPA are currently all vertically integrated payments infrastructure and payment services providers. Each of their respective payments infrastructures could be used by third parties to provide payment services.

Following the amalgamation, AP+ will control multiple payments infrastructure to which third party providers may seek access to provide payment services in Australia. Foreclosure of access to this infrastructure¹¹ could result in higher barriers to entry, less innovation and ultimately less competition in payments services. The ACCC considered the potential for foreclosure of third party access to the NPP, noting that BPAY's Osko 1 service is an overlay service using the NPP infrastructure. This potential foreclosure would be a concern if the amalgamation sufficiently increased the ability and incentive of AP+ to engage in a foreclosure strategy.

AP+ will have some ability to foreclose third party access to the NPP, but this ability will not increase as a result of the amalgamation compared to NPPA's existing ability to foreclose access without the amalgamation. Importantly, post-amalgamation there will remain significant regulatory constraints which limit AP+'s ability and incentive to deny access, including the threat of intervention by the RBA.

AP+ may have an increased incentive to deny or limit access by new person-to-person overlay service providers, particularly those that would compete with the pre-existing Osko 1 service (or subsequent iterations of BPAY's overlay services). This is because, with the amalgamation, AP+ will have incentives to maximise payment volumes over the NPP, as well as to maximise the number of payments made via the Osko 1 overlay service. In comparison, without the amalgamation, NPPA's incentives relate to maximising payment volumes through its network, but it is less concerned about maximising the use of a particular overlay service.

However, the increased incentive for AP+ to deny access would be unlikely to substantially lessen competition. In practice, entry of an overlay service that closely competes with Osko 1 is unlikely in the future with or without the amalgamation. This is because the major banks (in particular) would be unlikely to support a new service offering similar functionality to BPAY's Osko 1 service given both their own investment costs and their current ownership of BPAY.

AP+ is unlikely to have strong incentives to foreclose potential third party NPP access for services with different use cases to the use cases of Osko 1 (for example, services that would allow for the provision of online retail payments or business to person/Government to person payments). This is because AP+ will be incentivised to provide access to any third party overlay services which are likely to lead to an increase in transactions over NPPA infrastructure and unlikely to lead to a decrease in transactions over Osko 1.

Finally, the ACCC does not consider that the amalgamation significantly changes the incentives of AP+ to allow participants or connected institutions to join the NPP, compared to the incentives currently faced by NPPA.

¹¹ Noting that foreclosure can include denying or limiting access, for example in the form of higher prices.

Conclusion in relation to competition analysis

Taking into account the Undertaking from AP+, the ACCC is satisfied that the amalgamation is unlikely to result in a substantial lessening of competition in relation to the routing of debit card payments. The Undertaking imposes obligations on AP+ aimed at ensuring that eftpos services are maintained, that eftpos facilitates and promotes the availability of LCR for 4 years and requires investment in and the development of the Prescribed Services, some of which facilitate eftpos online payment services.

The amalgamation will soften competition to some extent between BPAY, EPAL and NPPA in relation to several services. The amalgamation may also lessen competition between the 3 parties to innovate and develop new infrastructure and services, because development decisions will be made centrally by AP+. However, it is important to consider these potential competitive effects in the context of the markets in which they may arise. In this regard, the ACCC considers that AP+ will continue to face significant competitive constraints, most significantly from Mastercard and Visa. Given the level of complementarity between the services provided by EPAL, NPPA and BPAY and the substantial constraints that would remain on the merged entity, the ACCC considers that any loss of competitive tension between the 3 entities is not likely to be substantial.

The ACCC is satisfied that third party access to the NPP is unlikely to materially change as a result of the amalgamation, and that there are sufficient constraints to mitigate the risk of third parties being foreclosed access following the amalgamation.

In all the circumstances, including the Undertaking from AP+, the ACCC is satisfied that the amalgamation would not have the effect, or would not be likely to have the effect, of substantially lessening competition, in any market.

Public benefits

The ACCC may grant an authorisation if satisfied in all the circumstances that no substantial lessening of competition is likely. Since the ACCC is satisfied that, having taken into account the Undertaking, no substantial lessening of competition is likely from the amalgamation, it is not required to consider whether public benefits are likely to arise from the amalgamation and would outweigh any public detriment. However, in light of the interest in and concerns raised by interested parties about the amalgamation and the fact that this is an application for merger authorisation, it is appropriate for the ACCC to provide its view on the 'net public benefit' limb of the authorisation test.

The ACCC considers that the primary benefit of the amalgamation is that a single overarching body could enable information sharing, coordination and alignment of roadmaps across the 3 parties. This is likely to result in a more unified roadmap for AP+, and greater clarity of proposals for consideration by AP+ shareholders. The efficiencies arising from the single roadmap will primarily benefit the banks, but more timely and efficient investment in new or innovative services is likely to constitute a public benefit.

The amalgamation will enable the 3 schemes to combine their respective strengths and work collaboratively to consider what hybrid products could be offered to a greater extent than would be the case without the amalgamation (as they will no longer be competing with each other). The amalgamation will also provide greater clarity and confidence for AP+ shareholders to agree to initiatives sooner, and with a greater degree of confidence that the other major banks will support that initiative, than what is possible without the amalgamation. Notwithstanding that the banks will continue to make their own decisions to implement payment initiatives, the amalgamation will likely enable the banks to better coordinate their

own adoption of payment initiatives and this may reduce the risk of stranded payment assets.

The ACCC considers that improved coordination and alignment of payments initiatives through the amalgamation, together with AP+'s commitment to the EPAL Prescribed Services in the context of the Undertaking, are likely to result in increased ability for eftpos (as a part of AP+), or AP+, to compete against Mastercard and Visa and international technology companies. The ACCC considers that this represents a public benefit that is tangible, but also notes that any such benefit is not readily quantifiable.

The ACCC has considered a number of other public benefits the applicants (represented by Industry Committee)¹² claim are likely to result from the amalgamation. The Undertaking provided by AP+ includes a commitment that one of the 4 independent directors appointed to the AP+ Board will have substantial small business experience. The amalgamation, together with AP+'s commitment, is likely to result in some public benefit in the form of increased engagement with small business and other participants.

While the amalgamation is likely to result in some cost synergies, reduced transaction costs and reduced compliance obligations, they are not likely to be substantial. The ACCC is not satisfied, based on the information available, that the claimed public benefit of improving payments system resilience is likely to arise from the amalgamation.

The ACCC considers that the amalgamation is likely to result in a material public benefit.

Public detriments

The ACCC has considered the public detriments arising from the amalgamation in the context of a lessening of competition arising from the amalgamation (discussed in the 'Competition analysis' section above).

Overall conclusion

For the reasons set out in this determination, including the acceptance of the Undertaking, the ACCC is satisfied that the amalgamation would not have the effect, or would not be likely to have the effect, of substantially lessening competition in any market.

While the ACCC is not required to assess the amalgamation under the 'net public benefit' limb of the authorisation test, the ACCC considers that the amalgamation is likely to result in a public benefit. The ACCC is satisfied that, in all the circumstances, including the Undertaking, this public benefit is likely to outweigh any likely detriment arising from the amalgamation, including from a lessening of competition.

¹² Industry Committee is an unincorporated association administered by Industry Committee Administration Pty Ltd. Industry Committee has applied to the ACCC for merger authorisation on behalf of its members who are shareholders of BPAY HoldCo and/or members of EPAL (who will become shareholders in EPAL) and/or shareholders of NPPA (see paragraphs [1.1]-[1.2] below).

1. The application for merger authorisation

- 1.1. On 22 March 2021, the Australian Competition and Consumer Commission (**ACCC**) received an application for merger authorisation from Industry Committee (an unincorporated association administered by Industry Administration Pty Ltd (**ICA**)) on behalf of its members under subsection 88(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**).¹³
- 1.2. Industry Committee's application was on behalf of its members who are shareholders of BPAY Group Holding Pty Ltd (**BPAY HoldCo**)¹⁴ and/or members of eftpos Payments Australia Limited (**EPAL**) (who will become shareholders in EPAL) and/or shareholders of NPP Australia Limited (**NPPA**). BPAY HoldCo and its wholly owned subsidiaries, BPAY Group Pty Ltd and BPAY Pty Ltd, are collectively referred to as **BPAY**.
- 1.3. The application seeks authorisation for the amalgamation of the ownership of BPAY HoldCo, EPAL and NPPA by way of 2 related acquisitions of shares.
- 1.4. Mergers or acquisitions that would have the effect, or be likely to have the effect, of substantially lessening competition in any market are prohibited by section 50 of the Act. Parties can lodge applications for authorisation with the ACCC, seeking legal protection to complete a proposed acquisition that would or might contravene section 50 of the Act.

Box 2: Merger authorisation – overview of the process and test

Merger authorisation is a public process where the ACCC may grant protection (called an 'authorisation') from legal action under section 50 of the Act for mergers or acquisitions in certain circumstances.

The ACCC may grant merger authorisation if it is satisfied that either:

- the proposed acquisition would not have the effect, or would not be likely to have the effect, of substantially lessening competition, or
- the proposed acquisition would result, or be likely to result, in a benefit to the public, and that benefit would outweigh the detriment to the public that would result, or be likely to result, from the proposed acquisition.¹⁵

The ACCC conducts a public consultation process when it receives an application for merger authorisation. Interested parties are invited to make submissions about the proposed acquisition, including commenting on the likely effect on competition, and whether the public benefit from the proposed acquisition outweighs the public detriment.

The Act requires the ACCC to make a determination about an application for merger authorisation within 90 days, unless the applicant agrees to an extension of this timeframe. In this case, ICA agreed to an extension of the timeframe to 10 September 2021.

¹³ The application was initially submitted by ICA, the administrator of Industry Committee. On 23 August 2021, the application was amended to have been made by Industry Committee.

¹⁴ Industry Committee initially applied for authorisation to amalgamate ownership of BPAY Group Pty Ltd, BPAY Pty Ltd, EPAL and NPPA. However, ICA's 18 June 2021 letter to the ACCC confirms that BPAY Group Pty Ltd, BPAY Pty Ltd and BPAY HoldCo will be part of the amalgamation. BPAY Group Pty Ltd and BPAY Pty Ltd are wholly owned subsidiaries of BPAY HoldCo. Syph, which is BPAY HoldCo's joint venture project with a third party, will not be included in the amalgamation.

¹⁵ Section 90(7) of the Act.

If the ACCC does not reach a decision within the agreed timeframe, the ACCC is taken to have denied merger authorisation.

The ACCC can decide to grant merger authorisation, deny merger authorisation, or grant merger authorisation with conditions (including imposing a condition to give or comply with an undertaking under section 87B of the Act).

Neither the ACCC nor third parties can take action for a contravention of section 50 of the Act regarding an acquisition that occurs for which an active merger authorisation is in force.

Overview of the amalgamation

- 1.5. The application seeks authorisation for the amalgamation of the ownership of BPAY HoldCo, EPAL and NPPA by way of 2 related acquisitions of shares:
 - the acquisition of shares by the shareholders of BPAY HoldCo, shareholders of EPAL,¹⁶ and shareholders of NPPA in a new company incorporated solely for the purposes of the conduct for which authorisation is sought, Australian Payments Plus Ltd (ACN 649 744 203) (**AP+**), and
 - the acquisition of shares by AP+ in each of BPAY HoldCo, EPAL and NPPA (together, the **amalgamation**).
- 1.6. The amalgamation will result in:
 - BPAY, EPAL and NPPA becoming wholly owned subsidiaries of AP+, and
 - AP+ being owned by the current shareholders and members of BPAY, EPAL and NPPA (other than the Reserve Bank of Australia (**RBA**), which will not become a shareholder of AP+).
- 1.7. Industry Committee sought in its application the protection of the authorisation for its members and to a group of persons named for the purposes of section 88(2) of the Act.
- 1.8. Industry Committee's members are: Australia and New Zealand Banking Group Limited (**ANZ**), Australian Settlements Limited, Bendigo and Adelaide Bank Limited, Commonwealth Bank of Australia (**CBA**), Coles Group Limited, Cuscal Limited, First Data Network Australia Limited trading as Fiserv, HSBC Bank Australia Limited, Macquarie Bank Limited, National Australia Bank Limited (**NAB**), Tyro Payments Limited, Westpac Banking Corporation (**WBC**) and Woolworths Group Limited.
- 1.9. The persons named for the purposes of section 88(2) of the Act, who are not members of Industry Committee, are:
 - EPAL, EPAL Foundation Shareholders,¹⁷ BPAY Holdco, NPPA and persons who are members of EPAL and/or shareholders of NPPA,¹⁸

¹⁶ EPAL will convert from a company limited by guarantee to a company limited by shares as part of the amalgamation proposal.

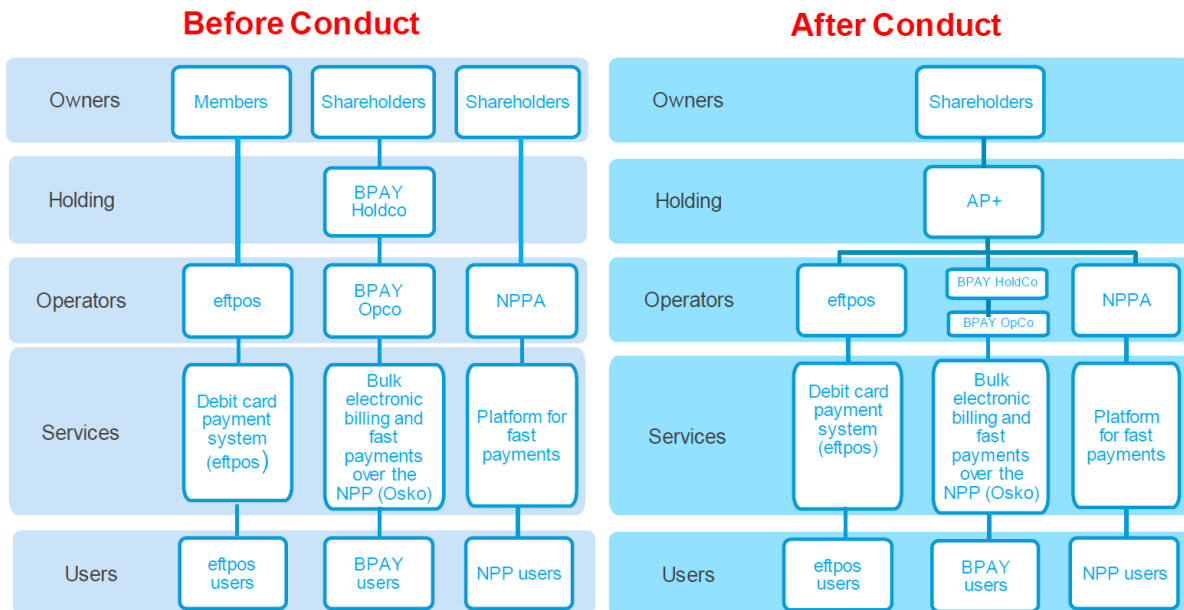
¹⁷ As defined by article 19.1 of AP+'s Constitution as follows: "eftpos Scheme Rules: Each Shareholder who was an "eftpos member" immediately prior to the date on which the Company first issued Preference Shares (other than the Initial Preference Share) (an eftpos Foundation Shareholder) must comply with, and continues to be bound by, the eftpos Scheme Rules applicable to it (as amended from time to time). For the purposes of this article 19 an "eftpos member" means a "Member" pursuant to the eftpos Constitution as it existed prior to the date on which the Company first issued Preference Shares (other than the Initial Preference Share)."

¹⁸ These persons include Citigroup Pty Limited, ING Bank (Australia) Limited, Indue Limited, EFTEX Pty Limited, Suncorp Metway Ltd, Adyen Australia Pty Limited, Bank of Queensland Limited, Windcave Pty Ltd and Wise Australia Pty Ltd.

- the RBA,¹⁹
- AP+, and
- the individuals directly involved in the administration and oversight of Industry Committee, including the Chairperson and the Secretary of Industry Committee.

1.10. The structure of AP+ before and after the amalgamation is depicted in Figure 1 below.

Figure 1: AP+ structure before and after the amalgamation



Source: ICA, Application for merger authorisation, 18 March 2021,²⁰ p 17; updated version of chart provided to ACCC on 26 August 2021.

1.11. ICA notes that the funding arrangements for AP+ are yet to be determined, however will be built on the principles that AP+ will be economically self-sustaining and it will be able to find the most efficient and low cost way of innovating across the 3 payment schemes.

1.12. ICA submits that AP+ will provide a broad representation of stakeholders in the future of domestic payments. The Board of AP+ will consist of a mix of independent directors, major shareholder-nominated directors, Authorised Deposit-taking Institution (**ADI**)-nominated directors and non-ADI-nominated directors. The number of shares held by any shareholder, and their voting band will determine their voting rights in relation to the nomination of certain representative directors to the Board of AP+. Further information on the governance arrangements for AP+ are discussed in Table 1 on page 33 below.

Rationale for the amalgamation

1.13. ICA considers that a stronger entity is needed to shape payments in Australia and provide sustainable competition to global payments companies.

¹⁹ The RBA is currently a shareholder of NPPA but will not acquire shares in AP+.

²⁰ ICA's application is dated 18 March 2021. However, the ACCC treats the application as having been validly received on 22 March 2021. The [ACCC Merger Authorisation Guidelines](#) sets out more information on its process for assessing validity of merger authorisation applications.

- 1.14. ICA submits that the amalgamation under a single entity, AP+, will allow it to align strategies, investments and offerings to better and more efficiently meet consumer and business expectations. This will allow it to remain competitive against global competitors as well as technology companies.
- 1.15. ICA submits that a single, unified innovations roadmap will create more certainty for major Australian banks, payments aggregators and smaller financial institutions to invest in payments innovations. There will be more certainty about the steps those stakeholders need to take and when they need to take them, allowing them to better prioritise their limited funds and resources to bring payments innovations to market sooner than would otherwise be the case. This will ultimately be to the benefit of consumers and merchants.

Background

The Australian payments system

- 1.16. The Australian 'payments system' refers to the collection of laws, regulations, protocols, infrastructure and services that variously govern, administer and facilitate the way payments in all forms are sent and received in Australia.²¹ It includes the payment instruments — cash, cards, cheques and electronic funds transfers which are used to make payments — and the usually unseen arrangements that ensure funds move from accounts at one financial institution to another.²²
- 1.17. The following sections provides an overview of each of the amalgamating entities, the payments infrastructure they own and the payment services they provide. Later sections consider other providers of payments infrastructure and services in Australia.

eftpos Payments Australia Limited (EPAL)

- 1.18. EPAL is an unlisted public company co-owned by 19 members. It was incorporated in 2009.²³ EPAL operates and administers the eftpos debit card payment infrastructure. It is also a provider of other payment services such as Beem It and connectID.

The eftpos debit card system

- 1.19. The eftpos payment system was launched in Australia in the 1980s.²⁴ At its core, the eftpos infrastructure facilitates electronic payments from customer accounts with ADIs. eftpos is most commonly associated with the use of plastic debit cards as a payment method for the purchase of goods and services at the point of sale. However, it also facilitates debit card transactions at automatic teller machines and some online debit card payments.
- 1.20. eftpos is what is known as a four-party card scheme. Four-party card schemes are discussed further at paragraph [1.37] below.

²¹ [RBA, Payments System.](#)

²² Ibid.

²³ There are 19 existing members: Adyen, ANZ, Australian Settlements Limited, Bank of Queensland, Bendigo & Adelaide Bank, Citigroup, CBA, Coles Group, Cuscal, EFTEX, Fiserv Australia, Indue, ING Australia, NAB, Suncorp-Metway, Tyro Payments, WBC, Windcave and Woolworths. EPAL notes it is expecting further members to be added prior to completion of the amalgamation. (See EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, p 9).

²⁴ The eftpos system was administered by the Australian Payments Clearing Association (now AusPayNet) before EPAL was incorporated in 2009.

- 1.21. eftpos is also a domestic-only system. Unlike the card schemes operated by Mastercard and Visa (discussed at paragraph [1.36] below), it cannot be used for payments in jurisdictions other than Australia.

Other EPAL services

- 1.22. EPAL provides other payments and payment-related services as part of a diversification strategy. Those services include Beem It, connectID, ecommerce solutions and data subscription services.
- 1.23. Beem It is an application-based payment service that facilitates account-to-account payments and is promoted for use cases such as allowing friends to transfer each other payments for shared meals to avoid restaurant bill splitting. Its use cases have recently expanded to include gift card enablement and loyalty transactions. Beem It came to be a service offered by EPAL after EPAL acquired Digital Wallet Pty Ltd (trading as Beem It) in November 2020.
- 1.24. connectID, currently in pilot, is a digital identity solution that aims to make it easy for individuals to share, store and receive personal identity information online.

BPAY Pty Limited

- 1.25. BPAY Pty Limited is responsible for managing and operating a suite of payments services including the BPAY scheme and Osko 1 by BPAY. BPAY Pty Limited is owned by ANZ, CBA, NAB and WBC (the **major banks**).
- 1.26. The BPAY scheme was launched in 1997. It is a domestic electronic bill payment service that enables users to make payments through a financial institution's online, mobile or telephone banking facility to organisations which are registered billers. Over 60,000 businesses offer the BPAY service to their customers to enable them to pay their bills securely from accounts at over 150 financial institutions.
- 1.27. Osko 1 is a payments service operating on the New Payments Platform (**NPP**) that allows customers to make near instant payments from one bank account to another, either by using a BSB and account number or an NPP PayID (**Osko 1**). The PayID service gives users the option for payments to be made based on details (such as a phone number, ABN or email address) registered by the recipient. Approximately 77% of transactions processed over the NPP at the time of writing are Osko 1 transactions.²⁵
- 1.28. BPAY Pty Limited intends to develop a proof of concept for an additional service (**Osko 2**), which allows customers to receive a payment with a document, by December 2021.²⁶ In addition, BPAY has proposed a third Osko service (**Osko 3**), which has been put on hold until after the launch of the MPS, and has no current implementation date. Osko 3 would allow a request to be sent to a payer, where the payer can choose when and how much of the request to pay.²⁷
- 1.29. Within the broader BPAY group, Syph is a software service business developed in 2018 in a partnership between BPAY Group Holdings Pty Limited and BCG Digital Ventures. Syph uses artificial intelligence and machine learning, augmented by human intelligence, to extract and interpret complex information from documents.

²⁵ [RBA, Payments Data, 'C6.1: Direct Entry and NPP – Original Series' May 2021.](#)

²⁶ It is unclear at this time whether Osko 2 will be launched. BPAY had originally completed the design for Osko 2 in 2016, but it was put on hold after participants withdrew their commitment to implement it to the agreed timetable. See BPAY, Non-confidential statement in support of application for authorisation, 16 March 2021, paragraphs [41]-[42].

²⁷ BPAY, Non-confidential statement in support of application for authorisation, 16 March 2021, paragraphs [41] and [43].

- 1.30. Syphit is excluded from the amalgamation and will remain owned by its current shareholders.

NPP Australia Limited (NPPA)

- 1.31. NPPA is an unlisted public company established in August 2014 to manage and operate the NPP, a centralised platform that facilitates real-time clearing and settlements of payments between participating Australian financial institutions. NPPA is owned by 12 ADIs²⁸ and the RBA. The RBA advised it intends to remain a full participant in the NPP but redeem its existing shares in NPPA and not become a shareholder in AP+.²⁹
- 1.32. The NPP was launched in February 2018 and is open access infrastructure for real-time payments within Australia. The NPP provides Australian businesses, government agencies and consumers with a fast, versatile, data-rich³⁰ payments system for making payments, with the largest single payment to date being a transfer of \$19.8billion.
- 1.33. The NPP infrastructure supports the development of overlay services to offer payment solutions to end-users.³¹ Overlay services can be developed by third parties and use the NPP infrastructure to deliver a bespoke payment service or process such as BPAY's Osko 1 service.

Other payments services operating in Australia

Direct Entry

- 1.34. The Direct Entry system co-ordinates and facilitates the exchange and settlement of bulk electronic transactions. In practice, it provides a means of making account-to-account payments and is commonly used by businesses to make and receive regular payments such as salaries and recurring bills. It may also be used by consumers and businesses to initiate 'pay anyone' transactions using internet banking applications, typically when one of the financial institutions is not connected to the NPP. Although customer accounts at financial institutions are credited and debited with the date of the transaction, settlement between the sponsoring financial institutions has historically occurred on the following business day.
- 1.35. The RBA expects that the NPP will come to replace an increasing share of payments currently made using Direct Entry,³² particularly those payments that are time-critical or that benefit from the additional data capabilities of the NPP.³³ Further, the NPP provides a PayID service, whereas payments over Direct Entry can only be made by addressing them to the BSB and account number of the intended recipient.

²⁸ The 12 ADIs are ANZ, Australian Settlements Limited, Bendigo and Adelaide Bank Limited, Citigroup Pty Ltd, CBA, Cuscal Limited, HSBC Bank Australia Limited, Indue Limited, ING Australia, Macquarie Bank Limited, NAB and WBC.

²⁹ RBA, Submission to ACCC, 16 April 2021.

³⁰ Each payment message on the NPP is capable of carrying much richer remittance information than other systems; for example, the Direct Entry system allows for 18 character messages. NPP achieves this because it uses the ISO20022 messaging format which has more than 1,400 data fields available for use within the message format.

³¹ [RBA, *The New Payments Platform*](#).

³² [RBA, *New Payments Platform Functionality and Access: Consultation, October 2018*](#).

³³ NPP payment messages use the ISO20022 message format and can carry much richer remittance information than the 18 characters currently available for Direct Entry payments.

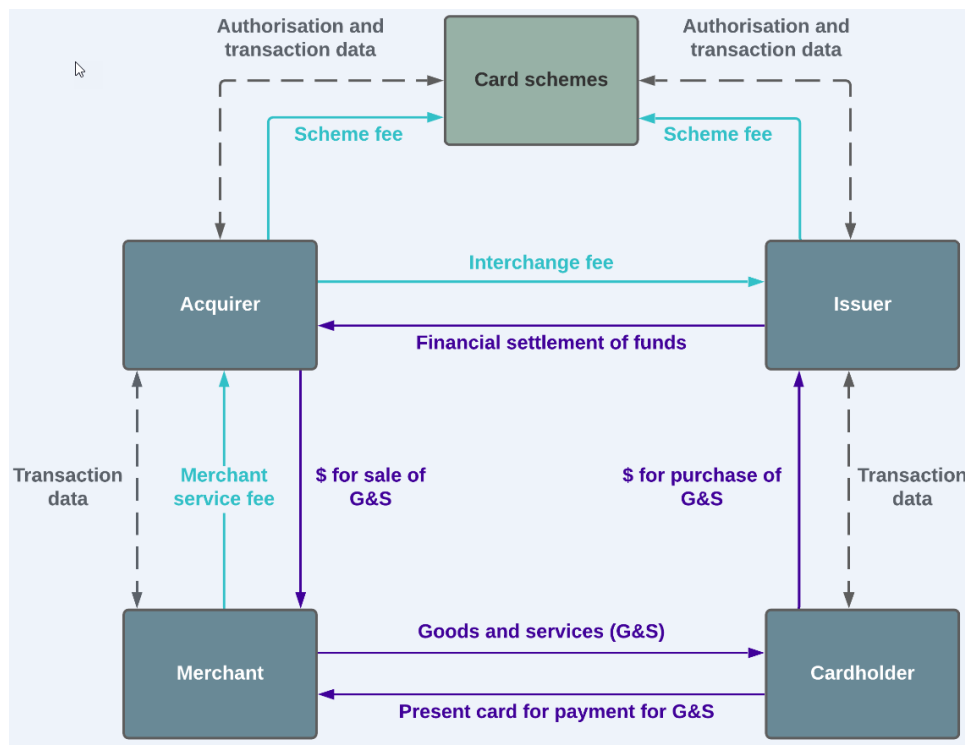
Mastercard and Visa

1.36. Mastercard and Visa are international card schemes that provide authorisation, clearing and settlement services for debit and credit card transactions undertaken via their respective schemes. Mastercard and Visa do not issue credit or debit cards, rather they provide financial institutions with Mastercard or Visa branded payment products that those institutions can use to offer credit, debit and prepaid cards to their customers. Like eftpos, Mastercard and Visa operate as four-party card schemes.

Four-party schemes

1.37. As noted in paragraphs [1.20] and [1.36] above, eftpos, Mastercard and Visa are all four-party card schemes. Aside from the card scheme itself, there are 2 groups of direct participants in a four-party card scheme: issuers and acquirers (Figure 2). The major banks and a number of other ADIs act as both issuers and acquirers. There are some companies, such as Tyro (who is also a member in EPAL), that act only in the capacity of an acquirer and do not issue cards.

Figure 2: Stylised example of a payment transaction in a four-party card scheme



Card schemes: eftpos, Mastercard or Visa (in the context of this determination).

Issuer: the customer's financial institution that issues the debit card or credit card being used in the purchase transaction.

Acquirer: the merchant's (for example, retailer's) financial institution (often but not always a bank) that accepts the transaction, sends it for processing via the card scheme, collects payment from the Issuer and pays the merchant.

Interchange fees: Interchange fees are set by the card schemes and are paid by the acquirer to the issuer on each card payment (except for eftpos cash out transactions, for which the interchange fee is payable by issuers to acquirers). The level of interchange fees is regulated by the RBA.

1.38. The various flows of interchange fees and scheme fees, and the drivers of those fees, create incentives for issuers and acquirers. These incentives are discussed in Box 3.

Box 3: Incentives for debit card scheme participants: issuers and acquirers

The payment flows for issuers and acquirers associated with a domestic debit card transaction within a four-party card scheme are as follows:

- issuers are the recipients of interchange fees (defined in Figure 2)³⁴ and payers of scheme fees to the relevant debit card scheme, and
- acquirers are payers of interchange fees to the issuers, and payers of scheme fees to the relevant debit card scheme (Figure 2).

Incentives for debit card issuers

An issuer will have an incentive to issue as many debit cards as possible, in order to maximise the volume (and value) of payments made using the debit cards it issued and consequently the amount of revenue it can derive from interchange fees. Maximising the issuance of debit cards for a particular scheme should also put the issuer in a stronger position to seek a rebate on scheme fees paid, negotiate a lower scheme fee schedule at the end of the contract period, and potentially realise incentive payments from the card scheme.

An issuer can consider passing through scheme fees to debit cardholders through measures such as annual card fees or card transaction fees. Cardholders' aversion to fees will constrain issuers' efforts to pass through scheme fees.

An issuer will generally have an incentive to favour card schemes that set higher interchange fees, in part because it could use the revenue from such fees to provide rewards programs for cardholders.

Issuers will prefer that numerous debit card schemes are available but may choose to deal with only one. That is because they can use competition between schemes to secure better outcomes for themselves, potentially via an exclusive agreement with a single card scheme.

Incentives for debit card payments acquirers

An acquirer will typically seek to recover from merchants the interchange fees and scheme fees it incurs in providing payment acquiring services. It does this through the merchant service fees levied on merchants.

An acquirer will seek to optimise its portfolio of merchant customers. For instance, it may rely on large merchants to generate high payment volumes and smaller merchants, who are more likely to be price takers, to absorb a relatively higher portion of the scheme and interchange fees.

An acquirer will usually seek to have membership of all debit card schemes with a meaningful number of cards on issue. That way it can maximise the number and type of debit cards its merchants can accept. For merchants this will reduce the risk of lost sales due to an inability to support a customer's preferred payment method.

An acquirer may look to negotiate lower scheme fees with the card schemes in order to lower their merchant fees and make their acquiring service more attractive to merchants.

³⁴ The exception is eftpos cash out transactions, for which the interchange fee is payable by issuers to acquirers.

A small acquirer may have limited success in this regard due to the bargaining power of the card schemes.

Some businesses, such as Coles and Woolworths, self-acquire the debit card payments for purchases made in their stores. As they are acting as both merchant and acquirer (Figure 2), they have similar incentives to those of other acquirers.

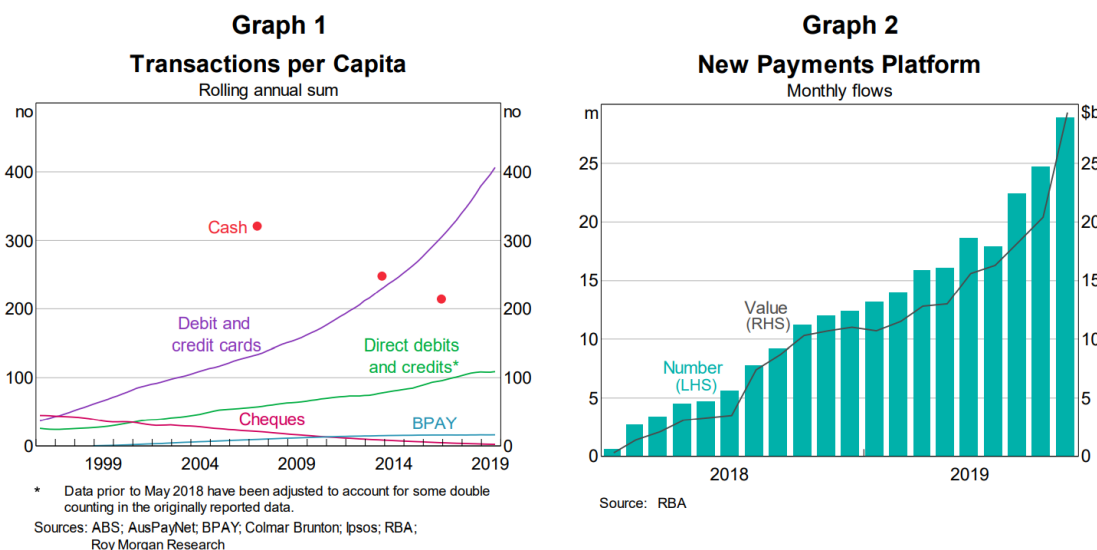
ADIs operating as issuers and acquirers

Many ADIs, including the major banks, are both issuers and acquirers. For the individual business units within these ADIs that are responsible for issuing or acquiring, the incentives are similar to those of debit card issuers and acquirers described above. However, as the RBA has observed, the issuing unit within ADIs typically have more influence in the decision-making within the ADI.³⁵

The changing nature of payments in Australia

1.39. Over the past 2 decades, the Australian retail payments system has moved from one where the dominant payment methods were cash and cheques to one where electronic payment methods are near-ubiquitous. In particular, there has been strong growth in the use of debit cards for payments over the last 20 years (Figure 3, Graph 1). More recently, the use of the NPP has increased markedly since its launch in February 2018 (Figure 3, Graph 2).³⁶

Figure 3: Use of payment methods over time



Source: [RBA, Review of Retail Payments Regulation: Issues Paper, November 2019.](#)

1.40. New technologies, such as contactless card payments, mobile payment and digital wallet services, and the rise of instalment payment arrangements have had a significant impact on how payments are made in Australia. For example, contactless card payments have increased from about 10% of all payments in 2013 to approaching

³⁵ [RBA, Discussion with ACCC, 24 June 2021.](#)

³⁶ [RBA, Review of Retail Payments Regulation: Issues Paper, November 2019.](#)

60% in 2019³⁷ while cash use has been declining (Figure 3, Graph 1). The COVID-19 pandemic has reinforced and accelerated these trends.³⁸

Contactless card payment services

- 1.41. Contactless card payments, sometimes referred to as 'tap-and-go', are those that occur without the purchaser needing to insert or swipe their payment card in the merchant's terminal. Instead, cards have an embedded chip that allows for them to be 'read' by a merchant terminal without contact using radio-frequency identification or near field communication (**NFC**) technology. There is a \$100 limit per transaction (increased to \$200 per transaction for some retailers since April 2020)³⁹ for contactless payments; above that limit the purchaser will need to input their personal identification number into the merchant's terminal after their card has been read in order to complete the transaction.
- 1.42. Around half of all in-person payments in 2019 were made using tap-and-go and a further 5% were contactless payments using a mobile payment service.⁴⁰

Mobile payment services

- 1.43. Mobile payment services can be facilitated by a range of participants in the payments system including ADIs, technology companies and other third parties. Mobile payment services are typically accessed by consumers via an application on a smartphone or a device such as a smart watch. These applications enable consumers to make contactless and, in some cases, online payments via that phone or device.
- 1.44. Apple Pay, Google Pay and Samsung Pay are the most widely used digital wallets (also known as 'mobile wallets') in Australia, with all of Australia's major banks and many smaller card issuers now supporting them.⁴¹ Digital wallets utilised by these payment methods are an application on a mobile device (such as a smartphone or smartwatch) that stores the details of a payment card (or cards) and allows contactless in-person payments to be made by using the NFC functionality of that mobile device. Digital wallets can sometimes also be used to make online payments.⁴²
- 1.45. The use of these digital wallets by consumers⁴³ has increased markedly in recent years, indicating that consumers likely value the ability to make secure payments with mobile devices and the convenience of not needing to carry cash or a plastic card to make purchases. It also likely reflects growing consumer awareness of this payment option and the increasing availability of the option as consumers upgrade to mobile devices with the required technology (such as NFC).

³⁷ [RBA, Payments System Board Annual Report – 2020: Trends in Payments, Clearing and Settlement Systems.](#)

³⁸ ICA, Application for merger authorisation, 18 March 2021, Sections 18.1 and 18.3.

³⁹ The increase in PIN limit on contactless card payments was introduced to reduce the risk of COVID-19 transmission associated with physical contact with payment terminals. See [AusPayNet, Contactless card PIN limits to increase temporarily to help reduce the risk of COVID-19 transmission, 3 April 2020.](#)

⁴⁰ [RBA, Payments System Board Annual Report – 2020: Trends in Payments, Clearing and Settlement Systems, p 23.](#) See also, [Commonwealth of Australia, Payments system review: from system to ecosystem, June 2021](#), pp 80-81, in which it is noted that digital wallets could become systematically important if consumer uptake continues to grow.

⁴¹ [RBA, Submission to the Parliamentary Joint Committee on Corporations and Financial Services inquiry into Mobile payment and digital wallet financial services, 21 May 2021.](#)

⁴² [RBA, RDP 2020-06: Consumer Payment Behaviour in Australia: Evidence from the 2019 Consumer Payments Survey, September 2020](#), p 22.

⁴³ [RBA, Submission to the Parliamentary Joint Committee on Corporations and Financial Services inquiry into Mobile payment and digital wallet financial services, 21 May 2021.](#)

- 1.46. Other countries have seen a rise in mobile payments using quick-response (**QR**) code technology, as distinct from mobile payments made using NFC technology and a digital wallet linked to a credit or debit card. To date, the most prominent use case for QR code payments in Australia has been a growing number of retailers using them to facilitate payments from tourists and consumers from China.⁴⁴
- 1.47. QR codes are widely used for consumer payments in China and involve the consumer or merchant scanning a QR code generated for a particular payment with their device's camera.⁴⁵ Most QR code-based payments in China are made through the Alipay and WeChat Pay digital wallets, which are associated with technology companies Ant Group and Tencent. Users of these services keep funds in their digital wallet account and payments are made between users in a 'closed loop' on the digital wallet platform, rather than through other payments infrastructure such as card or account-based payments channels.⁴⁶

Instalment payment arrangements

- 1.48. Instalment payment arrangements, such as 'buy now, pay later' (**BNPL**) services, have also grown strongly in recent years, albeit from a low base.⁴⁷ An example of a prominent Australian BNPL provider is Afterpay, which was launched in 2015.⁴⁸
- 1.49. BNPL services enable consumers to purchase goods and services by paying part of the purchase price at the time of the transaction and the remainder to the BNPL provider in a series of instalments. Unlike traditional lay-by, the consumer receives their purchase immediately and the merchant is paid up front by the BNPL provider. In most cases, customers use a mobile app to access these services and repayment instalments are drawn from a customer's linked debit card or credit card.

Regulation of Australia's payment system

- 1.50. The RBA, through the Payments System Board, is the principal regulator of the Australian payments system. The RBA is responsible for promoting the safety and efficiency of the payments system. It is obligated to exercise this responsibility in a way that best contributes to: controlling risk in the financial system, promoting the efficiency of the payments system, and promoting competition in the supply of payment services, consistent with the overall stability of the financial system.⁴⁹
- 1.51. However, the RBA has a presumption in favour of self-regulation and intervenes only where the industry is unable to address a public interest concern. This has meant that the RBA has imposed regulation in a relatively narrow range of payments system activity to date.⁵⁰

⁴⁴ [RBA, Payments System Board Annual Report – 2020: Trends in Payments, Clearing and Settlement Systems.](#)

⁴⁵ [RBA, Submission to the Parliamentary Joint Committee on Corporations and Financial Services inquiry into Mobile payment and digital wallet financial services, 21 May 2021.](#)

⁴⁶ Ibid. See also, [Commonwealth of Australia, Payments system review: from system to ecosystem, June 2021](#), p 78.

⁴⁷ It is estimated that the value of BNPL payments (based on available listed company data) was equivalent to less than 2% of the total value of Australian debit card and credit card purchases in 2020 – see, [RBA, Bulletin – March 2021, Developments in the Buy Now, Pay Later Market, 18 March 2021.](#)

⁴⁸ In August 2021, Square, an international financial services company based in the US, announced it would acquire Afterpay for A\$39 billion: [Square, 2 August 2021, Square, Inc. announces plans to acquire Afterpay, strengthening and enabling further integration between its Seller and Cash App ecosystems.](#)

⁴⁹ [RBA, Review of Retail Payments Regulation: Issues Paper, November 2019](#), p 1.

⁵⁰ [RBA, Approach to Regulation, The Reserve Bank's Approach to Regulation of the Payments System.](#)

- 1.52. Before the RBA can intervene in relation to a payment scheme, it must first make that payment scheme a 'designated scheme' under the *Payment Systems (Regulation) Act 1998*. Designation enlivens the RBA's powers to impose an access regime or establish standards to be complied with by participants in the designated scheme (among other powers). The RBA has designated the following debit card schemes operating in Australia: eftpos, Visa Debit and Debit Mastercard.
- 1.53. On 30 August 2021 the Treasurer published the final report of the Treasury's review of the Australian payments system. The review investigated whether the regulatory architecture of the Australian payments system remains fit for purpose and responsive to advances in technology and changes in consumer demand, and made 15 recommendations.⁵¹

2. Consultation

- 2.1. The ACCC tested ICA's claims in support of the application through a public consultation process. The ACCC has taken into account submissions received, including:
 - ICA's application in support of the merger authorisation and related annexures
 - submissions from 30 interested parties, including competitors, relevant industry associations, academics, consultants, transaction solution providers, and the RBA⁵²
 - submissions from 9 interested parties in response to the ACCC's Statement of Preliminary Views published on 4 June 2021
 - submissions from 15 interested parties in response to the draft undertaking published on 5 August 2021
 - several submissions from the ICA including in response to submissions from interested parties and to the ACCC's Statement of Preliminary Views.
- 2.2. Public submissions by ICA and interested parties are published on the ACCC's [public register](#).
- 2.3. The views expressed in submissions were mixed. Some stakeholders, including Mastercard, the Council of Small Business Organisations Australia and many small business and retailer representatives, argued that the amalgamation will have long term adverse consequences for competition in Australian payment markets, noting effects on innovation, horizontal competition, and potential vertical foreclosure. Concerns were also raised about AP+'s governance and structure, the potential to hinder industry progress toward promoting the practice of least-cost routing (**LCR**),⁵³ and the claimed public benefits.
- 2.4. Financial institutions were generally supportive of the amalgamation, believing it would be pro-competitive and ICA's claimed public benefits would be realised. The RBA had no concerns regarding any reduction in competition in the debit card market from the proposed amalgamation, and expected a number of benefits to result from it.

⁵¹ [Commonwealth of Australia, *Payments system review: from system to ecosystem*, June 2021.](#)

⁵² Some parties made multiple submissions.

⁵³ LCR is a functionality offered by acquirers that allows merchants to choose which debit card scheme will process contactless payments made by consumers using DNDCs. For more information regarding LCR, see Box 5 on page 57 below.

- 2.5. Some parties posited conditions that they considered would or could address their concerns, ranging from access regimes to address vertical foreclosure concerns, to measures to ensure appropriate governance and independence of each of the amalgamating entities, to undertakings to ensure the implementation of LCR.
- 2.6. Where specific submissions from interested parties are relevant to the ACCC's consideration, they are outlined in detail in the appropriate sections below.

3. Timing

- 3.1. The ACCC has a period of 90 days in which to make a determination in respect of the application.
- 3.2. The Act allows for the time period to be extended by agreement by the applicant before the 90 days. In this case, ICA has agreed to an extension and the ACCC has until 10 September 2021 to make its decision.

4. Section 87B undertaking

- 4.1. The ACCC accepted an undertaking under section 87B(1A) of the Act to address a potential reduction in competitive tension in debit card payments services resulting from the amalgamation. A copy of the Undertaking is at **Attachment A** to this determination.
- 4.2. The Undertaking places obligations on AP+ to:
 - a) procure that eftpos will do all things in its control to make available and promote least cost routing
 - b) procure that eftpos will maintain eftpos' card-based issuing and acquiring infrastructure, payments scheme and the supply of card-based issuing and acceptance services to customers and end users
 - c) procure that the OpCos will develop and make available certain services (the **Prescribed Services**)⁵⁴, and any relevant APIs
 - d) procure that the OpCos will maintain and continue to administer their respective Mandate Frameworks
 - e) procure that the OpCos agree an industry wide standard supporting Pay with a QR Code in coordination with Australian Payments Network Limited
 - f) procure that the OpCos explore the feasibility of developing certain services, and make them available if it is feasible to develop them
 - g) appoint one out of the 4 independent directors to its Board who has substantial small business experience
 - h) provide for the effective oversight of AP+'s compliance with this Undertaking.
- 4.3. The ACCC considers that the Undertaking will work alongside the role of the RBA to maintain eftpos' competitive position in the routing of debit card payments and ensure LCR continues to be available and promoted by eftpos for a period of 4 years, ameliorating the risk of a substantial lessening of competition.

⁵⁴ The services listed in Schedule 1 to the Undertaking.

Consultation on draft undertaking

4.4. On 5 August the ICA provided, and on 6 August the ACCC commenced consultation on, a draft undertaking. A copy of this draft undertaking is available on the ACCC's [public register](#) under 'Other'.

Interested party submissions

4.5. Several interested parties raised concerns regarding the draft undertaking's effectiveness in supporting eftpos and LCR. The points raised in these submissions were that the undertaking should:

- be in effect for longer than 3 years to ensure LCR's availability in the medium or long term and to support implementation for online channels and digital wallets. Several interested parties suggested 7 to 10 years would be most appropriate. Some interested parties proposed other amendments related to duration of the undertaking. These included developing a long term regulatory regime or mandatory code of conduct, delaying commencement of commitments until LCR is fully deployed and regular review of the undertaking for ongoing effectiveness⁵⁵
- create obligations on AP+ and/or its issuing and acquiring bank shareholders to offer or actively promote LCR to merchants. Some interested parties suggested specific commitments such as to only issue dual-network debit cards (**DNDCs**),⁵⁶ upgrade terminals within designated timeframes, maintain competitive transparent price offerings, deliver and promote EPAL's public roadmap, and comply with EPAL mandates⁵⁷
- have stronger mechanisms in place to monitor and report on compliance including clearer deliverables and stronger governance, compliance, auditing, complaints handling and dispute resolution processes. Several interested parties made proposals for the appointment of an independent auditor⁵⁸
- require greater small business representation and involvement in AP+ decision-making. For example, by appointing a number of small business representatives on the AP+ Board. Some submissions suggested involving small businesspersons in monitoring of the Undertaking⁵⁹

⁵⁵ Australian Association of Convenience Stores and Australian Lottery and Newsagents Association, Submission to ACCC, 17 August 2021, p 3; Australian Convenience and Petroleum Markers Association, Submission to ACCC, 16 August 2021, pp 2, 6 and 7; Australian Chamber of Commerce and Industry, Submission to ACCC, 17 August 2021, p 2, Benchmark Analytics, Submission to ACCC, 17 August 2021, p 1; Council of Small Business Organisations Australia, Submission to ACCC, 16 August 2021, pp 2, 3 and 7; MGA Independent Retailers and Timber Merchants Australia, Submission to ACCC, 17 August 2021, p 4.

⁵⁶ For information about DNDCs, see Box 1 on page 9 above.

⁵⁷ Australian Association of Convenience Stores and Australian Lottery and Newsagents Association, Submission to ACCC, 17 August 2021, p 4; Australian Convenience and Petroleum Markers Association, Submission to ACCC, 16 August 2021, pp 2-4, 6-7; Benchmark Analytics, Submission to ACCC, 17 August 2021, p 1; Council of Small Business Organisations Australia, Submission to ACCC, 16 August 2021, pp 2-3, 5; MGA Independent Retailers and Timber Merchants Australia, Submission to ACCC, 17 August 2021, pp 3-4.

⁵⁸ Australian Association of Convenience Stores and Australian Lottery and Newsagents Association, Submission to the ACCC, 17 August 2021, p 5; Australian Convenience and Petroleum Markers Association, Submission to ACCC, 16 August 2021, pp 4-5; Council of Small Business Organisations Australia, Submission to ACCC, 16 August 2021, pp 2-3, 6-8; Dr Harjinder Singh and Associate Professor Nigar Sultana (Curtin University), Submission to ACCC, 17 August 2021 p 1.

⁵⁹ Australian Association of Convenience Stores and Australian Lottery and Newsagents Association, Submission to the ACCC, 17 August 2021, pp 4-5, 6; Australian Convenience and Petroleum Markers Association, Submission to ACCC, 16 August 2021, pp 4-5; Australian Chamber of Commerce and Industry, Submission to ACCC, 17 August 2021, p 3; Council

- retain EPAL managerial discretion in relation to pricing within the amalgamated entity.⁶⁰
- 4.6. Some of these interested parties also expressed preference for a structural remedy⁶¹, or authorisation with conditions.⁶² Others submitted that the amalgamation should not proceed given industry uncertainty⁶³, or proposed that the ACCC should have an ongoing role in setting standards for and enforcing LCR.⁶⁴
- 4.7. Mastercard submitted that the draft undertaking potentially creates a barrier to alternative competing services from Mastercard or other third parties being developed or implemented. Mastercard also raised concerns regarding interoperability of AP+'s QR code solution for and consultation with other industry participants, and the potential for LCR to result in less protection for consumers.⁶⁵
- 4.8. Visa submitted that the undertaking merely describes and provides a commitment in respect of activity which industry participants would simply expect of eftpos and NPPA with or without the proposed transaction.⁶⁶
- 4.9. Visa also reiterated its suggestion that the Undertaking should require the parties to commit to appropriate safeguards to ensure AP+ does not increase barriers to entry, and a governance regime that will guard against the flow of commercially sensitive information.⁶⁷ Mastercard also raised concerns about the potential for vertical foreclosure and the handling of confidential information in its submissions.⁶⁸
- 4.10. A number of interested parties made submissions supporting the undertaking in its draft form:
- The RBA submitted that the undertaking would mitigate the risks raised by interested parties in relation to eftpos and LCR. It acknowledged that the undertaking does not impose obligations on the major banks and retailers whose support is important for eftpos' viability. Nonetheless, the RBA considered the commitments could be a useful focal point for the industry, and considered the support for eftpos would be greater under the amalgamation than without the amalgamation. The RBA was also encouraged by recent indications that some major acquirers have increased provision of LCR to small merchants.⁶⁹

of Small Business Organisations Australia, Submission to ACCC, 16 August 2021, pp 4 and 6; National Retail Association, Submission to ACCC, 17 August 2021, pp 2-3.

⁶⁰ Australian Convenience and Petroleum Markers Association, Submission to ACCC, 16 August 2021, p 7; Council of Small Business Organisations Australia, Submission to ACCC, 16 August 2021, p 5; MGA Independent Retailers and Timber Merchants Australia, Submission to ACCC, 17 August 2021, p 3.

⁶¹ Australian Association of Convenience Stores and Australian Lottery and Newsagents Association, Submission to the ACCC, 17 August 2021, p 3; Australian Convenience and Petroleum Markers Association, Submission to ACCC, 16 August 2021, p 2; Australian Chamber of Industry and Commerce, Submission to ACCC, 17 August 2021, pp 2-3; Council of Small Business Organisations Australia, Submission to ACCC, 16 August 2021, p 2.

⁶² Australian Association of Convenience Stores and Australian Lottery and Newsagents Association, Submission to ACCC, 17 August 2021, pp 3, 6.

⁶³ Australian Chamber of Commerce and Industry, Submission to ACCC, 17 August 2021, p 4; Controlabill, Submission to ACCC, 17 August 2021, p 1.

⁶⁴ Restaurant and Catering Australia, Submission to ACCC, 17 August 2021, p 1.

⁶⁵ Mastercard, Submission to ACCC, 16 August 2021, pp 6-8.

⁶⁶ Visa, Submission to ACCC, 17 August 2021, p 1.

⁶⁷ Visa, Submission to ACCC, 17 August 2021, p 2.

⁶⁸ Mastercard, Submission to ACCC, 16 August 2021, pp 2, 8.

⁶⁹ RBA, Submission to ACCC, 17 August 2021, p 1.

- The Australian Retailers Association submitted that the undertaking addresses some competition concerns, providing comfort that Prescribed Services will be delivered in the short-medium term and confidence that merchants will continue to be able to access the lower cost of payment processing often available with eftpos payments. The Australian Retailers Association noted the role of the RBA in resolving concerns with or without the proposed amalgamation.⁷⁰

ICA response

- 4.11. ICA offered an amended undertaking in response to interested party submissions, with the stated aim of assisting the ACCC’s decision-making. ICA submits that no new concerns were raised, that they have already more than adequately responded to these concerns, and that the Conduct will not be likely to have the effect of substantially lessening competition in any market and will be likely to give rise to a net public benefit to the Australian public.
- 4.12. Key changes to the revised Undertaking following consultation comprised:
- Extending the period of the Undertaking and relevant commitments from 3 to 4 years.
 - Committing that AP+ will procure that EPAL will also “promote” LCR in addition to the previous commitment to “make available” LCR.
 - Including a focus on interoperability and open access, and coordination with Australian Payments Network Limited (**AusPayNet**), in relation to industry-wide standard supporting Pay with a QR Code.
 - Committing that 1 of the 4 AP+ independent directors will have substantial small business experience.
 - Requiring the appointment of an ACCC-approved independent auditor.
- 4.13. ICA submits that the new commitment to appoint a director with substantial small business experience, combined with AP+’s End-User Committee and its incorporation into the AP+ decision-making process, should allay any residual concerns about the participation of small business representatives on the AP+ Board. ICA submits that the amalgamation gives rise to small business benefit that will not occur without the amalgamation. ICA further notes that the amalgamation will increase the number of independent directors on EPAL’s Board from 3 to 4.⁷¹
- 4.14. ICA submits that pricing decisions will remain with EPAL under AP+’s governance arrangements. Directors of EPAL will also be directors of AP+ and the Constitutional objects of AP+ obligate AP+ to ensure “cost effective” payment services are offered to facilitate “the provision of low-cost solutions for retailers, other businesses and their customers”.⁷²
- 4.15. ICA submits that EPAL will proceed with its QR code service.⁷³

⁷⁰ Australian Retailers Association, Submission to ACCC, 17 August 2021, p 1.

⁷¹ ICA, Applicants’ response to submissions from interested third parties, 23 August 2021, paragraph [3].

⁷² ICA, Applicants’ response to submissions from interested third parties, 23 August 2021, paragraph [4].

⁷³ ICA, Applicants’ response to submissions from interested third parties, 23 August 2021, paragraph [6].

ACCC view

- 4.16. Having regard to the Undertaking, the ACCC is satisfied that the amalgamation is unlikely to result in a substantial lessening of competition in relation to the routing of debit card payments. The ACCC considers that the Undertaking offered by the applicants on behalf of AP+, mitigates risk that eftpos' ability to exert competitive pressure in debit card payment services might become diminished following the amalgamation. This risk of diminution arises from major banks' (as shareholders of AP+) mixed incentives to support the eftpos scheme and LCR, and the change in Board structure resulting from the amalgamation.
- 4.17. As discussed in paragraphs [7.90]-[7.91] below, the ACCC considers that the obligations contained in the Undertaking, together with the role of the RBA, will minimise the risk of the major banks as shareholders of AP+ acting on any incentives they may have to diminish eftpos or to not provide or not extend the availability of LCR (including to the online environment).
- 4.18. The ACCC considers that the 4 year period of the Undertaking is appropriate, given the dynamic nature of payments technology and to allow AP+ the flexibility to adapt to changes in the medium term. The ACCC acknowledges submissions suggesting a longer term, and notes the increase to 4 years from the 3 years offered in the draft Undertaking.
- 4.19. The ACCC notes some interested parties requested that the obligations be extended to financial institutions, particularly the major banks as shareholders of AP+, to make available and promote LCR. The ACCC considers that these parties' incentives and likely behaviour in the future (as issuers and acquirers) are unlikely to be impacted by the amalgamation. The ACCC also considered the RBA's ongoing role in regulating debit card payment services when assessing these requests.
- 4.20. The ACCC considers that the Undertaking offered provides a level of assurance that a small business perspective will be available to the AP+ Board, through the commitment to appoint a director with substantial small business experience. The ACCC notes this is a new requirement compared to the current composition of the BPAY, EPAL and NPPA Boards.
- 4.21. The ACCC considers that eftpos managerial discretion in relation to pricing is not significantly impacted by the amalgamation as the decisions remain with relevant EPAL directors. Whilst individual members of the EPAL Board may change, those individuals are still bound by their duties as directors of EPAL.
- 4.22. The ACCC considers that the amalgamation is not likely to increase the risk of vertical foreclosure or of inappropriate transmission of commercial information in any way that would be likely to result in a substantial lessening of competition. These issues are discussed in further detail in paragraphs [7.327]-[7.406] below.
- 4.23. The Undertaking accepted by the ACCC is behavioural in nature. The ACCC does not normally accept behavioural undertakings, particularly due to the difficulty of enforcing and monitoring such undertakings. On this occasion the ACCC has accepted a behavioural undertaking due to the unique circumstances and context for this amalgamation. In this instance, the most concerning impact on competition arises from the amalgamation removing the independent EPAL Board and the banks having the ability to affect the investment decisions of AP+. The Undertaking is addressing the risk that the major banks and AP+ may not support eftpos and LCR, given the key role eftpos plays in ensuring competition in the routing of debit card payments. This must be considered in conjunction with the RBA's role in regulating debit card payment services as this provides important context for acceptance of the Undertaking.

- 4.24. The RBA submits that it has been strongly supportive of the role of DNDCs and LCR in promoting competition and holding down payment costs for merchants. It says that it is also proposing to take a number of actions to safeguard the role of DNDCs and LCR in promoting competition in debit card payments. The RBA also says that it understands that the major banks intend to continue issuing DNDCs, and that, more generally, the major banks remain supportive of the eftpos scheme. While the Undertaking has a role in ensuring no anti-competitive effects arise from the amalgamation in this regard, its role sits alongside the important role of the RBA in the same area.

5. The authorisation test

- 5.1. The ACCC may grant an authorisation to a person to engage in specified conduct to which one or more specified provisions of Part IV of the Act would or might apply.⁷⁴ However, the ACCC must not grant an authorisation for a proposed acquisition unless it is satisfied, in all the circumstances, that:
- the proposed acquisition would not have the effect, or would not be likely to have the effect, of substantially lessening competition (**'competition' limb**) or
 - the proposed acquisition would result, or be likely to result, in a benefit to the public, and that benefit would outweigh the detriment to the public that would result, or be likely to result, from the proposed acquisition (**'net public benefit' limb**).⁷⁵
- 5.2. The ACCC only needs to be satisfied that one limb of the statutory test has been met.

6. ACCC assessment of change in structure, ownership and control of BPAY, EPAL and NPPA

- 6.1. The ACCC has considered whether there will be a material change in the proposed structure and governance of AP+ compared to each of the entities continuing to operate independently with 3 separate Boards. This is particularly relevant to an assessment of the amalgamation's impact on eftpos' competitive position, as discussed in the competition analysis section, and to the public benefit claims made by ICA, discussed in the public benefits section.
- 6.2. Figure 4 below sets out the current owners of BPAY, EPAL and the NPPA who all, except for the RBA, will be shareholders of AP+.

⁷⁴ Section 88(1) of the Act. Relevantly, this includes a merger or acquisition such as the amalgamation, to which section 50 of the Act would or might apply.

⁷⁵ Section 90(7) of the Act.

Figure 4: Current owners of BPAY, EPAL and the NPPA



Source: Jackie Kallman, *ANZ Bluenotes*, 'Simplifying Australia's payments industry', 19 June 2020. The ACCC notes that EPAL is expecting further members to be added prior to completion of the amalgamation.⁷⁶

6.3. Table 1 below sets out an overview of some of the key features of AP+'s proposed structure.

Table 1: Key features of the AP+ governance structure

Feature	AP+
Ownership interests in AP+	<p>The current shareholders and members of BPAY, EPAL and NPPA will all become shareholders of AP+, with the exception of the RBA. The major banks will have a smaller shareholding in AP+ relative to their shareholding in BPAY.</p> <p>ANZ, NAB and Westpac will have a larger shareholding in AP+ relative to their membership or shareholding in each of EPAL and NPPA.</p> <p>The remaining owners will have a significantly smaller shareholding in AP+ than the major banks.</p>
Shareholder voting rights	<p>All shareholders have one vote at general meetings irrespective of the shareholding.</p> <p>Collectively:</p> <ul style="list-style-type: none"> the major banks will account for █████% Coles and Woolworths will account for █████% other ADIs will account for █████%

⁷⁶ EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, paragraph [9].

-
- non-ADIs will account for ██████% of the voting rights at general meetings.

Voting rights may change as the AP+ shareholder base expands (or contracts) over time.

Shareholder resolutions

Special Majority Band Resolution: if a decision is made by AP+ directors that would result in a fundamental change to:

- the nature, scale or operation of a payment service, or is a proposal to cease providing a payment service
- the manner of funding the operating costs of providing a payment service (including any requirement for particular shareholders to fund new investment)
- the manner in which funds generated by a payment service are utilised (including the use of funds generated by a payment service for investment in another payment service)
- the roadmap agreed for the development of the Prescribed Services to the extent it relates to a payment service,

then any 2 directors may request that the decision be ratified by an extraordinary resolution (75%) of the shareholders who are also participants in that payment service at the time.⁷⁷

Special Majority Shareholders' Resolution: Matters relating to changes to, among other things, the equity structure of AP+, the AP+ Constitution, the number of directors and the Board composition will also require passage of a Special Majority Shareholders' Resolution (i.e. approval by at least 75% of shareholders).⁷⁸

The ACCC notes the commitments offered by AP+ in the Undertaking limit the Board's ability to decide on a fundamental change to the Prescribed Services (see paragraph [4.2] above).

AP+ Board

The AP+ Board will comprise 13 directors. 4 independent directors including the Chair will be appointed based on certain attributes and skills,⁷⁹ and 9 shareholder-nominated directors will comprise of the following:

- 4 directors nominated by the major banks (i.e. shareholders who each hold more than 15% shareholding)
-

⁷⁷ A Band is defined as a band of classes of Preference Shares determined in accordance with relevant banding rules. ICA, AP+ Constitution, 2 July 2021, paragraph [10.5].

⁷⁸ ICA, AP+ Constitution, 2 July 2021, Schedule 3.

⁷⁹ ICA also submits that the 4 independent non-executive directors appointed to AP+'s Board will each be senior, accomplished leaders with notable executive achievement and will be appointed based on certain attributes and Board skills. Board skills include marketing and consumer experience across consumer and small to medium business segments. Independent directors must not have been employed by, acted in a material way for (for example as a consultant, supplier or customer), had a substantial holding in or be an existing shareholder or member of one of the 3 operating companies being consolidated or a related body corporate of a shareholder of AP+. ICA, Response to Issues Paper, 18 June 2021, Annexure H.

AP+ director voting rights	<ul style="list-style-type: none"> • 3 directors nominated by non-ADI shareholders⁸⁰ who each hold less than 15% of AP+ shares • 2 directors nominated by ADIs⁸¹ who each hold less than 15% of AP+ shares.⁸² <p>Each director will have one vote and the Chair will have the casting vote.</p> <p>Directors representing the major banks will have equal voting rights to all other directors.</p> <p>Board decisions (including decisions relating to the annual budget, development roadmap, and the appointment of senior management) will be decided by a simple majority vote of directors. Any 2 directors can request that a decision be ratified by a Special Majority Band Resolution in the circumstances described above under 'shareholder resolutions'.⁸³</p>
The operating companies⁸⁴	<p>The OpCos will become wholly owned subsidiaries of AP+. AP+ will appoint a subset of AP+ directors to the Board of each OpCo.</p> <p>Each OpCo will:</p> <ul style="list-style-type: none"> • continue to have its own operating governance and manage its respective payment scheme, operations and infrastructure (including pricing), as defined by the roadmap • be responsible for complying with obligations under its operating rules, for regulatory compliance and risk management • participate in cross-entity working groups that will be set up to support activities such as strategic planning and roadmap development • contribute to the development of additional functionalities, innovations and new products by providing proof of concepts to the AP+ Board • contribute staff for the AP+ management centre that will provide the finance, legal and risk management functions across the 3 entities.
The advisory committees	<p>AP+ will establish 2 advisory committees with whom it should consult on a regular basis:</p> <ol style="list-style-type: none"> 1. An end-user committee will represent the views of end-users of the 3 schemes. 2. A Payment Service Provider committee will represent the interests of the payment service providers and other organisations in the Australian payments' ecosystem.⁸⁵

⁸⁰ Non-ADI shareholders include Adyen Australia, Coles, Fiserv, Eftex, Windcave and Woolworths.

⁸¹ In addition to the major banks, ADI shareholders include Bendigo and Adelaide Bank, Citigroup, Cuscal, HSBC, ING, Macquarie, ASL, Indue, Bank of Queensland, Suncorp and Tyro Payments.

⁸² ICA, Application for merger authorisation, 18 March 2021, paragraphs [7.9] and [26.11].

⁸³ ICA, Application for merger authorisation, 18 March 2021, paragraph [27.4].

⁸⁴ ICA, Non-confidential response to ACCC RFI, 18 June 2021, p 4, paragraphs [7]-[9].

⁸⁵ ICA, Application for merger authorisation, 18 March 2021, paragraph [7.10].

The committees:

- will be established with terms of reference and guiding objectives
- are expected to report publicly on their work and AP+ will be obliged to publicly respond to any reports or statements made by the committees
- will be chaired by independent directors of AP+ and will comprise of senior representatives of the OpCo management teams.⁸⁶

ICA submissions

- 6.4. ICA submits that the amalgamation will enhance the ownership interests and voting rights of smaller participants in AP+, at the same time as reducing the control of the major banks over the 3 payment schemes. The major banks currently control 100% of shareholder votes in BPAY, █████% of member votes in EPAL (as at 31 January 2021), and 76% of shareholder votes in NPPA.⁸⁷
- 6.5. ICA submits that having independent directors on the AP+ Board and equal voting rights for directors and shareholders will provide smaller participants (such as non-ADIs and non-bank acquirers) with greater influence over the payment schemes compared to the counterfactual. This is because in the counterfactual, the major banks would control voting in each of the 3 schemes and there would be less engagement with small business and other users of Australia's payment ecosystem.⁸⁸
- 6.6. ICA submits that banding shareholders together to nominate directors based on the nature of the shareholder's business and, for Special Majority Band Resolutions, based on whether they use the payment service, will assist in providing fundamental checks for each of the 3 payment schemes. Under these rules, the major banks can nominate 4 out of 13 directors, which equates to a 30.76% share of the composition of the Board of directors.⁸⁹ ICA submits that the AP+ Board structure will enhance the representation of a broader range of stakeholders, including smaller participants in AP+. As a result, directors representing the larger shareholders (particularly the major banks) are less likely to have as significant an influence over Board deliberations as they would have in the schemes today. The major bank directors currently have a majority of voting rights in eftpos and BPAY on account of their scheme volume in eftpos and their collective ownership of 100% of BPAY.
- 6.7. ICA submits that the Boards of each OpCo will meet separately to make decisions required under the respective OpCo's Constitution, consistent with the directors' duties under common law and statute to act in the interests of the company and having regard to the advice and input provided by the respective OpCo's management teams.⁹⁰
- 6.8. ICA submits that each OpCo will have ample opportunity to present to the AP+ Board the case in favour of including a new payment service and the Board will consider that case on its merits, including by reference to input from all AP+ directors and information provided by the Board's sub-committees. ICA submits that it is expected that each

⁸⁶ ICA, AP+ Constitution, 2 July 2021, paragraph [9.10].

⁸⁷ ICA, Application for merger authorisation, 18 March 2021, paragraph [26.11].

⁸⁸ ICA, Application for merger authorisation, 18 March 2021, paragraphs [2.6] and [27.3].

⁸⁹ ICA, Application for merger authorisation, 18 March 2021, paragraphs [7.3] and [7.9].

⁹⁰ ICA, Non-confidential response to ACCC RFI, 18 June 2021, p 4.

OpCo and their respective management teams will play an important role in developing the unified roadmap for payment services.⁹¹

The major banks' submissions

- 6.9. The major banks are members of each scheme, with rights to appoint Board directors for each entity. Under the amalgamation, the major banks will continue to have representation on the AP+ Board. Some of the banks acknowledge that there will be a dilution of their voting rights and shareholdings in the payment schemes. Others consider that the governance arrangements for AP+ will still enable them to contribute and provide influence.⁹² Evidence from the major banks' internal documents generally supports these assertions.⁹³

The payment schemes' submissions

- 6.10. EPAL has indicated that it is concerned the change in ownership will result in a loss of support for the EPAL roadmap and that the checks and balances in AP+'s governance structure do not necessarily ensure support for its strategic initiatives where there is potential future competition between each of the amalgamated entities.⁹⁴
- 6.11. BPAY submits that the amalgamation may raise material challenges for BPAY OpCo by ceding decision-making to AP+'s governance and strategy, posing a risk to BPAY OpCo's ability to innovate and offer new services to the market.⁹⁵
- 6.12. NPPA's statements largely echo those of ICA in relation to a balanced representation on AP+'s Board, a reduction in the influence of the major banks and the ability of all users of the payments services to have an equal role in the ownership of AP+ regardless of their size.⁹⁶

Other submissions

- 6.13. Coles and Woolworths have submitted that the governance arrangements for AP+ provide some comfort in ensuring EPAL's revenue is used primarily to support its strategic roadmap and create short term certainty that EPAL will be a meaningful competitive alternative to Mastercard and Visa. They also note that [REDACTED] and that AP+'s Board will be comprised of more directors nominated by non-ADIs relative to the existing Boards of BPAY, EPAL and NPPA.⁹⁷
- 6.14. Some stakeholders, including from Curtin University (Dr Lien Duong, Professor Grantley Taylor and Dr Baban Eulaiwi) and the Australian Retailers Association, consider that the proposed governance structure of AP+ ensures that all users will

⁹¹ ICA, Non-confidential response to ACCC RFI, 18 June 2021, p 10.

⁹² [REDACTED]

⁹⁴ EPAL, Non-confidential statement in support of application for authorisation, 16 March 2021, paragraphs [100]-[106]; [REDACTED]

⁹⁵ BPAY, Non-confidential statement in support of application for authorisation, 16 March 2021, paragraph [76].

⁹⁶ NPPA, Non-confidential statement in support of application for authorisation, 16 March 2021.

⁹⁷ Coles, Non-confidential statement in support of application for authorisation, 17 March 2021; Woolworths, Non-confidential statement in support of application for authorisation, 16 March 2021.

have some degree of control or influence over the payment schemes, highlighting that fundamental changes can be vetoed by relevant participants (as per the Special Majority Band Resolution). However, several stakeholders raised concerns that decisions will be dominated by the major banks and retailers and that small businesses will have limited voice or influence.⁹⁸

- 6.15. Visa considers that without appropriate governance systems, AP+ may be incentivised to favour outcomes of key shareholders at the expense of smaller business groups and other competitors.⁹⁹ Mastercard, SuperChoice and Controlabill also expressed concern that under the proposed structure of AP+, the major banks may be able to act in concert. Mastercard recommended that conditions be imposed to maintain separation and independence of the amalgamation entities.¹⁰⁰

ACCC view

- 6.16. Based on information obtained in the course of its investigation, the ACCC considers that the major banks are likely to have less control and influence over the payment schemes in the future with the amalgamation than in the counterfactual. However, the ACCC considers that, following the amalgamation of the 3 OpCos into a single controlling entity, each OpCo will have reduced influence over the future of its own strategic roadmap. The ACCC notes that under the amalgamation the major banks will continue to independently decide whether to implement the roadmaps for the 3 OpCos agreed by AP+.
- 6.17. The ACCC considers that AP+ will effectively control each of the 3 OpCos as a result of the amalgamation. From July 2022, an OpCo will not be able to make a unilateral decision to include a new payment service in its roadmap unless it is endorsed by AP+'s Board as part of the unified roadmap. The ACCC considers that the OpCos' ability to influence AP+'s decision-making for these activities appears limited to providing input - which may or may not be reflected in the final view of the AP+ Board - and to implement the decision once it has been made by the AP+ Board.¹⁰¹ Importantly, the OpCos' ability to influence key decision-making will depend on the extent to which the AP+ Board and CEO seeks support from the cross-entity working groups or the management centre.¹⁰² The ACCC considers that AP+ will ultimately have control over the 3 schemes' operations and investment roadmaps. This conclusion is consistent with one of the reasons for the amalgamation put forward by ICA, namely the need to improve coordination between the 3 schemes to enhance innovation, investment and speed-to-market of new payment services.
- 6.18. With the exception of CBA, the major banks will increase their overall shareholdings in AP+ relative to their current shareholdings or membership in EPAL and NPPA (the major banks are the only shareholders in BPAY). Based on the shareholders or members of the 3 schemes as at the time ICA submitted its application for authorisation, AP+ would have 21 shareholders. The major banks would together hold ████████ of the shares in AP+ and each would be entitled to nominate one director to the AP+ Board, however they will collectively hold less than a third of Board votes and less

⁹⁸ Submissions from Australasian Convenience and Petroleum Marketers Association, Restaurant & Catering Australia, Australian Lottery and Newsagents Association, Council of Small Business Organisations Australia, Pharmacy Guild of Australia, Australasian Association of Convenience Stores and National Retail Association.

⁹⁹ Visa, Submission to the ACCC, 23 April 2021.

¹⁰⁰ SuperChoice, Submission to the ACCC, 16 April 2021; Mastercard, Submission to the ACCC, 22 April 2021; Controlabill, Submission to the ACCC, 21 April 2021.

¹⁰¹ See for example ICA, Non-confidential response to ACCC RFI, 18 June 2021, p 4.

¹⁰² ICA, Application for merger authorisation, 18 March 2021, Exhibit 2.

than 20% of shareholder votes.¹⁰³ The Board will comprise a mix of directors who represent a range of stakeholders, including 4 independent directors whose independence is assured by the mandatory application of selection criteria. The major banks will not constitute a simple majority of the AP+ Board. The ACCC does not consider that the change in the proportion of shares collectively held by the major banks will translate into them exercising greater influence or control over AP+ than they would otherwise exercise over each of the payment schemes in the counterfactual.

- 6.19. While the major banks' shareholding will continue to be significant in AP+, [REDACTED]. Further, Coles and Woolworths will not necessarily have representatives on the AP+ Board unless they are nominated by non-ADI shareholders.¹⁰⁴ They will, however, each have one vote at shareholder meetings irrespective of their shareholding.
- 6.20. [REDACTED].
- 6.21. With or without the amalgamation, each of the major banks will continue to decide whether AP+'s proposed payment services will be implemented and offered to their customers. As such, the ability of the major banks to influence the success of future payment services will not be limited to their role as AP+ shareholders and Board members. The major banks collectively account for approximately 74% of residential deposits¹⁰⁵ and therefore the success of any new payment initiatives is heavily dependent on the major banks updating their banking platforms in order to roll out and promote new services to their customers. Given the dominant position of the major banks in retail banking, if only one of the banks chooses not to make the upgrades required to support a new payment service, the service may not achieve the ubiquity it needs to become a viable offering.
- 6.22. The ACCC considers the possible effects of the control and governance changes under AP+ in the competition assessment and public benefits assessment.

7. ACCC assessment of competition limb

Relevant areas of competition

- 7.1. As a preliminary step to assess whether the amalgamation is likely to result in a substantial lessening of competition, the ACCC has sought to identify the relevant areas of competition likely to be impacted. This establishes the broad 'field of inquiry' relevant to the ACCC's consideration of the application.
- 7.2. 'Market definition' is an economic tool or instrumental concept, not an exact physical exercise to identify a physical feature of the world. It is rarely possible to draw a clear line around the relevant market or markets, and it is often sufficient to identify the

¹⁰³ Voting rights may change as the AP+ shareholder base expands (or contracts) over time.

¹⁰⁴ Non-ADI shareholders are those that are not financial institutions licensed by the Australian Prudential Regulatory Authority to accept deposits from the public. They include Coles and Woolworths and payments companies Adyen Australia, Fiserv, EFTEX and Windcave.

¹⁰⁵ [RBA, Review of Retail Payments Regulation: Consultation Paper, May 2021](#), p 13.

relevant areas of competition in which the proposed acquisition or its effects will occur, without precisely defining the boundaries of the relevant markets.¹⁰⁶

- 7.3. Rather, in assessing applications for merger authorisation the ACCC adopts a 'purposive' approach to market definition. That is, the definition of the market is considered in the context of the proposed acquisition and the prohibition in section 50 of the Act. Accordingly, the way a market is defined for the purposes of assessing a particular application for authorisation may differ to the market definition relevant to the ACCC's consideration of other matters, for example, mergers in the same or related industries.
- 7.4. In the present case, the ACCC has considered the range of buyers and sellers that could be affected by the amalgamation and the nature of the competitive environment in which the amalgamation will occur. This in turn assists in identifying the likely competition effects, benefits and detriments, and the extent to which such effects may be constrained by other factors.
- 7.5. BPAY, EPAL and NPPA are all present in 2 functional levels of the payment services supply chain:
 - Low value electronic payments authorisation and clearing infrastructure in Australia
 - Low value electronic payment services in Australia.
- 7.6. The ACCC considers that low value payments are in different markets from high value payments made between financial institutions for themselves or on behalf of corporate customers, including to and from overseas banks and for foreign exchange transactions.
- 7.7. The main low value payment infrastructures used in Australia are the NPP, the eftpos card scheme, the BPAY scheme, international card schemes (run by Visa, Mastercard, American Express and Diners Club) and the Direct Entry system.
- 7.8. Due to the different use cases and cost conditions involved, the ACCC considers it is useful to consider low value payment services in a narrower context according to the following segments of payments:
 - Point of sale electronic retail payments
 - Online retail payments
 - Online bill and invoice payments
 - Person-to-person payments
 - Government and business disbursements.
- 7.9. These segments are consistent with those referred to by ICA¹⁰⁷ and its economic expert,¹⁰⁸ and broadly consistent with the segmentations referred to by ICA's industry expert.¹⁰⁹ The segments are sometimes classified by reference to broad categories of payers and payees (such as consumer to business or government to consumer) in

¹⁰⁶ See generally: *Air New Zealand Ltd v Australian Competition and Consumer Commission* (2017) 262 CLR 207; (2017) 344 ALR 377; [2017] HCA 21, [57]-[66] and cases there cited.

¹⁰⁷ ICA, Application for merger authorisation, 18 March 2021, paragraph [25.3].

¹⁰⁸ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraphs [62]-[73].

¹⁰⁹ Lance Blockley, Expert industry opinion, 18 March 2021, paragraph [110].

combination with payment channels (such as in-store or online).¹¹⁰ The payment services available in each segment are discussed further in the competition analysis below at paragraphs [7.160]-[7.282].

- 7.10. Several stakeholders referred to one broad Australian market for payment services or digital payment services.¹¹¹ The Council of Small Business Organisations Australia refers to an 'Australian domestic digital financial services market' as well as 'the traditional credit card market'.¹¹² Similarly, the Australasian Convenience and Petroleum Marketers Association refers to 'the Australian payment services market' as well as the 'credit/debit card market' and 'electronic payments market'.¹¹³ Similar to other stakeholders, the Australian Association of Convenience Stores suggests a broad geographic market definition treating all of Australia as one marketplace is appropriate.¹¹⁴
- 7.11. In addition to the 2 functional levels of payment services supply chain discussed at paragraph [7.5] above, the ACCC also considered potential competitive overlap between:
- EPAL and BPAY in relation to digital identification services
 - EPAL and NPPA in relation to developing QR code standards.
- 7.12. The ACCC's conclusions as to the competitive effects of the amalgamation do not depend on precise market definitions in each of the relevant areas of competition in which the amalgamation or its effects will occur.

Future with and without

- 7.13. In applying the authorisation test, the ACCC compares the likely future with the proposed acquisition that is the subject of the authorisation (the factual scenario) to the likely future in which the proposed acquisition does not occur (the counterfactual scenario).

ICA submissions

- 7.14. ICA submits that the counterfactual scenario is likely to involve a lesser form of the amalgamation, such as a combination of 2 schemes, or a combination of one scheme and a part of another scheme, or a contractual arrangement between a scheme and one of its closest competitors.¹¹⁵
- 7.15. The ACCC considers there is insufficient evidence to determine that any of these counterfactual scenarios are likely to occur.
- 7.16. ICA further submits the following are likely counterfactual scenarios:¹¹⁶
- The lack of a coordinated investment roadmap will cause the gap between domestic schemes and Visa, Mastercard and international technology companies to grow.

¹¹⁰ See Lance Blockley, Expert industry opinion, 18 March 2021, paragraph [110].

¹¹¹ For example, Visa, Submission to ACCC, 23 April 2021; Dr Harjinder Singh and Associate Professor Nigar Sultana (Curtin University), Submission to ACCC, 15 April 2021.

¹¹² Council of Small Business Organisations Australia, Submission to ACCC, 16 April 2021, pp 5 and 7.

¹¹³ Australasian Convenience and Petroleum Marketers Association, Submission to ACCC, 16 April 2021, pp 2 and 6.

¹¹⁴ Australian Association of Convenience Stores, Submission to ACCC, 16 April 2021, p 2.

¹¹⁵ ICA, Application for merger authorisation, 18 March 2021, Section 14.3.

¹¹⁶ ICA, Application for merger authorisation, 18 March 2021, Sections 14.4-14.9.

- Australia's payment schemes will not be able to keep pace with technological developments and will be a weak constraint on Visa, Mastercard and international technology companies.
 - BPAY, EPAL and NPPA will require significant further investment by a critical mass of financial institutions.
 - Available resources to be allocated by banks and payments companies on new capability will continue to be limited.
 - Some overlapping future capabilities will be delayed, not built, or will not be successful because of insufficient network effects.
 - Domestic capability will falter to the benefit of global competitors.
- 7.17. The ACCC has considered the above scenarios as factors relevant to the public benefit claims and competition analysis rather than other likely counterfactual scenarios.

Other submissions

- 7.18. Interested parties provided a range of views in respect of the likely future without the amalgamation.
- 7.19. Mastercard's expert, Oxera, suggests that absent the merger, the 3 domestic payment schemes would be likely to continue on a converging path, becoming stronger competitors to each other and increasing competition and innovation.¹¹⁷
- 7.20. On the other hand, Dr Duong, Professor Taylor and Dr Eulaiwi of Curtin University, and the Australian Banking Association, submit that in the absence of the amalgamation, the 3 entities will continue to operate without competing closely.¹¹⁸

ACCC view

- 7.21. The ACCC considers that in the future without the amalgamation, each of the 3 domestic payment schemes will be likely to pursue their own individual strategy and roadmap. This will be likely to result in varying levels of potential overlap across different payment segments.
- 7.22. Potential counterfactual scenarios in relation to each of the merger entities are discussed in the following sections.

EPAL / eftpos

ICA submissions and expert views

- 7.23. ICA refers to expert reports from Lance Blockley (Expert Industry Opinion) and Dr Geoff Edwards (Economic Expert Opinion).
- 7.24. Dr Edwards considers there are 2 different counterfactuals that have a 'real chance of occurring' with respect to eftpos:¹¹⁹
- eftpos will continue to be a viable payment service for at least the next 10 years, and will continue to be an important constraint on pricing and other

¹¹⁷ Oxera submission on behalf of Mastercard, Initial economic assessment of the amalgamation, 22 April 2021, paragraph [1.6].

¹¹⁸ Dr Lien Duong, Professor Grantley Taylor and Dr Baban Eulaiwi (Curtin University), Submission to the ACCC, 15 April 2021, p 2. Australian Banking Association, Submission to the ACCC, 16 April 2021, p 2.

¹¹⁹ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraphs [94]-[107].

terms of the Mastercard and Visa debit schemes, but financial institutions' commitments to eftpos initiatives will continue to be limited and ambivalent.

- eftpos will cease to operate within 10 years unless there is proactive intervention by the RBA to maintain a domestic card-based payment infrastructure. This is because eftpos is likely to lose market share to Mastercard and Visa or new entrants.

7.25. Mr Blockley considers it likely that the core eftpos debit card business will disappear within the next 10 years¹²⁰ because of the following factors:

- Mastercard and Visa have a strong pipeline of innovations which allows them to erode the market share of localised domestic debit card schemes.¹²¹
- Mastercard and Visa will continue to set the 'catch up' agenda for eftpos, as they effectively set global standards in the capabilities required for card payments.¹²²
- Banks have limited incentive to support eftpos for a range of reasons. These include the cost of issuing and maintaining DNDCs¹²³ being greater than that of issuing single network debit cards (**SNDCs**) backed by Visa or Mastercard.¹²⁴ In addition, installing 'catch up' capabilities for eftpos requires significant investment in the banks' own banking / card platform systems.¹²⁵ Further, while the major banks may want eftpos to be a point of competitive leverage in their negotiations with the international card schemes, they appreciate that their profits would be improved if they moved from issuing DNDCs to purely issuing SNDCs backed by Visa or Mastercard.¹²⁶

EPAL submissions

7.26. EPAL submits that, absent the amalgamation, it would continue to execute its diversification strategy (which it established in 2019).¹²⁷

7.27. This strategy involves EPAL moving into new digital payments services and other non-payment services, including Beem It, deposit and withdrawal, connectID and QR orchestration.¹²⁸ EPAL considers the success of the strategy is dependent on members (including the major banks) implementing the EPAL roadmap. It submits the bulk of the development work by its members is already complete. It considers the remaining execution of the roadmap is unlikely to place significant financial burden on the major banks, because EPAL is self-funded, low cost and provides rebates to the banks to cover a significant portion of their implementation costs.¹²⁹

¹²⁰ Lance Blockley, Expert industry opinion, 18 March 2021, paragraph [463].

¹²¹ Lance Blockley, Expert industry opinion, 18 March 2021, paragraph [444].

¹²² Lance Blockley, Expert industry opinion, 18 March 2021, paragraph [453].

¹²³ For information about DNDCs, see Box 1 on page 9 above.

¹²⁴ Lance Blockley, Expert industry opinion, 18 March 2021, paragraph [457]. The SNDCs referred to by Mr Blockley are debit cards that feature a single international debit card scheme, i.e. either Visa Debit or Debit Mastercard. It should be noted that some banks issue 'eftpos proprietary cards', which are also a type of SNDCs as the cards feature a single network, being eftpos.

¹²⁵ Lance Blockley, Expert industry opinion, 18 March 2021, paragraph [455].

¹²⁶ Lance Blockley, Expert industry opinion, 18 March 2021, paragraph [457].

¹²⁷ EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, paragraphs [81], [122] and [151].

¹²⁸ EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, paragraph [153].

¹²⁹ EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, paragraphs [125]-[126].

7.28. EPAL also considers that without the amalgamation, eftpos would continue to be a sustainable, low-cost provider of debit card payment processing at the point of sale and in online transactions.¹³⁰

7.29. [Redacted]

7.30. [Redacted]

7.31. EPAL submits it has no intention of pursuing any form of consolidation absent the amalgamation, except it may take a broader role in ATM scheme management in collaboration with AusPayNet.¹³⁵

ACCC view

7.32. The ACCC considers that the likely counterfactual scenario is the status quo: the core eftpos debit scheme business will continue; and EPAL will continue to execute its diversification strategy, and will do so independently of NPPA and BPAY.

7.33. The ACCC understands that, until recently, eftpos' share of debit card payments had been declining over several years, while the share of debit card payments processed using the Mastercard and Visa debit schemes had been increasing.¹³⁶

7.34. However, the LCR initiative (see Box 5 on page 57 below), which has been supported and promoted by the RBA (see paragraphs [7.99] and [7.102] below), has enabled merchants to choose to route DNDC payments to eftpos (rather than to Visa or Mastercard). The availability of LCR has enabled eftpos to reverse the decline in its share of debit card payments processing in recent years.¹³⁷

7.35. The RBA has signalled an intention to continue to take steps to ensure the availability of LCR, in order to promote competition in the routing of debit card payments (see paragraph [7.102] below).

7.36. Based on the information available, the ACCC does not consider EPAL to be a failing firm. Further, there is no basis to conclude that EPAL will likely exit the market in the medium to long term without the amalgamation.

7.37. The ACCC considers that, absent the amalgamation, eftpos will likely continue to diversify into providing new services.

¹³⁰ EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, paragraph [128].

¹³¹ [Redacted]

¹³² [Redacted]

¹³³ [Redacted]

¹³⁴ [Redacted]

¹³⁵ EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, paragraph [168].

¹³⁶ [RBA, Payment Systems Board Annual Report 2019, p 26](#); [RBA, Discussion with ACCC, 24 June 2021](#).

¹³⁷ [RBA, Discussion with ACCC, 24 June 2021](#).

BPAY

7.38. BPAY submits that if the amalgamation does not proceed, BPAY will continue to operate and be governed by its current 5 year strategic roadmap which was developed in late 2019.¹³⁸ BPAY's strategy is focused on:

- enabling the BPAY scheme to thrive through simplifying payments for members, consumers and businesses to maximise the effectiveness of existing payments solutions that remain in high demand. Such initiatives include simplifying BPAY access and processes, accelerating BPAY payment notifications, enabling third party payment initiation and implementing Osko services 2 and 3; and
- creating value by diversifying payments into planned non-payment activities such as providing a single access point for debits, invoices and out of bank payments, and enabling integrated payments for businesses.¹³⁹

7.39. BPAY submits that it would continue to explore ways to achieve the benefits of industry coordination absent the amalgamation.¹⁴⁰

7.40. Mr Blockley and Dr Edwards consider that BPAY is likely to retain a significant presence in bill payments in Australia without the amalgamation.¹⁴¹

ACCC view

7.41. Based on the information available, the ACCC considers the likely counterfactual in respect of BPAY is the status quo. That is, BPAY will continue to pursue its existing strategy and roadmap.

NPPA

7.42. NPPA submits that absent the amalgamation, NPPA would continue its existing strategy to focus on implementation of the core business services set out in the NPP roadmap, including:

- The category purpose code business service from April 2021, which is designed to support specific payment types, namely payroll, tax, superannuation and e-invoicing payments.
- The Mandated Payment Service (**MPS**) (also known as 'PayTo') from the end of 2021, which will enable customers to authorise third parties to initiate payments from their bank accounts using the NPP.
- The NPP International Payment business service from end 2022, which is a scheme agnostic business service that enables the NPP to be used to send payments to customers over the NPP as the inbound domestic leg of the cross-border payment process.¹⁴²

¹³⁸ BPAY, Non-confidential Statement in support of application for authorisation, 16 March 2021, paragraph [77(a)].

¹³⁹ BPAY, Non-confidential Statement in support of application for authorisation, 16 March 2021, paragraph [15]-[16].

¹⁴⁰ BPAY, Non-confidential Statement in support of application for authorisation, 16 March 2021, paragraph [77(b)].

¹⁴¹ Lance Blockley, Expert industry opinion, 18 March 2021, paragraph [479]; Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [85].

¹⁴² NPPA, Non-confidential Statement in support of application for authorisation, 16 March 2021, paragraph [134].

- 7.43. NPPA and Dr Edwards submit that without the amalgamation, NPPA will continue to support the processing of bulk payments and migration of existing volumes from the Direct Entry system¹⁴³ to the NPP.¹⁴⁴

ACCC view

- 7.44. Based on the information available, the ACCC considers the likely counterfactual in respect of the NPPA is the status quo. That is, NPPA will continue to pursue its existing strategy and roadmap.

Impact of the amalgamation on eftpos

- 7.45. eftpos plays an important role in maintaining competition in the routing of debit card payments. It is the only domestic debit card scheme in Australia. It is an alternative to, and is often lower cost for merchants than, the 2 larger international debit schemes: Visa Debit and Debit Mastercard.¹⁴⁵ The ACCC has accepted a court enforceable Undertaking that obliges AP+ to procure that EPAL maintains eftpos' infrastructure and services, and does all things in its control to make available and promote LCR, among other things (see Box 4 on page 48 below).
- 7.46. The vast majority of debit cards currently issued in Australia are DNDCs. DNDCs make LCR possible.
- 7.47. LCR is a functionality offered by acquirers (see Figure 2) that allows merchants to choose which debit card scheme will process contactless payments made by consumers using DNDCs. Without LCR, DNDC payments would only be processed through the Visa Debit or Debit Mastercard schemes, for which many merchants incur higher fees than payments processed through eftpos.
- 7.48. A number of interested parties, including small businesses, have raised concerns about the impact of the amalgamation on the independence of EPAL, the provision of eftpos as a low cost debit card service and the availability of LCR to merchants.
- 7.49. The RBA has been supporting competition in debit card payments by, among other things, encouraging the issuance of DNDCs and the provision of LCR to merchants by the major banks and other acquirers.
- 7.50. The ACCC considers the presence of eftpos and the availability of LCR has contributed to greater competition in the routing of debit card payments. As the RBA has observed, Mastercard and Visa have lowered some interchange and scheme fees in response to the availability of LCR.¹⁴⁶ This has flowed through to lower merchant service fees over the past several years in relation to the processing of certain categories of debit card payments.
- 7.51. The amalgamation will result in the loss of an independent EPAL Board that would be expected to make decisions solely in the interests of EPAL and the eftpos scheme. EPAL will become a wholly owned subsidiary of AP+ and its Constitution will be amended so that directors acting in good faith in the interests of AP+ will be taken to be acting in the best interests of EPAL.
- 7.52. Further, as EPAL is one of 3 OpCos that will operate under AP+, the unified roadmap developed by AP+ will apply to EPAL. Given that AP+ will decide on what new

¹⁴³ For information about the Direct Entry system, see paragraphs [1.34]-[1.35].

¹⁴⁴ NPPA, Non-confidential Statement in support of application for authorisation, 16 March 2021, paragraph [135]. Dr Geoff Edwards, Expert economic opinion, 18 March 2021, paragraph [90].

¹⁴⁵ [RBA, Review of Retail Payments Regulation: Consultation Paper, May 2021](#), pp 8-9.

¹⁴⁶ [RBA, Review of Retail Payments Regulation: Consultation Paper, May 2021](#), p 8.

functionalities or services to invest in, the ACCC considers that the level and timeliness of support for and investments in the eftpos scheme may be lower in these circumstances than in the likely future without the amalgamation.

- 7.53. Given the role that eftpos plays in the competitive process, the ACCC has considered whether the amalgamation is likely to result in a reduction in support for eftpos from the major banks or AP+. Such a reduction in support may take the form of, for example, constraining the ability of EPAL to improve or expand its low cost service model through measures such as offering new types of payments and improving non-price aspects of its services.
- 7.54. Currently, the major banks have considerable influence over the decisions made by EPAL because they each hold voting rights on the EPAL Board proportional to each bank's transaction volumes.¹⁴⁷ The amalgamation will change the voting rights held by the major banks in BPAY, EPAL and NPPA. The ACCC does not consider this change will translate into the major banks exercising greater influence or control over AP+ than they would exercise over the individual payment schemes in the counterfactual. However, the major banks (as issuers and acquirers) will continue to each independently decide whether and when they will implement the functionalities proposed by AP+, including those related to eftpos.
- 7.55. The major banks currently have the ability to dilute the competitive influence of the eftpos network by deciding which payment services they will support, including which eftpos services they offer to their customers and how quickly the services are made available.
- 7.56. The major banks have mixed incentives to support eftpos by continuing to issue DNDCs and making LCR available to their merchant customers. The RBA has observed that the major banks are likely to have a collective incentive to support eftpos and LCR, though their individual incentive to do so may be relatively weak.¹⁴⁸ In this regard, the RBA has noted that the business units of the major banks involved in card issuance appear to be more influential in the respective bank's overall decision-making.¹⁴⁹ This may see them inclined to favour the routing of debit card transactions to Mastercard and Visa, or issuing SNDCs backed by Mastercard or Visa¹⁵⁰ rather than DNDCs, in order to increase revenue through the higher interchange fees set by Mastercard or Visa (on average) compared to eftpos. These mixed incentives are likely to persist following the amalgamation.
- 7.57. The RBA has noted in its Review of Retail Payments Regulation Consultation Paper that it is willing to take further steps to support DNDCs and LCR to safeguard competition between debit card schemes.¹⁵¹ In addition, the RBA submits that it would consider additional regulatory measures in the event that eftpos' ability to exert competitive pressure in debit card payment services was to weaken, if doing so would be in the public interest (see paragraph [7.73] below). However, while such steps could be directed to maintaining DNDCs and LCR, they are likely to be in response to a diminution of eftpos' ability to exert competitive pressure after it has occurred. The ACCC considered it appropriate to accept the Undertaking because it is likely to mitigate the risk of such a diminution occurring. By specifically requiring AP+ to

¹⁴⁷ ICA, Application for merger authorisation, 18 March 2021, paragraph [7.9] and [12.2].

¹⁴⁸ [RBA, Discussion with the ACCC, 24 June 2021](#).

¹⁴⁹ Ibid.

¹⁵⁰ The SNDCs referred to here are debit cards that feature a single international debit card scheme, i.e. either Visa Debit or Debit Mastercard. (It should be noted that some banks issue 'eftpos proprietary cards', which is also a type of SNDCs as they feature only a single network, being eftpos).

¹⁵¹ [RBA, Review of Retail Payments Regulation: Consultation Paper, May 2021](#), p 13.

maintain support for eftpos, the Undertaking, together with the role of the RBA, reduces the risk that the major banks as shareholders of AP+ will deprioritise support for eftpos following the amalgamation.

- 7.58. The ACCC considers that the mixed incentives of the major banks and AP+, and the ability of the major banks to materially affect AP+ investment decisions, give rise to some uncertainty with regard to the ongoing support of eftpos and LCR. As a result, there is a risk that the amalgamation may substantially lessen competition in relation to the routing of debit card payments.
- 7.59. The Undertaking imposes obligations on AP+ to, among other things, support eftpos, by procuring that EPAL will do all things in its control to make available and promote LCR, maintain the eftpos card-based issuing and acquiring infrastructure, eftpos' payments scheme and services, and develop the Prescribed Services, some of which facilitate eftpos online payment services. The development of eftpos' online payment services will assist in facilitating LCR for those payments. The ACCC considers that the Undertaking provides assurance that eftpos' payment services will be maintained and LCR will be made available for 4 years, and future functionalities relating to EPAL (the **EPAL Prescribed Services**) will be implemented.
- 7.60. Having regard to the Undertaking, the ACCC is satisfied that the amalgamation is unlikely to result in a substantial lessening of competition in relation to the routing of debit card payments.

Box 4: Overview of Undertaking as it relates to EPAL

The ACCC has accepted an Undertaking from ICA under section 87B(1A) of the Act. The Undertaking is at **Attachment A** to this determination.

The Undertaking will be in effect for 4 years from the date of completion of the amalgamation. It is intended to help ensure that eftpos will develop and improve its debit-based payment services for point of sale, online and in-app payments. The development and deployment of these services is important to the broad availability of LCR in online debit card payments.

The Undertaking contains obligations for AP+ to procure that EPAL will:

- do all things in its control to make available and promote LCR
- maintain eftpos' card-based issuing and acquiring infrastructure, eftpos' payments scheme and the supply of eftpos' card-based issuing and acceptance services to customers and end-users, including but not limited to pay for a purchase in-store with eftpos debit card (including using contactless methods) and using a mobile wallet, pay for a purchase online with eftpos debit, and pay for a purchase in-app with eftpos debit
- develop and make available the Prescribed Services (including APIs where applicable) in accordance with agreed timeframes
- continue to evolve and extend its various API assets in line with the implementation of its Prescribed Services
- maintain and continue to administer its current mandate framework
- agree, with the other OpCos, an industry wide standard supporting Pay with a QR code in coordination with AusPayNet
- explore the feasibility of developing certain services such as eftpos' transit support for debit card point of sale payments.

In addition:

- AP+ undertakes that one of the 4 independent directors appointed to its Board will have substantial small business experience
- AP+ must appoint and maintain an approved independent auditor to audit and report upon AP+'s compliance with the Undertaking.

Submissions

Third party submissions

- 7.61. A number of interested parties have raised concerns that the amalgamation would enable the major banks and AP+ to reduce investment in eftpos and divert investment to the other 2 payment schemes. They submit that deprioritising eftpos would likely weaken its competitive position against Mastercard and Visa and threaten the viability of the eftpos scheme, particularly as transaction volumes could be diverted to the NPP.¹⁵²
- 7.62. Interested parties have noted that eftpos provides affordable payments solutions to retailers and merchants and is committed to understanding and working with small businesses. Accordingly, they have raised concerns that EPAL will lose control of its roadmap and its focus on small business, ultimately leading to higher costs for merchants.¹⁵³
- 7.63. On the other hand, some interested parties support the governance mechanisms proposed for AP+, in particular the shareholder resolutions, and consider that the OpCos will continue to roll out new services following the amalgamation.¹⁵⁴

ICA submissions and expert views

- 7.64. ICA submits that the amalgamation is intended to enable EPAL to remain competitive and viable into the future, rather than to draw attention or investment away from its initiatives, including to the NPP.¹⁵⁵ ICA highlights the commitment to the Prescribed Services, most of which will assist EPAL with its online payment capability and which would not exist absent the amalgamation, as evidence of the intention to continue to support EPAL. ICA also highlights that AP+'s governance arrangements will ensure EPAL users retain control over the scheme and prevent the major banks from having significant influence relative to other AP+ shareholders.¹⁵⁶
- 7.65. The major retailers Coles and Woolworths each submit that the amalgamation will strengthen EPAL's competitive position relative to Mastercard and Visa. This is particularly because of ICA's support for the EPAL Prescribed Services which provides greater certainty for the EPAL roadmap. Coles and Woolworths suggest that these

¹⁵² Australian Retailers Association, Submission to the ACCC, 7 May 2021; Mastercard, Submission to the ACCC, 22 April 2021; Australian Convenience & Petroleum Marketers Association, Submission to the ACCC, 16 April 2021; Quest Payments Systems, Submission to the ACCC, 19 April 2021; Benchmark Analytics, Submission to the ACCC, 14 May 2021.

¹⁵³ Quest Payments Systems, Submission to the ACCC, 19 April 2021; Council of Small Business Organisations Australia, Submission to the ACCC, 16 April 2021; Australian Retailers Association, Submission to the ACCC, 16 April 2021.

¹⁵⁴ Australian Retailers Association, Submission to the ACCC, 16 April 2021; Dr Lien Duong, Professor Grantley Taylor and Dr Baban Eulaiwi (Curtin University), Submission to the ACCC, 15 April 2021.

¹⁵⁵ ICA, Response to submissions, 19 May 2021, p 2.

¹⁵⁶ ICA, Response to Statement of Preliminary Views, 18 June 2021.

commitments may not have been forthcoming absent the amalgamation, observing that industry participants have not historically been supportive of EPAL initiatives.¹⁵⁷

- 7.66. Mr Blockley's view is that the major banks will not have significant influence or control over EPAL following the amalgamation. He considers that the proposed governance mechanisms provide necessary checks on AP+'s decision-making (such as shareholder resolutions).¹⁵⁸ Similarly, Dr Edwards does not consider that the major banks or AP+ would have the ability or incentive to reduce support for eftpos following the amalgamation, noting that eftpos represents an important constraint on Mastercard and Visa. Further, Dr Edwards considers that degrading eftpos' services would likely benefit Mastercard and Visa rather than NPPA, observing that NPPA is unlikely to be competing for point of sale payments for many years at least.¹⁵⁹

Submissions from EPAL

- 7.67. EPAL considers that the amalgamation poses a risk to its ability to control its strategic roadmap and that AP+ will only support one scheme where there is any overlapping product or service. Specifically, EPAL raises concerns about the possible elimination of competition in areas of overlap between the 3 payment schemes. This could result in a reduction in eftpos transaction volumes in online purchases, deposit and withdrawal use cases and, over time, retail transactions. It may also result in an inability to diversify or expand its newer services which would also compete with the NPP or BPAY services (for example, Beem It and connectID). EPAL submits that AP+'s governance arrangements do not ensure support for EPAL's initiatives or interests more generally. EPAL is concerned that any loss of support for the eftpos scheme will hinder its ability to compete with Mastercard and Visa and could result in higher costs for merchants.¹⁶⁰

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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Submissions from the RBA

- 7.68. The RBA's Payments System Board (the principal regulator of Australia's payments system) has been taking various approaches to promote competition in debit card payments since at least August 2012. These include measures to promote competition between eftpos, and Mastercard and Visa, and to actively encourage the major banks to support DNDCs and LCR.
- 7.69. The RBA has previously observed that financial institutions may not generally have strong financial incentives for the continued issuance of DNDCs or the provision of LCR,¹⁶² both of which help maintain eftpos market share and assist eftpos' ability to compete with Mastercard and Visa. The RBA has also observed that when the major banks (and other ADIs) have introduced a new functionality for cardholders, such as

¹⁵⁷ Coles, Non-confidential statement in support of the application for authorisation, 22 March 2021 paragraph [116]; Woolworths, Non-confidential statement in support of the application for authorisation, 22 March 2021 paragraph [32].

¹⁵⁸ Lance Blockley, Expert industry opinion, 18 March 2021, paragraphs [518] and [527].

¹⁵⁹ Dr Geoff Edwards, Expert economic opinion of Dr Geoff Edwards, Charles River Associates, 2 April 2021, paragraph [271].

¹⁶⁰ EPAL, Non-confidential statement in support of application for authorisation, 22 March 2021, paragraphs [105]-[106] and [181].

¹⁶¹

¹⁶² [RBA, Review of Retail Payments: Issues Paper, November 2019](#), p 16.

Apple Pay, they have often done so first for an international card scheme, with no firm plans for also enabling it for eftpos.¹⁶³

7.70. However, in discussion with the ACCC, the RBA states that it considers the major banks collectively wish to see the eftpos scheme continue, because:¹⁶⁴

- the continued presence of eftpos and availability of LCR may contribute to downward pressure on the debit scheme fees set by Mastercard and Visa
- eftpos has some additional functionalities that bank customers want such as the cash out functionality and support for processing Medicare claims
- there is little cost per card for the major banks to include eftpos on DNDCs.¹⁶⁵

7.71. The RBA considers that, notwithstanding the major banks' collective interest to see the eftpos scheme continue, there may be financial incentives for individual banks to enter into an agreement with Mastercard or Visa in return for agreeing to issue only SNDCs backed by Mastercard or Visa.¹⁶⁶ More broadly, the RBA has been concerned that the trend of SNDC issuance by smaller issuers could diminish the value of LCR to merchants, and be detrimental to eftpos' ability to compete with Visa and Mastercard.¹⁶⁷

7.72. However, the RBA does not expect the major banks to move to issuing SNDCs backed by Mastercard or Visa instead of DNDCs. Rather, it expects the major banks' collective long-term incentive to keep the eftpos scheme operating to outweigh their individual short-term incentives.¹⁶⁸ Moreover, the RBA has flagged a range of measures in its Review of Retail Payments Consultation Paper to address the various threats to DNDCs and LCR (see Table 2 on pages 58-60 below). These include the option of requiring the major banks (and potentially a broader range of ADIs) to issue DNDCs, which would be 'agnostic' regarding the debit card networks included on those cards.¹⁶⁹

7.73. In its submission to the ACCC, the RBA submits that, if, for any reason, eftpos' competitive position was weakened, and merchant service fees for debit card payments began to increase as a result, it would consider taking further policy action in the public interest. The RBA has said it would consider measures such as the following (noting they are the cost components of debit payments charged to merchants):¹⁷⁰

- lowering the current RBA-regulated benchmark for the weighted-average interchange fees of the debit card schemes¹⁷¹

¹⁶³ Ibid.

¹⁶⁴ [RBA, Discussion with the ACCC, 24 June 2021](#).

¹⁶⁵ In contrast, the smaller and mid-sized banks have indicated to the RBA that they find it relatively costly to issue DNDCs and maintain two debit card networks. That is partly because they do not have a large customer base over which to defray the cost.

¹⁶⁶ [RBA, Discussion with the ACCC, 24 June 2021](#). The SNDCs referred to here are debit cards that feature a single international debit card scheme, i.e. either Visa Debit or Debit Mastercard. (It should be noted that some banks issue 'eftpos proprietary cards', which are also a type of SNDCs as the cards feature a single network, being eftpos).

¹⁶⁷ This is because, SNDCs are debit cards featuring a single debit card network, and therefore they cannot facilitate LCR.

¹⁶⁸ [RBA, Discussion with the ACCC, 24 June 2021](#).

¹⁶⁹ RBA, Submission to the ACCC, 9 July 2021, p 3. In its *Review of Retail Payments Regulation Consultation Paper*, the RBA also indicates that there would be no presumption as to which two debit networks were included by issuers; various combinations of domestic and international schemes might be feasible (see [RBA, Review of Retail Payments Regulation: Consultation Paper, May 2021](#), p 12).

¹⁷⁰ RBA, Submission to the ACCC, 12 July 2021.

¹⁷¹ These fees are set by the debit card schemes to be paid by acquirers to issuers, and are passed on directly or indirectly to merchants.

- subjecting debit scheme fees¹⁷² to greater transparency. For instance, as mentioned in the RBA's Review of Retail Payments Regulation Consultation Paper, the RBA could consider requiring debit card schemes to disclose scheme fee schedules and provide quarterly data on average fees charged to issuers and acquirers, or publishing some form of aggregate data¹⁷³
- subjecting acquirers' margins to greater competitive pressure, including by improving the transparency of merchant service fees to help reduce some impediments to competition between acquirers in the supply of debit card payment services to smaller merchants.¹⁷⁴

The ACCC's views on the major banks' ability and incentive to reduce support for eftpos

- 7.74. As discussed in paragraphs [7.45] and [7.46], eftpos plays an important role in maintaining competitive tension between debit card schemes and providing choice to merchants in the routing of debit card payments in Australia.
- 7.75. The ACCC has investigated whether the amalgamation would be likely to have an adverse effect on the competitive position of eftpos (and consequently, competition in the routing of debit card payments). The ACCC has considered the ability and incentives of the major banks and other ADIs as shareholders and as issuers and acquirers, and of AP+ to reduce support for the eftpos scheme.
- 7.76. The ACCC has considered whether the major banks and other ADIs have the incentive to reduce or deprioritise support for eftpos and whether the amalgamation would increase the likelihood of this occurring. Key considerations for the major banks and other ADIs in this regard include:
- whether it is more profitable for them for payments to be routed through Mastercard or Visa, which typically results in higher interchange fees flowing to them as issuers
 - whether eftpos is a source of constraint in the negotiations they have with Mastercard and Visa
 - the threat of further RBA intervention and the profit impact this would have on them.

Ability of the major banks to reduce support for eftpos

- 7.77. At present, EPAL is a company limited by guarantee.¹⁷⁵ It is self-funded and cannot distribute profits to its members. It is currently co-owned by 19 members whose entitlements to vote are based on their scheme volume (for General Meetings) or their

¹⁷² These fees are charged by the debit card schemes to issuers and acquirers, and in the case of acquirers are passed on directly or indirectly to merchants.

¹⁷³ In the RBA's *Review of Retail Payments Regulation Consultation Paper*, the RBA considers the opacity of scheme fee arrangements may be limiting competitive tension between the card schemes, as well as between acquirers (by obscuring their margins). The RBA considers that the opacity of scheme fees could also, in principle, make it easier for schemes to implement fees or rules that may be anti-competitive or have the effect of offsetting or circumventing the RBA's interchange fee regulation (see [RBA, Review of Retail Payments Regulation: Consultation Paper, May 2021](#), p 29).

¹⁷⁴ For instance, as flagged in the RBA's *Review of Retail Payments Regulation Consultation Paper*, the RBA may regularly publishing summary information on merchant service fees for merchants of different sizes, or potentially extending the Consumer Data Right to acquiring services provided to small businesses (see [RBA, Review of Retail Payments Regulation: Consultation Paper, May 2021](#), pp 41-42).

¹⁷⁵ Following the amalgamation, EPAL will be converted to a company limited by shares.

acquirer scheme volume or issuer scheme volume (for Class Meetings).¹⁷⁶ The major banks hold significant voting rights on the EPAL Board on account of their scheme volumes.¹⁷⁷

- 7.78. As discussed in paragraph [6.18], the ACCC does not consider that the change in the proportion of shares held by the major banks will translate into them exercising greater influence or control over AP+ than they would exercise over the individual payment schemes in the future without the amalgamation. Following the amalgamation, the major banks will hold no more than 4 of 13 seats on the AP+ Board and will see a reduction of their voting rights.¹⁷⁸
- 7.79. However, the amalgamation will result in the loss of an independent EPAL Board which is expected to make decisions solely in the interests of EPAL and the eftpos scheme. Further, the major banks, as both issuers and acquirers, will each continue to decide whether they will implement the functionalities proposed under the roadmap developed by AP+, including those related to eftpos.¹⁷⁹ The major banks currently have the ability to dilute the competitive influence of the eftpos network by deciding which payment services they will support, including which eftpos services they offer to their customers and how quickly the services are made available.
- 7.80. The proposed governance structure of AP+ has some features that would increase the likelihood of decisions being made which are not detrimental to eftpos, including a broad representation of payment stakeholders on the Board of AP+, equal voting rights of AP+ shareholders and directors and shareholder voting resolutions. For example, with regard to funding decisions, directors appointed to the AP+ Board by the major banks could make a decision to use funds (including retained earnings) generated from EPAL's payment services to provide funding for current or future payment services of BPAY or NPPA. However, these decisions may be subject to ratification by a Special Majority Band Resolution (see Table 1 on page 33 above), which will have the effect of placing the decision of whether to use funds from EPAL to fund another scheme in the hands of eftpos users who are also shareholders of AP+.¹⁸⁰
- 7.81. The major banks are critical to the success of new payment services. Following the amalgamation, the major banks (as both issuers and acquirers) will continue to decide whether to implement proposed payment initiatives in the roadmap developed by AP+ and therefore will have the ability to materially affect AP+ investment decisions. This gives rise to uncertainty with regard to their ongoing support for eftpos and LCR.

Incentives of the major banks to reduce support for eftpos

- 7.82. The ACCC considers that, absent regulatory intervention, the major banks (as both issuers and acquirers) have mixed incentives to support the eftpos scheme (Box 3 on page 22 above provides context for this view). Those incentives are likely to persist in the future with the amalgamation.
- 7.83. The major banks have mixed incentives to support eftpos because:

¹⁷⁶ ICA, Application for merger authorisation, 18 March 2021, paragraph [6.4]. Scheme volumes refers to the number of payments processed over the eftpos payment system by issuers and acquirers, as relevant. [REDACTED]

¹⁷⁷ ICA, Application for merger authorisation, 18 March 2021, paragraph [7.9].

¹⁷⁸ The other ADIs who are shareholders of AP+ include Bank of Queensland, Bendigo and Adelaide Bank, Cuscal and Tyro.

¹⁷⁹ The ACCC notes that in some cases the payment schemes have the ability to impose mandates on the banks, requiring that they adopt, implement or otherwise support a new service or functionality.

¹⁸⁰ ICA, Non-confidential response to ACCC RFI, 18 June 2021, p 21.

- Issuers may prefer debit card payments to be routed to Mastercard or Visa rather than eftpos, so that they can derive higher revenue due to the higher interchange fees (on average) set by Mastercard and Visa compared to eftpos. They may also be offered financial incentives from Mastercard or Visa to issue SNDCs backed by Mastercard or Visa, instead of DNDCs.
- Based on the views of the RBA in its Review of Retail Payments, and the views put forward by ICA's industry experts and numerous other parties,¹⁸¹ it is apparent that issuers have historically prioritised introducing new functionality for Visa or Mastercard, and delayed doing so for eftpos. To some extent, this has inhibited eftpos' ability to compete with Mastercard and Visa for the routing of debit card payments.
- At the same time, issuers may seek to reduce their costs by using eftpos as a pricing wedge to negotiate lower scheme fees with Mastercard or Visa.¹⁸² eftpos also provides functionality such as cash out at some merchants and the processing of Medicare Easyclaim rebates, which may be valued by some of the banks' customers.
- As acquirers, the major banks may support eftpos as a low-cost supplier of debit payment acceptance services and for any constraint it imposes on the scheme fees set by Mastercard and Visa. Lower scheme fees lower the major banks' costs, which could assist them to be more price competitive against other acquirers, and provide lower cost offerings to attract or retain merchant customers.
- On the whole, the business units of the major banks involved in card issuance seem likely to be more influential in the banks' overall decision-making.¹⁸³ This would mean the major banks would be inclined to favour routing of debit card transactions to Mastercard or Visa, or issuing SNDCs backed by Mastercard or Visa rather than DNDCs, in order to increase their revenue.

7.84. However, the major banks and other payments industry participants¹⁸⁴ operate subject to the regulatory oversight of the RBA. The ACCC considers that the RBA's actions in promoting competition in debit card payments to date (including through a mix of suasion, the threat of regulation and actual regulation) has had an influence on the decisions of the major banks to support the eftpos scheme (including through issuing DNDCs and providing LCR to merchants, both of which have benefited eftpos).

7.85. If the amalgamation proceeds, the ACCC considers that the major banks are unlikely to withdraw support for, or completely remove, the eftpos scheme. As noted in paragraph [7.72] above, the RBA also considers that the major banks collectively are likely to have an incentive to keep the eftpos scheme operating. The ACCC notes that

¹⁸¹ This includes: Mr Blockley (who submits that the major banks have limited financial incentives to support eftpos for various reasons), see paragraph [7.25] above for a summary of his submission; Coles, Non-confidential Statement in support of the application for authorisation, 17 March 2021, paragraphs [112], [118], [150] and [165]; Woolworths, Non-confidential Statement in support of the application for authorisation, 16 March 2021, paragraphs [32] and [37]; and EPAL, Non-confidential Statement in support of the application for authorisation, 22 March 2021, paragraph 144(f).

¹⁸² As the RBA has observed, the presence of eftpos and LCR may have contributed to Mastercard and Visa lowering their scheme fees (see [RBA, Discussion with the ACCC, 24 June 2021](#), and [RBA, Review of Retail Payments Regulation: Consultation Paper, May 2021](#), p 8).

¹⁸³ [RBA, Discussion with the ACCC, 24 June 2021](#).

¹⁸⁴ Including issuers, acquirers and the card schemes.

some of the other AP+ shareholders, particularly net acquirers (such as Coles, Woolworths and Tyro), will have a strong incentive for the eftpos scheme to continue operating as an alternative to Mastercard and Visa.

- 7.86. However, the major banks' mixed incentives with respect to eftpos (and, based on the views of Mr Blockley and Dr Edwards,¹⁸⁵ their degree of ambivalence towards eftpos) are likely to persist following the amalgamation. Consequently, there is some uncertainty as to how the major banks will act. For instance, it is unclear whether they would be likely to act to limit EPAL's ability to improve its lower cost service model, or delay upgrades or the introduction of new functionality that would assist the eftpos network to grow.
- 7.87. The ACCC also considers the amalgamation may increase the risk that eftpos or other new or innovative EPAL services would be de-prioritised relative to other services within the AP+ roadmap. This is because, following the amalgamation, EPAL will lose its independence as a separate entity with its own Board by becoming one of 3 OpCos under AP+. As a result, decisions made by the major banks as shareholders of AP+ regarding EPAL will be made in the broader context of being in the best interest of AP+, rather than only in the best interest of EPAL. EPAL (amalgamated within a bigger organisation, AP+) may not have its initiatives prioritised by AP+ relative to the initiatives of the other 2 OpCos.
- 7.88. If EPAL initiatives are deprioritised, this could potentially affect eftpos' ability to compete with Mastercard and Visa, and consequently, the extent of competition in relation to the routing of debit card payments. Given the dominance of Mastercard and Visa, any lessening of competition in relation to debit card payments would likely be detrimental.
- 7.89. As discussed in paragraphs [7.72]-[7.73] above, the RBA has outlined a range of proposed measures regarding DNDCs and LCR. These measures are not designed to protect eftpos per se, but rather are designed to protect competition in debit card payments.¹⁸⁶ The RBA has also indicated it may take additional regulatory measures in the event that eftpos' ability to exert competitive pressure in debit card payment services was to weaken, if doing so would be in the public interest. However, such measures are likely to be in response to a diminution of eftpos' ability to exert competitive pressure after it has occurred.
- 7.90. In view of the uncertainties associated with the major banks' incentives to support and grow the eftpos network, and to minimise the risk of a diminution of eftpos' competitive position in the routing of debit card payments occurring, the ACCC has accepted the Undertaking (see Box 4 on page 48 above). The Undertaking imposes obligations on AP+ to, among other things, procure that EPAL will:
- maintain the eftpos network for 4 years
 - develop and make available the EPAL Prescribed Services, some of which will provide the capability for eftpos online payment functionality. The implementation of this functionality will facilitate the availability for LCR on online payment services following the amalgamation.
- 7.91. The Undertaking, together with the role of the RBA, reduces the risk that the major banks as shareholders of AP+ will deprioritise their support for eftpos.

¹⁸⁵ Lance Blockley, Expert industry opinion, 18 March 2021, paragraphs [457] and [518]; Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [99].

¹⁸⁶ RBA, Submission to the ACCC, 9 July 2021, p 3.

The ACCC's views on ability and incentive of AP+ to rationalise investment in payment services

- 7.92. AP+ is likely to have an incentive to keep debit card payments on the eftpos scheme. If AP+ was to decrease the attractiveness of the eftpos scheme (for example, by increasing scheme fees or delaying the roll-out of new capabilities),¹⁸⁷ a proportion of the debit card payments currently routed over the eftpos scheme would likely shift to eftpos' closest competitors, Mastercard and Visa, resulting in lost revenue for the eftpos scheme (and for AP+).
- 7.93. As discussed in paragraphs [7.160]-[7.167] and [7.199]-[7.216], EPAL's core debit card business is unlikely to overlap in a significant way with the NPP in the short to medium term. There are several barriers to adoption of the NPP for retail payments. Investment would be required to enable NPP retail payments, and consumers and merchants would need to see benefit in using the NPP for these payments. NPP payments currently take longer to process, and are more expensive, than eftpos debit card payments. To the extent that the NPP enters the retail segment, it is more likely to be used as a funding method for other online payments services (for example, BNPL arrangements) and for some recurring in-app or e-commerce payments.
- 7.94. In the longer term, AP+ may have an incentive to rationalise overlapping payment services to avoid duplicating investment spend. This rationalisation may be facilitated by new technology and the development of new payment systems that allow older payment infrastructure or payment systems to be retired. The NPP, being newer and having a more modern payment messaging capability than eftpos, seems likely to be the infrastructure that will benefit from any such developments. If new payment methods were to reduce the volume of card-based payments, the incentive for AP+ to maintain the eftpos network would likely be weakened.
- 7.95. Improvements to the NPP, reduced transaction pricing for NPP services, and changed consumer and merchant preferences may, in the longer term, make it attractive for retail transactions that would otherwise be processed on eftpos to be processed on the NPP instead. However, the timing, likelihood and extent to which this will occur is uncertain.

LCR

- 7.96. Several interested parties, including retailer associations, have expressed concerns about the impact of the amalgamation on LCR. Interested parties are concerned that the amalgamation:
- will lead to LCR being suppressed by the banks, as the banks have an incentive to preference routing of debit card payments to Mastercard or Visa rather than to eftpos in order to increase their revenue;¹⁸⁸ or

¹⁸⁷ For example, not deploying functionality which would enable LCR to apply to transactions made online or through smart devices in the future.

¹⁸⁸ Australian Lottery and Newsagents Association, Submission to ACCC, 16 April 2021; Australasian Association of Convenience Stores, submission to ACCC, 16 April 2021; Council of Small Business Organisations Australia, submission to ACCC, 16 April 2021; Quest Payment, Submission to ACCC, 19 April 2021; Dr Harjinder Singh and Associate Professor Nigar Sultana (Curtin University), Submissions to the ACCC, 15 April 2021 and 6 May 2021.

- will not increase the availability of LCR, as the banks' incentives to promote Mastercard and Visa over eftpos debit transactions will not change as a result of the amalgamation.¹⁸⁹

7.97. Box 5 below provides further background information regarding LCR and its development.

Box 5: What is LCR?

Currently, over 90% of debit cards being issued in Australia are DNDCs. Having 2 debit card schemes 'present' on a card makes it possible for competition to occur between those schemes at the point of sale for the routing of debit card payments, in particular contactless payments. DNDCs essentially facilitate the availability of LCR.

LCR, also known as Merchant Choice Routing, is a functionality offered by acquirers that allows merchants to choose which debit card scheme will process contactless payments made by consumers using DNDCs. Without LCR, DNDC payments would only be processed through the Visa Debit or Debit Mastercard schemes, for which many merchants incur higher fees than payments processed through eftpos.

Prior to LCR progressively becoming available to merchants from about 2015,¹⁹⁰ contactless debit card payments were routed to the Visa Debit or Mastercard Debit network by default. This contributed to a decline in eftpos' share of debit card payments. Numerous retailer associations¹⁹¹ and EPAL advocated for the development and deployment of eftpos contactless capability and for ADIs and acquirers to make LCR available to merchants to enable routing of contactless debit card payments to eftpos. In addition, several government reports called on the banks and payments providers to provide LCR to merchants.¹⁹²

In response to these pressures and the RBA's intervention, the major banks and other acquirers have progressively deployed LCR, and by mid-2019, most of them offer merchants some form of LCR. However, the ACCC understands that take-up of LCR by merchants has been low.¹⁹³ The RBA's role with respect to LCR is discussed further below in paragraphs [7.98]-[7.102].

LCR is currently predominantly used for in-store payments made using the physical (plastic) card, and for some low-risk online payments (eftpos card-on-file payments). However, it may be extended to other types of online payments after eftpos completes its online payments processing capability (as part of the EPAL Prescribed Services under the terms of the Undertaking provided to the ACCC). LCR is mostly unavailable for payments made using mobile devices, as one of the international debit schemes is typically set as the default network in digital wallets (though cardholders may override that default and switch it to eftpos).

¹⁸⁹ Master Grocers & Timber Merchants Australia, Submission to ACCC, 26 March 2021 and 10 May 2021; Australasian Convenience & Petroleum Marketers Association, Submission to ACCC, 16 April 2021; National Retailer Association, submission to ACCC, 16 April 2021; Pharmacy Guild of Australia, Submission to ACCC, 16 April 2021; Restaurant & Catering Australia, Submission to ACCC, 16 April 2021.

¹⁹⁰ [Productivity Commission 2018, *Competition in the Australian Financial System, Final report no. 89, Canberra*](#), p 491.

¹⁹¹ These retailer associations include the Australasian Convenience & Petroleum Marketers Association.

¹⁹² These include: [House of Representatives Standing Committee on Economics, *Review of the Four Major Banks \(Third Report\)*, Tabled 7 December 2017](#); [Productivity Commission, *Competition in the Australian Financial System, Draft Report, January 2018*](#); and [Commonwealth of Australia, *Black Economy Task Force, Final Report, October 2017*](#).

¹⁹³ See [RBA, *Review of Retail Payments Regulation: Consultation Paper, May 2021*](#), p 2.

The availability of LCR has increased competition between eftpos and the international debit schemes, and resulted in lower card acceptance costs (on average) for the debit card payments to which LCR could be applied.¹⁹⁴

RBA support for DNDCs, LCR and competition in debit card payment routing

- 7.98. The RBA has been promoting competition in debit card payments since at least August 2012.
- 7.99. The RBA has stated that financial institutions may not generally have strong financial incentives to offer LCR to merchants.¹⁹⁵ However, under pressure from the RBA and several government reviews, the major banks have progressively enabled LCR for their merchants.
- 7.100. The RBA considers the availability of LCR has been important in facilitating competition between debit card schemes at the point of sale and has led to lower interchange fees, scheme fees and, in turn, merchant service fees over the past several years.¹⁹⁶
- 7.101. LCR has also played a role in enabling eftpos to reverse its decline in market share over many years (until the onset of the COVID-19 pandemic, as more consumers have opted to shop online rather than in-store, and LCR is not yet widely available for online transactions).
- 7.102. The RBA has stated that there are various issues and emerging threats relating to the continued issuance of DNDCs and the ongoing availability of LCR for merchants. For this reason, the RBA has proposed a range of measures in its Review of Retail Payments Regulation Consultation Paper to address these issues and safeguard competition in the routing of debit card payments. These proposed measures, which are currently the subject of RBA consultation with stakeholders,¹⁹⁷ are summarised in Table 2 below. At the time of this determination, it is expected that the RBA will make a decision on these matters later this year.

Table 2: Proposed RBA actions set out in its Review of Retail Payments Regulation Consultation Paper (May 2021)

Threat to LCR	Proposed RBA response
Issuers replacing DNDCs with SNDCs backed by Mastercard or Visa. This prevents routing of debit card payments to eftpos. ¹⁹⁸	The RBA proposes to set an expectation that the major banks will continue to issue DNDCs with 2 debit schemes to be provisioned in all relevant card forms offered by the issuer (whether it be physical cards or for digital wallets). ¹⁹⁹

¹⁹⁴ LCR is currently enabled for predominantly card-based transactions, some mobile device-enabled transactions and online transactions.

¹⁹⁵ [RBA, Review of Retail Payments Regulation Issues Paper, November 2021](#), p 16.

¹⁹⁶ [RBA, Discussion with the ACCC, 24 June 2021](#); RBA, Submission to the ACCC, 9 July 2021.

¹⁹⁷ Recently, it was reported that the Federal Treasurer, the Hon Josh Frydenberg MP, has written to the RBA to encourage the RBA to mandate the issuance of DNDCs by major and medium-sized financial institutions. (See [John Kehoe and James Eyers, Australian Financial Review, Treasurer presses banks on debit card fees, 1 September 2021](#); [Paulina Duran, Reuters, Australia may mandate low-cost debit card system for payments, 1 September 2021](#)).

¹⁹⁸ As mentioned in the RBA Consultation Paper, not all issuers currently support the provision of two networks on debit cards in mobile devices; and even if two networks are provisioned, it is not possible to route mobile device transactions using LCR (they are routed to Mastercard or Visa by default, though consumers could override this).

¹⁹⁹ The major banks collectively capture 74% of household deposits and, by extension, a similar proportion of debit cards on issue.

	<ul style="list-style-type: none"> • The RBA considers that the major banks intend to continue issuing DNDCs and that they remain supportive of the eftpos scheme. • If the major banks do not meet the RBA's expectation regarding the issuance of DNDCs, the RBA would consider imposing formal regulation but such regulation would likely "be agnostic as to which 2 debit networks were included by issuers".²⁰⁰ • The RBA did not propose extending the expectation to small and mid-sized issuers, as it considers doing so will impose costs on them and hinder them competing with the major banks. It is also not convinced that the likely economy-wide benefits would outweigh these costs. However, from May 2021, the RBA has been consulting with stakeholders on an alternative option of mandating broader issuance of DNDCs. <p>The RBA also proposes to set a lower weighted-average interchange cap²⁰¹ for SNDC transactions than for DNDC transactions to provide incentive for DNDC issuance.</p>
Anti-competitive conduct by Mastercard or Visa to discourage the take-up of LCR by merchants	The RBA proposes to explicitly prohibit Mastercard and Visa from engaging in anti-competitive tying conduct involving their debit and credit card products.
The take-up of LCR among merchants is low and the functionality provided by many acquirers is somewhat limited	<p>The RBA proposes to set an expectation that all acquirers and payment facilitators offer LCR to merchants for in-store retail payments, and report to the RBA every 6 months on their LCR offerings and on merchant take-up.</p> <ul style="list-style-type: none"> • The RBA does not consider it necessary to mandate the provision of LCR, given the progress already made by acquirers and payment facilitators to provide LCR and other policy actions being taken to address the threats to LCR. However, it will consider formal regulation if its expectations are not met.
Online LCR could be hindered by some participants taking restrictive approaches to its implementation,	The RBA proposes to set an expectation that the industry will follow a set of principles regarding the implementation of LCR in the device-not-present

²⁰⁰ RBA, Submission to ACCC, 9 July 2021, p 3. In its *Review of Retail Payments Regulation Consultation Paper*, the RBA also indicates that there would be no presumption as to which two debit networks were included by issuers; various combinations of domestic and international schemes might be feasible (see [RBA, Review of Retail Payments Regulation: Consultation Paper, May 2021](#), p 12).

²⁰¹ Interchange fee is a fee paid by acquirers to issuers. The RBA will amend the current cap on interchange fees, so that issuers will receive more interchange revenue from acquirers in relation to customer payments made using DNDCs (10 cents) than SNDCs (6 cents).

noting eftpos' online functionality is still being rolled out and, as a result, LCR is not available in all online contexts

(online) environment. The RBA would also monitor compliance with these principles.

Source: [RBA, Review of Retail Payments Regulation: Consultation Paper, May 2021](#); RBA, Submission to ACCC, 9 July 2021.

ICA submissions and expert views regarding LCR

7.103. ICA submits that LCR is not relevant to the ACCC's assessment of the amalgamation because:²⁰²

- LCR is a matter for the RBA in terms of regulatory policy
- the RBA has outlined policy options to promote the provision and awareness of LCR that should assuage any concerns that LCR could be neglected or abandoned under AP+
- the implementation of LCR depends on delivery by acquirers and uptake by merchants
- although EPAL and AP+ can encourage and influence acquirers and merchants to take up LCR, neither can roll out LCR (only acquirers can do that)
- in any event, the amalgamation will not affect the continued availability of LCR, as it is likely to be continued to be rolled out by acquirers under the RBA's oversight.

Submission from EPAL regarding LCR

7.104. EPAL submits that if the amalgamation does not proceed, it expects LCR for in-store and online payments will grow significantly in the future, in turn driving growth in eftpos transaction volumes and market share in debit card payments. EPAL attributes this growth to:

[REDACTED]
[REDACTED]
[REDACTED] regulatory support from the RBA and ACCC enforcement [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]²⁰³

7.105. However, EPAL submits the banks have not prioritised eftpos over Mastercard and Visa on account of the current DNDC arrangements. EPAL does not expect this will change as a result of the amalgamation.²⁰⁴

Submissions from third parties regarding LCR

7.106. As mentioned in paragraph [7.96] above, several interested parties have expressed concerns regarding the availability of LCR following the amalgamation, observing that

²⁰² ICA, Response to submissions, 19 May 2021, paragraphs [6.4]-[6.14]; ICA, Response to Statement of Preliminary Views, 18 June 2021, pp 11-12.

²⁰³ EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, paragraph [159].

²⁰⁴ EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, paragraph [181].

the banks have been slow in rolling out LCR to date and that some ADIs are moving to issuing SNDCs backed by Mastercard or Visa instead of DNDCs.

- 7.107. Some interested parties are concerned about the sustainability of LCR as a result of the potential effects of the amalgamation on eftpos' independence and its ability to innovate.²⁰⁵ Others submit that authorisation for the amalgamation should only be granted with a condition that LCR be offered to merchants.²⁰⁶
- 7.108. A number of interested parties do not consider the amalgamation will have an adverse impact on LCR, submitting that LCR will continue to be rolled out and may result in better outcomes for merchants as a result of a more competitive domestic debit card scheme following the amalgamation. They also highlight the role of the RBA in supporting LCR.²⁰⁷
- 7.109. Australian Banking Association submits that LCR is already widely available to merchants, and that merchants are continuing to gain a better understanding of it. It submits that as of May 2021, LCR has been available or offered to over 95 per cent of eligible small businesses of the four major banks. It considers that the decision to adopt LCR should always be in the control of the merchant and that many small merchants prefer fixed pricing plans due to the associated simplicity and cost certainty. In addition, it submits that the major banks are already taking steps to roll out and promote LCR, providing examples of the banks' customer engagement to help merchants make an informed choice in relation to LCR.²⁰⁸

Submission from the RBA regarding LCR

- 7.110. The RBA's submissions in relation to LCR, including current and potential regulatory responses to the issues raised, are discussed in paragraph [7.102] above.

ACCC view regarding LCR

- 7.111. As discussed in paragraphs [7.82]-[7.83] above, the ACCC considers that, absent any regulatory oversight or intervention, the major banks (acting as both issuers and acquirers) have mixed incentives to support the eftpos scheme. Similar mixed incentives would also apply to LCR.
- 7.112. However, the major banks (and other payments industry participants)²⁰⁹ are operating in a commercial environment that is subject to the regulatory oversight of the RBA. The ACCC considers that the RBA's promotion of competition in debit card payments to date (including through a mix of suasion, the threat of regulation and actual regulation) has influenced the major banks' decisions to support LCR (all major banks have made some form of LCR available to merchants since 2019).²¹⁰ The RBA has also noted that it is encouraged by some recent indications that it has received from major acquirers regarding the increased provision of LCR to small merchants.²¹¹

²⁰⁵ Quest Payment Systems, Submission to ACCC, 7 May 2021, pp 1-2.

²⁰⁶ Master Grocers Australia & Timber Merchants Australia, Submission to ACCC, 10 May 2021, p 2; Dr Harjinder Singh and Associate Professor Nigar Sultana (Curtin University), Submission to ACCC, 15 April 2021, p 3.

²⁰⁷ Australian Banking Association, Submission, 18 May 2021, p 1; Indue Ltd, Submission, 17 June 2021, pp 1-2; Woolworths, ICA Response to Statement of Preliminary Views – Annexure E, 18 June 2021, p 39.

²⁰⁸ Australian Banking Association, Submission to ACCC, 23 August 2021.

²⁰⁹ Including issuers, acquirers and the card schemes.

²¹⁰ By 2019, the RBA's assessment was LCR was then available from all 4 major banks:

While a few smaller acquirers began offering LCR in 2018, progress by the major banks and other acquirers was slower, with the four major banks launching their LCR functionality only between March and July 2019. Source: RBA, *Review of Retail Payments Regulation: Issues Paper*, November 2019, p. 16.

²¹¹ RBA, Submission to ACCC, 17 August 2021.

- 7.113. The ACCC considers that it is very likely that the RBA will continue to support DNDCs and LCR, and continue to exert influence on financial institutions to promote competition in debit card payments, regardless of the amalgamation. Such action may include measures such as those set out in its Review of Retail Payments Regulation Consultation Paper (discussed in Table 2 on pages 58-60 above). The RBA has also indicated that it may consider additional measures if competitive pressure in debit card payments was weakened because of eftpos' competitive position being weakened or because of LCR and DNDCs playing less of a role in holding down payment costs for merchants.
- 7.114. However, these measures would likely be taken after a diminution of eftpos' ability to exert competitive pressure has occurred. The ACCC considered it appropriate to accept the Undertaking because it is likely to mitigate the risk of such a diminution occurring. The Undertaking provides further assurances of the ongoing provision of LCR to merchants and places obligations on AP+ to procure that EPAL will maintain the eftpos network for the next 4 years. The Undertaking will ensure that AP+ will, among other things, procure that:
- EPAL will do all things in its control to make available and promote LCR for 4 years
 - EPAL will develop and make available Prescribed Services in accordance with the timeframes contained in Schedule 1 of the Undertaking. Some of these Prescribed Services relate to enabling LCR for online payments (beyond existing card-on-file payments), and in-app payments.
- 7.115. The ACCC considers that the obligations contained in the Undertaking, together with the role of the RBA, will mitigate the risk of the major banks as shareholders of AP+ acting on any incentives they may have to diminish eftpos or to not provide or not extend the availability of LCR (including to the online environment). Having regard to the Undertaking, the ACCC is satisfied that the amalgamation is unlikely to result in a substantial lessening of competition in relation to the routing of debit card payments.

Horizontal effects in payment services

- 7.116. There are several payment segments in which there may be competitive overlaps between EPAL, NPPA and BPAY, as outlined at paragraphs [7.1]-[7.12] above and discussed in more detail at paragraphs [7.160]-[7.282] below. The ACCC considers the amalgamation will likely soften potential future competition for some payment services due to the existing or potential horizontal overlap between BPAY, EPAL and NPPA. However, we consider the amalgamating entities are not close competitors. Many of the instances of overlap involve a situation where one or more of the services of the amalgamating entities could potentially compete at the fringes to provide an offering that is already serviced by the core service offering of another amalgamating entity. In addition, there are strong competitive constraints from other entities which will prevent the horizontal aggregation of the amalgamating entities having the likely effect of substantially lessening of competition in any payment services market.
- 7.117. The ACCC has also considered whether the amalgamation could result in a loss of investment in innovation, and therefore reduce competition. AP+ would have incentives to minimise duplicative research and development costs where competing investment proposals between BPAY, EPAL and NPPA relate to overlapping payment services. However, Mastercard, Visa and other potential future competitors will continue to bring competition for innovation. Although some competition for innovation will likely be lost, the ACCC considers that with the amalgamation, AP+ will still have a strong incentive to invest in and deliver future payment service innovations. The

ability to coordinate to expedite innovation is a claimed public benefit of the amalgamation discussed in paragraphs [8.4]-[8.26] below.

- 7.118. The support of major banks is highly influential in whether a domestic payment service can gain scale, and banks generally will not invest in duplicative services. This lessens the likelihood of service proposals by BPAY, EPAL and NPPA becoming close competitors in the future, with or without the amalgamation.
- 7.119. The following sections provide detail of the ACCC's considerations in relation to potential horizontal effects in payment services. They set out:
- Stakeholder views on competition between BPAY, EPAL and NPPA.
 - The ACCC's analysis of 3 competition issues that are relevant to several payment segments, namely: overlap between NPPA's SCT and BPAY's Osko 1 service; the level of constraint imposed by the Direct Entry system; and the level of constraint imposed by international technology companies.
 - The ACCC's analysis of competitive overlap and constraints in each of the 5 payment segments that the ACCC has identified.

Stakeholder views on competition between BPAY, EPAL and NPPA

- 7.120. ICA submits that the 3 Australian payment schemes own and operate largely complementary assets, have differing core services, and do not offer services that are close substitutes for each other. However, ICA also acknowledges that a degree of marginal competition has occurred between the 3 schemes as payment mechanisms and habits have changed.²¹² ICA submits that the payment schemes' closest competitors are global payments schemes (such as Mastercard and Visa),²¹³ rather than each other.²¹⁴ Mr Blockley says that the Direct Entry system²¹⁵ and services which sit above the core payments systems are also main competitors.²¹⁶
- 7.121. Mr Blockley expresses the view that BPAY, EPAL and NPPA only compete against each other 'at the edges'. He says that they each address different payment markets, have a different cost per transaction, and have a different functionality that suits their target markets. He says that this situation is likely to change over time as both EPAL and NPPA develop new capabilities, but that a much greater source of competition will come from Mastercard and Visa.²¹⁷
- 7.122. Dr Edwards says that unilateral effects of the amalgamation are not likely to be substantial because:
- the amalgamating entities offer largely complementary services and merger increments are small or otherwise immaterial in each segment
 - the closest competitors of the amalgamating entities are much larger entities and have significant competitive advantages
 - the Australian payments landscape is dynamic and there are significant constraints on domestic payment infrastructures and services from

²¹² ICA, Application for merger authorisation, 18 March 2021, paragraph [2.7].

²¹³ For more information about Mastercard and Visa, see paragraph [1.36] above.

²¹⁴ ICA, Application for merger authorisation, 18 March 2021, paragraph [2.7].

²¹⁵ For information about the Direct Entry system, see paragraph [1.34] above.

²¹⁶ Lance Blockley, Expert industry opinion, 18 March 2021, paragraph [531].

²¹⁷ Lance Blockley, Expert industry opinion, 18 March 2021, paragraph [522].

innovations of Mastercard and Visa and potential entry of international technology companies

- the largest customers of AP+ will enjoy significant countervailing power.²¹⁸

- 7.123. Australian Banking Association, Customer Owned Banking Association and Australian Finance Industry Association also submit that the amalgamation would not substantially lessen competition. Australian Banking Association submits that the core payments products of BPAY, EPAL and NPPA do not (and are unlikely to) compete in a meaningful way.²¹⁹ Customer Owned Banking Association submits that the amalgamation would create more competition between the payment schemes.²²⁰
- 7.124. By contrast, Mastercard submits that the ACCC should not be satisfied on the information provided by ICA that the amalgamation will not result in a substantial lessening of competition.²²¹
- 7.125. Mastercard submits that the application understates the extent of existing competition between the merger parties and, in particular, the likely future competition in payments services and innovation.²²² Visa also raises concerns about the potential impact of the amalgamation on innovation, given the rapid changes in payments products and services.²²³
- 7.126. Mastercard also submits that Mastercard and Visa face significant hurdles when seeking to expand their offerings. Mastercard submits that the extent to which Mastercard and Visa are able to compete with the merger parties will be limited across low value payment sectors.²²⁴
- 7.127. EPAL submits that there are several areas of direct overlap across the 3 entities' roadmaps, which could be eliminated following the amalgamation.²²⁵
- 7.128. Other stakeholders including the Australian Lottery and Newsagents Association, Australian Convenience and Petroleum Marketers Association and Dr Harjinder Singh and Prof Nigar Sultana of Curtin University also suggest that BPAY, EPAL and NPPA compete now or will increasingly compete in the future without the amalgamation.
- 7.129. Australian Banking Association, KeyOne Consulting and Dr Duong, Professor Taylor and Dr Eulaiwi of Curtin University suggest that competitors such as Mastercard, Visa, Apple and Google will continue to constrain AP+. Mastercard submits that Mastercard and Visa are strong competitors in relation to card payments, but they are not strong competitors in a number of other payment segments identified by the ACCC.²²⁶

²¹⁸ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, section 6.2.

²¹⁹ Australian Banking Association, Submission to the ACCC, 16 April 2021, pp 1-2.

²²⁰ Customer Owned Banking Association, Submission to the ACCC, 16 April 2021, p 2.

²²¹ Mastercard, Submission to the ACCC, April 2021, paragraph [7.1].

²²² Mastercard, Submission to the ACCC, April 2021, paragraph [7.2]; Oxera submission on behalf of Mastercard, Initial economic assessment of the amalgamation, 22 April 2021, paragraph [2.19]; Oxera submission on behalf of Mastercard, 18 June 2021, paragraph [23].

²²³ Visa, Submission to the ACCC, 23 June 2021, pp 2-3.

²²⁴ Mastercard, Submission to the ACCC, 18 June 2021, p 3.

²²⁵ EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, paragraphs [38], [100(c)], [104] and [105].

²²⁶ Mastercard, Submission to the ACCC, 18 June 2021, paragraph [4.2].

Competition issues relevant to multiple payment segments

Competitive overlap between NPPA's SCT and BPAY's Osko 1

- 7.130. The ACCC does not consider that NPPA's SCT service and BPAY's Osko 1 service are likely to closely constrain each other with or without the amalgamation.²²⁷
- 7.131. There are several segments in which payments can be made through the NPP using NPPA's SCT service, or using BPAY's Osko 1 service with the SCT service. BPAY identifies potential overlap between its Osko 1 service and NPPA's SCT service as a primary area of potential overlap.²²⁸
- 7.132. The NPP is designed to allow different payment services to use and build upon its basic platform infrastructure.²²⁹ Both SCT and Osko 1 use the NPP to make payments with real-time settlement between financial institutions. Osko 1 is an overlay to the SCT service. Osko 1 requires funds to be transferred in under one minute, at any time, along with a payment description of up to 280 characters.²³⁰ BPAY submits that NPPA is expanding beyond providing basic infrastructure, to provide its own business services using the NPP. BPAY submits that this increases NPPA's overlap with BPAY's role as an overlay service provider.²³¹
- 7.133. BPAY suggests that Osko 1 could become a stranded asset if most of the direct credit volume on the NPP moves to the SCT without using the Osko 1 service.²³² The ACCC considers that it is possible that NPPA's category purpose codes SCT service will eventually increase the number of payments made over SCT without Osko 1, whether or not the amalgamation occurs. The category purpose codes contain targeted message elements that can be used for payroll, tax and superannuation payments which are designed to assist migration from the Direct Entry system.
- 7.134. Some other providers have developed value-added services for making and receiving payments via the NPP, which use the SCT service (with or without the Osko 1 overlay). These providers include Assembly Payments, Azupay, Monoova and Split Payments. These providers rely on the SCT service (and potentially the Osko 1 overlay), rather than competing with it.
- 7.135. The ACCC considers that BPAY's Osko 1 service and NPPA's SCT service are asymmetric complements. This is because:
- Osko 1 is a complement to NPPA's SCT service. The use of Osko 1 requires the use of the SCT service. This means that if the cost of an SCT transaction was to increase, the overall cost of an Osko 1 transaction would increase by the same amount. Therefore, Osko 1 does not impose a competitive constraint on the SCT service.²³³

²²⁷ The NPPA's SCT service uses single credit transfer messages over the NPP basic infrastructure to make a payment with real-time settlement between financial institutions. For information about BPAY's Osko 1 service, see paragraph [1.27] above.

²²⁸ BPAY, Non-confidential Statement in support of application for authorisation, 16 March 2021, paragraph [53(a)].

²²⁹ [Emilie Fitzgerald and Alexandra Rush, RBA, *Two Years of Fast Payments in Australia*, 19 March 2020; NPPA, *Becoming an overlay service provider*, 8 October 2019.](#)

²³⁰ [Emilie Fitzgerald and Alexandra Rush, RBA, *Two Years of Fast Payments in Australia*, 19 March 2020.](#)

²³¹ BPAY, Non-confidential Statement in support of application for authorisation, 16 March 2021, paragraph [54(c)-(f)].

²³² BPAY, Non-confidential Statement in support of application for authorisation, 16 March 2021, paragraph [54(f)].

²³³ NPPA revenue is currently collected on a fixed-cost basis, rather than on a per-transaction basis. It is likely that per transaction pricing will be adopted from 2022/23 onwards. See NPPA, Non-confidential Statement in support of application for authorisation, 16 March 2021, paragraphs [89]-[90]. The same principle applies whether revenue is collected in relation to the SCT and Osko on a fixed-cost or on a per transaction basis.

- By contrast, the SCT service can be used without using Osko 1. Therefore, the SCT service could theoretically impose a competitive constraint on Osko 1.

7.136. However, in practice we do not consider the SCT is likely to impose a significant competitive constraint on Osko 1 with or without the amalgamation. This is because Osko 1 is already used for around 77% of transactions processed by NPPA (across all segments), compared to around 23% which are SCT-only transactions.²³⁴ This suggests that Osko 1 has gained broad acceptance and financial institutions value its benefits, such as the benefits of committing to a uniform standard of service.

7.137. The amalgamation is not likely to result in an increase in Osko 1 prices, because an increase in Osko 1 prices would not result in an increase in the total number of SCT users. In response to an Osko 1 price increase, Osko 1 users might switch to the SCT service on its own, or leave the SCT altogether and switch to a third party service. Dr Edwards suggests that the amalgamation could even result in an incentive to lower prices for SCT and Osko 1 services due to the elimination of double marginalisation.²³⁵

7.138. The ACCC has also considered potential overlaps in several payment segments between:

- the SCT and Osko 1 services, and
- other services offered by the amalgamating entities.

7.139. These potential overlaps, as well as the competitive constraints, are discussed at paragraphs [7.160]-[7.282] below.

Constraint offered by the Direct Entry system

7.140. The ACCC considers that the Direct Entry system is unlikely to impose a strong competitive constraint in any payment segment in the long term. However, the level of constraint will vary between segments, and it is likely to impose a constraint in the short term in some segments.

7.141. The Direct Entry Bulk Electronic Clearing System is used for payments in several settings. For example, it is used for electronic bill payments, person-to-person payments and government and business disbursements. The system facilitates internet banking transactions such as direct debits (payments collected from payers' bank accounts by payees) and direct credits (payments sent to payees' bank accounts by payers).²³⁶

7.142. We consider it likely that payment volumes will migrate from the Direct Entry system to feature-rich technologies like the NPP. As a result, the Direct Entry system may eventually be phased out.

7.143. The Direct Entry system is administered by AusPayNet, a self-regulatory body and industry association for payments. It has a relatively low cost because it is a mature system, transaction volumes are high and payments are batched rather than processed in real-time or near real-time.

7.144. After the NPP was introduced in 2018, the number and value of Direct Entry credit transfers began to decline. The RBA considers it likely that this is because financial

²³⁴ [RBA, *Payments Data*, 'C6.1: Direct Entry and NPP – Original Series' May 2021.](#)

²³⁵ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, section 6.3.4-5.

²³⁶ For more information about the Direct Entry system, see paragraphs [1.34]-[1.35] above.

institutions migrated some Direct Entry payments to the NPP. The RBA expects this to continue as the use of NPP expands.²³⁷

7.145. The NPP was developed in response to the RBA's strategic review of innovation in the payments system, which identified gaps in the payments system that the Direct Entry system did not address. Unlike the Direct Entry system, the NPP enables simply-addressed payments with near real-time funds availability to the recipient, on a 24/7 basis. The RBA has suggested that:

... at some point it may be appropriate to consider whether the enhanced functionality of more modern arrangements (such as the NPP) offer benefits that would justify migration of remaining payments going through the direct entry system.²³⁸

7.146. ICA submits that it expects that payments will move from the Direct Entry infrastructure to the NPP, over the next 5-10 years. ICA submits that the cost of transactions over the NPP will decline as volumes increase, to a point where NPP payments become cost competitive with other options.²³⁹ Migration of Direct Entry volumes to the NPP is a key strategic focus of the NPPA.²⁴⁰

7.147. According to Mr Blockley, without the amalgamation, NPP volumes will grow in the next 10 years. He says that there will be an associated decline in volume over the Direct Entry system, in both direct credits (as is occurring with the SCT) and direct debits (with the MPS).²⁴¹ He suggests that the speed with which direct debit will be replaced may be slowed by resistance from some of the 'major billers'.²⁴² Mr Blockley also says that Direct Entry is a main competitor of BPAY, EPAL and NPPA.²⁴³

7.148. The level of constraint offered by the Direct Entry system in the short and medium term may vary between segments. Incentives to switch away from the Direct Entry system may be stronger for electronic bill payments and person-to-person payments, compared to government and business disbursements (see paragraphs [7.261]-[7.282] below).

Constraint offered by international technology companies

7.149. The ACCC considers that there is some level of competitive constraint imposed by the entry, or the threat of entry, of international technology companies in payment services. This is particularly true for emerging or future services.

ICA submissions and expert views

7.150. Dr Edwards says that AP+ may face future competition from international technology companies who are able to 'leverage their large installed user bases and deep relationships with consumers'.²⁴⁴ Dr Edwards highlights the potential for significant disruption by these companies,²⁴⁵ including by disintermediating card infrastructure and offering stored value services, such as 'Apple Cash' which already operates

²³⁷ [Emilie Fitzgerald and Alexandra Rush, RBA, *Two Years of Fast Payments in Australia*, 19 March 2020.](#)

²³⁸ [RBA, *Review of Retail Payments Regulation – Issues Paper*, November 2019](#), section 3.1.

²³⁹ ICA, Application for merger authorisation, 18 March 2021, sections 18.4(a) and 18.5(c).

²⁴⁰ NPPA, Non-confidential Statement in support of application for authorisation, 16 March 2021, paragraphs [104]-[108].

²⁴¹ For information about the MPS see paragraph [7.42].

²⁴² Lance Blockley, Expert industry opinion, 18 March 2021, paragraph [495].

²⁴³ Lance Blockley, Expert industry opinion, 18 March 2021, paragraph [531].

²⁴⁴ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [151].

²⁴⁵ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [152].

overseas.²⁴⁶ Mr Blockley also raises the possibility that these firms could deploy their own payments infrastructure.²⁴⁷

- 7.151. EPAL submits that international technology companies could compete with traditional payment services through open banking payment initiation, stored value facilities, and through value-add features on existing infrastructures.²⁴⁸ EPAL suggests that, in most cases, these firms will rely on existing infrastructure and participants to facilitate payments.²⁴⁹ EPAL considers its largest competition in ‘above the rails’ digital services comes from international technology companies. EPAL suggests these companies face low barriers to entry, can leverage existing customer bases, have global scale of investments and substantial resources, and are experts at recognising consumer and merchant needs.²⁵⁰
- 7.152. CBA considers the domestic schemes face competition from international technology companies who are increasingly introducing payment functionalities.²⁵¹ CBA submits these companies have significantly more resources, higher brand recognition, and an existing and extensive customer base.²⁵² CBA suggests that international technology companies are not subject to the same regulatory burden as domestic schemes, and that they benefit from existing payments infrastructure without contributing to its maintenance or modernisation.²⁵³
- 7.153. BPAY states international technology companies already compete with its Osko 1 service, and will potentially compete with BPAY Payments and BPAY View.²⁵⁴ ICA, Coles and Cuscal all recognise the potential for international technology companies to constrain AP+ by continuing to expand into digital payments products.²⁵⁵

Other submissions

- 7.154. Australian Banking Association and Dr Duong, Professor Taylor and Dr Eulaiwi from Curtin University, express the view that international technology companies will constrain the services provided by AP+, particularly in online payments.²⁵⁶
- 7.155. Mastercard submits any ongoing competitive constraint from international technology companies will be undermined as many participants will rely on AP+’s infrastructure.²⁵⁷
- 7.156. Facebook submits that the competitive threat of international technology companies is overstated.²⁵⁸ Facebook considers it is, at most, a marginal participant in the payments sector and that it does not constrain BPAY, EPAL or NPPA in any significant way.

²⁴⁶ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [151].

²⁴⁷ Lance Blockley, Expert industry opinion, 18 March 2021, paragraph [13].

²⁴⁸ EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, paragraph [39].

²⁴⁹ EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, Table 1, p 23.

²⁵⁰ EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, paragraph [61].

²⁵¹ CBA, Non-confidential Statement in support of application for authorisation, 18 March 2021, paragraph [118].

²⁵² Ibid.

²⁵³ CBA, Non-confidential Statement in support of application for authorisation, 18 March 2021, paragraph [105].

²⁵⁴ BPAY, Non-confidential Statement in support of application for authorisation, 16 March 2021, paragraph [49].

²⁵⁵ ICA, Application for merger authorisation, 18 March 2021, p 9; Coles, Non-confidential Statement in support of the application for authorisation, 22 March 2021, paragraph [155]; Cuscal, Non-confidential Statement in support of the application for authorisation, 16 March 2021, paragraph [5].

²⁵⁶ Australian Banking Association, Submission to the ACCC, 16 April 2021, p 2; Dr Lien Duong, Professor Grantley Taylor and Dr Baban Eulaiwi (Curtin University), Submission to the ACCC, 15 April 2021, p 3.

²⁵⁷ Mastercard, Submission to the ACCC, 22 April 2021, paragraph [7.5].

²⁵⁸ Facebook, Submission to the ACCC, 22 April 2021, p 3.

Facebook notes it has limited payment services in Australia.²⁵⁹ Facebook states that the assertion that it can leverage its large user base to establish strong positions in the payments sector is not supported by evidence and ignores Australian regulatory requirements.²⁶⁰

ACCC view

- 7.157. The ACCC considers that currently there is not a significant level of overlap between international technology companies and the 3 domestic payments schemes, but this could increase in the future.
- 7.158. International technology companies are most likely to provide overlay payments services using existing infrastructure, rather than building their own payments infrastructure or disintermediating existing infrastructure. Regulatory bodies may limit the ability of these firms to directly provide financial services without being subject to regulation. In the short to medium term, international technology companies are more likely to leverage existing infrastructure and may therefore rely on Visa, Mastercard and the amalgamating entities to facilitate their payment services.
- 7.159. The payments industry is experiencing rapid change. In this environment, it is not possible to predict with precision the future competitive constraint that international technology companies will represent in the longer term. However, firms are demonstrating a desire to expand into digital payment services.²⁶¹ The ACCC considers that there is scope for new entry and increased activity from international technology companies, particularly in point of sale payments, online retail payments and person-to-person payments. The threat of entry and expansion of international technology companies into these payment services will likely impose some level of competitive constraint on AP+.

Competition for point of sale electronic retail payments

- 7.160. The ACCC considers there is a distinct payment segment of electronic 'in-store' (also called 'point of sale') retail payments. These payments occur when an individual makes an electronic payment to a business at a physical store.
- 7.161. There is a degree of potential overlap between EPAL and NPPA's services for point of sale payments. However, the ACCC considers that Mastercard, Visa and other providers are likely to impose a significant competitive constraint with or without the amalgamation. Any horizontal aggregation arising from the amalgamation is unlikely to substantially lessen competition in relation to these services.
- 7.162. Electronic point of sale payments have historically been card-based. Payment for goods or services can be made using a plastic credit card, debit card, charge card or gift card. As point of sale payment technology has evolved, consumers have transitioned from swiping or inserting their cards, to 'contactless' payments where they

²⁵⁹ Ibid.

²⁶⁰ Facebook, Submission to the ACCC, 22 April 2021, p 4.

²⁶¹ International technology companies have various initiatives which demonstrate a desire to expand into payment services, particularly within an international context. In the US, Google has developed a digital transaction and savings account 'Plex', Facebook now facilitates person-to-person payments through QR codes, and Apple Cash provides users with a stored value card for person-to-person payments. Google and Facebook have also established a presence in India's payments system by introducing overlay services which facilitate account-to-account transactions without the need for a debit or credit card. International technology companies are also acquiring financial technology companies to increase their payments functionality, including Apple acquiring Mobeewave, a company which allows merchants to use their iPhones as a mobile payment terminal, and Square's recently announced plans to acquire BNPL company Afterpay.

'tap' their cards using NFC.²⁶² Card payments can now also be made by tapping a mobile device equipped with NFC through a digital wallet such as Google Pay or Apple Pay. International technology companies have contributed to innovation in this segment, playing a role in the development of digital wallets and in 'in-app' payment capabilities.²⁶³

7.163. The ACCC considers there is a degree of existing and potential future competitive overlap between EPAL's and NPPA's services for point of sale payments that may be lost as a result of the amalgamation.

7.164. EPAL's core eftpos debit card service is a widely used point of sale service.²⁶⁴

[REDACTED]
[REDACTED]²⁶⁵ EPAL's Beem It app may also compete for point of sale payments in the future. Beem It is a digital wallet which allows users to make payments using a mobile device. It started with functionality for person-to-person payments and has expanded to include other services.²⁶⁶

7.165. NPPA does not currently have a significant presence in point of sale payment services. NPPA's SCT service is considered impractical for point of sale services. NPPA's MPS has potential to be used for some point of sale services in the future, but would have to overcome significant hurdles to become a mainstream point of sale payment method. Therefore, it is unclear how much overlap there would be between EPAL's and NPPA's point of sale payment services if the amalgamation does not proceed.

7.166. The most practical way for NPPA's services and EPAL's Beem It app to directly facilitate point of sale payments appears to be using QR code technology. For these services to achieve widespread usage for point of sale payments, QR code technology would need to be widely adopted by Australian consumers and merchants. If this occurred, there could be overlap between EPAL's debit card service and these QR code-based services without the amalgamation.

7.167. However, regardless of whether the NPP would be used for point of sale payments without the amalgamation, a number of current and potential future competitors are likely to still constrain the amalgamated entity, including by promoting technological payment innovations. The following sections describe the potential overlaps and competitive constraints.

Overlap between EPAL's debit card service and NPPA's services

7.168. EPAL's debit card service is an established presence in point of sale payment services. NPPA does not currently have a significant presence in this segment, but Mr Blockley states that NPPA and EPAL both have plans to gain market share at point of sale.²⁶⁷ Oxera, on behalf of Mastercard, raises concerns about areas of current and potential future overlap between EPAL and the NPPA for point of sale services, including through a potential loss of innovation.²⁶⁸

²⁶² For further information about NFC, see paragraph [1.41].

²⁶³ [Philip Lowe, RBA, *Innovation and Regulation in the Australian Payments System*, 7 December 2020.](#)

²⁶⁴ For further information about EPAL's debit card service, see paragraphs [1.19]-[1.21].

²⁶⁵ **[REDACTED]**.

²⁶⁶ ICA, Application for merger authorisation, 18 March 2021, paragraph [12.4(g)]. For more information about Beem It, see paragraph [1.23].

²⁶⁷ Lance Blockley, Expert industry opinion, 18 March 2021, paragraph [13].

²⁶⁸ Oxera submission on behalf of Mastercard, Initial economic assessment of the amalgamation, 22 April 2021, paragraph [2.20].

- 7.169. In most point of sale settings, there is currently no practical and simple way to use the NPPA's SCT service (including BPAY's Osko 1 overlay),²⁶⁹ although it is possible for a payer to initiate a payment while in a physical store through their mobile banking app. Therefore, the SCT service has been used very minimally in this segment, mainly by very small merchants.²⁷⁰
- 7.170. However, NPPA's MPS, which is anticipated to be implemented by mid-2022, is designed to support a range of use cases including point of sale payments.²⁷¹ NPPA submits that it is more likely that the MPS will enable NPP point of sale transactions than the SCT,²⁷² but it does not expect the MPS to be used for point of sale transactions in a significant way.²⁷³ The MPS will enable merchants to initiate payments from payers' bank accounts using the NPP, which payers will be able to authorise. This is in contrast with the SCT, which requires the payer to initiate each payment.
- 7.171. Consumers can theoretically make point of sale payments over the NPP (over the SCT or MPS service) using a mobile device, including through an app or by scanning a QR code provided by the merchant. In order for NPP payments to become prominent in point of sale settings, large numbers of merchants, banks and consumers would likely need to adopt QR code technology.²⁷⁴
- 7.172. The use of QR codes (which have become ubiquitous in China) is uncommon but growing in Australia.²⁷⁵ In Australia there is an apparent preference for, and prevalence of, NFC-enabled contactless payments.²⁷⁶ Mr Blockley notes that using a QR code is generally slower than using NFC technology, but he considers consumers may adopt QR code technology if it provides a stronger value proposition than NFC.²⁷⁷ However, Dr Edwards does not consider that QR payments will significantly displace card-based payments.²⁷⁸
- 7.173. Mr Blockley says that competition between EPAL and the NPP for point of sale payments is some years away, because the cost of a NPP payment for a major merchant is presently several times that of an eftpos debit card payment. He suggests that the volume of payments across the NPP would need to grow by a significant multiple before the end-to-end cost per payment could become as low as eftpos, which (in his view) might never occur.²⁷⁹
- 7.174. NPPA submits that NPPA and NPP participants would need to make a range of investments to support the use of NPP as a point of sale option. In contrast with an eftpos payment, merchants currently cannot initiate a refund of an NPP payment, authorise an NPP payment during a connectivity outage, or conduct a preauthorisation

²⁶⁹ The ACCC does not consider that the combination of NPPA's SCT and BPAY's Osko 1 is likely to result in a substantial lessening of competition, for the reasons outlined at paragraphs [7.130]-[7.139] above.

²⁷⁰ ICA, Application for merger authorisation, 18 March 2021, paragraph [25.3(a)].

²⁷¹ [NPPA, NPP Roadmap October 2020: Enhancing the platform's capabilities, October 2020](#), p 11. The MPS is a Prescribed Service to be made available by the end of May 2022 under the Undertaking (Schedule 1 – Prescribed Services, item 9).

²⁷² NPPA, Response to RFI, 18 June 2021, p 6.

²⁷³ NPPA, Response to RFI, 18 June 2021, p 7.

²⁷⁴ See ICA, Application for merger authorisation, 18 March 2021, paragraph [25.3(a)]; Dr Geoff Edwards, Expert economic opinion, 4 April 2021, paragraph [140(c)]; For discussion of EPAL and NPPA's initiatives in developing QR code standards, see paragraphs [7.315]-[7.326] below.

²⁷⁵ Lance Blockley, Expert industry opinion, 18 March 2021, paragraph [225]; see paragraphs [1.46]-[1.47] above for more information about QR codes.

²⁷⁶ [Sumitra Krishnan, AusPayNet, Are QR codes making a comeback, 4 February 2021](#).

²⁷⁷ Lance Blockley, Expert industry opinion, 18 March 2021, paragraphs [437] and [523].

²⁷⁸ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [140(c)].

²⁷⁹ Lance Blockley, Expert industry opinion, 18 March 2021, paragraph [523].

(temporary holding of funds) using the NPP. Investments would be required to address these shortcomings. Despite being effectively cleared and settled in 'real-time', NPP payments are slower to clear than eftpos payments. The end-to-end clearing time for NPP transactions is between 2 seconds and 30 seconds as an outlier.²⁸⁰

7.175. NPPA suggests that the MPS will principally be used to facilitate recurring payments. For example, a consumer might use the MPS to establish a bank account as a funding source for a BNPL service.²⁸¹ Currently, repayments are typically drawn from the debit or credit card the consumer has linked to their BNPL service.²⁸²

7.176. EPAL submits that its competition with NPPA will escalate in the short and mid-term.²⁸³ However, it submits that the investments required to move to the NPP for point of sale payments are high, and the business case for banks to make such investments may not exist.²⁸⁴ EPAL does not consider its point of sale volumes are at risk through NPPA because eftpos is already a low cost, fast service (for both consumers and merchants).²⁸⁵

7.177. ICA submits that the NPP does not have the speed, capability or support of merchants that would enable a shift of transaction volumes from eftpos to the NPP.²⁸⁶

7.178. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]²⁸⁷

7.179. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]²⁸⁸

7.180. The ACCC considers the amalgamated entity would face significant barriers to moving point of sale volumes from EPAL's debit card service to the NPP. This is particularly so given the constraint imposed by Mastercard and Visa discussed at paragraphs [7.188]-[7.189] below. Successfully shifting significant point of sale volumes to the NPP would depend on users preferring the NPP and choosing to adopt it rather than adopting other options. Further, the ACCC notes that the parties have committed, through the Undertaking, that AP+ will procure that EPAL will maintain the eftpos payments scheme and the eftpos card-based issuing and acceptance services and infrastructure for the next 4 years.²⁸⁹

7.181. It is unclear whether QR technology will be widely adopted by merchants and supported by ADIs. It is therefore unclear whether NPPA's MPS and EPAL's debit card service would be competitors in the long term without the amalgamation.

²⁸⁰ NPPA, Response to RFI, 18 June 2021, p 5.

²⁸¹ Ibid.

²⁸² [Chay Fisher, Cara Holland and Tim West, RBA, *Developments in the Buy Now, Pay Later Market*, 18 March 2021.](#)

²⁸³ EPAL, Non-confidential statement in support of application for authorisation, 17 March 2021, Table 2, p 26.

²⁸⁴ EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, paragraph [162].

²⁸⁵ Ibid.

²⁸⁶ ICA, response to ACCC Statement of Preliminary Views, 18 June 2021, p 7.

²⁸⁷ [REDACTED]

²⁸⁸ [REDACTED]

²⁸⁹ Undertaking, paragraph [5.2].

Future overlap between EPAL's Beem It and NPPA's MPS

- 7.182. EPAL's Beem It app is another potential future competitor of the MPS. Beem It may currently be used for point of sale transactions by a very low number of small merchants, in a similar way to NPPA's SCT (see paragraph [7.171] above).
- 7.183. EPAL submits that Beem It plans to introduce a capability to make point of sale payments with Beem It via QR code.²⁹⁰ ICA submits that, like MPS, Beem It may grow in the point of sale segment (without the amalgamation) if QR technology becomes established.²⁹¹ EPAL submits there are also plans to facilitate Beem It point of sale payments using NFC technology.²⁹²
- 7.184. The likely reach of Beem It and the MPS in the point of sale segment in the medium to long term is unclear. However, the ACCC considers that there is potential for significant overlap between the two. Although Beem It will likely direct payments over card-based infrastructure and the MPS will use the NPP, both solutions would rely on consumers accepting QR code as a payment method. The ACCC considers it is likely that, with the amalgamation, AP+ will prioritise one of these solutions over the other.
- 7.185. However, the ACCC does not consider that the amalgamation is likely to result in a significant loss of competition, including competition for innovation, in point of sale payments through the potential loss of Beem It. This primarily because of the presence of competitive constraints, as discussed in the following.

Competitive constraints

- 7.186. The ACCC considers that, in the future with the amalgamation, AP+ would be constrained in this segment by competitors including Mastercard and Visa. In addition, AP+ would be constrained to some extent by the threat of new entry (including by international payment services providers).
- 7.187. ICA notes that cash and cheques are further alternatives for in-store retail payments. The ACCC does not consider that cash and cheques are likely to impose a significant competitive constraint on electronic payment services. This is because the use of cash and cheques is declining, and seems likely to continue to decline.

Card schemes and BNPL arrangements

- 7.188. The ACCC considers Mastercard and Visa are EPAL's closest and strongest competitors for point of sale payments.²⁹³ Mastercard and Visa's debit and credit card schemes will continue to provide a strong competitive constraint with or without the amalgamation. This is consistent with the view of Mr Blockley, who notes that Mastercard and Visa are the current incumbents.²⁹⁴ Mastercard also notes that Mastercard and Visa are strong competitors in relation to card payments.²⁹⁵ Mastercard and Visa's debit card schemes are likely to impose the strongest constraint. Their credit card schemes and other credit and charge card schemes, such

²⁹⁰ EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, p 13.

²⁹¹ ICA, Application for merger authorisation, 18 March 2021, paragraph [25.3(a)].

²⁹² EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, p 13.

²⁹³ According to data provided by ICA, Mastercard and Visa had a combined share of █████ in point of sale payments for their debit card schemes in FY2019/20 by volume. EPAL's debit scheme had a share of █████. Credit card schemes (including Visa, Mastercard, American Express, Diners Club and Union Pay) had a combined share of █████. Cash had a █████ share. If we consider electronic point of sale payments only (not including cash), then Mastercard and Visa's debit schemes shared around █████, eftpos' debit scheme had around █████ share and credit schemes had around █████ share.

²⁹⁴ Lance Blockley, Expert industry opinion, 18 March 2021, p 6.

²⁹⁵ Mastercard, Submission to the ACCC, 18 June 2021, paragraph [4.2].

as American Express and Diners Club International, may also impose some competitive constraint.

- 7.189. 'Mobile wallets' like Apple Pay and Google Pay, and BNPL providers like Afterpay, could also provide an avenue for Mastercard, Visa and other payment services to constrain the amalgamating entities. For example, a consumer could use a mobile wallet like Samsung Pay to make a Mastercard or Visa debit or credit card payment. As another example, a consumer could make BNPL repayments using a series of direct debits from their bank account over the Direct Entry system.²⁹⁶ However, mobile wallets and BNPL services will not impose a competitive constraint on AP+ in instances where they facilitate payments using EPAL, NPPA or BPAY's underlying payment services.
- 7.190. As outlined at paragraphs [1.48]-[1.49], BNPL payments comprised less than 2% of the total value of Australian debit card and credit card purchases in 2020. Modern BNPL initially launched in online retail, and most BNPL sales continue to occur online. However, Mr Blockley suggests that BNPL providers are now aggressively increasing physical point of sale transactions.²⁹⁷

Potential new entrants or expansions

- 7.191. The ACCC considers that new entry or expansion, or the threat of new entry or expansion, is also likely to impose a degree of competitive constraint in relation to point of sale payments with or without the amalgamation.²⁹⁸ Mr Blockley suggests that a number of new competitors could potentially enter the point of sale market or grow their existing activity. He suggests these entities could plausibly deploy greater functionality than the amalgamating entities,²⁹⁹ and might deploy their own payments infrastructure.³⁰⁰ Similarly, Dr Edwards suggests that there is potential for significant disruption in retail payments.³⁰¹
- 7.192. Similar to Beem It and the MPS, several of the potential new entrants in this segment may attempt to gain volumes through QR code payments. EPAL submits that PayPal could be competing for point of sale mobile payments by the end of 2023.³⁰² Mr Blockley says that PayPal has attempted to enter the Australian point of sale market without much success, but that a new attempt could be made via a mobile app.³⁰³ PayPal can be used for point of sale payments in the US.³⁰⁴
- 7.193. EPAL also submits that international technology companies could compete for point of sale payments beyond 2023.³⁰⁵ EPAL notes that Beem It is facing competition or future competition from PayPal, Apple Pay, Google Pay, Samsung Pay, Klarna, Square, Revolut, Zippay, Afterpay (now to offer a prepaid solution) and foreign wallets including

²⁹⁶ The RBA provides an explanation of financial flows in a BNPL transaction: [Chay Fisher, Cara Holland and Tim West, *Developments in the Buy Now, Pay Later Market, 18 March 2021*](#), Box A.

²⁹⁷ Lance Blockley, Expert industry opinion, 18 March 2021, paragraph [341], [363].

²⁹⁸ See paragraphs [7.149]-[7.159] above.

²⁹⁹ Lance Blockley, Expert industry opinion, 18 March 2021, paragraph [470].

³⁰⁰ Lance Blockley, Expert industry opinion, 18 March 2021, paragraph [13].

³⁰¹ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [152].

³⁰² EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, p 17, paragraph [38].

³⁰³ Lance Blockley, Expert industry opinion, 18 March 2021, paragraph [470].

³⁰⁴ [PayPal, FAQ, Can I use PayPal to pay in stores?](#)

³⁰⁵ EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, paragraph [38], p 17.

WeChat and AliPay.³⁰⁶ Mr Blockley refers to potential entry/expansion by entities such as Apple, Facebook and Google, and notes that Google has indicated an interest in expanding its footprint in payments and financial services.³⁰⁷

- 7.194. ICA suggests that account-to-account apps on mobiles, such as AliPay and WeChat Pay, also participate in this segment.³⁰⁸ Mr Blockley notes that, so far, QR code payments using AliPay and WeChat Pay have been limited to overseas visitors to Australia, but suggests that they could be expanded.³⁰⁹
- 7.195. Mr Blockley also suggests that Chinese firm UnionPay International has discussed card issuance with Australian banks, and has the resources to support card issuance in Australia.³¹⁰ However, the ACCC does not consider there is strong evidence that UnionPay is likely to become a strong competitor in Australia.
- 7.196. Mr Blockley also refers to the continued growth of in-app payments that use embedded payment credentials.³¹¹ An example of an existing app that does this is Woolworths' Scan and Go.
- 7.197. The ACCC considers that, collectively, these potential new entrants impose a threat of new entry that is likely to provide some constraint on EPAL and NPPA's services in point of sale purchases with or without the amalgamation.
- 7.198. The potential new entrants are likely to have the ability and incentives to innovate and offer consumer choice in this segment in the event that any innovations that EPAL or NPPA may have carried out in this segment are lost if the amalgamation proceeds.

Competition for online retail payments

- 7.199. The ACCC considers there is a segment of payment services used to make online retail payments. These payments are usually from an individual to a business, and they include 'one-off' payments (such as through a 'guest checkout'), irregular recurring payments (such as in-app payments), and online stored detail payments (including payments made online for purchases in-store).
- 7.200. There is potential for the online retail payments services of NPPA and EPAL to overlap in future. However, the ACCC considers that, in the future with the amalgamation, AP+ will be constrained by Visa, Mastercard and other competitors. Consequently, the ACCC does not consider that any horizontal aggregation arising from the amalgamation will have or will be likely to have the effect of substantially lessening competition in relation to online retail payments.

Overlap between EPAL, NPPA and BPAY

- 7.201. ICA submits that there is no material overlap between EPAL, NPPA and BPAY in this segment presently, but acknowledges that each entity is targeting this 'area of large potential growth'.³¹²

³⁰⁶ EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, paragraph [52], p 23-4; paragraph [60], p 33.

³⁰⁷ Lance Blockley, Expert industry opinion, 18 March 2021, paragraph [470].

³⁰⁸ ICA, Application for merger authorisation, 18 March 2021, paragraph [25.3(a)].

³⁰⁹ Lance Blockley, Expert industry opinion, 18 March 2021, paragraph [470].

³¹⁰ Ibid.

³¹¹ Ibid.

³¹² ICA, Application for merger authorisation, 18 March 2021, paragraph [26.1(c)].

- 7.202. The ACCC considers that there could be a degree of overlap in the future between EPAL's digital services and NPPA's planned MPS service, although it is not clear that both of these services will be successful in this segment. Mr Blockley considers that the success of EPAL and NPPA's online payment services will depend on adoption of these services by merchants, gateways, acquirers and banks. Mr Blockley considers it unlikely these services will be adopted in the next 5 years.³¹³ Dr Edwards says that considerable speculation and optimism would be required to predict that AP+ will bring together 2 entities that would both have significant future shares in this segment in the counterfactual.³¹⁴
- 7.203. EPAL is taking steps to enable eftpos online acceptance and increase its online and in-app presence, including technological steps such as enabling tokenisation and reducing fraud rates.³¹⁵ The most relevant current EPAL digital service is its card-on-file service, which was launched in 2020. Businesses can use this service to store card details to facilitate an easier payment process for consumers for recurring retail payments. EPAL is developing capability to also process riskier types of online transactions, such as pay-as-you-go transactions where card details are typed in, and guest checkout where the consumer pays using a third party application (such as PayPal).³¹⁶ The parties have committed, through the Undertaking, to complete several technical developments to facilitate eftpos online acceptance.³¹⁷
- 7.204. Dr Edwards considers that EPAL is likely to gain some volume in online retail payments, and that the card-on-file service is likely to constrain NPPA's MPS.³¹⁸ By contrast, Mr Blockley says that gaining a reasonable level of adoption of online eftpos debit card acceptance will take 2-3 years.³¹⁹ He considers that in the meantime Mastercard and Visa will consolidate their positions, making them harder to compete with, through activities such as tokenisation of card-on-file details, attractive contractual arrangements with major merchants and use of marketing campaigns.³²⁰
- 7.205. Some acquirers have raised concerns with the RBA about differences in the security capabilities of EPAL's online offerings, compared to those of Mastercard and Visa,³²¹ which could potentially slow the adoption of EPAL's online payment products. There are also likely to be challenges in persuading consumers and merchants to adopt new processes and migrate from well-functioning existing services.³²² The RBA supports the provision of LCR for online payments as well as for point of sale payments,³²³ and is considering some related policy questions.³²⁴ Implementation of LCR may assist EPAL to gain more volume from Mastercard and Visa in online payments than it otherwise would, with or without the amalgamation.

³¹³ Lance Blockley, Supplemental Report, 18 June 2021, p 23.

³¹⁴ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [204].

³¹⁵ Undertaking, Schedule 1 – Prescribed Services, items 1, 4, 5 and 7; See also [EPAL, media release, eftpos brings competition to the Digital Economy through highly secure online payments capability, 4 August 2021](#).

³¹⁶ EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, paragraph [22].

³¹⁷ Undertaking, Schedule 1 – Prescribed Services, items 1, 4, 5 and 6.

³¹⁸ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [141(b)-(c)].

³¹⁹ Lance Blockley, Expert industry opinion, 18 March 2021, paragraph [535]; Lance Blockley, Supplemental Report, 18 June 2021, p 9.

³²⁰ Lance Blockley, Supplemental Report, 18 June 2021, p 9.

³²¹ [RBA, Review of Retail Payments Regulation: Consultation Paper, May 2021](#), pp 16-17.

³²² Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraphs [141(c)], [217(c)].

³²³ For more information on LCR, see Box 5 on page 57 above.

³²⁴ [RBA, Review of Retail Payments Regulation: Consultation Paper, May 2021](#), pp 1-11 and pp 16-17

- 7.206. The relevant NPPA service is its MPS, which is expected to be used for online one-off or recurring retail payments.³²⁵ Dr Edwards says that it is likely to take some time for the MPS to enter this segment, and that it is likely to face significant barriers to expansion. Merchants and banks may be reluctant to incur the significant capital costs in modifying their systems to facilitate NPP payments.³²⁶
- 7.207. Dr Edwards says that the MPS appears to be at a disadvantage compared to card-on-file services for recurring payments in terms of cost, speed and other functionalities. EPAL's card-on-file service appears to be more similar to the well-established services of Mastercard and Visa in this segment than NPPA's MPS.
- 7.208. As noted at paragraph [7.175] above, NPPA suggests that the MPS will be of greatest value when facilitating recurring payments. For example, a consumer might use the MPS to establish a bank account as a funding source for a BNPL service. BNPL services are currently much more commonly used online than in physical stores. MPS will also be able to support card-on-file type arrangements.³²⁷
- 7.209. BPAY Payments has a minimal presence in online retail payments which appears unlikely to grow with or without the amalgamation. Similarly, a small number of online retail payments (less than 1%)³²⁸ are made using NPPA's SCT, including via services such as Azupay (potentially including via BPAY's Osko 1 overlay service).³²⁹ EPAL's Beem It can also technically be used for online payments, and if adopted by users its presence in this segment may grow in the future. The ACCC considers these services are not likely to attract sufficient volumes to impose a significant competitive constraint with or without the amalgamation.
- 7.210. ICA submits that BPAY's proposed Osko 3 service could be used for online retail payments if rolled out.³³⁰ Osko 3 was put on hold until after the launch of the MPS, after potential participants prioritised work on the NPP and the MPS. BPAY has taken an impairment charge against its Osko 3 assets as a result.³³¹ The ACCC considers there is not strong evidence that Osko 3 will become a viable product which would impose a competitive constraint with or without the amalgamation.

Competitive constraints

- 7.211. Mastercard and Visa have large shares in this segment with around 89% of online (or 'remote') retail payments by volume and 85% by value, according to ICA.³³² They are likely to impose a significant competitive constraint in this segment.
- 7.212. ICA submits that BPAY, EPAL and NPPA are only active to a minor extent in this segment, and that AP+'s market share in FY2020 would have been less than 1%.³³³

³²⁵ NPPA, Response to RFI, 18 June 2021, p 8.

³²⁶ Lance Blockley, Expert industry opinion, 18 March 2021, paragraph [476]; Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [141(c)].

³²⁷ Undertaking Schedule 1, item 9.

³²⁸ Lance Blockley, Expert industry opinion, 18 March 2021, p 211.

³²⁹ The ACCC does not consider that the combination of NPPA's SCT and BPAY's Osko 1 is likely to result in a substantial lessening of competition, for the reasons outlined at paragraphs [7.130]-[7.139] above.

³³⁰ ICA, Application for merger authorisation, 18 March 2021, paragraph [25.3(b)]; See paragraph [1.28] for more information about Osko 3.

³³¹ BPAY, Non-confidential Statement in support of application for authorisation, 16 March 2021, paragraphs [33]-[43], [57]-[58].

³³² ICA, Application for merger authorisation, 18 March 2021, paragraph [25.5]; Lance Blockley, Expert industry opinion, 18 March 2021, pp 211-212.

³³³ ICA, Application for merger authorisation, 18 March 2021, paragraph [25.5].

Dr Edwards says that Mastercard and Visa offer services with equivalent or superior functionality, enjoy incumbency and multi-service advantages, and benefit from being the preferred infrastructure of a number of significant online intermediaries such as PayPal and BNPL providers.³³⁴ Some of the advantages of Mastercard and Visa's offerings include the ability to make international payments and fraud minimisation strategies such as tokenisation of stored card details.³³⁵

- 7.213. The ACCC considers that online retailers have incentives to offer as many payment options as possible to consumers, in order to encourage consumers to complete their purchases. Offering a wide range of payment options is generally more practical online than in a physical environment. The availability of a number of alternatives, including Mastercard and Visa, is also likely to impose competitive constraint in this segment.
- 7.214. For example, PayPal and BNPL services act as intermediaries in the schemes of Mastercard and Visa, such as when someone makes a credit or debit card payment through their PayPal account, or transacts at a merchant using Afterpay.³³⁶
- 7.215. Most PayPal and BNPL services currently use Mastercard or Visa's infrastructure, to some extent.³³⁷ However, PayPal can also be used to make payments from bank accounts. Non-NPP account-to-account payments, such as through PayPal from a bank account, accounted for 8% of retail remote payments by volume in 2020. Mr Blockley expects these payments to decline slightly over the next 5 years as a proportion of total online retail payments.³³⁸
- 7.216. There is also some scope for new entry and increased activity from large international technology companies in this segment.³³⁹ Much of this would likely rely on Mastercard and Visa's infrastructure in the short to medium term. It is possible that Mastercard and Visa's infrastructure, or other existing infrastructure, could be bypassed in the long term, but this seems unlikely because there are significant barriers to doing so.

Competition for online bill and invoice payments

- 7.217. This segment includes services for regular payments such as in-app or subscription payments, bills and invoice payments (such as phone or utility bills). This includes payments made from one business to another, as well as from individuals to businesses.
- 7.218. The ACCC does not consider that the effect of the amalgamation in relation to bill and invoice payment services is likely to constitute a substantial lessening of competition.
- 7.219. Currently, BPAY Payments has a significant presence in this segment. BPAY Payments' closest competitors are the Direct Entry system and Mastercard and Visa, rather than NPPA or EPAL. This includes Mastercard and Visa's card-on-file services which allow customers to make recurring online payments without inputting their card details for each payment. NPPA's SCT (including BPAY's Osko 1) and EPAL's debit scheme are also used, but for a small number of bill and invoice payments.

³³⁴ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [223(a)].

³³⁵ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [104]; Lance Blockley, Expert industry opinion, 18 March 2021, paragraph [460].

³³⁶ Lance Blockley, Expert industry opinion, 18 March 2021, paragraph [69], footnote 19.

³³⁷ Lance Blockley, Expert industry opinion, 18 March 2021, paragraph [245].

³³⁸ Lance Blockley, Expert industry opinion, 18 March 2021, p 211.

³³⁹ See paragraphs [7.149]-[7.159].

7.220. There is potential for the level of competitive overlap between the amalgamating entities to increase in the future without the amalgamation, with the possible introduction of NPPA's MPS and the potential increase in the use of EPAL's card-on-file service. BPAY's proposed Osko 2 and 3 services could also potentially be used for these types of payments in the future.

7.221. However, assuming they are successfully introduced or expanded, each of these services will provide differing functionalities which may lend them to be better suited for particular types of billers or payers compared to others. Dr Edwards argues that they are more like complements than close substitutes.³⁴⁰ This could mean that there will be little change to the services that will be offered, with or without the amalgamation. In addition, the entities will be constrained by the decisions of major banks to support particular initiatives at the expense of others, and this is unlikely to be different with or without the amalgamation.³⁴¹

Current overlap

7.222. [REDACTED]
[REDACTED]
[REDACTED]³⁴² BPAY Payments facilitates recurring and one-off payments and enables payments through a financial institution's online, mobile, or telephone banking facility to organisations that are registered billers. Dr Edwards says that the unique characteristics of BPAY Payments mean that it does not have a particularly close competitor.³⁴³

7.223. [REDACTED]
[REDACTED]
[REDACTED]³⁴⁴ The ACCC does not consider that the SCT and Osko 1 currently have a sufficient share of bill payments to impose a strong competitive constraint on BPAY's offerings. However, the ACCC considers that their shares are likely to increase in the future with or without the amalgamation.

7.224. EPAL's debit card scheme also has a small presence in online bill payments [REDACTED].³⁴⁵ This may increase in the future if use of EPAL's card-on-file service increases.

Future overlap

7.225. If the amalgamation does not go ahead, the overlap between BPAY, EPAL and NPPA's bill and invoice payment services may increase. This would depend on the level of success of NPPA's SCT and MPS services (including BPAY's Osko 1 overlay), EPAL's card-on-file service and BPAY's Osko 2 and 3 services.

³⁴⁰ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [232].

³⁴¹ [REDACTED]
[REDACTED]
[REDACTED]

³⁴² [REDACTED]
[REDACTED]
[REDACTED]

³⁴³ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraphs [138(c)], [146(c)], [231].

³⁴⁴ [REDACTED]

³⁴⁵ [REDACTED]

NPPA's SCT and MPS services (including BPAY's Osko 1 overlay)

- 7.226. Dr Edwards says that, in the future, NPP services are likely to develop significant shares of bill payments through direct credit payments (via Osko 1 and SCT)³⁴⁶ and, in the longer term, direct debit payments (via the MPS).³⁴⁷ NPPA describes recurring payments as a key use case for the MPS.³⁴⁸
- 7.227. It is unclear how long it will take for the number of SCT (and Osko 1) bill and invoice payments to increase with the decline in use of the Direct Entry system. However, it appears likely that its use will increase significantly. [REDACTED]
[REDACTED]
[REDACTED]³⁴⁹ In addition to gaining customers because of the advantages of the SCT compared to the Direct Entry system, NPPA may attract volumes through its category purpose code 'e-invoicing' service.³⁵⁰
- 7.228. It is also unclear if or when the MPS will become widely adopted for online payments. Mr Blockley considers this is highly unlikely in the next 5 years or more.³⁵¹ Dr Edwards highlights a range of barriers to expansion of the MPS in this segment.³⁵² He suggests a number of BPAY billers would need to undertake significant system changes in order to be able to receive MPS payments.³⁵³
- 7.229. Several factors might hinder the NPP being taken up for bill and invoice payments. NPPA's services are (or will be) more costly than BPAY Payments (on average).³⁵⁴ NPPA's services do not provide similar reconciliation efficiency to BPAY Payments,³⁵⁵ although some third party providers (such as Monoova and Split Payments) offer services that assist with reconciliation for SCT payments.³⁵⁶ Dr Edwards suggests that many billers may prefer the batch nature of BPAY Payments.³⁵⁷ Some billers may not significantly value the real-time or data rich features offered by the NPP.
- 7.230. If the MPS were adopted, there would be a level of overlap between the MPS and BPAY Payments. BPAY identifies potential overlap between BPAY Payments and NPPA's MPS as a primary area of potential overlap between BPAY and NPPA.³⁵⁸
- 7.231. However, while the MPS and BPAY could both be used for bill payments, they would also be different in some ways. The MPS will be a direct debit style service with payments initiated by merchants, in contrast to BPAY Payments which is a direct credit service with payments initiated by customers. The MPS will enable bill payments to be

³⁴⁶ The ACCC does not consider that the combination of NPPA's SCT and BPAY's Osko 1 is likely to result in a substantial lessening of competition, for the reasons outlined at paragraphs [7.130]-[7.139] above.

³⁴⁷ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [230].

³⁴⁸ NPPA, Response to RFI, 18 June 2021, p 8.

³⁴⁹ [REDACTED]
[REDACTED].

³⁵⁰ See NPPA, Non-confidential Statement in support of application for authorisation, 16 March 2021, paragraphs [67], [108(b)] and [116(a)]; [NPPA, NPP Australia's submission on options for the mandatory adoption of electronic invoicing by businesses, 18 January 2021](#).

³⁵¹ Lance Blockley, Supplemental Report, 18 June 2021, pp 23-24.

³⁵² Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [216]-[218], [232].

³⁵³ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [232].

³⁵⁴ Ibid.

³⁵⁵ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [138(c)].

³⁵⁶ NPPA, Response to RFI, 18 June 2021, pp 4-5.

³⁵⁷ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [232].

³⁵⁸ BPAY, Non-confidential Statement in support of application for authorisation, 16 March 2021, paragraph [53(b)].

cleared and settled in real-time, in contrast to BPAY Payments which are typically settled on the next business day.³⁵⁹ The MPS will also have better functionality for facilitating recurring payments for variable amounts than BPAY Payments.³⁶⁰

7.232. The ACCC considers that, to the extent there would be competitive overlap between BPAY Payments and NPPA's services without the amalgamation, this overlap could be lost as a result of the amalgamation. Alternatively, due to the differences between the MPS and BPAY Payments, it is possible that the amalgamated entity would continue to offer both services on a competitive basis. Regardless of whether both services are offered by the amalgamated entity, any resulting lessening of competition is not likely to be substantial due to the competitive constraints discussed at paragraphs [7.240]-[7.243] below.

EPAL's card-on-file service

7.233. EPAL and BPAY acknowledge that EPAL's card-on-file service³⁶¹ may overlap with BPAY and NPPA's online bill payment services, if it begins to facilitate significant numbers of bill and invoice payments.³⁶²

7.234. The overlap between EPAL's card-on-file services and NPPA's MPS service for bill payments is likely to be similar to the overlap for online retail payments.

7.235. Similar to the NPPA's MPS, the likelihood of EPAL's card-on-file service gaining volumes is unclear. It is possible that some overlap that would have occurred without the amalgamation will be lost with the amalgamation. Alternatively, the amalgamated entity may offer the card-on-file service in addition to other bill payment services. The card-on-file service appears to be more similar to the services of Mastercard and Visa than to those of BPAY and NPPA.

7.236. Even if some competitive constraint would be lost under the amalgamation because of this overlap, the amalgamated entity is likely to still be constrained by competition from Mastercard, Visa and, in the short term, the Direct Entry system.

BPAY's Osko 2 and 3 services

7.237. BPAY's proposed Osko 2 and 3 services could also be used for bill payments.³⁶³ Dr Duong, Professor Taylor and Dr Eulaiwi of Curtin University suggest the MPS will be a close substitute of these services.³⁶⁴

7.238. While there may be some degree of future competitive overlap with the NPPA's MPS if Osko 2 was to be adopted, the ACCC considers Osko 2's prospects of success with or without the amalgamation are unclear. According to BPAY, a proof of concept for Osko 2 will be developed by December 2021 with a subset of NPP Participants and a Federal Government agency.³⁶⁵ If Osko 2 is not adopted in the future without the

³⁵⁹ NPPA, Response to RFI, 18 June 2021, p 9.

³⁶⁰ Ibid.

³⁶¹ For more information about EPAL's card-on-file service, see paragraph [7.203] above.

³⁶² BPAY, Non-confidential statement in support of application for authorisation, 16 March 2021, paragraph [51]; EPAL, Non-confidential statement in support of application for authorisation, 17 March 2021, p 18.

³⁶³ For more information about Osko 2 and 3, see paragraph [1.28] above.

³⁶⁴ Dr Lien Duong, Professor Grantley Taylor and Dr Baban Eulaiwi (Curtin University), Submission to ACCC, 15 April 2021, p 2.

³⁶⁵ BPAY, Non-confidential statement in support of application for authorisation, 16 March 2021, paragraph [42]. AP+ has committed, through the Undertaking (clause 5.7(a)) to procure that BPAY explore the feasibility of developing business to business and business to consumer –'Pay with a URL' services and, if it is feasible to develop them, to make them available.

amalgamation, then there is unlikely to be any competition from Osko 2 that is lost as a result of the amalgamation.

7.239. It is unclear whether Osko 3 will proceed with or without the amalgamation.³⁶⁶ In addition, BPAY submits that Osko 3 is different from the MPS because Osko 3 leaves control in the hands of the payer, rather than the payee, and therefore has a different available user base.³⁶⁷ In the event that Osko 3 proceeds, with or without the amalgamation, the level of overlap appears unlikely to be significant. In addition, the amalgamated entity is likely to be constrained by competition from Mastercard, Visa and (in the short term) the Direct Entry system.

Competitive constraints

7.240. The ACCC considers Mastercard's and Visa's schemes are likely to impose a significant competitive constraint in electronic bill and invoice payment services, with or without the amalgamation. The Direct Entry system is also likely to be a constraint in the short term.

7.241. The Direct Entry system (including direct credit and direct debit payments) comprises a large proportion of electronic bill payments [REDACTED],³⁶⁸ and is likely to impose a significant competitive constraint in this segment in the short term in the absence of the amalgamation. This is likely to diminish in the long term as transaction volumes move to the NPP.³⁶⁹ The NPP is likely to become more attractive as overall NPP volumes increase and transaction prices decrease. The MPS will provide functionality that Direct Entry direct debit arrangements lack, including real-time notification of available funds and real-time remittance of funds,³⁷⁰ which may or may not be valued by billers and payees.

7.242. In addition, Mastercard and Visa process a significant share of electronic bill payments [REDACTED]³⁷¹ and are likely to impose a significant amount of competitive constraint, particularly in relation to EPAL's card-on-file service to which they are most similar.

7.243. Further, the ACCC considers that the decisions of major banks to support, or not support, particular initiatives are likely to constrain the entities. These decisions are likely to be a highly determinative factor in the success of particular initiatives with or without the amalgamation.³⁷²

Competition for person-to-person payments

7.244. The ACCC considers the ability to make secure payments between individuals ('person-to-person' or 'pay anyone' payments) to be distinct from other payment

³⁶⁶ For more information, see paragraph [7.210] above.

³⁶⁷ BPAY, Non-confidential Statement in support of application for authorisation, 16 March 2021, paragraph [56].

³⁶⁸ [REDACTED]

³⁶⁹ For more information, see paragraphs [7.140]-[7.148] above.

³⁷⁰ NPPA, Non-confidential Statement in support of application for authorisation, 16 March 2021, paragraph [77].

³⁷¹ [REDACTED]

³⁷² [REDACTED]

services. Person-to-person payments are commonly made using account-to-account services. They account for a relatively small percentage of low value payments.³⁷³

7.245. While there may be some loss of competitive overlap between the amalgamating entities, the ACCC does not consider that this is likely to constitute a substantial lessening of competition. This is primarily because existing alternative person-to-person payment services, including Direct Entry and other payment methods, will likely sufficiently constrain AP+, at least in the short term. In addition, the threat of entry by Visa and Mastercard, which are significant providers of person-to-person payment services, is likely to constrain AP+ in the longer term.

Overlap between EPAL services, and NPPA's SCT service

7.246. The ACCC considers there is a degree of overlap between EPAL's digital services (such as Beem It) and the NPPA's SCT (including SCT transactions using BPAY's Osko 1 overlay).

7.247. The NPPA's SCT service, and BPAY's Osko 1 overlay, have a significant presence in this segment which is growing as payments migrate from the Direct Entry system.³⁷⁴ NPPA's MPS is not expected to play a role in person-to-person payments.³⁷⁵

7.248. Beem It offers real-time person-to-person payments using the EPAL's deposit and withdrawal services. The deposit and withdrawal messages are designed for person-to-person funds transfers and disbursement use cases on DNDCs. They allow card-based real-time transfer in and out of accounts.³⁷⁶

7.249. Beem It has a small presence in person-to-person payments.³⁷⁷ Despite this, due to the importance of network effects in payment services, it is possible that Beem It may impose a significant competitive constraint on other services.

7.250. Dr Edwards says that Beem It has not managed to realise a significant share of person-to-person transactions since being launched in 2018.³⁷⁸ According to Mr Blockley, person-to-person apps like Beem It have seen limited uptake because they do not solve a significant problem for consumers.³⁷⁹ Dr Edwards discusses several potential challenges to the growth of Beem It without the amalgamation, including:

- Incentives that some financial institutions may have to promote their own apps and portals over bank-agnostic apps in order to keep customers engaged in their own ecosystems.³⁸⁰
- Competition from other current or future person-to-person payment apps.³⁸¹

³⁷³ See Lance Blockley, Expert industry opinion, 18 March 2021, paragraph [319]. See also, [Mary-Alice Doyle, Chay Fisher, Ed Tellez and Anirudh Yadav, RBA, How Australians Pay: Evidence from the 2016 Consumer Payments Survey, July 2017](#), p 32.

³⁷⁴ The ACCC does not consider that the combination of NPPA's SCT and BPAY's Osko 1 is likely to result in a substantial lessening of competition, for the reasons outlined at paragraphs [7.130]-[7.139] above. If BPAY's Osko 3 service is developed it may also operate in this segment, but similar to Osko 1, the ACCC considers it is likely to be a complement to the SCT service rather than a competitor.

³⁷⁵ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [143(a)].

³⁷⁶ For more information about Beem It, see paragraph [1.23] above. SNDCs cannot be used to make payments through Beem It.

³⁷⁷ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [143(c)].

³⁷⁸ Ibid.

³⁷⁹ Lance Blockley, Expert industry opinion, 18 March 2021, paragraph [192], see also paragraph [319].

³⁸⁰ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [248].

³⁸¹ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [249].

- The view that Beem It needs to increase its scale in other segments (such as retail) in order to realise scale in the person-to-person segment.³⁸²

- 7.251. By contrast, EPAL submits that it conservatively expects that Beem It will break even in 2023-4 with material enterprise value created after that time.³⁸³ EPAL submits that Beem It has a strong and successful presence in the under 25 target segment in New South Wales, and a high app store rating of 4.9, and will expand its target audience and widen its role.³⁸⁴
- 7.252. Dr Edwards says that there would only be limited competition between Beem It, on the one hand, and NPPA's SCT and BPAY's Osko 1 overlay, on the other.³⁸⁵
- 7.253. By contrast, EPAL submits that there is direct competitive overlap between NPPA and EPAL (with Beem It and EPAL's deposit and withdrawal messages) in person-to-person payments. EPAL also submits that BPAY's Osko 1 is currently a primary competitor for Beem It for person-to-person transactions.³⁸⁶
- 7.254. EPAL also submits that Beem It is differentiated from Osko 1 because it is driven by customer choice whereas Osko 1 volumes are often driven by bank default settings in their standard 'Pay Anyone' services.³⁸⁷
- 7.255. The ACCC considers there is a direct overlap between Beem It's person-to-person payment service and the NPP and this competitive tension would play out in the future without the amalgamation. The ACCC considers it is likely that the amalgamated entity would prioritise NPPA's SCT service (including overlay services built on top of the SCT) over Beem It for person-to-person payments, and the competitive constraint from Beem It would be lost.

Competitive constraints

- 7.256. The ACCC considers that competitive constraints from a number of alternative sources would remain in this segment if the amalgamation proceeds. We consider these constraints will prevent significant increases in price or decreases in choice for person-to-person payments if Beem It is deprioritised.
- 7.257. A significant volume of person-to-person payments are sent through the Direct Entry System.³⁸⁸ Direct Entry was the predominant electronic transfer method for person-to-person payments before the NPP was implemented. Direct Entry is still used by financial institutions who have not subscribed to the NPP or its overlay services. Direct Entry volumes are expected to decline in this segment as more financial institutions offer their customers improved functionality via the NPP, and the cost per transaction decreases.³⁸⁹ The ACCC considers the Direct Entry system will continue to impose a degree of competitive constraint in the short term, which will lessen in the long term.

³⁸² Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [251].

³⁸³ EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, paragraph [33].

³⁸⁴ EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, paragraph [34].

³⁸⁵ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [252].

³⁸⁶ EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, paragraph [105(a)]; Table 3, p 27; paragraph [20(e)(iv)].

³⁸⁷ EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, paragraph [34(d)].

³⁸⁸ [REDACTED]

³⁸⁹ See paragraphs [7.140]-[7.148] above.

- 7.258. There also appear to be a large number of nascent or developing person-to-person payment apps. EPAL notes that mobile payment apps for person-to-person payments which use existing payment infrastructure include PayPal.ME, Splitr and Splitwise, as well as QR code based systems such as Alipay and WeChat Pay.³⁹⁰ EPAL lists other potential competitors in person-to-person payments³⁹¹ including Apple Pay, Google Pay, Samsung Pay, Facebook Pay, Square Cash, Zelle Pay, Visa Direct³⁹² and MastercardSend.³⁹³ PayPal can be used to send money to anyone with an email address or phone number.³⁹⁴ In addition, Dr Edwards notes the presence of groupee, DiviPay and Split Payments.³⁹⁵
- 7.259. Mastercard and Visa do not currently have a significant presence in Australian person-to-person payments. It is possible that they could increase their presence in the future, as they have in other jurisdictions, although the likelihood of this is unclear. ICA submits that Mastercard operates a global account-to-account platform (Vocalink) and has won domestic real-time account-to-account mandates all over the world.³⁹⁶ Mastercard has also recently acquired Nets, a European payment technology company, which will expand its account-to-account capabilities and support a ‘multi-rail’ strategy overseas.³⁹⁷ However, Mastercard responded by noting that such mandates must be either awarded by central banks/payment authorities or by individual banks and financial institutions.³⁹⁸ Facebook also submits that the extent and significance of its participation in the Australian payments sector had been overstated.³⁹⁹
- 7.260. However, there appear to be relatively low barriers to entry for person-to-person payment services to the extent that these services can sit on top of already existing underlying payment infrastructure. EPAL submits that competition with Beem It from international technology companies is likely to be significant as there are low barriers to entry, they can often leverage existing customer bases, they have global scale and deep pockets, and they understand consumer and merchant needs.⁴⁰⁰ Therefore, the ACCC does not consider that a potential deprioritisation of Beem It by AP+ would be likely to result in a significant reduction in competitive tension for the supply of person-to-person payment services.

Competition for government and business disbursements

- 7.261. Government-to-person and business-to-person payment services include government and business disbursements such as payroll, superannuation, welfare and government rebate payments. The ACCC does not consider that the amalgamation is likely to substantially lessen competition in relation to these payments.

³⁹⁰ EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, paragraph [49]; p 24.

³⁹¹ EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, Table 4, pp 28-30.

³⁹² See [Visa, Visa Direct](#).

³⁹³ See [Mastercard, Q: What is Mastercard Send?](#)

³⁹⁴ [PayPal, FAQ, How do I send money with my PayPal account?](#)

³⁹⁵ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [249] (p 70); Annex B (p 101).

³⁹⁶ ICA, Response to submissions, 19 May 2021, p 14.

³⁹⁷ [Mastercard, Mastercard Newsroom, 'Mastercard completes acquisition of Nets' account-to-account payment business', 5 March 2021](#).

³⁹⁸ Mastercard, Submission to the ACCC, 18 June 2021, paragraph [4.6].

³⁹⁹ Facebook, Submission to the ACCC, 22 April 2021, p 1.

⁴⁰⁰ EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, paragraph [61].

- 7.262. Government and business disbursements are predominantly processed through the Direct Entry System. Excluding non-electronic cash and cheque payments (which combined accounted for around 8% of total government and business disbursements), the Direct Entry system facilitated around 94% of electronic government and business disbursements in FY2020. The other 6% were facilitated by the NPPA's SCT, mostly through BPAY's overlay service Osko 1.⁴⁰¹
- 7.263. In the future, these payments may also be facilitated by NPPA's MPS service, BPAY's Osko 2 (if developed) and EPAL's deposit and withdrawal messages.
- 7.264. While there may be some level of overlap between these services if they are all implemented and adopted, there is uncertainty about the likelihood that this will occur. The Direct Entry system is a close substitute and will provide a high level of competitive constraint for these payment types, at least in the medium term, with or without the amalgamation. The ACCC considers that the effect of the amalgamation on these types of payments is unlikely to constitute a substantial lessening of competition.

Competitive overlap between NPPA and BPAY's services

Overlap between NPPA's category purpose codes and BPAY's Osko 1

- 7.265. NPPA's category purpose codes allow payments sent via the SCT to be accompanied by a payment message that follows NPPA's guidelines for payroll, tax, and superannuation payments. Specific elements in the payment message help payers and financial institutions identify payment types. The category purpose codes are intended to support the growth of business use and commercial payment volumes on the NPP. NPP participating financial institutions were required to support receiving (but not necessarily sending) these types of payments by April 2021.⁴⁰²
- 7.266. BPAY suggests that the category purpose codes could create further opportunities for Osko 1. However, BPAY also suggests that another potential outcome is that volume could move to the SCT, but not to Osko 1, putting Osko 1 at risk.⁴⁰³
- 7.267. BPAY's Osko 1 service is an overlay service to the NPPA's SCT and we do not consider there is likely to be any impact on competition from the amalgamation in relation to any overlap between these services.⁴⁰⁴

Overlap between NPPA's MPS and BPAY's Osko 2

- 7.268. The ACCC considers the NPPA's MPS and Osko 2, if they were both successful, would offer complementary services and have limited competitive overlap.
- 7.269. The MPS will enable customers to authorise third parties to initiate payments from their bank accounts using the NPP. An example of an MPS use case is a cloud accounting software provider being authorised to request payments from the payer customer's account, for example corporate payroll and supplier payments.⁴⁰⁵
- 7.270. In contrast, the NPPA's SCT and Osko 1 do not enable third party payment initiation.

⁴⁰¹ Lance Blockley, Expert industry opinion, 18 March 2021, p 214; The ACCC does not consider that the combination of NPPA's SCT and BPAY's Osko 1 is likely to result in a substantial lessening of competition, for the reasons outlined at paragraphs [7.130]-[7.139] above.

⁴⁰² NPPA, Non-confidential Statement in support of application for authorisation, 16 March 2021, paragraph [67]; [NPPA, NPP Roadmap October 2020: Enhancing the platform's capabilities, October 2020](#), p 9.

⁴⁰³ BPAY, Non-confidential Statement in support of application for authorisation, 16 March 2021, paragraph [54(f)].

⁴⁰⁴ See paragraphs [7.130]-[7.139] above.

⁴⁰⁵ [NPPA, Mandated Payments Service: Enabling third party payment initiation on the NPP, 30 April 2020](#), p 2.

- 7.271. BPAY's Osko 2 is similar to Osko 1 with an additional feature that allows payees to receive their payment with a related document, for example a salary payment accompanied by a payslip.⁴⁰⁶ It is unclear whether Osko 2 will be widely adopted with or without the amalgamation, as discussed at paragraphs [7.237]-[7.238] above.
- 7.272. Osko 2 provides a slightly different functionality to the services provided, or currently in development, by NPPA. While the category purpose codes can assist users to identify payroll, superannuation, or tax payments based on the payment message, and MPS will allow third party authorisation to initiate payments, Osko 2 will enable payers to provide additional information to payees that would not fit in a payment message. Further, given Osko 2 will be another overlay service on the NPP, we consider it will have similarly complementary dynamics as Osko 1, discussed at paragraphs [7.130]-[7.139] above.

EPAL's deposit and withdrawal messages

- 7.273. EPAL's deposit and withdrawal messages are designed for real-time funds transfer in person-to-person and disbursement use cases via DNDC card infrastructure. These messages are currently used by Beem It and could be extended to government and business disbursements. EPAL submits these messages compete directly with NPPA's current and future services. In particular, the deposits service is planned for expansion into disbursement use cases from October 2021.⁴⁰⁷ EPAL flags the possible elimination of areas of competition in deposit and withdrawal use cases as a result of the amalgamation.⁴⁰⁸
- 7.274. The ACCC considers EPAL's deposit and withdrawal messages could potentially overlap with current or future services by NPPA or BPAY.⁴⁰⁹ They appear to share similarities with NPPA's SCT and BPAY's Osko 1. However, they do not appear to contain purpose-specific payment messages (unlike NPPA's category purpose codes). They also do not appear to be designed to assist intermediaries to facilitate payments for governments or businesses (unlike NPPA's MPS).

Competitive constraints

- 7.275. The ACCC considers the Direct Entry system will impose a significant competitive constraint in this segment in the short to medium term. Currently, 94% of business and government disbursements (excluding cash and cheque) occur using the Direct Entry system.⁴¹⁰
- 7.276. As discussed from paragraph [7.140] above, over time the ACCC expects that more Direct Entry payments will migrate to the NPP. NPPA states that supporting bulk payment processing and migrating volumes from Direct Entry is a key focus, including bulk credit transfers such as superannuation, payroll, tax payments, and e-invoicing.⁴¹¹

⁴⁰⁶ BPAY, Non-confidential Statement in support of application for authorisation, 16 March 2021, paragraph 19(b). AP+ has committed, through the Undertaking (clause 5.7(a)) to procure that BPAY explore the feasibility of developing business to business and business to consumer –'Pay with a URL' services and, if it is feasible to develop them, to make them available.

⁴⁰⁷ EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, paragraph [20(e)].

⁴⁰⁸ EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, paragraph [100(c)].

⁴⁰⁹ The Undertaking (clauses 5.3-5.4 and Schedule 1 – Prescribed Services, item 2) obliges AP+ to procure that EPAL will develop and make available certain Prescribed Services, including a service allowing businesses to withdraw/deposit funds in real time from/into their customers' accounts using the customers' debit card number (for DNDCs only).

⁴¹⁰ Lance Blockley, Expert industry opinion, 18 March 2021, p 214.

⁴¹¹ NPPA, Non-confidential Statement in support of application for authorisation, 16 March 2021, paragraphs [104(a)], [105].

- 7.277. Mastercard submits that the Direct Entry system cannot be considered to impose a competitive constraint because payments will migrate to the NPP.⁴¹² Further, Mastercard submits that the replacement of the Direct Entry system for batch payments provides an opportunity for other market participants to enter or expand their services to capture migrating customers.⁴¹³ The ACCC recognises that there is unlikely to be competition between the amalgamating entities under AP+ for the Direct Entry volumes that are likely to eventually be migrated to the NPP. However, it is unclear whether the situation would be significantly different without the amalgamation. As described at paragraph [6.21] above, the success of the amalgamating entities' payment services (with or without the amalgamation) depends not only on each entity's incentives to pursue them, but also on the support of financial institutions to facilitate those services and the adoption of those services by end users.
- 7.278. The RBA considers that Direct Entry is likely to continue to be used by businesses to make regular payments, until the equivalent functionality is available in the NPP.⁴¹⁴ Dr Edwards says that NPP will eventually gain a significant share of payments in this segment, but that the main competition for a long time will be the low cost, incumbent Direct Entry system.⁴¹⁵ He says that the speed of migration will depend on the functionality NPP develops and the prices it charges. He notes that even once the functionality is in place, financial institutions can choose to continue using the Direct Entry system. He notes that government, businesses, and third parties (such as payroll providers) will likely also need to implement changes to their systems for the NPP.⁴¹⁶ Thus, the cost of switching systems will need to be weighed against the benefits of the change.
- 7.279. The need for certain NPP payment features or alternatives over card infrastructure are less obvious for government and business disbursements compared to other segments. This because government and business disbursements largely consist of regular, non-time-sensitive bulk payments.⁴¹⁷ However, over the long term there may be a widespread preference for faster payments across all payment types, which may lead to changed expectations for fast access to earnings or entitlements.⁴¹⁸
- 7.280. In the ACCC's view, payment methods such as cash and cheques do not impose a strong constraint in this segment, given their use has been in steady decline across the board.

⁴¹² Mastercard, Submission to the ACCC, 22 April 2021, paragraph [2.11] and [9.7]; Oxera submission on behalf of Mastercard, Initial economic assessment of the amalgamation, 22 April 2021, paragraph [2.13].

⁴¹³ Mastercard, Submission to the ACCC, 22 April 2021, paragraph [9.8].

⁴¹⁴ [Emilie Fitzgerald and Alexandra Rush, RBA, *Two Years of Fast Payments in Australia*, 19 March 2020.](#)

⁴¹⁵ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [261].

⁴¹⁶ Dr Geoff Edwards, Response to Oxera, 31 May 2021, p 11, paragraph [21]; However, the Government has delivered emergency payments for natural disasters through the NPP, as described in [Commonwealth of Australia, *Payments system review: from system to ecosystem*, June 2021](#), pp 77-78. The review heard that governments should consider how to move their payments to the NPP, but also heard that there are barriers to doing so. The review recommended that Governments should use the payment systems that best serve the needs of Australians, and that the government should leverage its position as a large user of the payment ecosystem to support broader payments policy objectives (Recommendation 15).

⁴¹⁷ [Talina Leung, RBA, *Transactional Banking at the RBA in Extraordinary Times*, 18 June 2020](#); [Emilie Fitzgerald and Alexandra Rush, RBA, *Two Years of Fast Payments in Australia*, 19 March 2020](#); [NPPA, *New Payments Platform Roadmap October 2020: Enhancing the platform's capabilities*, 30 October 2020.](#)

⁴¹⁸ See [Eduardo Aroni, PWC, *Future of payments in Australia: The future of transaction banking and payments in 2020*](#), pp 5-9. See also comments from [Philip Lowe, *Opening Statement to the House of Representatives Standing Committee on Economic*, 6 August 2021](#). Mr Lowe states that the RBA has worked with Services Australia to make sure that COVID Disaster Payments are made quickly to applicants (sometimes within an hour). This is an example of a more time sensitive government disbursement.

7.281. Disbursements through Mastercard and Visa, such as Visa Direct and Mastercard Send, have been growing overseas. However, it is unclear whether these services will become widely available in Australia.

7.282. The ACCC considers that Direct Entry is likely to impose a significant competitive constraint for the foreseeable future, before volumes largely migrate to the NPP in the long term for government and business disbursements.

Horizontal effects in payments infrastructure

7.283. The ACCC has considered the likely effect of the amalgamation on competition and innovation in a market for low value electronic authorisation and clearing infrastructure in Australia.

7.284. The main low-value authorisation and clearing infrastructures in Australia are:

- card-based infrastructures of Visa, Mastercard, eftpos, American Express and Diners Club
- Direct Entry direct account-to-account infrastructure
- BPAY Payments infrastructure for bill payments
- NPP for real-time account-to-account payments.⁴¹⁹

7.285. The ACCC considers the amalgamation will result in some reduction of investment in overlapping infrastructure that could support future downstream competition, including from third party use of that infrastructure.

7.286. However, taking into account the Undertaking, the ACCC does not consider the reduction would comprise a substantial lessening of competition, because of the competitive constraints imposed by Visa, Mastercard and, in the short term, the Direct Entry system.

Effect of the amalgamation on investment in competing infrastructure

7.287. The ACCC considers that the amalgamation is unlikely to result in a significant decrease in investment in competing infrastructure. This is because of the differing use cases for the entities' core infrastructure, the low likelihood of multiple competing infrastructures being successful in the counterfactual, and the competitive constraints discussed at paragraphs [7.300]-[7.307] below.

7.288. Payments infrastructure allows payments to be:

- cleared (non-monetary exchange of payment information)
- authorised (ensuring the payer's account is valid and has sufficient funds – if necessary)
- settled (transferring funds between financial institutions).

7.289. EPAL, NPPA and BPAY are each vertically integrated downstream, providing payment services that use their own core infrastructures, and investing in infrastructure which facilitates these services.⁴²⁰ EPAL and NPPA operate and invest in infrastructure that provides authorisation and clearing functionality. BPAY operates and invests in clearing-only infrastructure, because BPAY payments are authorised by the payer's

⁴¹⁹ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [64].

⁴²⁰ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [67].

bank. EPAL, NPPA and BPAY all use RBA-administered infrastructure for settlement.⁴²¹

- 7.290. Each entity uses its infrastructure to provide distinct core payment services, although there are potential areas of future overlap in their services as they each look to expand.
- 7.291. Without the amalgamation, BPAY, EPAL and NPPA could be expected to make independent decisions. This would mean they could potentially invest in infrastructure which can be used by themselves or by third parties to provide potentially overlapping functionality in payment services. By contrast, following the amalgamation, the amalgamated entity would not have incentives to invest in competing infrastructure between BPAY, EPAL and NPPA.
- 7.292. As noted by Mastercard, the amalgamation would reduce the number of low-value payment scheme providers in Australia from 6 main providers to 4 (that is, AP+, the Direct Entry system whose use is likely to decline, Mastercard and Visa).⁴²² Mastercard submits that the amalgamation could reduce incentives to innovate as investment in any one of the 3 schemes would be likely to cannibalise volumes run on the other schemes.⁴²³ By contrast, Dr Edwards states that the amalgamated entity will produce strong initiatives to innovate due to internal rivalry for ideas to be accepted by the AP+ Board.⁴²⁴
- 7.293. However, as discussed at paragraph [6.21] above, the entities are likely to require the support of major financial institutions to support new initiatives, and these institutions are unlikely to support multiple initiatives with the same functionality. This would be the case regardless of whether the amalgamation proceeds.

Effect of the amalgamation on third party access to infrastructure

- 7.294. The ACCC considers it is unlikely that the amalgamation will result in a substantial lessening of competition for third party access to payment services infrastructure.
- 7.295. In addition to relying on their infrastructure to deliver their own services, EPAL and NPPA (but not BPAY) make their infrastructure available to third party payment services.⁴²⁵
- 7.296. BPAY's infrastructure was designed and built to provide BPAY's services. BPAY submits that there have been no third party requests for access to the BPAY infrastructure to provide a new payment service, since BPAY was established.⁴²⁶ Third parties can connect to the BPAY system to provide value added services to billers to assist billers with payment management, but they still rely on BPAY's services when doing so. Dr Edwards states that BPAY's infrastructure is not well-suited to retail or non-retail payments (aside from uses similar to what BPAY already offers). Dr Edwards states that third party service developers are unlikely to be interested in accessing the BPAY infrastructure in the counterfactual.⁴²⁷

⁴²¹ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [66].

⁴²² Oxera submission on behalf of Mastercard, Initial economic assessment of the amalgamation, 22 April 2021, paragraph [2.14].

⁴²³ Oxera submission on behalf of Mastercard, Initial economic assessment of the amalgamation, 22 April 2021, paragraph [2.20].

⁴²⁴ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [277].

⁴²⁵ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [262].

⁴²⁶ BPAY, Non-confidential Statement in support of application for authorisation, 16 March 2021, paragraph [32].

⁴²⁷ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [264].

- 7.297. NPPA's infrastructure and open access arrangements are designed to allow third party overlay services. However, BPAY's Osko 1 overlay is the only operational overlay and there are no other third party overlay services in the pipeline.⁴²⁸ Dr Edwards states that it is challenging to achieve the coordination necessary for sufficiently ubiquitous development of an overlay service by financial institutions.⁴²⁹ He submits that NPPA is now 'filling the vacuum' with purpose code business services and the MPS.⁴³⁰ He expects this to continue in the counterfactual, 'crowding out' third party overlay services of a similar nature.⁴³¹
- 7.298. EPAL also makes its infrastructure available to third party payment service providers. For example, Beem It, when independent of EPAL, initially accessed the Mastercard and Visa infrastructure for withdrawals and the eftpos infrastructure for deposits.⁴³²
- 7.299. However, EPAL's infrastructure was designed for, and is suited to, different types of payments to the MPS.⁴³³ The ACCC considers that the differences between EPAL and NPPA's infrastructures means that they are unlikely to be close substitutes for most third party payment service developers in the foreseeable future.

Competitive constraint from other infrastructure operators

- 7.300. The ACCC considers Mastercard's and Visa's infrastructures are likely to act as significant constraints, with or without the amalgamation, in relation to third party payment service providers seeking access to payments infrastructure. A number of third party intermediaries already access Mastercard and Visa's infrastructures. Examples include PayPal, BNPL schemes and Uber.⁴³⁴
- 7.301. Mastercard's and Visa's infrastructures are more similar to EPAL's infrastructure than to NPPA's infrastructure. Dr Edwards suggests that Mastercard and Visa's infrastructures would be considered a similar or better alternative to EPAL's infrastructure for third parties seeking access to card-based infrastructure.⁴³⁵
- 7.302. The ACCC considers the Direct Entry account-to-account infrastructure will also impose a competitive constraint, which will lessen over time.⁴³⁶
- 7.303. The Direct Entry system accounts for the majority of authorising and clearing of low value payments by volume.⁴³⁷ ICA submits that the amalgamation will not have a substantial effect on concentration in a market for low value payment infrastructure, because, in terms of volume, the amalgamated entity will have approximately 16% market share, with an incremental change of approximately 5%.⁴³⁸
- 7.304. ICA submits that in terms of value, the amalgamated entity will have approximately 7% market share, with an incremental change of approximately 4%. Dr Edwards argues that it is more appropriate to consider market shares by volume rather than value,

⁴²⁸ NPPA, Non-confidential Statement in support of application for authorisation, 16 March 2021, paragraph [55].

⁴²⁹ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [265].

⁴³⁰ Ibid.

⁴³¹ Ibid.

⁴³² Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [67(c)].

⁴³³ See Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [266].

⁴³⁴ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [67(a)], [262].

⁴³⁵ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [267].

⁴³⁶ See paragraphs [7.140]-[7.148] above.

⁴³⁷ ICA, Application for merger authorisation, 18 March 2021, paragraphs [25.2] and [26.1].

⁴³⁸ Ibid.

because different types of transactions (including transactions that are typically higher or lower value) typically occur over different types of infrastructure.⁴³⁹

- 7.305. Oxera, on behalf of Mastercard, suggests that the market shares provided by ICA overstate the constraint that the Direct Entry system will impose in the upstream market, because the Direct Entry system is a legacy system.⁴⁴⁰ In response, Dr Edwards argues that the financial institutions continue to favour the Direct Entry system as a very low cost and fit for purpose infrastructure. Dr Edwards argues that the NPP will need to persuade users to move away from bespoke Direct Entry-based solutions to new bespoke NPP-based solutions.⁴⁴¹ He also suggests that the reason for the combined share of the amalgamating entities being 16% by volume is the large size of Mastercard and Visa, rather than the size of the Direct Entry system.⁴⁴²
- 7.306. The threat of new entry in payments infrastructure is low. The ACCC considers that barriers to entry in establishing payments infrastructure are already significant, as entry requires significant scale and capital expenditure. The competitive constraint on incumbents from the threat of new entry is unlikely to change as a result of the amalgamation.
- 7.307. This is illustrated by the small number of new entrants in the history of electronic payments. The RBA played a significant role in promoting the establishment of the NPP, which was launched in February 2018 after 5 years of development through industry collaboration. Before the NPP, the most recent new payment system to be introduced was BPAY's infrastructure, in 1997.⁴⁴³ The ACCC considers large technology companies and other potential new entrants are more likely to focus on offering payment services that rely on existing infrastructure, than to attempt to develop their own new infrastructure.

Horizontal effects in other related services

Digital identity services

- 7.308. The ACCC does not consider that the amalgamation is likely to have the effect of substantially lessening competition in relation to digital identity services. This is despite steps by both EPAL and BPAY toward developing digital identity services.
- 7.309. ICA describes digital identity as a complementary component of the Australian payments landscape.⁴⁴⁴ Digital identity services enable identification information (such as a date of birth) to be shared between 'identity service providers' (such as government agencies and banks) and 'relying parties' that require identity verification (such as an online liquor retailer requiring proof of age). This removes the need for customers to re-prove their identity when engaging with new relying parties.
- 7.310. EPAL is planning to launch a digital identity verification service called connectID.⁴⁴⁵ The service acts as an 'identity broker'. It uses eftpos infrastructure to transport identity

⁴³⁹ Dr Geoff Edwards, Response to Oxera, 31 May 2021, paragraph [24].

⁴⁴⁰ Oxera submission on behalf of Mastercard, Initial economic assessment of the amalgamation, 22 April 2021, paragraph [2.11].

⁴⁴¹ Dr Geoff Edwards, Response to Oxera, 31 May 2021, paragraphs [20]-[22].

⁴⁴² Dr Geoff Edwards, Response to Oxera, 31 May 2021, paragraph [23].

⁴⁴³ Lance Blockley, Expert industry opinion, 18 March 2021, paragraph [70].

⁴⁴⁴ ICA, Application for merger authorisation, 18 March 2021, paragraph [18.5(i)].

⁴⁴⁵ EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, paragraph [20(e)(v)].

data between a relying party and an identity service provider.⁴⁴⁶ connectID will support digital experiences including payments, not limited to eftpos payments.⁴⁴⁷ connectID is designed to work within the government's Trusted Digital Identity Framework and AusPayNet's TrustID framework, which outline standards and facilitate interoperability.⁴⁴⁸

- 7.311. BPAY may also launch a digital identity service. EPAL suggests this could occur by the end of 2023.⁴⁴⁹ Although any future BPAY digital identity service may overlap with connectID, it is unclear how closely the services would compete. Absent the amalgamation, there may still be incentives for connectID and BPAY to collaborate to develop an effective solution, as suggested by EPAL.⁴⁵⁰ Alternatively, one of the products may become significantly more attractive than the other by achieving a level of ubiquity before the other gains a significant presence.
- 7.312. If the amalgamation proceeds, it is possible that digital identity solutions offered by AP+ will be somewhat constrained by other similar services. EPAL submits that no fully launched digital identity solutions exist which are providing the same services as connectID.⁴⁵¹ Australia Post provides similar services, and is partnering with EPAL to pilot the connectID service.⁴⁵²
- 7.313. However, as demand for digital identity services grows and changes, there may be significant scope for new entry (actual or threatened), such as by large technology companies. For example, Apple will soon launch digital identity services in the US.⁴⁵³ EPAL suggests that technology providers such as Apple, Google and Facebook may compete with connectID from 2023.⁴⁵⁴ In addition, the international card systems appear to be developing digital identity services overseas and in Australia.⁴⁵⁵ EPAL describes Mastercard as a potential competitor or collaborator which already provides a similar service in Australia.⁴⁵⁶ EPAL also cites Equifax and Experion as existing or potential competitors.⁴⁵⁷
- 7.314. The ACCC does not consider the amalgamation is likely to substantially lessen competition in relation to digital identification services.

Development of QR code standards

- 7.315. The ACCC does not consider the amalgamation is likely to have the effect of substantially lessening competition in relation to the development of QR code

⁴⁴⁶ EPAL, Response to RFI, 18 June 2021, p 9.

⁴⁴⁷ ICA, Application for merger authorisation, 18 March 2021, paragraph [16.4].

⁴⁴⁸ EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, paragraph [20(e)(i)]; [AusPayNet, TrustID Framework](#); [Australian Government Digital Transformation Agency, The Trusted Digital Identity Framework](#).

⁴⁴⁹ EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, paragraph [38]. See also: [BPAY Group, Submission to Senate Select Committee on Financial Technology and Regulatory Technology – Issues Paper, 11 December 2020](#), submission 189.

⁴⁵⁰ EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, Table 5, p 31.

⁴⁵¹ EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, Table 5, p 30.

⁴⁵² [Justin Hendry, Itnews, eftpos to trial digital ID platform with AusPost, 22 July 2020](#).

⁴⁵³ [Jon Porter, The Verge, You'll soon be able to use your iPhone as ID at the airport, 7 June 2021](#).

⁴⁵⁴ EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, paragraph [38].

⁴⁵⁵ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [149], footnote 161; EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, paragraph [38]; Table 5, p 30; [James Evers, Mastercard, Australia Post testing new digital identity model, Australian Financial Review, 12 December 2019](#).

⁴⁵⁶ [Mastercard, Mastercard and Optus bring digital identity to the Australian Telecommunications Industry, 17 November 2020](#); EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, paragraph [38].

⁴⁵⁷ EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, Table 5, p 30.

standards. This is despite both EPAL and NPPA developing solutions relating to QR code acceptance.

7.316. EPAL submits that there is a direct competitive overlap between NPPA and EPAL for QR code standards.⁴⁵⁸

7.317. NPPA has published a QR code standard for QR codes on the NPP. The standard builds on the EMV Merchant-Presented QR Code Specification for Payment Systems (which NPPA considers is generally seen as the de facto global standard for QR codes).⁴⁵⁹ The standard is designed to support a consistent user experience across NPP use cases.⁴⁶⁰ NPPA is planning to enhance the current standard to enable the use of a QR code with the MPS.⁴⁶¹ BPAY currently offers QR codes for BPAY Payments.⁴⁶² AusPayNet has been exploring the feasibility of developing a channel agnostic QR code standard,⁴⁶³ and has been leading analysis of the use cases for QR codes in payments, and identification of where in those use cases industry collaboration and coordination is required.⁴⁶⁴

7.318. EPAL has been developing a 'rail-agnostic' market wide QR code acceptance network supporting digital wallet retail payments.⁴⁶⁵ EPAL's solution would support multiple digital wallet operators accessing a single QR acceptance solution for merchants.⁴⁶⁶ EPAL expects its QR code solution to generate revenues and transaction volumes.⁴⁶⁷ [REDACTED]⁴⁶⁸ ICA submits that EPAL has informed ICA that EPAL is proceeding with its QR code service.⁴⁶⁹

7.319. NPPA suggests that there is broad consensus among market participants (except for EPAL), that a merchant-presented EMV-based standard would be an appropriate 'multi-rail' interoperable QR code solution.⁴⁷⁰ NPPA suggests that EPAL's proposed solution is less efficient than this because it is a proprietary solution in which EPAL is likely to play an intermediary role, 'translating' QR codes for use on particular payment infrastructures.⁴⁷¹ [REDACTED]

[REDACTED]⁴⁷²

7.320. NPPA's QR code standard is limited to facilitating consistency in QR codes used to make payments over the NPP,⁴⁷³ whereas EPAL's QR code acceptance network is

⁴⁵⁸ EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, paragraph [105].

⁴⁵⁹ NPPA, Response to RFI, 18 June 2021, p 9.

⁴⁶⁰ [NPPA, QR Code standard.](#)

⁴⁶¹ [NPPA, NPP Roadmap April 2021 Update, April 2021](#), p 5.

⁴⁶² [BPAY, QR Codes set to turbocharge SME real time payments, 8 October 2020](#); BPAY, [Paying bills with BPAY: How do I use a BPAY QR Code?](#).

⁴⁶³ [AusPayNet, Payments Monitor Newsletter, July 2020.](#)

⁴⁶⁴ [AusPayNet, Payments Monitor Newsletter, April 2021.](#)

⁴⁶⁵ EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, paragraph [20(b)(v)].

⁴⁶⁶ Ibid.

⁴⁶⁷ Ibid.

⁴⁶⁸ [REDACTED]

⁴⁶⁹ ICA, Applicants' response to Submissions re Undertaking, 23 August 2021, paragraph [6.1].

⁴⁷⁰ NPPA, Response to RFI, 18 June 2021, pp 9-10.

⁴⁷¹ Ibid.

⁴⁷² [REDACTED]

⁴⁷³ [NPPA, QR Code standard.](#)

designed to work across different payment infrastructures.⁴⁷⁴ In addition, unlike NPPA's standard, EPAL's solution offers the ability to support additional functionalities for merchants and consumers such as loyalty points, offers and receipts.⁴⁷⁵ Despite this, the ACCC considers there is some overlap between NPPA's standard and EPAL's network because they could both be used for payments over the NPP.

- 7.321. The ACCC considers that AP+ would be unlikely to pursue both NPPA and EPAL's QR code solutions in the event of the amalgamation. This is consistent with EPAL's view.⁴⁷⁶
- 7.322. Irrespective of whether a particular QR code standard is more successful than another, the ACCC considers it is unclear, in the absence of the amalgamation, whether QR codes will become a significant payment method in Australia (see paragraphs [7.166] and [7.172] above). It is also unclear whether NPPA or EPAL's QR solutions will both achieve the necessary level of take-up to impose a level of competitive constraint.
- 7.323. The ACCC considers that the decisions of merchants, acquirers and consumers to support, or not support, particular initiatives such as QR codes are likely to heavily influence the success of particular initiatives with or without the amalgamation.
- 7.324. It is possible that having 2 competing QR code standards would introduce uncertainty about the potential ubiquity of services using those standards. This may slow the potential uptake of QR codes in Australia, reducing the chances of achieving the minimum scale required to be viable and impose competitive constraint.
- 7.325. AP+ has committed through the Undertaking, to procuring that BPAY, EPAL and NPPA agree an industry wide standard supporting payment with QR codes by the end of June 2022. This will be in coordination with AusPayNet, with a focus on interoperability and open access.⁴⁷⁷ While there may be less competing QR code standards with the amalgamation, the ACCC considers there may be scope for an agreed standard to facilitate increased adoption of QR code payment services by industry participants. This may facilitate increased competition between competing QR code payment services, as well as between QR code payment services and other types of payment services.
- 7.326. The ACCC does not consider that impacts from the amalgamation in relation to the development of QR code standards are likely to substantially lessen competition in any market.

Vertical effects in access to payment infrastructure

- 7.327. BPAY, EPAL and NPPA are currently all vertically integrated providers of both payment infrastructure and payment services. Each of their respective payment infrastructures could be used by third parties to provide payment services.
- 7.328. Following the amalgamation, AP+ would control multiple payments infrastructure to which third party providers may wish to seek to access to provide payment services in Australia. Foreclosure of access to this infrastructure could result in higher barriers to entry, less innovation and ultimately less competition for payments services.
- 7.329. The ACCC has considered vertical foreclosure in respect of the NPP arising from the amalgamation noting:

⁴⁷⁴ [EPAL, Engage more. Reward more. Grow more. 'FAQs: Does eftpos QR only support eftpos transactions?'](#).

⁴⁷⁵ [EPAL, Beam It builds eftpos national QR code payments utility, 13 May 2021.](#)

⁴⁷⁶ EPAL, Non-confidential Statement in support of application for authorisation, 17 March 2021, paragraph [105].

⁴⁷⁷ Undertaking, clause 5.6.

- BPAY's Osko 1 service is provided as an overlay service on the NPP infrastructure, and this gives rise to an increased incentive for foreclosure
 - the NPP was designed as, and intended to be, open access infrastructure
 - interested parties have indicated they may seek access to provide overlay services on the NPP in the future.
- 7.330. The ACCC considers AP+ will have some ability to foreclose third party access to the NPP, but this ability does not increase as a result of the amalgamation compared to NPPA's existing ability to foreclose access. Following the amalgamation there will remain significant regulatory constraints which limit AP+'s ability and incentive to deny access.
- 7.331. There may be an increased incentive for AP+ to deny access to the NPP with respect to new person-to-person overlay service providers, particularly those that would compete with the Osko 1 service (or subsequent iterations of BPAY overlay services). However, the ACCC considers a substantial lessening of competition from this change in incentive is unlikely to arise because entry of an alternative person-to-person overlay service is unlikely with or without the amalgamation.
- 7.332. The ACCC considers there is unlikely to be any change in incentives in relation to potential future overlay services with different use cases to Osko 1. AP+ is unlikely to have strong incentives to foreclose potential third party NPP access for services with different use cases to the use cases of Osko 1 (for example, services that would allow for the provision of online retail payments or business to person/Government to person payments). This is because AP+ will be incentivised to provide access to allow third party overlay services which are likely to lead to an increase in transactions over NPPA infrastructure and unlikely to lead to a decrease in transactions over Osko 1.

Access to NPP

- 7.333. Different types of entities can access the NPP in different ways depending on their business model and objectives:
- Direct participants are ADIs that connect to the NPP directly using their own NPP payment gateway, and clear and settle payments through the NPP. Direct participants can also offer indirect connectivity to the NPP for other entities.
 - Indirect participants connect to the NPP using a direct participant's NPP payment gateway, but otherwise have the same capabilities as direct participants.
 - Identified institutions connect to the NPP indirectly via a direct participant's NPP payment gateway. Identified institutions are able to offer their customers NPP payment services, with the payments cleared and settled on behalf of the identified institution by the sponsoring direct participant.
 - Connected institutions will connect to the NPP using their own payment gateway and are able to send payment initiation and other non-value messages through the NPP.
- 7.334. The eligibility criteria for each of these categories is summarised in Table 3 below.

Table 3: NPP Access Eligibility Criteria⁴⁷⁸

	Direct Participant	Indirect Participant	Identified Institution	Connected Institution
Shareholder of NPPA	✓	✓	✗	✗
Licensed by APRA as an ADI (or RADi)	✓	✓	✗	✗
Hold an ESA at the Reserve Bank	✓	✓	✗	✗
Connect via own payment gateway	✓	✗	✗	✓
Connect via third-party payment gateway	✗	✓	✓	✗

Source: NPPA

7.335. In addition to the avenues for participation/access to the NPP identified in Table 3 above, NPPA also allows access to the NPP infrastructure through the use of an overlay service. ‘Overlay services’ are commercial payment services that leverage the underlying NPP infrastructure and functionality. They may be simple rule books that set standards for how participants handle certain payments (for example, speed of posting, what data travels with the payment and what the end-user customer experience is), or they may be more complex payment solutions that involve new message types and interactions with external entities or databases.⁴⁷⁹ The only overlay service that has been launched to date from the platform is Osko 1 by BPAY, which is a basic person-to-person credit transfer that provides more requirements around the underlying SCT service.

7.336. Osko 1 utilises the NPP infrastructure to provide person-to-person payments with an additional set of agreed rules between institutions about how NPP transfers will be processed. For example, about how quickly a recipient account must be credited after a transfer is made. Approximately 77% of transactions processed by NPPA are Osko 1 transactions.⁴⁸⁰

7.337. Under the amalgamation, the ACCC considers that AP+ will have incentives to maximise transaction volumes through the NPP, and to maximise the number of transactions using the Osko 1 overlay service. This could lead to increased incentives to deny access to overlay services by third party payment services providers that compete with Osko 1.⁴⁸¹

7.338. This increased incentive relates to the person-to-person services that are currently provided over the NPP. Osko 1 (in its current form) only relates to the person-to-person services that are provided over the NPP, and not to more complex payment solutions or to alternative use cases such as person-to-business payments.

7.339. The ACCC considers that it is necessary to consider both the potential access issues as they relate to:

- Participants, Connected Institutions and Identified Institutions
- Overlay services.

7.340. The ACCC considers that the amalgamation has the potential to change incentives to foreclose that relate to overlay services. It is not clear that the incentives for AP+ are significantly different to NPPA’s incentives without the amalgamation in relation to

⁴⁷⁸ [RBA, NPP Functionality and Access Consultation: Conclusions Paper, June 2019.](#)

⁴⁷⁹ [RBA, NPP Functionality and Access Consultation: Conclusions Paper, June 2019](#), p 9.

⁴⁸⁰ [RBA, Payments Data, C6.1: Direct Entry and NPP – Original Series, May 2021.](#)

⁴⁸¹ If the gains of foreclosure outweigh the losses it would incur from not supplying infrastructure services to those third parties.

allowing Participants, Connected Institutions and Identified Institutions to connect to the NPP.

7.341. The ACCC considers the following factors as relevant to its assessment of whether the amalgamation would increase AP+'s ability and incentive to engage in vertical foreclosure of third parties' access to the NPP:

- the extent to which the governance structure and decision-making in respect of access to the NPP changes as a result of the amalgamation
- the threat of regulatory intervention by the RBA
- whether there are likely to be sufficient gains to foreclosing access that outweigh the losses AP+ would incur from not supplying infrastructure access to third parties, and
- the existence of suitable alternative infrastructure which could draw significant transaction volumes away from the NPP infrastructure if AP+ attempted to foreclose access.

ICA submissions and expert views

Ability to foreclose

7.342. ICA submits that post-amalgamation, the NPP will continue to operate substantially in accordance with its current rules – including rules that allow for open and non-discriminatory access.⁴⁸² Dr Edwards notes that the open and non-discriminatory access is an important feature of the NPP, and the amalgamation will not change this.⁴⁸³ ICA notes that:

- the NPPA Regulations set out the objective and transparent eligibility criteria and processes for the admission of NPP Participants and Connected Institutions. Regulation 4.7 of the NPP Regulations provides that any applicant who meets the criteria shall be admitted as an NPP Participant or Connected Institution. The ACCC notes Regulations 4.8 to 4.10 set out the eligibility criteria and processes for the acceptance of new Overlay Service Providers. Regulation 4.9(b) states that Overlay Service Provider applications received by NPPA will be considered by the Board within 5 Business Days of receipt. The Board shall accept an Overlay Service Provider application which it reasonably determines satisfies the criteria in Regulation 4.8 and which complies with the conditions specified in the NPP Regulations.
- NPP Regulation 4.7 may only be amended in accordance with the framework for changes to the NPP Regulations and NPP Procedures. The procedure requires a two-thirds majority endorsement by the NPP Rules sub-committee – which is comprised of representatives of NPP Participants and representatives of Connected Institutions – and NPPA Board approval. The ACCC understands changes to the NPP Regulations more broadly also follow this procedure.⁴⁸⁴

⁴⁸² ICA, Application for merger authorisation, 18 March 2021, p 10.

⁴⁸³ Dr Geoff Edwards, Response to Oxera, 31 May 2021, p 11.

⁴⁸⁴ ICA, Non-confidential response to ACCC RFI 1, Governance, 18 June 2021, p 11.

- decisions about admission to the NPP will continue to be made in accordance with the NPP Regulations by the NPP Governance Committee (as a delegate of the NPPA Board), which is comprised of the CEO and the independent directors of NPPA.⁴⁸⁵
- 7.343. Dr Edwards considers that AP+'s ability to foreclose access to the NPP infrastructure is likely to be limited by its governance structure, as there will continue to be 13 directors, including 4 which will be independent.⁴⁸⁶
- 7.344. In response to Mastercard's concerns about AP+'s ability and incentive to discriminate against third party access seekers (discussed below at paragraphs [7.355]-[7.358] and [7.360]-[7.363]), ICA submits that NPPA currently provides direct access to not only NPP Participants, but also to any Connected Institution using payment gateway hardware,⁴⁸⁷ and that this is an option open to Mastercard and Visa.⁴⁸⁸
- 7.345. ICA submits that there is also the option for ADIs and non ADIs to connect indirectly to the NPP infrastructure via a commercial arrangement with an NPP Participant or a Connected Institution.⁴⁸⁹
- 7.346. In response to Mastercard's concerns regarding the incentives of Australian banks to support third party investment, ICA submits that major Australian financial institutions will have their ownership interests in AP+ diluted compared to their respective interests in eftpos, BPAY and NPPA in the counterfactual.⁴⁹⁰ It submits that the ability and incentives for major Australian financial institutions to preference AP+ over third parties will be reduced with the amalgamation.
- 7.347. ICA submits that should concerns about access arise, the RBA has the power to designate and establish an access regime in respect of the NPP.⁴⁹¹

Incentive to foreclose

- 7.348. Dr Edwards states that it is not likely that AP+ and NPPA would have the incentives to pursue a foreclosure strategy in in-store retail payment, online retail payment or business-to-person/government-to-person services⁴⁹² for the following reasons:
- In relation to store retail payments, EPAL's share of in-store retail payments⁴⁹³ is unlikely to be high enough to result in sufficient downstream gains to outweigh the losses to the NPP from foreclosing access to a third party competitor in in-store payments.
 - In relation to online store payments, Mastercard and Visa have a dominant market share which is expected to continue into the future. Any foreclosure strategy by AP+ would likely benefit Mastercard and Visa instead of AP+.⁴⁹⁴

⁴⁸⁵ ICA, Non- confidential response to ACCC RFI 1, Governance, 18 June 2021, q.7 a.

⁴⁸⁶ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, p 79.

⁴⁸⁷ Payment gateways are parts of the NPP infrastructure that provide decentralised switching and route messages across the NPP. They are located within participating ADIs' data centres. RBA, [Bulletin, The New Payments Platform and Fast Settlement Service, September 2018](#).

⁴⁸⁸ Dr Geoff Edwards, Response to Oxera, 31 May 2021, p 11.

⁴⁸⁹ Ibid.

⁴⁹⁰ Ibid.

⁴⁹¹ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, p 80.

⁴⁹² Dr Geoff Edwards, Response to Oxera, 31 May 2021, p 12.

⁴⁹³ Ibid.

⁴⁹⁴ Dr Geoff Edwards, Response to Oxera, 31 May 2021, p 13.

- For business-to-person/government-to-person disbursements, the volumes of the Direct Entry system are expected to largely migrate to the NPP in the future. EPAL and BPAY are unlikely to realise a material share in this segment of payments. The incremental downstream gains to AP+ arising from the amalgamation are likely to be limited.⁴⁹⁵
- 7.349. ICA submits that AP+ would see an increased market share as a result of the amalgamation in bill payments and person-to-person payments where BPAY operates both the BPAY Payments service and Osko 1.
- 7.350. However, the major banks currently own 100% of BPAY. ICA submits it is unlikely without the amalgamation that there would be appetite to support a third party service that would add little in functionality to that provided by BPAY and Osko 1.⁴⁹⁶
- 7.351. ICA submits that there is currently little interest from third parties in developing overlay services over the NPP. It submits there are significant challenges in achieving coordination for sufficient ubiquitous development of an overlay service by financial institutions.⁴⁹⁷
- 7.352. It submits that if third party services over the NPP are unlikely to be developed in the counterfactual, there would be no additional harm that would arise under the amalgamation.
- 7.353. Mastercard raised concerns regarding the incentives of AP+ that NPPA could exploit information provided by rivals to direct its own downstream investments. In response, Dr Edwards states that it is important there are information protocols in place that preclude transferring information for investment decisions.
- 7.354. Dr Edwards states that information provided by third parties to each of the schemes is currently subject to strict confidentiality obligations, and these obligations will continue under AP+.⁴⁹⁸

Submissions from interested parties

Ability to foreclose

- 7.355. Mastercard submits that if the ACCC was to authorise the amalgamation, there should be operational and functional separation of the NPP from the rest of AP+. It submits measures should be undertaken to open direct access to the NPP to other payment service providers on non-discriminatory terms. It submits the NPPA should be prevented from changing the NPP Regulations in a manner that could restrict access to third parties.
- 7.356. Mastercard submits that direct access to the NPP is only granted to direct participants. Direct participants are required to be licensed as an ADI, to hold an Exchange Settlement Account at the RBA, and to become a shareholder in NPPA.⁴⁹⁹
- 7.357. Mastercard submits that most new third party developments that would use the NPP infrastructure would need to obtain endorsements from a critical mass of the Australian banks. Given these banks are the ultimate owners of AP+, Mastercard submits they

⁴⁹⁵ Ibid.

⁴⁹⁶ Dr Geoff Edwards, Response to Oxera, 31 May 2021, p 13.

⁴⁹⁷ Dr Geoff Edwards, Response to Oxera, 31 May 2021, p 12.

⁴⁹⁸ Ibid.

⁴⁹⁹ Oxera submission on behalf of Mastercard, Initial economic assessment of the amalgamation, 22 April 2021, p 13.

would be able to restrict third party developments that compete with AP+ investments.⁵⁰⁰

- 7.358. Mastercard submits that Mastercard and Visa could potentially use card infrastructure to process payments such as PayPal or BNPL schemes. However third parties would require access to the NPP infrastructure for bill payment and person-to-person services.⁵⁰¹
- 7.359. The RBA submits that, regardless of the decision by the ACCC on the amalgamation, the RBA would see benefits in periodic reviews of NPP access and functionality similar to the review that was conducted jointly by the RBA and the ACCC in 2018-19.⁵⁰² Following this review, the RBA published a Conclusions Paper regarding NPP Functionality and Access.⁵⁰³ This is discussed further below in paragraphs [7.375]-[7.376] and [7.380].

Incentive to foreclose

7.360. Parties including Mastercard, Visa and SuperChoice raise concerns that combining NPPA's infrastructure with BPAY and EPAL could foreclose competition and reduce innovation in competing payments services that rely on the NPP infrastructure.

7.361. [REDACTED]

7.362. Mastercard in particular raises concerns about the increased incentive to foreclose concerning the development of overlay services that compete with Osko 1.

7.363. Mastercard and Visa raise concerns that the merged entity could gain knowledge on their competitors' commercial strategies and use this information to direct downstream investments. While these concerns existed pre-merger, Mastercard believes allowing the transaction would make them even more prominent and relevant, increasing the number of situations in which AP+ could use this information to its advantage.⁵⁰⁵

7.364. SuperChoice submits that NPPA should remain a wholesale provider that deals with overlay payment service providers in a non-discriminatory fashion.⁵⁰⁶

7.365. Dr Rob Nicholls of UNSW Business School submits that ICA should offer an access regime to the NPP infrastructure as part of an undertaking. Without this Dr Nicholls submits AP+ would not have the appropriate incentives to encourage innovation and competition in payment systems.⁵⁰⁷ He submits the regime should protect non-discriminatory access to overlay services and to services requiring gateway interconnection.

⁵⁰⁰ Ibid.

⁵⁰¹ Oxera submission on behalf of Mastercard, Initial economic assessment of the amalgamation, 22 April 2021, p 12.

⁵⁰² RBA, Submission to ACCC, 16 April 2021, p 3.

⁵⁰³ [RBA, NPP Functionality and Access Consultation: Conclusions Paper, June 2019.](#)

⁵⁰⁴ [REDACTED]

⁵⁰⁵ Oxera submission on behalf of Mastercard, Initial economic assessment of the amalgamation, 22 April 2021, p 14.

⁵⁰⁶ SuperChoice, Submission to ACCC, 16 April 2021, p 5.

⁵⁰⁷ Dr Rob Nicholls UNSW Business School, Submission re: Proposed, p 1.

ACCC views

Ability to foreclose

7.366. The ACCC considers that AP+ will have the ability to vertically foreclose rivals' access to the NPP infrastructure in certain ways but that this ability does not increase as a result of the amalgamation (compared to NPPA's ability to foreclose access without the amalgamation). The ACCC considers that there are sufficient mitigating factors that reduce the prospect of AP+ foreclosing access to the NPP infrastructure following the amalgamation.

Extent to which Rules and decisions relating to NPP access change post-amalgamation

7.367. The ACCC notes ICA's submission that the rules around access to the NPP will remain fundamentally unchanged following the amalgamation and that decisions relating to access applications and changes to the NPP Rules and Regulations will continue to be made in the same way as they currently are made.

7.368. In respect of the relevant shareholdings and governance of NPPA post-amalgamation, the ACCC notes the following:

- The major banks currently hold 76% of shareholder votes in NPPA, and 100% of the shares in BPAY.⁵⁰⁸
- As discussed in paragraph [6.18] above, the ACCC does not consider that the change in the proportion of shares collectively held by the major banks in AP+ will translate into them exercising greater influence or control over the payment schemes via AP+ than they would otherwise exercise over the individual payment schemes in the counterfactual.
- ICA states that it is intended that the Board of each OpCo will be comprised of either the same directors as the Board of AP+, or a subset of those directors in the same proportion of independent directors to representative directors. The NPPA OpCo directors will be taken to be satisfying their duties to act in the best interests of the NPPA OpCo if they are acting in good faith and in the best interests of AP+.

7.369. Following the amalgamation, if a third party sought to access the NPP infrastructure, the decision about access will be made in accordance with the NPP Regulations by the NPP Governance Committee, which is comprised of the CEO and the independent directors of NPPA.⁵⁰⁹

7.370. Access decisions by the NPP Governance Committee will be made by a simple majority vote, and each of the 4 independent directors and CEO of the NPPA OpCo have one vote each.⁵¹⁰ The continued appointment of independent directors will help to limit the ability of AP+ to influence access decisions through the NPPA CEO.

⁵⁰⁸ ICA, Application for merger authorisation, 18 March 2021, paragraph [26.11].

⁵⁰⁹ An independent director is not currently, and has not within the last two years, been employed by, or acted in a material way, as: a professional adviser, consultant, supplier or customer to; nor had a substantial holding in, an existing shareholder of one of the 3 operating companies being consolidated (AP+); or, a Related Body Corporate of a Shareholder of AP+ within the meaning of the Corporations Act.

⁵¹⁰ ICA, Non-confidential response to ACCC RFI 1, Governance, 18 June 2021, Annexure G, *NPP Governance Committee Charter*.

- 7.371. However, the ACCC considers that the independent directors will still be obligated to act in the best interests of AP+. To the extent that foreclosing access to the NPP infrastructure for a rival Overlay Service Provider, Participant or Connected Institution would benefit AP+, the decision-making structure of the NPP Governance Committee provides the ability to make such decisions. However, this structure is unchanged as a result of the amalgamation.
- 7.372. The ACCC notes ICA's submission that the NPPA OpCo will have responsibility⁵¹¹ for operational matters including assessing access applications, and the types of matters for which AP+'s Board will be responsible will be confined to deciding the strategy for AP+, the investment roadmap and the appointment of AP+'s CEO.⁵¹² Where a decision to admit or deny access for a new overlay service that would impact on NPPA OpCo's future roadmap or AP+'s investment strategy, such a decision would likely be made by the AP+ Board. This decision-making structure represents a change resulting from the amalgamation and an avenue through which AP+ has the ability to deny access to third party access seekers.
- 7.373. The extent to which the amalgamation changes NPPA's or AP+'s *incentive* to make such a decision is discussed from paragraphs [7.393] to [7.406] below.
- 7.374. The ACCC notes that the eligibility requirements to obtain access to the NPP do not change as a result of the amalgamation, other than changes that relate to being a shareholder of NPPA.⁵¹³ Concerns that in order to become a Participant in the NPP an entity must be a licensed and regulated ADI arise with or without the amalgamation. Further these concerns can be considered by the RBA as part of its consultation on NPP access and functionality issues.
- 7.375. One of the recommendations from the RBA's 2019 Conclusions Paper regarding NPP Functionality and Access was to ensure that there is an independent review mechanism for access decisions for prospective Participants, Connected Institutions and Overlay Service Providers.
- 7.376. The RBA recommended that, where an applicant wishes to have an access decision reviewed, the review should be by a panel comprised of 3 independent Board members (possibly including the RBA-appointed director)⁵¹⁴ and 2 independent external payments experts. The panel should have the binding power to overturn the earlier denial of an application if the applicant is deemed by the panel to have met all of NPPA's published eligibility requirements.⁵¹⁵
- 7.377. NPPA submits it has implemented 10 of the RBA's recommendations (including in relation to its review of access decisions) and partially implemented 2 recommendations⁵¹⁶. NPPA submits it has fair and transparent processes in place to support new applications for access. It notes access decisions will be subject to review

⁵¹¹ Delegated to the NPP Governance Committee.

⁵¹² ICA, Non-confidential response to ACCC RFI 1, Governance, 18 June 2021, p 9.

⁵¹³ The operating rules of the NPP will be amended to remove the requirement that an 'NPP Participant' or 'Connected Institution' for the purposes of the NPP Regulations be a shareholder of NPPA.

⁵¹⁴ The RBA submits it will seek to reach agreement on suitable arrangements under which it would remain a full participant in the NPP but redeem its existing shares in NPPA and not become a shareholder in the proposed holding company that would hold shares in NPPA and the companies that operate BPAY and eftpos. (RBA, Submission to ACCC, 16 April 2021, p 3).

⁵¹⁵ [RBA, NPP Functionality and Access Consultation: Conclusions Paper, June 2019](#), Chapter 4.

⁵¹⁶ NPPA, Response to RFI 9 June 2021, pp 11-14. The 2 partially implemented recommendations relate to allowing non-ADI's the ability to become NPP Participants, and introducing greater gradation in the shareholding requirements for NPP Participants.

by the NPP Governance Committee.⁵¹⁷ If required, decisions made by the NPP Governance Committee may be further appealed by applicants to the full NPPA Board.⁵¹⁸

7.378. The ACCC considers that there is an ability through the NPP Governance Committee to foreclose access to the NPP, but that this ability exists without the amalgamation. The ACCC also considers that the NPPA's recent implementation of the RBA's recommendation to publicly report on access applications (including reasons for the decisions in cases where access was not supported) provides a useful layer of transparency and oversight for the RBA, and the ACCC.

Regulatory intervention – role of the RBA and ACCC

7.379. The RBA has the power to designate a payment service and establish an access regime under Part 3 of the *Payments Systems (Regulation) Act 1998* if it considers this to be in the public interest. In practice, the ACCC also considers the act of designation could prompt AP+ to provide undertakings or amend access rules to address concerns or issues around access to the NPP (such that an access regime is not imposed).

7.380. In 2018 the RBA (with ACCC involvement) commenced consultation on NPP functionality and access issues. It published its Conclusions Paper in June 2019.⁵¹⁹ The RBA will (with ACCC involvement) commence another review on NPP access and functionality following the ACCC's determination of the application for authorisation for the amalgamation.⁵²⁰

7.381. The ACCC considers the threat of intervention by the RBA is likely to constrain AP+'s ability (and incentive) to engage in a successful foreclosure strategy.

7.382. The ACCC notes that it authorised certain provisions of the NPP Regulations relating to eligibility and settlement (in perpetuity) and termination and suspension provisions (for 5 years) in 2017. The ACCC considered that the suspension and termination provisions, eligibility criteria and settlement obligations in the NPP Regulations contribute to the security, efficiency and integrity of the NPP system and are likely to result in a benefit to the public. The ACCC found that any public detriment, including anti-competitive detriment, from the relevant provisions in the NPP Regulations would likely be limited. For example because suspension or denial of direct access to the NPP does not preclude a financial institution from having low-value payments cleared and settled through the NPP. Third parties could enter into an agreement with existing NPP Participants for clearing and settlement.

7.383. The ACCC notes that there are currently 13 ADIs which are connected directly to the NPP infrastructure. These 13 Participants have relationships with a further 84 indirect participants or identified institutions (80 ADIs and 4 non-ADIs) which connect to the NPP indirectly via one of those 13 Participants.⁵²¹ The RBA's Conclusion Paper regarding NPP Functionality and Access acknowledges the large number of institutions which are connected to the NPP, and the use of the platform is continuing to grow.⁵²² The ACCC considers that this provides a degree of comfort that the rules around access eligibility are being administered appropriately to date, and have

⁵¹⁷ NPPA, Response to RFI 9 June 2021, pp 13-14.

⁵¹⁸ Ibid.

⁵¹⁹ [RBA, NPP Functionality and Access Consultation: Conclusions Paper, June 2019](#)

⁵²⁰ [RBA, Media Release, Payments System Board Update: May 2021 Meeting, 21 May 2021.](#)

⁵²¹ NPPA, Non-confidential Statement in support of application for authorisation, 16 March 2021, p 11.

⁵²² [RBA, NPP Functionality and Access Consultation: Conclusions Paper, June 2019](#), p 34.

allowed access to the NPP to a number of institutions. As noted above at paragraph [7.342], these rules are not intended to change under the amalgamation.

- 7.384. Authorisation granted in respect of the termination and suspension provisions of the NPP Regulations expires in 2022. If there was evidence and information indicating that a public detriment, including anti-competitive detriment, is arising from the relevant provisions of the NPP Regulations following the amalgamation, this would be relevant to the ACCC's consideration of any application for re-authorisation. The ACCC may review an authorisation at any time if there has been a material change in circumstances, and revoke authorisation if it considers the public benefits of the authorised conduct no longer outweigh any public detriments.

Access to confidential information

- 7.385. Mastercard and Visa raise concerns about the impact of the amalgamation on the handling of confidential information. However, the ACCC considers the amalgamation is not likely to increase the risk of inappropriate disclosure of confidential information to or from the amalgamating entities in a way that is likely to substantially lessen competition.
- 7.386. Visa raises concerns that customers of third parties (such as those of Visa and Mastercard) who are also customers or shareholders of AP+ (for example, the major banks) could provide the third parties' information to AP+. ⁵²³ Visa notes that many directors and shareholder participants of AP+ are also customers and suppliers of BPAY, EPAL and NPPA and customers of Visa and Mastercard. Visa suggests that information barriers should be put in place to ensure that commercially sensitive information (such as confidential material disclosed by Visa to an AP+ shareholder and customer) is not inappropriately disclosed to AP+. ⁵²⁴ Visa also raises concerns that information derived from AP+ could be used by shareholders of AP+ to make investment decisions that favour AP+ rather than third party products.
- 7.387. The ACCC considers that third parties such as Visa or Mastercard are in a position to impose appropriate conditions relating to the use of commercially sensitive information when disclosing such information to an entity that is a shareholder or customer of AP+. The ACCC expects that this is a risk that third parties would need to manage with or without the amalgamation, given the common shareholdings that exist (in particular in relation to the major banks) with either AP+, or with each of BPAY, EPAL and NPPA.
- 7.388. Mastercard and Visa also raise concerns that AP+ could gain an unfair commercial advantage by gaining knowledge of competitors' commercial strategies, or that confidential information could be transmitted to competitors through the AP+ Board. ⁵²⁵ Concerns have previously been raised with the RBA about NPPA's potential use of information provided by entities applying to become overlay service providers, given that there could be potential competitors on the NPPA Board. ⁵²⁶ Mastercard suggests that the amalgamation will increase the number of situations in which AP+ could use the information to its advantage.
- 7.389. The ACCC considers that the potential for information to flow from entities (such as Visa and Mastercard) to their competitors through BPAY, EPAL, NPPA or AP+ will

⁵²³ Visa, Submission to ACCC, 23 April 2021, pp 4-5; Visa, Submission to ACCC, 23 June 2021, pp 1-2; Visa, Submission to ACCC, 17 August 2021, p 2.

⁵²⁴ Visa, Submission to ACCC, 23 April 2021, pp 4-5.

⁵²⁵ Oxera submission on behalf of Mastercard, Initial economic assessment of the amalgamation, 22 April 2021, paragraph [2.39]; Visa, Submission to ACCC, 23 June 2021, pp 1-2.

⁵²⁶ In this regard, see: [RBA, NPP Functionality and Access Consultation: Conclusions Paper, June 2019](#), p 15.

exist in a similar way with or without the amalgamation given the common shareholdings in the 3 payment schemes.

- 7.390. The ACCC considers the current information protocols undertaken by NPPA are sufficient to protect the confidentiality of third party commercial information. In response to confidentiality concerns raised in the RBA's *NPP Functionality and Access Consultation: Conclusions Paper* and the RBA's recommendation in this regard, NPPA published its process for assessing applications to provide overlay services.⁵²⁷ This process requires that a confidentiality undertaking must be executed between the prospective overlay service provider and NPPA.⁵²⁸
- 7.391. In addition, the upcoming RBA review on NPP access and functionality will be well placed to address issues concerning information flows.
- 7.392. Further, each of the NPP, eftpos and BPAY scheme rules contain provisions that require information provided by third parties to be kept confidential and used only for specified purposes. This will continue under the amalgamation.⁵²⁹

Incentive to foreclose

- 7.393. The ACCC considers that AP+ may have an incentive to foreclose access to overlay service providers that compete closely with BPAY's existing Osko 1 overlay, or potential future iterations of Osko such as Osko 2 (pay with document) or Osko 3 (request to pay). The ACCC considers that AP+ will have limited incentive to foreclose access to any other services on the NPP infrastructure.
- 7.394. ICA submits that it is unlikely there will be increased incentives to pursue a foreclosure strategy in relation to retail store payments, online store payments and business-to-person/government-to-person disbursements.
- 7.395. ICA also submits that BPAY's Osko 1 Service is currently the only overlay service provider, and there has been little evidence of interest from third parties in developing other overlay services over the NPP.
- 7.396. The lack of interest in other overlays is likely due to third parties needing the support of major financial institutions in order to achieve sufficient ubiquity. The level of support is in turn influenced by the major banks' existing ownership in BPAY and the existing functionality of Osko 1.
- 7.397. The development of increased native functionality through NPPA's MPS has contributed to the implementation of BPAY's future overlay services Osko 2 being delayed until December 2021, and Osko 3 being suspended until after the launch of the MPS.⁵³⁰
- 7.398. The ACCC considers the amalgamation could increase the risk of NPPA giving preference to BPAY for future overlay services due to their common ownership. This is particularly true where BPAY is currently the only entity which has successfully implemented an overlay service on the NPP.
- 7.399. Post-amalgamation, the ACCC considers that AP+ would have increased incentives (compared to NPPA's incentives without the amalgamation) to use BPAY to deliver planned overlay services. This is because AP+ would obtain revenues from

⁵²⁷ [NPPA, *Overlay services: process for assessing potential Overlay Service Provider Applications*, 30 September 2019;](#)
[NPPA, *Becoming an Overlay Service Provider*, 8 October 2019.](#)

⁵²⁸ [NPPA, *Regulations for NEW PAYMENTS PLATFORM \(NPP\)*, commenced 1 July 2017](#), at 4.9(iii).

⁵²⁹ Dr Geoff Edwards, Response to the Oxera report, 31 May 2021, paragraph [52].

⁵³⁰ BPAY, Non-confidential Statement in support of application for authorisation, 16 March 2021, p 12.

participants using the BPAY overlay services (such as Osko), as well as the benefits of volumes and revenues over the NPP infrastructure. Without the amalgamation, NPPA would be less likely to be concerned as to whether increased volumes over its infrastructure would be driven by participants using a BPAY overlay service or an alternative overlay service.

- 7.400. The amalgamation would likely change the incentives of AP+ foreclosing access to overlay service providers that would compete with the existing Osko 1 service. This could act as a deterrence to potential future investments in NPP overlay services by third parties. However, the ACCC considers that it is unlikely that major financial institutions would invest in adopting a service that does not add significant additional value to BPAY's Osko 1, both under the amalgamation and the counterfactual.
- 7.401. In order to ensure the success of the NPP, AP+ has strong incentives to maximise the number of users and transactions undertaken over the NPP infrastructure. The ACCC considers that AP+ would have limited incentives to restrict the ability of Participants, Connected Institutions and Identified Institutions to connect to the NPP (as distinct from overlay service providers). These limited incentives are not likely to change under the amalgamation compared to NPPA's current incentives to maximise volumes over the NPP.
- 7.402. The one exception to this may be allowing access to direct competitors of AP+ to parts of the NPPA infrastructure – for example, Mastercard and Visa. Mastercard raised concerns that the amalgamation provides incentives to foreclose access to third parties.⁵³¹ However, the ACCC considers that clear criteria for qualifying as a Participant or Connected/Identified Institution will mitigate the risk of AP+ denying access and notes the other constraints identified with respect to AP+'s ability to foreclose access (in particular, the threat of RBA intervention).
- 7.403. In relation to use cases other than person-to-person transactions, the ACCC considers that the incentives for vertical foreclosure stemming from the amalgamation do not change significantly in the future with the amalgamation. It seems unlikely that AP+ would have significant incentives to foreclose a third party from access that would allow for the provision of online retail payments, given the competitive constraint provided by Mastercard and Visa. In relation to potential future use cases such as business-to-person/government-to-person payments, these volumes will largely transfer from the Direct Entry system either with or without the amalgamation. AP+ will retain an incentive to maximise volumes over the NPP in both scenarios, in particular given these alternative uses will not be duplicating the functionality of the current overlay services provided by Osko 1.
- 7.404. Another factor which is likely to affect AP+'s incentive to foreclose third party access to the NPP is the availability of alternative infrastructure over which third parties could supply payment services, instead of using the NPP infrastructure.
- 7.405. The ACCC notes Mastercard's submission stating that its own infrastructure is able to be used as an alternative to some of the services that the NPP infrastructure provides.⁵³²
- 7.406. However the ACCC considers that there is not currently a viable alternative infrastructure that offers an effective constraint on all of NPPA's services. In particular, access to the NPP infrastructure at the present time is essential for real-time bill or invoice providers and providers of real-time person-to-person services.

⁵³¹ See Mastercard, Submission to ACCC, 22 April 2021, paragraphs [9.9]-[9.15].

⁵³² Oxera submission on behalf of Mastercard, Initial economic assessment of the amalgamation, 22 April 2021, p 12.

Conclusion on competition analysis

- 7.407. The ACCC does not consider that any horizontal aggregation arising from the amalgamation will have or will be likely to have the effect of substantially lessening competition in any market.
- 7.408. The amalgamation will soften competition to some extent between BPAY, EPAL and NPPA in relation to several services. The amalgamation may also lessen competition between the 3 parties to innovate and develop new infrastructure and services, because development decisions will be made centrally by AP+.
- 7.409. However, ACCC considers that AP+ will continue to face significant competitive constraints, most significantly from Mastercard and Visa. Given the level of complementarity between the services provided by EPAL, NPPA and BPAY and the substantial constraints that would remain on the merged entity, the ACCC considers that any lessening of competition is not likely to be substantial.
- 7.410. The ACCC is satisfied that third party access to the NPP is unlikely to materially change as a result of the amalgamation, and that there are sufficient constraints to mitigate the risk of third parties being foreclosed access following the amalgamation.
- 7.411. As discussed in paragraphs 7.45-7.115 above, taking into account the Undertaking from AP+, the ACCC is satisfied that the amalgamation is unlikely to result in a substantial lessening of competition in relation to the routing of debit card payments.
- 7.412. Therefore, the ACCC considers that the 'competition' limb of the authorisation test in the Act is satisfied.

8. ACCC assessment of net public benefit limb

Public benefits

- 8.1. Having reached the view that the 'competition' limb of the authorisation test in the Act is satisfied, taking into account the Undertaking, the ACCC is not required to consider the second limb of the test, the 'net public benefit' limb. However, in light of the interest in and concerns raised by interested parties about the amalgamation, it is appropriate for the ACCC to provide its view on any public benefits likely to arise from the amalgamation.
- 8.2. The ACCC considers that the public benefits relevant to its assessment of the amalgamation fall within the following broad categories:
- more streamlined and coordinated decision-making process to invest in adoption of payments innovations sooner
 - increased likelihood of hybrid innovations
 - reducing the risk of stranded payments assets
 - increasing competition with Mastercard and Visa
 - cost synergies, reduced transaction costs for the 3 payments schemes and their participants, and potential to reduce compliance obligations
 - creating policy benefits by ensuring Australia has a strong domestic payments company
 - enhanced ownership interests and voting rights of smaller participants in AP+

- increased engagement with small businesses and other participants.
- 8.3. These public benefits, and the views of the ICA and interested parties, are discussed in the following sections.

More streamlined and coordinated decision-making process to invest in adoption of payments innovations sooner

- 8.4. The ACCC has considered whether the amalgamation results in better coordination among the major banks in deciding what new payment services or functionalities to adopt across each of eftpos, BPAY and the NPP and whether this is likely to result in more efficient investment in each of the 3 schemes. The ACCC has focused its assessment of how the major banks make decisions to invest in a new payment service because they are the key driver of whether an initiative is adopted on one of the 3 schemes and they are common shareholders or members across all 3 schemes.
- 8.5. Currently, BPAY, EPAL and NPPA independently propose payments initiatives that sometimes compete. They seek support from each of their shareholders / members (which include the major banks) to adopt these payment initiatives. In each bank there is limited ability to compare different payment initiatives across each of the 3 schemes because of confidentiality and competition concerns. This makes it difficult for each bank to consider what it should invest in, how it should prioritise implementing new payment initiatives and when to implement initiatives across the 3 schemes.
- 8.6. AP+ will be able to provide shareholders (including the major banks) with a single roadmap. This will include a sequenced plan to navigate AP+ shareholders' resource constraints and enable adoption of initiatives by shareholders. The single roadmap is likely to provide certainty on the path forward, and to simplify the consultation process between AP+, each of the OpCos and each shareholder. This simplified governance process is likely to reduce information asymmetries and lead to better coordination among shareholders (in particular the major banks) in what payment services they invest in across each of the schemes. It is also likely to enable the major banks to implement new payment services more quickly. The efficiencies arising from the single roadmap will primarily benefit the banks but timelier, more efficient investment in new or innovative services is likely to constitute a public benefit.

ICA submissions

- 8.7. ICA submits that the amalgamation will:
- be likely to result in reduced uncertainty which allows for more efficient deployment of capital, both sooner and with less risk of stranded assets⁵³³
 - enhance the speed to market of innovations by the 3 payments schemes, because AP+ will be able to consult, co-ordinate and direct investments, and remove information asymmetries and uncertainties that have slowed the speed at which innovations by the schemes have been brought to market.⁵³⁴
- 8.8. ICA explains that various coordination problems arise in the industry because:

⁵³³ ICA, Application for merger authorisation, 18 March 2021, Section 27.5.

⁵³⁴ ICA, Application for merger authorisation, 18 March 2021, Section 27.6.

- Currently, each of the 3 schemes seeks adoption⁵³⁵ of payments initiatives by their shareholders / members (including the major banks) in an uncoordinated manner. This prevents shareholders / members from comparing the different investment proposals in a timely or informed way. This makes it difficult for individual organisations to take a coordinated approach to their internal prioritisation and contribute to discussions prioritising the 3 schemes.⁵³⁶
- The lack of coordination between the 3 payment schemes (and the lack of a unified payments innovation roadmap) complicates the ability of financial institutions to invest in payment innovations, as each financial institution delays its decision until it is clear which proposal will be preferred by the other institutions.⁵³⁷
- In some cases, competition law would preclude an agreed industry-wide innovations roadmap.⁵³⁸
- The inefficiency in calls for investment in adoption and resource allocation by common participants across the 3 schemes leads to slower innovation, as capability development continues to be duplicated across the schemes with a cost multiplier effect on shareholders and members to integrate innovations. The risk of duplication or fragmentation results in key participants holding back investment because of a lack of certainty about outcomes and return.⁵³⁹
- Small to mid-sized participants lack the resources to engage with multiple schemes. Engaging with multiple entities is also resource intensive for larger participants.⁵⁴⁰

8.9. ICA submits that the amalgamation would address all of these challenges because it would provide an efficient and lawful forum for the payments schemes and their owners to agree an innovations roadmap, following consultation with other key stakeholders.⁵⁴¹

8.10. ICA submits that the amalgamation is not intended to, and cannot, overcome the funding and resource constraints faced by any investor in the payments sector. ICA submits that, rather, a single, unified innovations roadmap will create more certainty for investors, including the major banks and payments aggregators, about the steps they need to take, and when they need to take them. ICA suggests this will allow them to better prioritise their limited funds and resources to bring payments innovations to market sooner than would otherwise be the case, to the benefit of consumers and merchants.⁵⁴²

⁵³⁵ 'Adoption' means the shareholders / members adopt a payment capability offered by the payment scheme, so that they can offer the capability to their customers. This involves shareholders / members making changes in their own IT systems, training their staff and marketing the payment capability to end-customers. It does not mean shareholders / members fund the scheme to develop the payment capability.

⁵³⁶ ICA, response to ACCC Statement of Preliminary Views, 18 June 2021, p 2.

⁵³⁷ Ibid.

⁵³⁸ Ibid.

⁵³⁹ ICA, Application for merger authorisation, 18 March 2021, Section 10.2(b).

⁵⁴⁰ ICA, Application for merger authorisation, 18 March 2021, Section 10.2(c).

⁵⁴¹ ICA, response to ACCC Statement of Preliminary Views, 18 June 2021, p 2.

⁵⁴² ICA, response to ACCC Statement of Preliminary Views, 18 June 2021, p 3.

Expert views

- 8.11. Mr Blockley considers that a coordinated investment program will improve efficiency (both in the allocation of IT resources and funding, and in the operations of the payments schemes) and speed to market for new innovations.⁵⁴³
- 8.12. Dr Edwards states that when multiple new payments services (that require network effects to be successful) seek adoption by financial institutions, they often compete for the financial institutions' scarce resources (including in situations where the payments services are not substitutable and do not compete in any market). Dr Edwards considers that this gives rise to the coordination problems between financial institutions that have differences in investment priorities. That is, it results in 'confusion',⁵⁴⁴ 'splintering'⁵⁴⁵ and the financial institutions adopting 'wait and see' strategies.⁵⁴⁶
- 8.13. Dr Edwards states that the amalgamation is likely to overcome the financial institutions' current coordination problems by removing conflict and competition between the 3 schemes for their innovations to be adopted by the financial institutions.⁵⁴⁷ Rather than uncoordinated decisions being made across financial institutions with differing priorities, AP+ will be able to provide financial institutions with a single roadmap, with a sequenced plan to navigate their resource constraints and enable adoption of initiatives by all financial institutions.⁵⁴⁸ This will lead to:
- enhanced speed to market of domestic payment initiatives that are tailored to local demands
 - more successful roll out of these initiatives by financial institutions, better solutions for industry problems (by providing an appropriate forum to consider alternative solutions and pooling of resources)
 - fewer instances of stranded assets.
- 8.14. Dr Edwards states that the 3 schemes have largely complementary initiatives, and competition between them is and will remain limited.⁵⁴⁹ The greater coordination in relation to prioritisation of initiatives of the 3 entities will address a market failure, rather than representing a loss of competition in any relevant payment service market. This includes initiatives that will not compete with each other in any relevant payment service market.⁵⁵⁰

The major banks' submissions

- 8.15. The major banks provided statements that broadly support the claimed public benefit by ICA. That is, the amalgamation will remove silos, enable strategic coordination, assessment of options and sequencing of roadmaps to avoid duplication of

⁵⁴³ Lance Blockley, Supplementary Report to Expert industry opinion, 18 June 2021, paragraph [504].

⁵⁴⁴ Dr Edwards explains that financial institutions would prefer to coordinate with each other, but due to uncertainty over what others are doing, they choose incompatible options (see Dr Geoff Edwards, Expert economic opinion, 2 April 2021, section 2.1).

⁵⁴⁵ Dr Edwards explains that financial institutions have certainty of what others plan to do, however the payments services are differentiated (including where the payments services are not substitutable and do not compete in any market), and financial institutions prioritise the service differently (e.g. due to scarce resources) (see Dr Geoff Edwards, Expert economic opinion, 2 April 2021, section 2.1).

⁵⁴⁶ Dr Edwards explains that financial institutions are uncertain whether a new payment service will be widely adopted by others, so they 'wait and see' until a sufficient number of other financial institutions adopt the service (see Dr Geoff Edwards, Expert economic opinion, 2 April 2021, section 2.1).

⁵⁴⁷ He provides 2 examples of these conflicts: real-time direct debits, and BPYA's Osko Service 1 and NPPA's SCT service.

⁵⁴⁸ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [296].

⁵⁴⁹ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [299].

⁵⁵⁰ Dr Geoff Edwards, Response to the Oxera Report, 31 May 2021, paragraph [56].

investments targeting the same use cases, and enable pooling of resources to drive innovation and create scale.

8.16. In particular, the major banks express concerns around the increasing overlapping use cases in the payments initiatives proposed by the 3 schemes and the uncoordinated nature in which they are being developed, which they consider creates several risks. In summary, those risks are:

- inefficient use of scarce resources by the schemes to target the same or similar use cases
- increasing burden on industry stakeholders to support the schemes and inefficient use of their scarce resources
- duplicating services with limited differentiation which confuse consumers, slowing the pace of innovation and reducing the potential for network effects
- inability for the schemes to build the scale necessary to compete with Mastercard and Visa.⁵⁵¹

8.17. In response to the ACCC's Statement of Preliminary Views, the major banks provided further submissions.⁵⁵² The key points are:

- ANZ states that the single roadmap will mean more clarity on the path forward and the expected funding and resourcing requirements, as opposed to multiple, fragmented investment proposals at different points in time from different schemes. It will simplify the consultation process, and investment proposals will be presented to ANZ with awareness of broader engagements between AP+, the OpCos and ANZ.⁵⁵³
- CBA states that AP+ will be a single interface through which stakeholders will provide feedback on proposals. This will reduce the need for CBA to dedicate time and resources to engage with the OpCos, and allow new investment initiatives to be brought to market more quickly.
- CBA notes that while there are other factors that determine when a bank will be in a position to make a solution available to customers (for example, different investment cycles and funding priorities), the amalgamation will remove one of the key factors causing delay – the inefficiencies created by separate governance structures.⁵⁵⁴
- NAB submits that the current fragmentation of shareholders' interests in the 3 schemes leads to slower and less efficient decision-making and investment rollouts. The amalgamation will combine the shareholders' interests into one company, one management team and one Board, which will result in greater efficiency of decision-making, align investment roadmaps, increase AP+'s ability to bring new payments services to market, and improve timeframes for implementation.

⁵⁵¹ See for instance, ANZ statement, paragraphs [37], [58], [66], [79] and [80]; CBA, Non-confidential Statement in support of application for authorisation, paragraphs [11-14]; NAB, Non-confidential Statement in support of application for authorisation, paragraphs [37], [45] and [62]; NAB statement, paragraph [62]; WBC Non-confidential Statement in support of application for authorisation, paragraphs [23], [34] and [47].

⁵⁵² ICA, response to ACCC Statement of Preliminary Views, 18 June 2021, Annexures A-D.

⁵⁵³ [REDACTED]

⁵⁵⁴ [REDACTED]

- NAB also submits that the amalgamation will lead to investment being undertaken at a greater pace and scale, compared to the counterfactual of each of the schemes operating in a subscale way.

8.18. In its statement, WBC also suggests that amalgamating the governance of the 3 schemes would prevent schemes needing to mandate their own service (such as the NPPA Board's mandate in respect of the MPS, and enable AP+ to make better and more sustainable decisions on the investment roadmap.⁵⁵⁵

Other submissions

8.19. The RBA has not taken a position regarding the merits of the amalgamation. Nonetheless, the RBA expects that a consolidated entity would be better able to deal with coordination issues and the challenges the 3 schemes currently face in getting industry participants to take decisions to support new products or build new infrastructure.⁵⁵⁶

8.20. Cuscal, KeyOne and Customer Owned Banking Association support the claim that the amalgamation will overcome challenges to the banks' coordination problem. Australian Finance Industry Association provided a broad statement that the amalgamation will drive competition and innovation in Australia's financial services industry.

8.21. Mastercard submits that ICA's coordination argument implies that information will be shared within AP+ to ensure the 3 entities are not bringing forward competing innovations, and therefore the claimed benefits would appear to only arise due to a lessening of future competition between the 3 schemes. Mastercard submits the amalgamation will remove competitive tension between the 3 schemes, which will reduce rather than enhance competition and innovation.⁵⁵⁷

8.22. Benchmark Analytics submits that the amalgamation will not solve the banks' investment coordination problem. It submits that a body such as the Australian Payments Council (or the RBA's Payments Systems Board) could facilitate investment coordination.⁵⁵⁸ In response, the Australian Payments Council submits that it is not set up to make any decisions on investment, due to the range of organisations it represents and the competitive nature of these organisations.⁵⁵⁹

ACCC view

8.23. The ACCC considers that if the amalgamation proceeds, a single overarching body (AP+) is likely to enable better information sharing across the 3 schemes and their shareholders or members than is currently possible, due to the removal of commercial and confidentiality obligations. This will make it easier for AP+ and its shareholders – particularly the major banks, who are common shareholders in all 3 schemes – to compare and assess initiatives across the schemes, and consider which initiatives would be most likely to succeed and should be progressed.

8.24. AP+ will be able to remove overlapping initiatives and unify the roadmaps, and plan the sequencing and timeframe for implementation of payments initiatives for AP+ shareholders' consideration. The more streamlined assessment process and removal

⁵⁵⁵ WBC, Statement in support of authorisation, 16 March 2021, paragraphs [26] and [30-31].

⁵⁵⁶ RBA, Submission to the ACCC, 9 July 2021, pp 1-2.

⁵⁵⁷ Mastercard, Oxera report, 18 June 2021, paragraphs [2.11] and [2.12].

⁵⁵⁸ Benchmark Analytics, Submission to the ACCC, 14 May 2021.

⁵⁵⁹ The APC comprises a diverse set of participants, with representation from majors banks, other domestic and international financial institutions, the RBA, retailers, national and international payment schemes, technology companies and a telecommunications provider.

of overlapping initiatives will provide greater clarity for AP+ shareholders. It will also increase the likelihood that they will be more easily able to reach an agreement on the single unified roadmap. This contrasts with the status quo, where there is limited ability for shareholders to compare initiatives across the 3 schemes, and there are more available options for shareholders to consider. The existence of overlapping initiatives makes it more likely that shareholders would choose different options rather than the same option.

8.25. The ACCC considers there is a range of other factors impacting on financial institutions' willingness to support particular payment initiatives. These include:

- the commercial strategy for each financial institution
- the investment cycles and availability of funding
- consideration of other competing proposals (such as from Mastercard and Visa)
- other priorities such as technical development of the banks' own service offerings.

8.26. These factors will continue to pose challenges to investment coordination between financial institutions, including on the timing of any investment to adopt payments initiatives. Each AP+ shareholder is likely to continue to assess the merits of payments initiatives individually and in accordance with its own priorities, even if there is a unified roadmap for AP+. Nonetheless, the ACCC considers the efficiencies outlined in paragraphs [8.23]-[8.24] above will lead to a more certain environment in which financial institutions could better coordinate their adoption of initiatives and make a decision more quickly. This is primarily due to removal of overlapping initiatives, removal of duplicated spending, and better sequencing of initiatives. The extent that this coordination and alignment results in a reduced risk of stranded assets is discussed in paragraph [8.41] below.

Increased likelihood of hybrid innovations

8.27. The ACCC considers that the amalgamation will better enable the 3 schemes to collaborate on potential hybrid innovations and that this constitutes a likely public benefit. This is discussed in the following sections.

ICA submissions and expert views

8.28. ICA submits the amalgamation will lead to innovations that:

- have greater functionality and are delivered faster, at a lower cost and with less risk of being abandoned
- will be differentiated from Mastercard and Visa's schemes (for example, innovations will be 'multi-rail' across both account-to-account and cards infrastructure)
- will benefit from the combined data and technical expertise of the 3 payments schemes.

8.29. ICA indicates that authorisation is sought in order to have a legal framework to plan for medium to long-term innovation projects across the 3 entities (rather than one-off collaborative projects). Mr Blockley has provided a number of ideas regarding hybrid innovation products, but these have not been considered by the 3 schemes and their participants. Dr Edwards states that it would be difficult for anyone to identify what

hybrid innovations will develop in the future following the amalgamation (because collaboration is not occurring at the moment). He considers that this is not a reason to deny the public benefit claim.⁵⁶⁰

- 8.30. Dr Edwards states that the relevant question is not whether collaboration and hybrid services would or would not be achieved in the counterfactual, but rather whether collaboration would occur and hybrid products would be developed *more often or sooner* with the amalgamation (emphasis original).⁵⁶¹ He submits that there is likely to be additional collaboration and hybrid products compared to the counterfactual, because: (1) information barriers between the 3 schemes will be lowered, due to combining the research and development and marketing divisions of the 3 schemes; and (2) amalgamation will remove the contractual 'hold-up' problem,⁵⁶² and is likely to open or speed up paths to the development of hybrid products. Similarly, Mr Blockley states the amalgamation will remove barriers to close cooperation between the 3 domestic payment schemes and improve their competitive position in relation to the international players.⁵⁶³
- 8.31. CBA submits that consolidation will enable increased innovations from the OpCos to occur in several ways, including:
- combining each entity's limited payments expertise to encourage innovation, making use of scarce resources (and avoiding duplication)
 - reinvestment of capital in innovation by AP+
 - more efficient and effective engagement from stakeholders, and
 - securing broader stakeholder support for initiatives.⁵⁶⁴

Other submissions

- 8.32. Mastercard submits that this claimed benefit would not necessarily arise as a result of consolidation, because collaboration is possible in the absence of consolidation. Australasian Convenience and Petroleum Marketers Association and the Australian Association of Convenience Stores consider that the Australian payments industry is capable of introducing innovation without the amalgamation.⁵⁶⁵
- 8.33. In response, ICA submits that the type of collaboration that is required to develop and execute a pipeline of payments innovations would not be possible without the amalgamation, due to restrictions imposed by the law and for the other reasons outlined in the Application. ICA also submits that previous attempts at coordination and collaboration through AusPayNet (for example, a QR code standard), have been unsuccessful.

ACCC view

- 8.34. The ACCC considers that collaborative innovation among competing payments schemes could be achieved without the amalgamation. For instance:

⁵⁶⁰ Dr Geoff Edwards, Response to ACCC Statement of Preliminary Views, 18 June 2021, paragraph [26].

⁵⁶¹ Dr Geoff Edwards, Response to ACCC Statement of Preliminary Views, 18 June 2021, paragraph [25]; see also Dr Geoff Edwards, Expert economic opinion, 2 April 2021, section 10.2.

⁵⁶² Dr Geoff Edward explains that a hold-up problem arises due to one or both parties making investment in specialised assets, which subsequently exposes them to the risk of 'hold up' by their partners (see Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [305]).

⁵⁶³ Lance Blockley, Supplementary Report to Expert industry opinion, 18 June 2021, p 13.

⁵⁶⁴ CBA, Non-confidential statement in support of authorisation, 17 March 2021, paragraph [113].

⁵⁶⁵ They point to the examples of the growth in new entrants in the BNPL sector in the past 5 years, and the Beem It app.

- NPPA and BPAY have been in a commercial partnership in relation to the development and launch of BPAY's Osko 1 services on the NPP Basic Infrastructure (from 2015 to present).
 - EPAL indicates that, whether or not the amalgamation proceeds, it will continue to engage with other parties including competitors in non-competing activities that are of mutual commercial interest.
- 8.35. Nonetheless, the ACCC accepts that the amalgamation will enable the 3 schemes to combine their respective technologies and expertise and work collaboratively to consider what hybrid products could be offered, with potentially better functionality, more than would be the case without the amalgamation. This is because the amalgamation will remove the incentive for them to compete with each other. The ACCC considers the potential increase in hybrid innovation constitutes a likely public benefit. However, the banks will continue to make their own decisions to implement payment initiatives based on their own internal priorities and other considerations. It is therefore uncertain what innovations or new functionality may arise on the 3 payment schemes as a result of the amalgamation.

Reducing the risk of stranded payments assets

- 8.36. The ACCC considers that the amalgamation is likely to reduce the risk of stranded assets and that this constitutes a likely public benefit.

ICA submissions and expert views

- 8.37. ICA submits that the amalgamation will reduce the risk of payments innovations becoming stranded due to an inability to reach network effect in a timely manner (for example, BPAY's Osko 3, which is partially impaired).
- 8.38. Dr Edwards states that the amalgamation will result in fewer instances of wasted investments and stranded assets. He considers this is because investment decisions will be informed by more certainty about which payment service initiatives are likely to be widely deployed and achieve network effects.⁵⁶⁶

Other submissions

- 8.39. BPAY submits that if the amalgamation proceeds, there will be increased potential for industry coordination to prioritise and implement payment services, which may reduce the risk to BPAY of stranded investments or false starts.⁵⁶⁷
- 8.40. Mastercard submits that this claimed benefit would only arise due to a lessening of competition between the 3 schemes.⁵⁶⁸

ACCC view

- 8.41. The ACCC considers that the amalgamation will enable AP+ to undertake better planning of initiatives, including what initiatives should be implemented by each of the OpCos under a single unified roadmap. This will remove overlap between the 3 schemes, and provide greater clarity and confidence for AP+ shareholders to agree to initiatives sooner, and with a greater degree of confidence that the other major banks will support that initiative, than what is possible without the amalgamation. Notwithstanding that the banks will continue to make their own decisions to implement

⁵⁶⁶ Dr Geoff Edwards, Response to ACCC Statement of Preliminary Views, 18 June 2021, paragraph [30].

⁵⁶⁷ BPAY, Non-confidential Statement in support of application for authorisation, 16 March 2021, paragraph [76(a)].

⁵⁶⁸ Mastercard, Submission to the ACCC, 22 April 2021, paragraphs [1.19] and [8.6].

payment initiatives based on their own internal priorities and other considerations, the ACCC considers the amalgamation will enable the banks to better coordinate their own adoption of payment initiatives, and this in turn may reduce the risk of stranded payment assets.

Increasing competition with Mastercard and Visa

- 8.42. Taking into account the Undertaking, the ACCC considers that the amalgamation is likely to result in an increased ability of eftpos (as part of AP+) or AP+ to better compete with Mastercard and Visa. However, the nature and magnitude of this benefit is uncertain. For example, it is unclear whether this increased ability to compete with Mastercard and Visa will necessarily result in import substitution as claimed by AP+.
- 8.43. The ACCC considers the amalgamation will result in an increased ability for AP+ to compete with international technology companies.

ICA submissions and expert views

8.44. ICA submits that:

- Mastercard and Visa have research and development budgets that significantly outweigh those of all the Australian banks combined.⁵⁶⁹ It is critical that there be no duplication or inefficiency in the build out of the 3 domestic systems and that the best people work on the right initiatives. The amalgamation will lead to pooling of resources, more effective coordination and targeted investment to allow differentiated and locally tailored innovations by the 3 payment schemes, including eftpos, to achieve the necessary ubiquity and network effects faster.
- The amalgamation will strengthen eftpos' ability to compete with Mastercard and Visa in the medium to long term through more efficient deployment of capital and access to broader stakeholder support from the wider AP+ membership base. This will improve the speed to market of eftpos innovations and enable development of hybrid innovations (combining eftpos with NPP's account-to-account functionality) to compete with Mastercard and Visa.⁵⁷⁰
- The amalgamation will ensure eftpos continues to be a 'pricing wedge' against Mastercard and Visa and other global players. Any share won by eftpos from Mastercard and Visa is a form of import substitution because it results in a domestic service replacing an international one. While it is challenging to quantify the volume of import substitution that will occur, there is no statutory or policy requirement for all (or any) benefits to be quantified when assessing an application for authorisation. The ACCC can, and should, acknowledge that import substitution will be increased in the factual compared to the counterfactual, even if it cannot be quantified, and to give weight to that likelihood.⁵⁷¹
- The amalgamation will defend against undesirable reliance on Mastercard and Visa for core payment services by providing a viable domestic alternative for end users.⁵⁷² It will also result in greater competition with international

⁵⁶⁹ ICA, Response to Statement of Preliminary Views, 18 June 2021, p 14.

⁵⁷⁰ ICA, Response to Statement of Preliminary Views, 18 June 2021, p 12.

⁵⁷¹ ICA, Response to Statement of Preliminary Views, 18 June 2021, p 15.

⁵⁷² ICA, Application for merger authorisation, 18 March 2021, Section 27.10.

technology companies, which are either introducing or expanding their payments offerings and will continue to exercise a powerful competitive constraint in Australia's payments landscape.

- 8.45. CBA considers that, as a strong domestic entity, AP+ will drive down processing costs by strengthening the bargaining position of Australian financial institutions relative to that of Mastercard, Visa and international technology company payments providers.⁵⁷³
- 8.46. WBC submits that the current uncertainty created by duplicative investment proposals leaves the domestic schemes open to disintermediation⁵⁷⁴ from alternative payment service providers (for example, Calibra and Libra),⁵⁷⁵ or unable to provide competitive tension with Mastercard and Visa.⁵⁷⁶ WBC considers that the amalgamation is necessary to address the current shortcomings in the governance structure of the 3 schemes, and will ensure the amalgamated entity is more competitive, resilient and responsive to the challenges posed by Mastercard and Visa.⁵⁷⁷
- 8.47. NAB submits that the current system with 3 schemes potentially means that subscale organisations are unable to develop at-scale innovations which will eventually become ubiquitous.⁵⁷⁸ It submits that the amalgamation will enable the domestic schemes to increase scale and better compete with Mastercard and Visa.
- 8.48. Dr Edwards states he sees no reason that the financial institutions' support for eftpos' infrastructure would decrease following the amalgamation. He considers it likely that, particularly in the medium and longer term, there will be more successful and timelier deployment of domestic payment initiatives and a more innovative domestic payments entity with a greater ability to develop hybrid and localised services that differentiate eftpos' services from those of Mastercard and Visa. He considers that this is likely to produce a domestic payments system that is more dynamic and capable of providing stronger competition to Mastercard and Visa and other global players.⁵⁷⁹
- 8.49. Mr Blockley states that if the amalgamation proceeds, the 3 domestic schemes would be combined into one entity so that, instead of competing with each other, they can together more efficiently and effectively compete with the international payments players.⁵⁸⁰ Mr Blockley considers that there is 'strength in numbers' and strength from the broad support of senior executives from across the Australian payments industry, which the eftpos debit scheme will gain by being part of AP+ in the amalgamation.⁵⁸¹

Other submissions

- 8.50. The RBA submits that it expects the amalgamation would be likely to result in a stronger eftpos that would be able to compete more effectively against the 2 international debit schemes. The RBA considers that, under the amalgamation:⁵⁸²

⁵⁷³ CBA, Non-confidential Statement in support of application for authorisation, 16 March 2021, paragraph [119].

⁵⁷⁴ 'Disintermediation' is a term used to describe the removal or bypassing of an intermediary, e.g. a bank.

⁵⁷⁵ Calibra was a Facebook digital wallet (now called Novi), and Libra was a cryptocurrency developed by Facebook (now called 'Diem').

⁵⁷⁶ WBC statement, 16 March 2021, paragraph [16].

⁵⁷⁷ WBC statement, 16 March 2021, paragraphs [42]-[44].

⁵⁷⁸ NAB statement, 18 March 2021, paragraph [52].

⁵⁷⁹ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraphs [312]-[313].

⁵⁸⁰ Lance Blockley, Supplementary Report to Expert industry opinion, 18 June 2021, paragraphs [4] and [28].

⁵⁸¹ Lance Blockley, Supplementary Report to Expert industry opinion, 18 June 2021, paragraphs [29].

⁵⁸² RBA, Submission to the ACCC, 9 July 2021, pp 1-2.

- the consolidated entity would be better able to deal with the coordination issues and the challenges that the 3 schemes currently face in getting industry participants to take decisions to support new products or build new infrastructure
- more senior bank representatives would be appointed to the AP+ Board, which would benefit eftpos in particular in terms of more strategic decision-making.

8.51. Mastercard submits that:

- The import substitution benefit required to be assessed by the ACCC under the section 90(9A) of the Act relates to goods, rather than services.⁵⁸³
- In any event, the stated benefit is unclear or unlikely to arise, because much of the technology used by the domestic payments schemes is still provided by international providers (for example, NPP's basic infrastructure, and eftpos' Hub, tokenisation solutions and disputes and chargeback tools).⁵⁸⁴
- It is unclear to what extent the amalgamation would allow eftpos to win market share from Mastercard and Visa that would not otherwise have been won absent the merger, given eftpos is already being assisted by the current regulation on DNDCs.

8.52. A number of interested parties (including retailer associations) have expressed concerns regarding the future of eftpos under AP+ and eftpos' ability to compete with Mastercard and Visa in the future if the amalgamation proceeds. For instance, they have raised concerns that the banks or AP+ may have an incentive or ability to undermine EPAL's capabilities (see paragraphs [7.61] and [7.96] above).

8.53. Facebook submits that the Application overstates the extent of Facebook's participation in the Australian payments industry. It also submits that the Application exaggerates the competitive threat of international technology companies more generally.⁵⁸⁵

ACCC view

8.54. The ACCC considers that the public benefits discussed in paragraphs [8.4]-[8.41] above are likely to result in an increased ability of eftpos (as part of AP+) or AP+ to compete against Mastercard and Visa. The ACCC has arrived at this view taking into account AP+'s commitment to procure that EPAL develop and make available EPAL Prescribed Services (including eftpos online services) under the terms of the Undertaking. The ACCC considers this constitutes a likely public benefit.

8.55. However, the magnitude and nature of this benefit are uncertain. For instance, it is unclear whether a greater ability to compete with Visa and Mastercard will necessarily translate to import substitution for example, eftpos or AP+ increasing market share relative to that of Mastercard and Visa. Further, future regulation or threat of regulation by the RBA will also have an impact on competition with Mastercard and Visa (see paragraph [7.102] above).

⁵⁸³ Mastercard, Response to ACCC's Statement of Preliminary Views, 18 June 2021, paragraph 6.7.

⁵⁸⁴ Mastercard, Response to ACCC's Statement of Preliminary Views, 18 June 2021, paragraph 6.8; Mastercard, Submission to the ACCC, 22 April 2021, p 18.

⁵⁸⁵ Facebook, Submission to the ACCC, 22 April 2021, pp 1-4.

8.56. The ACCC also considers the public benefits discussed above are likely to result in an increased ability for AP+ to compete with international technology companies. The ACCC considers this is likely to be relevant for future competition in payment services.

Cost synergies, reduced transaction costs, and potential to reduce compliance obligations

ICA submissions and expert views

8.57. ICA submits that:

- A unified roadmap will reduce time spent by the 3 domestic schemes and their participants assessing innovations which are unlikely to be successful.
- The amalgamation will give rise to cost synergies through a range of shared services and functions.⁵⁸⁶
- The amalgamation will provide an opportunity to reduce compliance burden for ICA, for example, standardising fraud reporting.

8.58. Mr Blockley states that the amalgamation would deliver lower administration costs for the 3 schemes, in turn lowering costs to users. He considers the amalgamation would also lower costs for stakeholder organisations, as they would no longer need to manage relationships with 3 separate domestic payment entities.⁵⁸⁷ He also submits that, in the longer term, some rationalisation of the underlying systems operated by the 3 schemes is likely, and the use of 'common infrastructure' would also deliver cost savings and operational efficiencies.⁵⁸⁸

8.59. Dr Edwards states that there is potential for the amalgamation to lead to reduction in duplication of spending on research and development, for example, [REDACTED] QR code initiatives.⁵⁸⁹

ACCC view

8.60. The ACCC considers it likely that some transaction cost savings will arise as a result of the amalgamation, as there will be a more streamlined decision-making process within AP+ for AP+ shareholders to assess payments initiatives.

8.61. The ACCC also considers some synergies from shared services are likely to arise. However, such benefits may be limited to the extent each scheme and its infrastructure will be maintained separately following the amalgamation. This is due to each scheme having different products and different operating rules. It is likely that any cost synergies would become significant if one or more schemes were to reduce their existing or future planned product offerings (for instance, to reduce overlapping products across the 3 schemes).

8.62. The ACCC understands that, following the amalgamation, each of the 3 payments schemes will continue to have separate compliance obligations as they have different operational and technical requirements. Accordingly, any reduction in compliance obligations arising from the amalgamation may be small.

⁵⁸⁶ Section 27.12 of the Application states that these include strategy functions (e.g. finance, legal, communications and 24/7 incident management), shared management of commercial relationships, shared scheme operations and administration, and shared technology (e.g. common API and middleware access to schemes).

⁵⁸⁷ Lance Blockley, Expert industry opinion, 18 March, paragraphs [507-508].

⁵⁸⁸ Lance Blockley, Expert industry opinion, 18 March 2021, paragraphs [507-509].

⁵⁸⁹ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, paragraph [3.18].

Creating policy benefits by ensuring Australia has a strong domestic payments company

ICA submissions and expert views

- 8.63. ICA submits that consolidation will provide a greater ability for the Australian Government to influence the merged domestic entity (in the event of a financial crisis) and ensure payments system resilience (reducing over-reliance on Mastercard and Visa).⁵⁹⁰
- 8.64. Dr Edwards states that the amalgamation is likely to enhance Australia's ability to navigate a potential future scenario in which international payment schemes experience downtimes due to cyber attacks or are barred by other governments from delivering services in Australia.⁵⁹¹

Other submissions

- 8.65. Mastercard considers this claimed benefit is unlikely to arise, noting that Australian payment technology used by the 3 schemes is and will remain reliant on international service providers (see paragraph [8.51] above).
- 8.66. The Australasian Convenience & Petroleum Marketers Association disagrees with this claimed public benefit and submits that the merger would afford only negligible protection.⁵⁹²

ACCC view

- 8.67. It is unclear how consolidating 3 entities into a single entity will improve domestic payments schemes' resilience. The ACCC notes that, with or without the amalgamation, the Australian Government and the RBA will have a role in managing broader policy objectives relating to sovereignty, security and resilience of Australia's domestic payments schemes.

Enhanced ownership interests and voting rights of smaller participants in AP+

ICA submissions

- 8.68. As explained in paragraphs [6.4]-[6.6] above, ICA submits that the amalgamation will result in a public benefit of enhanced ownership interests and voting rights of smaller participants in AP+. Under the proposed governance arrangements, ICA submits that AP+'s Board will consist of a mix of independent directors, ADI-nominated directors and non-ADI-nominated directors. Each director will have one vote in relation to Board decisions and each shareholder will have one vote of equal weight at shareholder meetings.

Other submissions

- 8.69. While the Australian Banking Association considers the proposed governance arrangements will give greater power to smaller participants (and enhance small business engagement), several small business representatives and retailer associations raise concerns about the proposed governance structure of AP+. For

⁵⁹⁰ ICA, Application for merger authorisation, 18 March 2021, Section 27.11.

⁵⁹¹ Dr Geoff Edwards, Expert economic opinion, 2 April 2021, p 52.

⁵⁹² Australasian Convenience and Petroleum Marketers Association, Submission to the ACCC, 16 April 2021, p 6.

example, Australasian Convenience and Petroleum Marketers Association envisages that decisions of the merged entity will be dominated by the large banks and retailers.

- 8.70. Some third parties expressed a view that enhanced ownership interests and voting rights of smaller participants in AP+ would be predominantly a private benefit rather than a public benefit arising from the amalgamation.

ACCC view

- 8.71. The current ownership and Board composition of each of the 3 payment schemes have limited representation from the smaller participants which includes both ADI and non-ADI members. AP+ has provided a commitment that 1 of the 4 independent directors to be appointed to the AP+ Board will have substantial small business experience. As such, taking into account the Undertaking, the ACCC considers that the amalgamation is likely to enhance the representation of smaller participants and results in a public benefit.

Increased engagement with small businesses and other participants

- 8.72. ICA submits that the amalgamation will create 2 advisory committees with whom AP+ will consult on a regular basis, resulting in increased engagement with small businesses and other participants. Several interested parties submit that such committees lack real influence and will not facilitate adequate engagement with small business, suggesting that small businesses should be offered more substantive involvement in decision-making.⁵⁹³
- 8.73. ICA advises that the committees will be established (with terms of reference and guiding objectives) to represent a range of views including those of small businesses: an end-user committee will represent the views of end-users of the 3 schemes; and a Payment Service Provider committee will represent the interests of the payment service providers and other organisations in the Australian payments ecosystem.
- 8.74. ICA advises that the committees will be chaired by independent directors of AP+ and will comprise of senior representatives of the OpCo management teams. The committees are expected to report publicly on their work and AP+ will be obliged to publicly respond to any reports or statements they make. The AP+ Constitution sets out several principles and requirements of the committees, including that the AP+ Board should take the committees' views into consideration to inform its decision-making on the roadmap and that the dialogue between the committees and the Board should be two-way.⁵⁹⁴
- 8.75. Submissions from Visa, and several small business and retailer representatives generally consider the proposed AP+ governance arrangements would not enable small businesses to provide meaningful input into AP+ decisions.⁵⁹⁵

ACCC view

- 8.76. The ACCC considers that the advisory committees facilitate the interests of small businesses and other participants in the payments systems being considered in AP+'s

⁵⁹³ Submissions from Australian Banking Association, Restaurant and Catering Australia, Australian Lottery and Newsagents Association, Australian Retailers Association, Australasian Association of Convenience Stores, National Retail Association and Pharmacy Guild of Australia.

⁵⁹⁴ ICA response to RFI, 18 June 2021.

⁵⁹⁵ Submissions from Restaurant and Catering Australia, Australian Lottery and Newsagents Association, Council of Small Business Organisations Australia, Pharmacy Guild of Australia, Australasian Association of Convenience Stores and National Retail Association.

decision-making. By contrast, the 3 schemes do not currently have prescriptive mechanisms in place to facilitate engagement with these stakeholders. To the extent that the advisory committees facilitate engagement with small business participants, this is likely to result in a public benefit.

ACCC conclusion on public benefit

8.77. The ACCC considers the amalgamation is likely to result in the following public benefits:

- more streamlined and coordinated decision-making process to invest in adoption of payments innovations sooner
- increased likelihood of hybrid innovations
- reduced risk of stranded payments assets
- increased ability of eftpos (as part of AP+) or AP+ to compete with Mastercard and Visa and increased ability for AP+ to compete with international technology companies
- to some extent cost synergies, reduced transaction costs and reduction in compliance obligations
- enhanced representation and engagement with small businesses and other participants.

8.78. The ACCC considers that it is unclear how the amalgamation will improve the payments schemes' resilience, noting the role the RBA and the Australian Government will have in broader policy objectives relating to sovereignty, security and resilience of Australia's domestic payments schemes.

Public detriments

8.79. The ACCC has considered the public detriments arising from the amalgamation in the context of a lessening of competition arising from the amalgamation (this is discussed at section 7 above).

8.80. As discussed in paragraphs [7.82]-[7.83] above, absent any regulatory oversight or intervention, the ACCC considers that the major banks have mixed incentives to support eftpos. The ACCC considers the mixed incentives of the major banks and the ability of the major banks to materially affect AP+ investment decisions give rise to some uncertainty with regard to the ongoing support of eftpos and LCR. The Undertaking accepted by the ACCC aims to address these concerns. The Undertaking imposes obligations on AP+ to support eftpos, including by procuring that EPAL will do all things in its control to make available and promote LCR for 4 years and will develop the Prescribed Services, some of which facilitate eftpos online payment services.⁵⁹⁶

8.81. The RBA has encouraged competition in debit card payments, for example by promoting the issuing of DNDCs and the provision of LCR to merchants. Further, the RBA has indicated a willingness to take further steps in the event that eftpos' ability to exert competitive pressure in debit card payment services was to weaken. However, while such steps could be directed to maintaining DNDCs and LCR, they would be in response to a diminution of eftpos' ability to exert competitive pressure after it has occurred. The ACCC considers that the Undertaking is likely to mitigate the risk of such a diminution occurring by specifically requiring AP+ to maintain support for eftpos. The

⁵⁹⁶ Undertaking, clauses 5.1 and 5.3.

ACCC considers that the Undertaking, together with the role of the RBA, reduces the risk that the major banks as shareholders of AP+ will deprioritise support for eftpos following the amalgamation.

- 8.82. Taking into account the Undertaking which the ACCC has accepted, the ACCC is satisfied that the amalgamation is unlikely to result in a substantial lessening of competition in relation to the routing of debit card payments.
- 8.83. The amalgamation is likely to soften competition to some extent between BPAY, EPAL and NPPA in relation to several payments and payments related services. The amalgamation may also lessen competition between the 3 parties to innovate and develop new infrastructure and services, because development decisions will be made centrally by AP+. However, it is important to consider these potential competitive effects in the context of the markets in which they may arise. In this regard, the ACCC considers that AP+ will continue to face significant competitive constraints, most significantly from Mastercard and Visa. Given the level of complementarity between the services provided by BPAY, EPAL and NPPA and the substantial constraints that would remain on the merged entity, the ACCC considers that any lessening of competition from the horizontal aggregation of the amalgamating entities is not likely to be substantial.
- 8.84. The ACCC is satisfied that third party access to the NPP is unlikely to materially change as a result of the amalgamation, and that there are sufficient constraints to mitigate the risk of third parties being foreclosed following the amalgamation.
- 8.85. In all the circumstances, including taking into account the Undertaking, the ACCC is satisfied that the amalgamation would not have the effect, or would not be likely to have the effect, of substantially lessening competition, in any market.

9. ACCC conclusion

- 9.1. The ACCC is satisfied in all the circumstances, which include the Undertaking provided to the ACCC, that the amalgamation is unlikely to have the effect of substantially lessening competition.
- 9.2. The ACCC considers that the Undertaking mitigates the risk that eftpos' ability to exert competitive pressure in debit card payment services might become diminished following the proposed amalgamation.
- 9.3. The ACCC considers the amalgamation is likely to soften competition between the payment services offered by BPAY, EPAL and NPPA, but is satisfied that this horizontal aggregation would not have the effect, or would not be likely to have the effect, of substantially lessening competition in any market.
- 9.4. The ACCC is also satisfied that third party access to the NPP is unlikely to materially change as a result of the amalgamation, and that there are sufficient constraints to mitigate the risk of third parties being foreclosed access following the amalgamation.
- 9.5. While the ACCC is not required to assess the amalgamation under the 'net public benefit' limb of the authorisation test, the ACCC considers that the amalgamation is likely to result in a public benefit. In particular, a material public benefit is likely to result in the form of a more streamlined and coordinated decision-making process for AP+ shareholders to invest in adoption of payments initiatives of the 3 payment schemes. The ACCC is satisfied that, in all the circumstances, including the Undertaking, this public benefit is likely to outweigh any likely detriment arising from the amalgamation, including from a lessening of competition.

10. Period of authorisation

- 10.1. The Act allows the ACCC to specify a period during which an authorisation will be in force.⁵⁹⁷ The ACCC will generally grant a merger authorisation for a period of no longer than twelve months from the date of the determination. In order to have the legal protection conferred by the merger authorisation, the authorised party will need to complete the relevant acquisition during the period and notify the ACCC once the acquisition has been completed.
- 10.2. In this instance, the ACCC has decided to grant authorisation for 12 months until 1 October 2022.

11. Determination

The application

- 11.1. On 22 March 2021, the ACCC received an application for merger authorisation from Industry Committee (an unincorporated association administered by Industry Administration Pty Ltd) on behalf of its members under subsection 88(1) of the Act.⁵⁹⁸ Industry Committee's application was on behalf of its members who are shareholders of BPAY HoldCo⁵⁹⁹ and/or members of EPAL (who will become shareholders in EPAL) and/or shareholders of NPPA.
- 11.2. The application seeks authorisation of the amalgamation of the ownership of BPAY HoldCo, EPAL and NPPA by way of 2 related acquisitions of shares:
 - (a) the acquisition of shares by the shareholders of BPAY HoldCo, shareholders of EPAL⁶⁰⁰, and shareholders of NPPA in a new company incorporated solely for the purposes of the conduct for which authorisation is sought, AP+ (ACN 649 744 203), and
 - (b) the acquisition of shares by AP+ in each of BPAY HoldCo,⁶⁰¹ EPAL and NPPA.
- 11.3. The amalgamation will result in:
 - (a) BPAY, EPAL and NPPA becoming wholly owned subsidiaries of AP+, and
 - (b) AP+ being owned by the current shareholders and members of BPAY, EPAL and NPPA (other than the RBA, which will not become a shareholder of AP+).
- 11.4. Industry Committee sought in its application the protection of the authorisation for its members and to a group of Persons Named for the purposes of section 88(2) of the Act (see paragraph [11.6] below).
- 11.5. Industry Committee's members are:
 - (a) Australia and New Zealand Banking Group Limited,
 - (b) Australian Settlements Limited,

⁵⁹⁷ Subsection 91(1).

⁵⁹⁸ The application was initially submitted by Industry Administration Pty Ltd, the administrator of Industry Committee. On 23 August 2021, the application was amended to have been made by Industry Committee.

⁵⁹⁹ BPAY HoldCo and its wholly owned subsidiaries, BPAY Group Pty Ltd and BPAY Pty Ltd, are collectively referred to as **BPAY**.

⁶⁰⁰ EPAL will convert from a company limited by guarantee to a company limited by shares as part of the amalgamation proposal.

⁶⁰¹ Industry Committee's 18 June 2021 letter to the ACCC indicates that Syphnt, which is BPAY HoldCo's joint venture project with a third party, will not be included in the amalgamation.

- (c) Bendigo and Adelaide Bank Limited,
- (d) Commonwealth Bank of Australia,
- (e) Coles Group Limited,
- (f) Cuscal Limited,
- (g) First Data Network Australia Limited trading as Fiserv,
- (h) HSBC Bank Australia Limited,
- (i) Macquarie Bank Limited,
- (j) National Australia Bank,
- (k) Tyro Payments Limited,
- (l) Westpac Banking Corporation, and
- (m) Woolworths Group Limited.

11.6. The Persons Named for the purposes of section 88(2) of the Act, who are not members of Industry Committee, are:

- (a) EPAL, EPAL Foundation Shareholders,⁶⁰² BPAY Holdco, NPPA and persons who are members of EPAL and/or shareholders of NPPA,⁶⁰³
- (b) the RBA,⁶⁰⁴
- (c) AP+, and
- (d) the individuals directly involved in the administration and oversight of Industry Committee, including the Chairperson and the Secretary of Industry Committee.

Section 87B undertaking

11.7. On 8 September 2021, the ACCC accepted a court enforceable undertaking (the **Undertaking**) from AP+ pursuant to section 87B of the Act. A full copy of the Undertaking is available at **Attachment A**.

The authorisation test

11.8. The ACCC may grant an authorisation to a person to engage in specified conduct to which one or more specified provisions of Part IV of the Act would or might apply.⁶⁰⁵ However, the ACCC must not grant an authorisation for a proposed acquisition unless it is satisfied, in all the circumstances, that:

- (a) the proposed acquisition would not have the effect, or would not be likely to have the effect, of substantially lessening competition, or

⁶⁰² As defined by article 19.1 of AP+'s Constitution as follows: "eftpos Scheme Rules: Each Shareholder who was an "eftpos member" immediately prior to the date on which the Company first issued Preference Shares (other than the Initial Preference Share) (an eftpos Foundation Shareholder) must comply with, and continues to be bound by, the eftpos Scheme Rules applicable to it (as amended from time to time). For the purposes of this article 19 an "eftpos member" means a "Member" pursuant to the eftpos Constitution as it existed prior to the date on which the Company first issued Preference Shares (other than the Initial Preference Share)."

⁶⁰³ These persons include Citigroup Pty Limited, ING Bank (Australia) Limited, Indue Limited, EFTEX Pty Limited, Suncorp Metway Ltd, Adyen Australia Pty Limited, Bank of Queensland Limited, Windcave Pty Ltd and Wise Australia Pty Ltd.

⁶⁰⁴ The RBA is currently a shareholder of NPPA but will not acquire shares in AP+.

⁶⁰⁵ Section 88(1) of the Act. Relevantly, this includes a merger or acquisition such as the amalgamation, to which section 50 of the Act would or might apply.

- (b) the proposed acquisition would result, or be likely to result, in a benefit to the public, and that benefit would outweigh the detriment to the public that would result, or be likely to result, from the proposed acquisition.⁶⁰⁶
- 11.9. For the reasons outlined in this determination, the ACCC is satisfied, in all the circumstances, which include the Undertaking, that the proposed conduct, being the amalgamation, would not be likely to substantially lessen competition.
- 11.10. The ACCC only needs to be satisfied that one limb of the statutory test has been met but has considered the 'net public benefit' limb. For the reasons set out in this determination, the ACCC is satisfied, in all the circumstances including the Undertaking, that the proposed conduct would be likely to result in a benefit to the public and the benefit to the public would outweigh the detriment to the public that would result or be likely to result from the amalgamation, including any lessening of competition.
- 11.11. Accordingly, the ACCC grants authorisation MA1000020.

Conduct for which the ACCC grants authorisation

- 11.12. The ACCC grants authorisation MA1000020 to Industry Committee members named in paragraph [11.15] above to proceed with the amalgamation.
- 11.13. The ACCC's grant of authorisation extends to the Persons Named in accordance with section 88(2) of the Act. The authorisation extends to any conduct by Industry Committee members (see paragraph [11.15] above) and the Persons Named (see paragraph [11.6] above) that directly or indirectly provides for one or both of the acquisitions of shares that constitute the amalgamation.

Period of authorisation

- 11.14. The ACCC grants authorisation MA1000020 for 12 months until 1 October 2022.

Date authorisation comes into effect

- 11.15. This determination is made on 9 September 2021. If no application for review of the determination is made to the Australian Competition Tribunal it will come into force on **1 October 2021**.

⁶⁰⁶ Section 90(7) of the Act.

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and Consumer Act 2010* (Cth)

by Australian Payments Plus Ltd (ACN 649 744 203)

1. Person giving the Undertaking

- 1.1. This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Australian Payments Plus Ltd (ACN 649 744 203) (**AP+**) for the purposes of section 87B of the *Competition and Consumer Act 2010* (Cth) (the **Act**).

2. Background

The amalgamation

- 2.1. On 22 March 2021, the ACCC received an application for merger authorisation under subsection 88(1) of the Act from Industry Committee (an unincorporated association administered by Industry Committee Administration Pty Ltd (**ICA**)).¹
- 2.2. Industry Committee's application was on behalf of its members who are shareholders of BPAY Group Holding Pty Ltd (**BPAY HoldCo**)² and/or members of eftpos Payments Australia Limited (**eftpos**) (who will become shareholders in eftpos) and/or shareholders of New Payments Platform Australia Limited (**NPPA**).
- 2.3. The application seeks authorisation for the amalgamation of the ownership of BPAY HoldCo, eftpos and NPPA by way of 2 related acquisitions of shares:
- (a) the acquisition of shares by the shareholders of BPAY HoldCo, shareholders of eftpos³, and shareholders of NPPA in a new company incorporated solely for the purposes of the conduct for which authorisation is sought, AP+, and
 - (b) the acquisition of shares by AP+ in each of BPAY HoldCo,⁴ eftpos and NPPA
- (together, the **amalgamation**).
- 2.4. The amalgamation will result in:
- (a) BPAY, eftpos and NPPA becoming wholly owned subsidiaries of AP+, and
 - (b) AP+ being owned by the current shareholders and members of BPAY, eftpos and NPPA (other than the Reserve Bank of Australia (**RBA**), which will not become a shareholder of AP+).

¹ The application was initially submitted by Industry Administration Pty Ltd, the administrator of Industry Committee. On 23 August 2021, the application was amended to have been made by Industry Committee.

² BPAY HoldCo and its wholly owned subsidiaries, BPAY Group Pty Ltd and BPAY Pty Ltd, are collectively referred to as **BPAY**.

³ eftpos will convert from a company limited by guarantee to a company limited by shares as part of the amalgamation proposal.

⁴ Industry Committee's 18 June 2021 letter to the ACCC indicates that Syphit, which is BPAY HoldCo's joint venture project with a third party, will not be included in the amalgamation.

- 2.5. Industry Committee sought in its application the protection of the authorisation for its members and for a group of persons named for the purposes of section 88(2) of the Act.
- 2.6. Industry Committee's members are: Australia and New Zealand Banking Group Limited (**ANZ**), Australian Settlements Limited, Bendigo and Adelaide Bank Limited, Commonwealth Bank of Australia (**CBA**), Coles Group Limited, Cuscal Limited, First Data Network Australia Limited trading as Fiserv, HSBC Bank Australia Limited, Macquarie Bank Limited, National Australia Bank (**NAB**), Tyro Payments Limited, Westpac Banking Corporation (**WBC**) and Woolworths Group Limited.
- 2.7. The persons named for the purposes of section 88(2) of the Act, who are not members of Industry Committee, are:
 - (a) eftpos, eftpos Foundation Shareholders,⁵ BPAY Holdco, NPPA and persons who are members of eftpos and/or shareholders of NPPA.⁶
 - (b) the RBA,⁷
 - (c) AP+, and
 - (d) the individuals directly involved in the administration and oversight of Industry Committee, including the Chairperson and the Secretary of Industry Committee.

Parties to the proposed amalgamation

- 2.8. BPAY, eftpos and NPPA, through their respective payment schemes, provide a number of the payment services that are utilised every day by Australian consumers and businesses. Under the amalgamation they will be wholly owned subsidiaries of a new entity called AP+. eftpos, NPPA and BPAY will operate as 3 separate operating companies, with AP+ determining a unified investment roadmap for the 3 payment schemes.
- 2.9. BPAY primarily operates a domestic electronic bill payment service that enables users to make payments through a financial institution's online, mobile or telephone banking facilities to organisations which are registered billers.
- 2.10. eftpos' main business is facilitating electronic payments from customer accounts to merchant accounts at the point of sale. eftpos owns and operates the eftpos debit card scheme and associated infrastructure. eftpos is most commonly associated with the use of plastic debit cards as a payment method for the purchase of goods and services. However, eftpos also facilitates some online debit card payments and debit card withdrawals at automatic teller machines.

⁵ As defined by article 19.1 of AP+'s Constitution as follows: "eftpos Scheme Rules: Each Shareholder who was an "eftpos member" immediately prior to the date on which the Company first issued Preference Shares (other than the Initial Preference Share) (an eftpos Foundation Shareholder) must comply with, and continues to be bound by, the eftpos Scheme Rules applicable to it (as amended from time to time). For the purposes of this article 19 an "eftpos member" means a "Member" pursuant to the eftpos Constitution as it existed prior to the date on which the Company first issued Preference Shares (other than the Initial Preference Share)."

⁶ These persons include Citigroup Pty Limited, ING Bank (Australia) Limited, Indue Limited, EFTEX Pty Limited, Suncorp Metway Ltd, Adyen Australia Pty Limited, Bank of Queensland Limited, Windcave Pty Ltd and Wise Australia Pty Ltd.

⁷ The RBA is currently a shareholder of NPPA but will not acquire shares in AP+.

- 2.11. The New Payments Platform (**NPP**) was launched in February 2018 and is open access infrastructure used to facilitate real-time payments between bank accounts within Australia.

The ACCC's assessment of the amalgamation

- 2.12. The ACCC commenced public consultation on the merger authorisation application on 30 March 2021.
- 2.13. As part of this consultation, the ACCC undertook market inquiries and considered information provided by members of ICA and other persons named in the application, industry participants and other interested parties.
- 2.14. Pursuant to s90(7) of the Act, the ACCC must not make a determination granting an authorisation under s88 of the Act in relation to the proposed amalgamation unless it is satisfied in all the circumstances that:
- (a) The proposed amalgamation would not have the effect or likely effect of substantially lessening competition (effects limb); or
 - (b) The proposed amalgamation would result or be likely to result in a benefit to the public that would outweigh the detriment that would result or be likely to result from the proposed amalgamation (benefits limb).
- 2.15. ICA sought merger authorisation on the basis of both the effects limb and the benefits limb.

The ACCC's competition concerns

- 2.16. The ACCC considers that, without the Undertaking, there is a risk the proposed amalgamation will result in a substantial lessening of competition for the routing of debit card payments. This could occur as a result of a reduction in support for eftpos from the major banks or AP+.
- 2.17. eftpos plays an important role in maintaining competition in the routing of debit card payments. It is the only domestic debit card scheme in Australia. It is an alternative to and is often lower cost for merchants than the 2 larger international debit schemes it competes against: Visa Debit and Debit Mastercard.⁸
- 2.18. A number of interested parties, including small businesses, have raised concerns about the impact of the amalgamation on the independence of eftpos, the provision of eftpos as a low cost debit card service, and the availability of least-cost routing (**LCR**) to merchants.
- 2.19. LCR is a functionality offered by acquirers that allows merchants to choose which debit card scheme will process contactless payments made by consumers using Dual Network Debit Cards (**DNDC**).⁹ Without LCR, DNDC payments would only be processed through the Visa Debit or Debit Mastercard schemes, for which many merchants incur higher fees than payments processed through eftpos.

⁸ RBA, *Review of Retail Payments Regulation Consultation Paper*, May 2021, pp 8 and 9.

⁹ DNDCs are debit cards that have point of sale functionality with 2 debit card schemes. Typically, one of the international debit card schemes (Mastercard or Visa) has first priority (that is, absent a routing instruction at the point of sale, a transaction made using the card will be routed to the card scheme that has first priority), and the domestic debit scheme, eftpos, has second priority (that is, payments are not routed to the scheme by default; the merchant must choose to route payments to this second priority scheme). DNDCs can be used to enable domestic debit payments to be processed via either Mastercard or Visa, or eftpos (provided the least-cost routing (LCR) functionality is available).

- 2.20. The RBA has encouraged competition in debit card payment systems, for example by promoting the issuing of DNDC and the provision of LCR to merchants. Further, the RBA has indicated a willingness to take further steps in the event that eftpos' ability to exert competitive pressure in debit card payment services was to weaken.¹⁰ However, while such steps could be directed to maintaining DNDC and LCR, they would be in response to a diminution of eftpos' ability to exert competitive pressure after it has occurred. The ACCC considered that it was appropriate to accept the Undertaking because it is likely to mitigate the risk of such a diminution occurring. By specifically requiring AP+ to maintain support for eftpos, the Undertaking, together with the role of the RBA, reduces the risk that the major banks as shareholders of AP+ will deprioritise support for eftpos following the amalgamation.
- 2.21. The amalgamation will result in the loss of an independent eftpos board which would be expected to make decisions solely in the interests of the eftpos scheme. eftpos will become a wholly owned subsidiary of AP+ and its Constitution will be amended so that directors acting in good faith in the interests of AP+ will be taken to be acting in the best interests of eftpos.¹¹
- 2.22. Further, as one of 3 operating companies (**OpCos**) wholly owned by AP+, the unified roadmap developed by AP+ will apply to eftpos. With AP+ making decisions on what new functionality is developed or services are invested in, the ACCC considers that the level and timeliness of support for, and investments in, the eftpos scheme may be lower in these circumstances than in the likely future without the amalgamation.
- 2.23. The major banks currently have considerable influence over the decisions made by eftpos because they each hold voting rights on the eftpos Board, proportional to the volume of transactions each bank accounts for. The ACCC does not consider that the change in the proportion of shares and voting rights held by the major banks as a result of the amalgamation will translate into them exercising greater influence or control over AP+ than they would exercise over the individual payment schemes in the counterfactual without the amalgamation.
- 2.24. The major banks (as issuers and acquirers¹²) currently have the ability to dilute the competitive influence of the eftpos network by deciding which payment services they will support; including which eftpos services they offer to their customers and how quickly the services are made available. Following the amalgamation, the major banks will continue to each independently decide whether they will implement the functionalities proposed by AP+, including those related to eftpos.
- 2.25. The major banks have mixed incentives (because of the different roles they have as issuers and acquirers) to support eftpos by issuing DNDCs and making LCR available to their merchant customers. The RBA has observed that the major banks are likely to have a collective incentive to support eftpos and LCR, though

¹⁰ RBA, *Review of Retail Payments Regulation* Consultation Paper, May 2021, pp 13; RBA, Submission to ACCC, 9 July 2021, pp 3-4.

¹¹ As provided for by s 187 of the *Corporations Act 2001*; see ICA, Non-confidential response to ACCC RFI, 18 June 2021, p 4 and 11.

¹² Issuers are the financial institution that issued the debit cards or credit cards being used in a purchase transaction. Acquirers are the merchants' (e.g. retailers') financial institution – they are often but not always banks, and facilitate the processing of a card payment, including collecting payment from the issuers and paying the merchants.

their individual incentive to do so may be relatively weak.¹³ These mixed incentives are likely to persist following the amalgamation.

- 2.26. The ACCC considers that the mixed incentives of the major banks and AP+ and the ability of the banks to materially affect AP+ investment decisions give rise to some uncertainty with regard to the ongoing support of eftpos and LCR. As a result, the ACCC considers there is a risk that the amalgamation may substantially lessen competition for the routing of debit card payments. Industry Committee does not share the ACCC's concerns. However, to address the ACCC's competition concerns, AP+ has offered this Undertaking pursuant to section 87B of the Act.

The Undertaking remedy

- 2.27. The objective of this Undertaking is to address the ACCC's competition concerns as set out above. The Undertaking aims to achieve this objective by placing obligations on AP+ to:
- (a) procure that eftpos will do all things in its control to make available and promote least cost routing;
 - (b) procure that eftpos will maintain eftpos' card-based issuing and acquiring infrastructure, payments scheme and the supply of card-based issuing and acceptance services to customers and end users;
 - (c) procure that the OpCos will develop and make available the Prescribed Services, and any relevant APIs;
 - (d) procure that the OpCos will maintain and continue to administer their respective Mandate Frameworks;
 - (e) procure that the OpCos agree an industry wide standard supporting Pay with a QR Code in coordination with Australian Payments Network Limited;
 - (f) procure that the OpCos explore the feasibility of developing certain services, and make them available if it is feasible to develop them;
 - (g) appoint one out of the 4 independent directors to its board who has substantial small business experience; and
 - (h) provide for the effective oversight of AP+'s compliance with this Undertaking.

The ACCC considers that the Undertaking will work alongside the role of the RBA to maintain eftpos' competitive position in the routing of debit card payments and ensure LCR continues to be available and promoted by eftpos for a period of 4 years, ameliorating the risk of a substantial lessening of competition.

Mandated Frameworks

- 2.28. Each of BPAY, eftpos and NPPA have Mandate Frameworks:
- (a) pursuant to those Mandate Frameworks, each of BPAY, eftpos and NPPA have rights to issue mandates to the members of their respective payments schemes:

¹³ RBA, Discussion with the ACCC, 24 June 2021, record available at ACCC website [here](#).

- i. BPAY's Mandate Framework is in accordance with its scheme rules;
 - ii. eftpos' Mandate Framework is in accordance with its scheme rules and technical, operational and security rules; and
 - iii. NPPA's Mandate Framework is in accordance with its regulations;
- (b) in all instances, each of BPAY, eftpos and NPPA must obtain approval through their respective governance processes to issue a mandate; and
- (c) each of BPAY, eftpos and NPPA have rights to impose fees or charges on members for non-compliance with a mandate they have issued:
- i. for BPAY, the rights are contained in its scheme procedures;
 - ii. for eftpos, the rights are contained in its scheme rules; and
 - iii. for NPPA, the rights are contained in its regulations.

API Assets

- 2.29. An API is a type of software interface, offering a service to other pieces of software. A document or standard that describes such a connection or interface is called an API specification. The term API may refer to the specification or the implementation.
- 2.30. An API sandbox is an environment that developers and testers can use to mimic the characteristics of how an API would work in practice and create simulated responses from all APIs that the application relies upon.
- 2.31. Each of the 3 schemes makes available different API assets, according to their existing technology strategy, to support access by third parties:
- (a) BPAY has made available a number of APIs, enabling end-users to interact directly with BPAY's systems to complete certain functions. This includes functions to retrieve BPAY biller details, validate BPAY payment, generate BPAY batch files, generate BPAY Customer Reference Numbers, submit BPAY payments, biller management activities and, in the future, BPAY payment notifications & investigations.
 - (b) eftpos' API portal and API sandbox give users the opportunity to build eftpos' payments capability into their solutions, for use in CP and CNP use cases.
 - (c) NPPA has developed an API framework to encourage consistency among the APIs that are made available by NPP Participants and Identified Institutions. NPPA has also made available a sandbox for developers which mirrors its API framework.

3. Commencement and terms of the Undertaking

- 3.1. This Undertaking comes into effect when:
- (a) this Undertaking is executed by AP+; and

- (b) this Undertaking so executed is accepted by the ACCC,
(the **Commencement Date**).
- 3.2. This Undertaking will expire on the 4 year anniversary of the Control Date (the **Term**).
- 3.3. AP+ acknowledges that the obligations contained in clause 5 of this Undertaking commence on the Control Date.

4. Cessation of Ongoing Obligations

Withdrawal

- 4.1. AP+ may request withdrawal of this Undertaking pursuant to section 87B of the Act at any time. This Undertaking is taken to be withdrawn on the date the ACCC consents in writing to that withdrawal.

Revocation

- 4.2. The ACCC may, at any time, revoke its acceptance of this Undertaking if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

Waiver

- 4.3. The ACCC may, at any time, expressly waive in writing any of the obligations contained in this Undertaking or extend the date by which any such obligation is to be satisfied.

5. Obligations

Facilitation of the delivery of Least Cost Routing

- 5.1. AP+ will procure that eftpos will do all things in its control to make available and promote Least Cost Routing.

Maintenance of eftpos' infrastructure, scheme and services

- 5.2. AP+ will procure that eftpos will maintain:
- (a) eftpos' card-based issuing and acquiring infrastructure;
 - (b) eftpos' payments scheme; and
 - (c) the supply of eftpos' card-based issuing and acceptance services to customers and end users, including but not limited to the following services:
 - i. pay for a purchase in-store with eftpos debit card (including via contactless methods);
 - ii. pay for a purchase in-store with eftpos debit using a mobile wallet;
 - iii. pay for a purchase online with eftpos debit (low risk card on file);

- iv. pay for a purchase in-app with eftpos debit (low risk card on file);
- v. process disputes and charge backs for all use cases; and
- vi. improvements to payment control and security through Network Tokenisation.

Development of the Prescribed Services

- 5.3. AP+ will procure that the OpCos will develop and make available the Prescribed Services (including, where applicable, APIs) for participants to adopt in accordance with the timeframes contained in Schedule 1 of this Undertaking.
- 5.4. Where an API asset is relevant to a Prescribed Service, AP+ will procure that each OpCo will continue to evolve and extend their various API assets (API's, API frameworks, and sandboxes) in line with the implementation of their respective Prescribed Services.

Maintenance of mandate frameworks

- 5.5. AP+ will procure that the OpCos will maintain and continue to administer their respective Mandate Frameworks as they are at the Commencement Date.

Industry-wide supporting standard – Pay with a QR Code

- 5.6. AP+ will procure that the OpCos, by the end of June 2022, agree an industry wide standard, with a focus on interoperability and open access, supporting Pay with a QR Code in coordination with Australian Payments Network Limited (ABN 12 055 136 519).

Commitment to explore feasibility of certain services and to develop if feasible

- 5.7. AP+ will procure that the OpCos explore the feasibility of developing certain services and, if it is feasible to develop them, to make them available. Those services are as follows:
 - (a) in BPAY's case, business to business (B2B), business to consumer (B2C) – Pay with a URL;
 - (b) in eftpos' case:
 - i. POS payments – Transit support for debit cards;
 - ii. remote payments – Support Secure Remote Commerce; and
 - (c) in each of the OpCo's case, industry wide supporting capabilities - Pay with a QR Code (in accordance with an agreed standard and in coordination with relevant entities).

Commitment to small business representation

- 5.8. AP+ undertakes that one of the 4 independent directors appointed to its board will have substantial small business experience.

6. Independent Audit

Obligation to appoint an Approved Independent Auditor

- 6.1. AP+ must appoint and maintain an Approved Independent Auditor to audit and report upon AP+'s compliance with this Undertaking.

Process for approving a Proposed Independent Auditor

- 6.2. At least fifteen (15) Business Days before the Control Date, AP+ must provide the ACCC with a notice for a Proposed Independent Auditor in the form prescribed in Schedule 2 to this Undertaking (**Proposed Independent Auditor Notice**), including draft terms of appointment and a draft audit plan.
- 6.3. If clauses 6.17, 6.18, or 6.19 apply, AP+ must provide the ACCC with a Proposed Independent Auditor Notice within 5 Business Days after the relevant event occurs, otherwise clause 6.7 applies.
- 6.4. The ACCC shall have the discretion to approve or reject in writing the Proposed Independent Auditor identified in the Proposed Independent Auditor Notice.
- 6.5. Without limiting the ACCC's discretion, in deciding whether to approve a Proposed Independent Auditor, the factors to which the ACCC may have regard include whether the:
 - (a) person named in the Proposed Independent Auditor Notice or identified by the ACCC has the qualifications and experience necessary to carry out the functions of the Approved Independent Auditor, including knowledge and experience in the payments industry;
 - (b) person named in the Proposed Independent Auditor Notice or identified by the ACCC is sufficiently independent of AP+;
 - (c) draft terms of appointment and the draft audit plan are consistent with this Undertaking; and
 - (d) draft terms of appointment and the draft audit plan are otherwise acceptable to the ACCC.

Appointment of the Approved Independent Auditor

- 6.6. After receiving a written notice from the ACCC of its approval of a Proposed Independent Auditor, the draft terms of appointment and draft audit plan, AP+ must by the Control Date:
 - (a) appoint the person approved by the ACCC as the Approved Independent Auditor on the Approved Terms of Appointment; and
 - (b) forward to the ACCC a copy of the executed Approved Terms of Appointment.

Failure to appoint

6.7. If:

- (a) an Approved Independent Auditor has not been appointed by the Control Date;
- (b) the Approved Independent Auditor has not be appointed within fifteen (15) Business Days after the Approved Independent Auditor resigns or otherwise ceases to act as the Approved Independent Auditor pursuant to clause 6.17, 6.18 or 6.19; or
- (c) the ACCC has not received a Proposed Independent Auditor Notice pursuant to 6.2;

then clause 6.8 applies.

6.8. If clause 6.7 applies, the ACCC at its sole discretion may:

- (a) identify and approve a person as the Approved Independent Auditor, including approving the draft terms of appointment and draft audit plan; and/or
- (b) direct AP+ to appoint a person who the ACCC has deemed is an Approved Independent Auditor.

Obligations and powers of the Approved Independent Auditor

6.9. AP+ must procure that any proposed terms of appointment for the Approved Independent Auditor include obligations on the Approved Independent Auditor to:

- (a) maintain his or her independence from AP+, apart from appointment to the role of Approved Independent Auditor, including not forming any relationship of the types described in paragraph 2(c) of Schedule 2 to this Undertaking with AP+ for the period of his or her appointment;
- (b) conduct compliance auditing according to the Approved Audit Plan;
- (c) provide the following reports directly to the ACCC:
 - i. a scheduled written Audit Report as described in clause 6.11; and
 - ii. an immediate report of any issues that arise in relation to the performance of his or her functions as Approved Independent Auditor or in relation to compliance with this Undertaking by any person named in this Undertaking;
- (d) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Independent Auditor under this Undertaking.

6.10. AP+ must procure that any proposed terms of appointment for the Approved Independent Auditor provide the Approved Independent Auditor with the authority to:

- (a) access any information or documents that the Approved Independent Auditor considers necessary for carrying out his or her functions as the Approved Independent Auditor or for reporting to or otherwise advising the ACCC; and
- (b) engage any external expertise, assistance or advice reasonably required by the Approved Independent Auditor to perform his or her functions as the Approved Independent Auditor.

Audit Report

6.11. The Approved Independent Auditor must conduct an audit and prepare a detailed report (**Audit Report**) that includes:

- (a) the Approved Independent Auditor's procedures in conducting the audit, or any change to audit procedures and processes since the previous Audit Report;
- (b) a full audit of AP+'s compliance with this Undertaking.
- (c) identification of any areas of uncertainty or ambiguity in the Approved Independent Auditor's interpretation of any obligations contained in this Undertaking;
- (d) all of the reasons for the conclusions reached in the Audit Report;
- (e) any qualifications made by the Approved Independent Auditor in forming his or her views;
- (f) any recommendations by the Approved Independent Auditor to improve:
 - i. the Approved Audit Plan;
 - ii. the integrity of the auditing process;
 - iii. AP+'s processes or reporting systems in relation to compliance with this Undertaking; and
 - iv. AP+'s compliance with this Undertaking; and
- (g) the implementation and outcome of any prior recommendations by the Approved Independent Auditor.

6.12. AP+ must provide the Approved Independent Auditor and the ACCC with written notice within 3 Business Days if a Prescribed Service fails to meet a Development Date and/or Make Available Date contained in Schedule 1, including:

- (a) the reasons why AP+ did not meet the Development Date and/or Make Available Date;
- (b) the impact on:
 - i. customers including issuers and acquirers; and

- ii. end users, including merchants and consumers of the Development Date and/or Make Available Date not being met;
 - (c) a description of the steps being taken by AP+ to develop and make available the Prescribed Service as soon as possible; and
 - (d) a waiver request pursuant to clause 4.3 of this Undertaking seeking an extension of time for compliance with the Development Date and/or Make Available Date.
- 6.13. The Approved Independent Auditor is to provide Audit Reports to the ACCC and AP+ at the following times:
- (a) within 2 months of the Control Date, at which time the Audit Report is to include the results of the initial audit and any recommended changes to the Approved Audit Plan, including the Approved Auditor's proposed procedures and processes for conducting the audit (**Establishment Audit**);
 - (b) every 6 months from receipt of the Audit Report provided in clause 6.13(a) of this Undertaking; and
 - (c) a final report due 2 months following expiry of the Term that will cover the 4 month period from receipt of the last Audit Report provided in clause 6.13(b) of this Undertaking up to the end of the Term.
- 6.14. AP+ must implement any recommendations made by the Approved Independent Auditor in Audit Reports, and notify the ACCC of the implementation of the recommendations, within 10 Business Days after receiving the Audit Report or such other period as agreed in writing with the ACCC.
- 6.15. AP+ must comply with any direction of the ACCC in relation to matters arising from the Audit Report within 10 Business Days after being so directed (or such other period as agreed in writing with the ACCC).

AP+'s obligations in relation to the Approved Independent Auditor

- 6.16. Without limiting its obligations in this Undertaking, AP+ must:
- (a) comply with and enforce the Approved Terms of Appointment for the Approved Independent Auditor;
 - (b) maintain and fund the Approved Independent Auditor to carry out his or her functions including:
 - i. indemnifying the Approved Independent Auditor for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Independent Auditor of his or her functions as the Approved Independent Auditor except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Independent Auditor;
 - ii. providing and paying for any external expertise, assistance or advice required by the Approved Independent Auditor to perform his or her functions as the Approved Independent Auditor; and

- (c) not interfere with, or otherwise hinder, the Approved Independent Auditor's ability to carry out his or her functions as the Approved Independent Auditor, including:
- i. directing AP+ personnel, including directors, contractors, managers, officers, employees and agents, to act in accordance with this clause 6;
 - ii. providing to the Approved Independent Auditor any information or documents he or she considers necessary for carrying out his or her functions as the Approved Independent Auditor or for reporting to or otherwise advising the ACCC;
 - iii. not requesting any information relating to the compliance audit from the Approved Independent Auditor without such a request having been approved by the ACCC; and
 - iv. not appointing the Approved Independent Auditor, or have any Agreements with the Approved Independent Auditor, to utilise the Approved Independent Auditor's services for anything other than compliance with this Undertaking until at least 12 months after the Approved Independent Auditor ceases to act in the role of the Approved Independent Auditor.

Resignation, revocation or termination of the Approved Independent Auditor

- 6.17. AP+ must immediately notify the ACCC in the event that the Approved Independent Auditor resigns or otherwise stops acting as the Approved Independent Auditor.
- 6.18. The ACCC may revoke an Approved Independent Auditor's status as the Approved Independent Auditor if the ACCC becomes aware that any information provided to it in connection with the appointment of the Approved Independent Auditor was incorrect, inaccurate or misleading.
- 6.19. The ACCC may approve any proposal by, or alternatively may direct, AP+ to terminate the appointment of the Approved Independent Auditor if in the ACCC's view the Approved Independent Auditor acts inconsistently with the provisions of this Undertaking and/or the Approved Terms of Appointment or the Approved Independent Auditor fails to perform their role to an adequate standard.

7. ACCC Enquiries

- 7.1. For the purpose of monitoring compliance with this Undertaking, the ACCC may seek information and documents from AP+, and AP+ must provide that information and those documents (other than information, or documents containing information, which is subject to legal professional privilege) within the timeframe requested or as otherwise agreed with the ACCC.

8. Disclosure of this Undertaking

- 8.1. AP+ acknowledges that the ACCC may:
- (a) make this Undertaking publicly available;

- (b) publish this Undertaking on its Public Section 87B Undertakings Register and Public Mergers Register; and
 - (c) from time to time publicly refer to this Undertaking.
- 8.2. Nothing in clause 8.1 prevents the ACCC from disclosing such information as is:
 - (a) required by law;
 - (b) permitted by section 155AAA of the Act; or
 - (c) necessary for the purpose of assessing compliance with or enforcement of this Undertaking.

9. Obligation to procure

- 9.1. Where the performance of an obligation under this Undertaking requires a Related Body Corporate of AP+ to take or refrain from taking some action, AP+ will procure that Related Body Corporate to take or refrain from taking that action.

10. No Derogation

- 10.1. This Undertaking does not prevent the ACCC from taking enforcement action at any time whether during or after the period of this Undertaking in respect of any breach by AP+ of any term of this Undertaking.
- 10.2. Nothing in this Undertaking is intended to restrict the right of the ACCC to take action under the Act for penalties or other remedies in the event that AP+ does not fully implement and/or perform its obligations under this Undertaking or in any other event where the ACCC decides to take action under the Act for penalties or other remedies.

11. Change of Control

- 11.1. In the event that a Change of Control is reasonably expected to occur, AP+ must:
 - (a) notify the ACCC of this expectation as soon as practicable; and
 - (b) only implement a Change of Control to another person or entity if that person or entity has given a section 87B undertaking to the ACCC that requires it to comply with the same obligations as are imposed on AP+ pursuant to this Undertaking, or on terms that are otherwise acceptable to the ACCC, unless the ACCC has notified AP+ in writing that a section 87B undertaking under this clause is not required.

12. Costs

- 12.1. AP+ must pay all of its own costs incurred in relation to this Undertaking, including the costs of any independent auditor appointed pursuant to clause 6.1.

13. Notices

Giving Notices

- 13.1. Any notice or communication to the ACCC pursuant to this Undertaking must be sent to:

Email address: mergers@acc.gov.au

Attention: Executive General Manager

Merger, Exemptions & Digital Division

With a copy sent to:

Email address: mergersru@acc.gov.au

Attention: Director, Remedies Unit

Policy, Coordination & Remedies

Merger, Exemptions & Digital Division

- 13.2. Any notice or communication to AP+ pursuant to this Undertaking must be sent to:

Name: Sharon Henrick, Partner, King & Wood Mallesons

Address: Level 61 Governor Phillip Tower, 1 Farrer Place, Sydney,
New South Wales, 2000

Email Address: sharon.henrick@au.kwm.com

Fax number: +612 9296 3999

Attention: Sharon Henrick

When a notice is received

- 13.3. If sent by post within Australia, notices are taken to be received 5 Business Days after posting unless proved otherwise.
- 13.4. If sent by email, notices are taken to be received at the time shown in the email as the time the email was sent unless proved otherwise.

Change of contact details

- 13.5. AP+ must promptly notify the ACCC of a change to its contact details.
- 13.6. Any notice or communication will be sent to the most recently advised contact details and subject to clauses 13.3 and 13.4, will be taken to be received.

14. Defined terms

ACCC means Australian Competition and Consumer Commission.

Act means *Competition and Consumer Act 2010* (Cth).

AP+ means Australian Payments Plus Ltd (ACN 649 744 203).

API means an application programming interface.

Approved Independent Auditor means the person approved by the ACCC and appointed under clause 6 of this Undertaking.

Approved Audit Plan means the plan approved by the ACCC in accordance with the terms of this Undertaking, by which the Approved Independent Auditor will audit and report upon compliance with this Undertaking.

Associated Entity has the meaning given by section 50AAA of the Corporations Act.

Audit Report has the meaning given to it in clause 6.11 of this Undertaking.

BPAY means BPAY Group Pty Ltd (ACN 003 311 644) and BPAY Pty Ltd (ACN 079 137 518).

Business Day means a day other than a Saturday or Sunday on which banks are open for business generally in the Australian Capital Territory.

CNP means card not present.

CP means card present.

Change of Control means:

- (a) the assignment or other transfer of the legal or beneficial ownership of some or all of the share capital of AP+ to any other person or entity that may impact compliance with this Undertaking in its entirety; or
- (b) the sale or transfer of any assets necessary, or which may be necessary, to enable AP+ to continue to comply with this Undertaking in its entirety.

Commencement Date has the meaning given in clause 3(1)(b) of this Undertaking.

Control Date means when completion occurs under the Implementation Agreement.

Development Date means the date upon which infrastructure development at the OpCo level to support a Prescribed Service is completed.

eftpos means eftpos Payments Australia Limited (ABN 37 136 180 366).

Entities Connected has the meaning given by section 64B of the Corporations Act.

Establishment Audit has the meaning given to it in clause 6.13(a) of this Undertaking.

ICS means the international card schemes.

Implementation Agreement means the agreement titled Implementation Agreement dated 10 December 2020 between NPP Australia Limited, eftpos and BPAY Group Holding Pty Ltd (ABN 44 626 481 525), as amended from time to time.

Least Cost Routing (sometimes also referred to as merchant-choice routing) means a merchant being able to choose to process a dual-network debit card transaction over the lowest-cost network. Least-cost routing can apply to dual-network debit card transactions made in-store (for contactless payments) or online (for card not present payments). In the in-store environment, the cardholder can override least-cost routing by inserting their card into the terminal and selecting their preferred network.

Make Available Date means the date upon which a service has been fully tested by an OpCo and is available to be integrated with the systems of a scheme member.

Mandate Framework refers to the provisions of the scheme rules or regulations of the relevant OpCo which specifically enable:

- (a) a requirement to be imposed under the scheme rules on all or some of the participants in that payment service to adopt, implement or otherwise support a new product/service or functionality;
- (b) any such mandate to be varied, revoked or waived; and
- (c) fees or charges to be imposed under the scheme rules on a participant which does not comply with any such mandate.

MNDC means multi network debit card.

Network Tokenisation means provision of infrastructure by an OpCo which enables the replacement of a primary account number by a surrogate value for use within the payment scheme ecosystem.

NPPA means NPP Australia Limited (ABN 68 601 428 737).

OpCo means any of BPAY, eftpos and NPPA, as the case may be.

Prescribed Services means the services listed in **Schedule 1** to this Undertaking.

Proposed Independent Auditor means a person named in a Proposed Independent Auditor Notice.

Proposed Independent Auditor Notice has the meaning given to it in clause 6.2 of this Undertaking.

Related Body Corporate has the meaning given to it by section 50 of the *Corporations Act 2001* (Cth).

Related Entities has the meaning given to it by section 9 of the *Corporations Act 2001* (Cth).

Related Parties has the meaning given to it by section 228 of the Corporations Act 2001 (Cth).

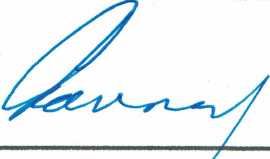

S2I means Switch to Issuer.

SRC means Secure Remote Commerce.

Undertaking is a reference to all provisions of this document, including its schedules and as varied from time to time under section 87B of the Act.

Executed as an Undertaking

Executed by Australian Payments Plus Ltd (ACN 649 744 203) pursuant to section 127(1) of the *Corporations Act 2001* (Cth) by:

	
Signature of director	Signature of a director
Robert Milliner	Adrian Lovney 
Name of director (print)	Name of director (print)
7 September 2021	7 September 2021
Date	Date

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) on:

Date

and signed on behalf of the Commission:

Chair

Related Parties has the meaning given to it by section 228 of the Corporations Act 2001 (Cth).

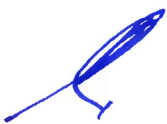
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Robert Milliner	Adrian Lovney
Name of director (print)	Name of director (print)
7 September 2021	7 September 2021
Date	Date

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) on:

8 September 2021

Date

and signed on behalf of the Commission:



Chair

Schedule 1 - Prescribed Services

Service	Description	Responsible OpCo	Relevance to least cost routing	Development Date for the OpCo	Make Available Date for the OpCo	Implementation by Issuers and/or Acquirers under the relevant OpCo's Mandate Framework
Services to be developed and made available by the Control Date						
1. Remote payments	<p>Pay for a purchase online</p> <ul style="list-style-type: none"> Switch to Issuer (S2I) <p>-----</p> <p>S2I processing allows transactions to go directly from a merchant's payments processor to the eftpos Hub and be switched to the issuer for payment authorisation and processing. Acquirers are notified for settlement purposes. This speeds up the delivery and reduces the cost (to acquirers and potentially merchants) of changes to eftpos' products and services as it removes the need to make acquirer host system changes. This solution also adds resilience to the payments system by simplifying payments processing.</p> <p>Initially the service will support processing of online card not present (CNP) transactions. Longer term support for card present (CP) transactions from a physical terminal is contemplated.</p>	eftpos	This will support CNP least cost routing by expediting eftpos' online acceptance and availability of CNP least cost routing.	Service was developed by the end of March 2021.	Service will be made available by the end of August 2021.	Not mandated.

Service	Description	Responsible OpCo	Relevance to least cost routing	Development Date for the OpCo	Make Available Date for the OpCo	Implementation by Issuers and/or Acquirers under the relevant OpCo's Mandate Framework
2. Business to business (B2B), business to consumer (B2C) and peer to peer (P2P) payments	<p>Make real-time payments into customer account via debit card CNP</p> <p>-----</p> <p>This service allows businesses to withdraw/deposit funds in real-time from/into their customers' accounts using the customers' debit card number (for multi network debit cards (MNDC) cards only).</p> <p>This service is live and this iteration is for support of additional use cases beyond P2P in the CNP environment, including support for insurance disbursements, gift card loading and instant payroll for gig economy workers.</p>	eftpos	No application to least cost routing.	Service was developed in 2020.	Service will be made available by the Control Date.	<p>Effective date of mandate: 31 May 2022.</p> <p>Name of mandate: Deposit & Withdrawals – Low-Risk Card Not Present.</p> <p>Scope of mandate: Mandate will be applicable to Issuers.</p> <p>The mandate will be applicable to MNDC only.</p>
3. Industry wide supporting capabilities and standards	<p>Enhance settlement service (for debit cards)</p> <p>-----</p> <p>This replaces the system of interchange fee exchange, where each of eftpos' participants settles individually with each counterparty bilaterally, with multilateral netting of interchange fee settlement obligations via a single debit or credit executed via the Reserve Bank of Australia's Information and Transfer System.</p> <p>This means that both net transaction value exchange (implemented in 2015) and net interchange fee exchange now happen at the same time.</p>	eftpos	No application to least cost routing.	Service was developed by the end of April 2021.	Service will be made available by the Control Date.	<p>Effective date of mandate: 30 June 2021.</p> <p>Name of mandate: eftpos Settlement Services Enhancements and Initiatives Disposition (Member Advice 017-020).</p> <p>Scope of the mandate: The mandate is applicable to Issuers and Acquirers.</p>

Service	Description	Responsible OpCo	Relevance to least cost routing	Development Date for the OpCo	Make Available Date for the OpCo	Implementation by Issuers and/or Acquirers under the relevant OpCo's Mandate Framework
Services to be developed and made available by 31 December 2021						
4. Remote payments	<p>Pay for any purchase online</p> <ul style="list-style-type: none"> ○ With merchant option for liability shift to issuer <p>-----</p> <p>This service relates to the ability to pay for a purchase online using a MNDC. This capability supports both card on file (where a debit card is stored with a merchant) and pay as you go (where debit card details are typed in) payment options. This service allows a merchant to choose how an MNDC transaction is processed with no change to consumers' experience.</p> <p>eftpos Secure (3DS) provides a means for merchants to authenticate transactions and receive liability protection, which they would typically do for only high-risk transactions until authorisation rates improve for 3DS services generally. When invoked by the merchant, the consumer is required to enter a one-time code, sent to them by their bank, into the merchant's online checkout flow to complete a purchase. Support by members for eftpos' Secure (3DS) is a necessary step to enable the safe and secure processing of any online transaction.</p>	eftpos	This service is central to the enablement of least cost routing of online payments beyond low risk card on file routing.	Service will be developed by the end of October 2021.	Service will be made available by the end of October 2021.	<p>Effective date of the mandate: 31 May 2022.</p> <p>Name of the mandate: Card-Not-Present (CNP) processing for all Multi-Network Debit (MND) card transactions (02-03/21).</p> <p>Scope of the mandate: Mandate applicable to all Issuers and Acquirers.</p> <p>The scope is for MNDC only.</p>

Service	Description	Responsible OpCo	Relevance to least cost routing	Development Date for the OpCo	Make Available Date for the OpCo	Implementation by Issuers and/or Acquirers under the relevant OpCo's Mandate Framework
5. Remote payments	<p>Pay for a purchase online</p> <ul style="list-style-type: none"> With network token (including life-cycle management) <p>-----</p> <p>This is a technical development not visible to eftpos' cardholders.</p> <p>At a technical level this development means that the eftpos' hub replaces the consumer's sensitive card details (i.e. 16-digit number, CVV) with a replacement number which is used for online (i.e. browser-based) transactions at that merchant. The cardholder sees no difference in the transaction practically, which occurs as it normally would.</p> <p>The benefit of this change is that if a merchant or merchant's service providers systems were hacked, the data that would be exposed would not be the cardholder's sensitive card details, reducing the risk of further transaction fraud, and potentially reducing the need for a card to be reissued.</p> <p>This is a development which brings eftpos into line with similar functionality which has been generally available by the ICS for a number of years.</p>	eftpos	This service is central to the enablement of least cost routing of online payments for card on file services popular with large ecommerce merchants and their service providers.	Service will be developed by the end of October 2021.	Service will be made available by the end of October 2021.	<p>Original mandate date: May 2020. The mandate will not be enforced until May 2022.</p> <p>Name of the mandate: Support for Tokenisation (Member Advice 005-20).</p> <p>Scope of the mandate: The mandate is applicable to Issuers.</p> <p>The scope of the mandate is for MNDC only.</p>

Service	Description	Responsible OpCo	Relevance to least cost routing	Development Date for the OpCo	Make Available Date for the OpCo	Implementation by Issuers and/or Acquirers under the relevant OpCo's Mandate Framework
6. Industry wide supporting capabilities and standards	<p>Monitor and risk score transactions for fraud (debit cards)</p> <p>-----</p> <p>This is a network fraud monitoring and transaction scoring capability, which is critical to enable the safe expansion of eftpos into riskier (i.e. beyond low risk recurring payments) MNDC CNP transactions. The score and reason codes will be provided to members within the transaction record enabling real time data capture and issuer decision-making within their authorisation processes. The information obtained from this process will give issuers more data to feed into their authorisation systems, allowing them to make more accurate decisions to approve or decline.</p> <p>This service will help decrease fraud losses for banks and their customers and help increase the ability for eftpos to enable online card acceptance in riskier merchants, where banks might otherwise decline the transaction.</p>	eftpos	This will support least cost routing because it will support eftpos' online acceptance.	Service will be developed by the end of October 2021.	Service will be made available by the end of December 2021.	Not mandated.

Service	Description	Responsible OpCo	Relevance to least cost routing	Development Date for the OpCo	Make Available Date for the OpCo	Implementation by Issuers and/or Acquirers under the relevant OpCo's Mandate Framework
Services to be developed and made available by 30 June 2022						
7. Remote payments	<p>Pay for a purchase in-app</p> <ul style="list-style-type: none"> With network token (including lifecycle management) <p>-----</p> <p>Mobile applications are increasingly supporting card-based payments within the application (i.e. "in-app") aligned to the Apple iOS and Google Android operating systems and their respective digital wallets. Where supported within a merchants' app, the consumer would select to pay using their mobile wallet (such as Apple Pay) and follow the familiar checkout experience. This service will ensure the ability to process eftpos' network tokens when a consumer has selected eftpos within their mobile wallet (such as Apple Pay).</p>	eftpos	This service is central to the enablement of least cost routing of in-app payments, if merchants are provided the choice.	Service will be developed by the end of October 2021.	Service will be made available by the end of October 2021.	<p>Effective date of the mandate: 31 May 2022.</p> <p>Name of the mandate: eftpos Tokenisation Service for Device (eTS-D) – In-app Payments (Member Advice 03-03/21).</p> <p>Scope of the mandate: The mandate is applicable to Issuers and Acquirers.</p> <p>The scope of the mandate is for MNDC only, when provisioned into digital wallets.</p>
8. B2B, B2C and P2P payments	<p>Make real-time payments into customer account via debit card (resolve for time-bound exceptions for CP)</p> <p>-----</p> <p>This service allows a merchant via the terminal supplied by their payment processor or bank to deposit funds from their merchant account into a customer's bank account via linked eftpos functionality (with funds made available to the cardholder in real-time). This terminal based service is currently used by Medicare to process eligible Medicare claims to a</p>	eftpos	Not applicable to least cost routing.	Service will be developed by the end of April 2022.	Service will be made available by the end of June 2022.	<p>Effective date of the mandate: 31 May 2023.</p> <p>Name of the mandate: Deposit & Withdrawals – Card Present.</p>

Service	Description	Responsible OpCo	Relevance to least cost routing	Development Date for the OpCo	Make Available Date for the OpCo	Implementation by Issuers and/or Acquirers under the relevant OpCo's Mandate Framework
	<p>bank account which has linked eftpos functionality.</p> <p>This service is for CP transactions beyond Medicare payments and replaces current time-based exemptions allowing specific other use cases, for example where a card is tapped at a newsagent to receive a lottery payout.</p>					<p>Scope of the mandate:</p> <p>The mandate will be applicable to Issuers.</p> <p>The scope of the mandate will be applicable to both eftpos' proprietary debit cards and MNDC.</p>
9. B2B, B2C and P2P payments	<p>Give and manage standing authorisations for payments initiated by third parties (i.e. Mandated Payments Service)</p> <p>-----</p> <p>The "PayTo" service will enable customers to authorise third parties to initiate payments from their bank accounts using the NPP. PayTo enables a more digital and enhanced customer experience, providing customers with more visibility and control over their payment arrangements. The functionality can be used for a range of use cases including an alternative for direct debit, supporting the linking of bank accounts for in-app payments, card-on-file type arrangements (such as Uber), funding for other payment options such as digital wallets and BNPL services and for recurring e-commerce payments.</p> <p>PayTo will also deliver benefits to parties initiating payments which are not available today, such as real-time account validation, confirmation of funds availability and confirmation that the payment has been made.</p>	NPPA	Not applicable to least cost routing.	Service was developed by the end of July 2021.	Service will be made available by the end of May 2022.	<p>Effective date of the mandate:</p> <p>30 June 2022.</p> <p>Name of the mandate:</p> <p>Mandate Management Requirements and Mandate Payment Processing.</p> <p>Scope of the mandate:</p> <p>The mandate will be applicable to all NPP Participants.</p>

Schedule 2 –Independent Auditor Appointment Form

This form sets out the information required by the ACCC in relation to proposed appointment of the Proposed Independent Auditor.

Please note in relation to information given pursuant to this form, giving false or misleading information is a serious offence.

Method of Delivery to the ACCC

This completed form, along with the additional requested information is to be provided to the ACCC with the subject line (Proposed Independent Auditor Notice – AP+ to the below email addresses:

1. mergers@acc.gov.au

Attention: Executive General Manager

Merger, Exemptions & Digital Division

2. With a copy sent to:

mergersru@acc.gov.au

Attention: Director

Remedies Unit

Policy, Coordination & Strategy Branch

Merger, Exemptions & Digital Division

Information Required

The ACCC requires the following information in order to assess a proposed Independent Auditor:

1. Proposed Independent Auditor details:
 - a. the name of the Proposed Independent Auditor; and
 - b. the name of the Proposed Independent Auditor's employer and contact details including:
 - i. address;
 - ii. contact name;
 - iii. telephone number;
 - iv. other contact details.
2. A submission containing the following information:
 - a. details of the Proposed Independent Auditor's qualifications and experience relevant to his or her proposed role pursuant to the Undertaking
 - b. the names of the owner(s) and the directors(s) of the Independent Auditor's employer

- c. details of any of the following types of relationships between AP+ and the Proposed Independent Auditor or the Proposed Independent Auditor's employer or confirmation that no such relationship exists whether within Australia or outside of Australia:
 - i. AP+ and the Proposed Independent Auditor's employer are Associated Entities
 - ii. AP+ is an Entity Connected with the Proposed Independent Auditor's employer
 - iii. the Proposed Independent Auditor's employer is an Entity Connected with AP+
 - iv. AP+ and the Proposed Independent Auditor's employer are Related Entities
 - v. AP+ and the Proposed Independent Auditor's employer are Related Parties
 - vi. any Related Party, Related Entity or Entity Connected with AP+ is a Related Party, Related Entity or Entity Connected with the Proposed Independent Auditor
 - vii. AP+ and the Proposed Independent Auditor or Proposed Independent Auditor's employer have a contractual relationship or had one within the past 3 years, other than those attached to this form
 - viii. the Proposed Independent Auditor's employer is a supplier of AP+ or has been in the past 3 years
 - ix. AP+ is a supplier of the Proposed Independent Auditor's employer or has been in the past 3 years, and
 - x. any other relationship between AP+ and the Proposed Independent Auditor or Proposed Independent Auditor's employer that allows one to affect the business decisions of the other, and
 - d. details of any existing or past contractual relationships between the Proposed Independent Auditor or the Proposed Independent Auditor's employer and the ACCC within the past 3 years.
- 3. A document outlining the terms of appointment for the Proposed Independent Auditor. This should identify the basis on which fees will be paid, including disclosure of any proposed performance-based fees.
 - 4. A finalised draft audit plan for AP+, drafted by the Proposed Independent Auditor and outlining (to the extent possible) the Proposed Independent Auditor's plans in regard to the Establishment Audit and the Audit Report.