



Your ref: MA1000020  
Contact officer: Sophie Mitchell / Alex Reed  
Contact phone: (02) 9230 3843 / (02) 6243 1364

4 June 2021

Dear Sharon and Christopher

**Re: Application for merger authorisation MA1000020 – further information request**

I refer to previous correspondence regarding the application for merger authorisation for an amalgamation of ownership of BPAY Group Pty Ltd and BPAY Pty Ltd (**BPAY**), eftpos Payments Australia Limited (**eftpos**) and New Payments Platform Australia Limited (**NPPA**) by way of share acquisition (the **proposed amalgamation**).

The Australian Competition and Consumer Commission (**ACCC**) requires further information to conduct its analysis. I have set out an information request at **Attachment A**.

I request your response to the information request by **close of business on 18 June 2021**.

Your response to these questions is fundamental to the ACCC's assessment of the proposed amalgamation. Subject to our consideration of any request for exclusion from the public register, a public version of your response to this letter with confidential information redacted will be placed on the ACCC's public register. We request that a greater level of detail is provided in your public response to these questions on changes in governance and control than what has previously been provided in respect of these issues. This letter will also be published on the public register.

If you wish to discuss this letter, please contact Sophie Mitchell on (02) 9230 3843 or Alex Reed on (02) 6243 1364.

Yours sincerely

Daniel McCracken-Hewson  
General Manager  
Merger Investigations

## Attachment A

### Information request

1. In relation to each of the three OpCos, please explain (by reference to the relevant parts of the Implementation Agreement):
  - a. How the directors are appointed to the OpCo board by NewCo (e.g. vote by NewCo shareholders or resolution by NewCo directors, including the applicable majority requirements for the vote or resolution, as the case may be)?
  - b. How the OpCo directors are nominated, including in particular, whether they are nominated by the NewCo shareholders and if so, which shareholders are entitled to nominate how many directors?
2. Please explain the decision-making power of, and the decision-making processes within, each OpCo, including:
  - a. What types of matters will each OpCo be responsible for?
  - b. What types of decisions will each OpCo be able to make, including (but not limited to) decisions with respect to the development of the OpCo's roadmap and the inclusion of a particular payment service in its roadmap?
  - c. Whether the decisions will be made by way of resolution of the Board of directors of the OpCo, including the applicable majority requirements?
  - d. Whether the decisions will be made by the OpCos independently from NewCo?
  - e. Who has the ability to change the governing rules, scheme rules and/or constitution of each OpCo?
3. If any of the decisions identified in response to question 2 above are not made by the OpCo independently from NewCo, please explain the extent of control or influence, either legal or de facto, NewCo will have in relation to these decisions.
4. Please explain how the OpCos will make decisions in relation to the pricing of services (we refer to paragraph 8.5 of the Transition Plan, Schedule 3 of the Implementation Agreement dated 10 December 2020). Please address the following:
  - a. Will the NewCo Board have any control over or exert any influence on the OpCos' decisions in relation to the pricing of services?
  - b. Will the NewCo Board make pricing recommendations or provide pricing guidance to the OpCos in relation to the pricing of services?
  - c. Will the NewCo Board otherwise be involved in the OpCos' decision-making in relation to the pricing of services?
5. When a funding request is required for outside capital for a payment service, who decides whether to provide funding for the investment? Explain how this decision is made by NewCo by reference to the relevant provisions of the NewCo Constitution.
6. Please explain the proposed funding arrangements for NewCo with regards to (i) the day-to-day operating costs and (ii) the non-operating costs of each OpCo. In doing so, please refer to the relevant provisions in the Implementation Agreement which incorporate or set out any such funding arrangements and explain what types of matters will be considered to be non-operating costs of an OpCo. In your response, please specifically address the following:

- a. Could NewCo use funds generated from one OpCo's payment services to provide funding for one or both of the other two OpCos' current or future payment services?
  - b. Could NewCo use operating profits and/or dividends generated from the eftpos OpCo's payment services to fund operating and/or non-operating costs (including, in particular, investments in new services or infrastructure) of one or both of the other two OpCos (for example, to provide funding for a new NPP functionality)?
  - c. If your response to 6a. and/or 6b. above is in the affirmative, please describe the processes which would be required for NewCo to do so (e.g. vote by NewCo shareholders or resolution by NewCo directors, including the applicable majority requirements for the vote or resolution, as the case may be).
7. Please explain how decisions relating to access will be made. In your response, please specifically address the following:
  - a. Will the NPPA OpCo or the NewCo Board decide if a third party can access the NPP?
  - b. If the former, will the NPPA OpCo make such a decision independently from NewCo?
  - c. If such a decision is not made by the NPPA OpCo independently from NewCo, please explain the extent of control or influence the NewCo Board will have in relation to such a decision.
8. Please identify, for each Payment Service operated by each OpCo:
  - a. All Participant Members;
  - b. The possibility / likelihood that the number and identity of the Participant Members will change over time, and the relevant factors that will influence that possibility / likelihood;
  - c. All Members who will hold classes of Preference Shares in the Band for a particular Payment Service;
  - d. Each such Member's shareholding (number and proportion of shares) and voting rights in the classes of Preference Shares in the Band for a particular Payment Service.
9. Please explain how any subsequent shareholders of NewCo will be classified as or determined to be a Participant Member of a particular Payment Service, and the role of NewCo and/or its shareholders in this process.
10. Describe the types of matters or decisions that will be capable of being taken by a resolution of the NewCo Board of directors, on the one hand, and those which will require the passage of a resolution by NewCo members/shareholders (or a subset of members/shareholders) on the other hand. In practice, what types of matters or decisions will be capable of being taken by the NewCo management and not require a resolution by the Board of directors.
11. Explain in more detail how a Special Majority Band Resolution will work in practice, with reference to an example of a potential fundamental change for each of eftpos, BPAY and NPPA (for instance, in terms of operation / roadmap, nature of services, use of funding generated from the Payment Services).
12. If there were to be a NewCo business case for rationalising payment rails (e.g. shutting down some eftpos or BPAY infrastructure in the long term), explain the

decision-making process and any Board or shareholder/member resolution process that would be required in order to implement this.

13. By reference to the relevant provisions of the Implementation Agreement and/or the NewCo Constitution (if applicable), please explain the process through which NewCo could decide to impose mandates on shareholders to support new services.
14. Is there a requirement upon NewCo to establish and maintain the End User Committee and Payment Service Provider Committee? If so, please:
  - a. Explain the basis for this requirement (including by reference to the Implementation Agreement and/or the NewCo Constitution);
  - b. Provide information on the terms of references for each of these committees; and
  - c. Outline how NewCo's Board will be required to take into consideration the committees' views to inform its decision making.
15. In relation to the Prescribed Services, please provide/explain:
  - a. a detailed description of each of the services (by reference to the responsible OpCo's current roadmap);
  - b. which OpCo will be responsible for developing each of the services;
  - c. whether there will be any contractual or other requirement for any shareholders/members of each OpCo to adopt and/or implement the services (please explain by reference to the Implementation Agreement, if applicable).