



23 April 2021

Australian Competition & Consumer Commission
Your ref: MA1000020
Contact officer: Alex Reed / Sophie Mitchell
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Dear Alex Reed / Sophie Mitchell

Visa – MA100020 – Submission to the Proposed amalgamation of BPAY, eftpos and NPPA – interested party consultation

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

Visa does not propose to make any specific submission on the questions of whether the proposed amalgamation will substantially lessen competition or result in a net public benefit. Visa's submission is focussed on three key points:

1. The role of the Reserve Bank of Australia (**RBA**) as shareholder of the NPP Australia Limited (**NPPA**) and its role as primary regulator for the Australian Payments System;
2. The importance of appropriate safeguards to ensure that the Proposed Merger does not increase structural and strategic barriers to entry which make it difficult for new entrants and existing players, including global payment network participants, to enter, innovate and compete;
3. The importance of a strong governance regime that is fit for purpose for the proposed amalgamated entity and which will guard against the flow of commercially sensitive information that may detrimentally impact participants in the Australian Payments System.

Visa has suggested some guiding principles which it considers appropriate to address these key points and requests that the ACCC take these into consideration in assessing the Proposed Merger and any conditions of authorisation.

Visa also wishes to comment on some statements concerning Visa contained in the Authorisation Application and includes a table at **Annexure 1** which identifies the paragraphs and statements and provides comment or corrections for the public record.

These issues are addressed below.

1. Role of the RBA

Visa understands from its review of the Authorisation Application that the Reserve Bank of Australia (**RBA**) will not be acquiring shares in NewCo and will not continue to hold shares in NPPA¹. The RBA is not an Applicant but it is a person named and referred to in the Authorisation Application for the purposes of sub-section 88(2) of the Competition and Consumer Act 2010 (**CCA**) which allows it to take the benefit of the authorised conduct.

Visa agrees that it is not appropriate for the RBA to maintain its shareholding in NPPA nor is it appropriate for the RBA to hold shares in NewCo. As the primary regulator for the Australian Payments System² and therefore the services offered by NewCo, maintaining this appropriate level of independence from NPPA and NewCo is important for public confidence. This independence gives the public confidence that the RBA and its Payments System Board will and be able to efficiently and effectively exercise their statutory responsibilities to control risk in the financial system; promote the efficiency of the payments system and promote competition in the market for payment services³.

Visa notes that there is some inconsistency in the references to the RBA not continuing to hold shares in NPPA and considers that this would best be addressed by confirmation from the RBA that it will neither hold shares in NewCo or maintain its shareholding in NPPA.⁴

2. Barriers to entry and innovation

Visa is mindful that the NewCo entity (and the underlying shareholders) will have a dominant position from a control, access and service provision coverage in the Australian payments landscape relative to any other player, including global payment networks.

Hence, Visa recommends that safeguards are put in place to ensure the Proposed Merger does not increase structural and/or strategic barriers to entry. The Proposed Merger may create links between the NewCo products and services which may make it difficult for new entrants and existing players to enter, innovate and compete.

¹ Section 5.1 of the Authorisation Application, footnote 5.

² The Reserve Bank of Australia Act 1959 (Cth) gives the Payments System Board responsibility to determine the RBA's payment system policy

³ Authorisation Application, pp 162

⁴ Footnote 5 states clearly that the RBA "...will not continue to hold shares in NPPA...". However, section 2.2 does not state clearly that the RBA will not continue to hold shares in NPPA. Instead, it provides "*NewCo will be owned by the current shareholders and members of BPAY, HoldCo, eftpos and NPPA. The RBA is currently a shareholder of NPPA. However, the RBA will not become a shareholder of NewCo and is not, therefore, an Applicant*". Footnote 294, states that the RBA has advised NPPA that if NewCo proceeds to implementation, that the RBA will not continue as a shareholder in NewCo given its formal role as a regulator for services offered by NewCo.

Specifically, control of the end-to-end value chain could reduce the motivation for NewCo shareholders to explore and offer alternative solutions to customers. For example, banks may be less inclined to enable card-based real-time payment solutions, leaving consumers and businesses with only one, NewCo-owned real-time payment option. Also, bundling of NewCo products could have the effect of reduced competition from providers of similar products offered by competing entities on a standalone basis.

Hence, the Proposed Merger should maintain principles of competition and choice to ensure there are requisite incentives for continued innovation from existing as well as new players. It is critical to the ongoing choice for consumers, merchants and new entrants/innovators that the merged entity operates on the basis of open and non-discriminatory access and creates products and services that can be integrated into the globalised marketplace in which Australian consumers and merchants operate.

To do otherwise, could create a closed loop and fragmented payment system. This would give rise to significant consumer and market detriments and Visa notes that a fragmented payments system is in fact a concern that the proposed amalgamation is intended to overcome.

Visa and MasterCard, for example, operate in and adopt globally recognised and common technology standards and protocols. This, in turn, encourages access by other payments system participants and the development of innovations by payments systems participants who can be confident about the applicable standards and rules which allows for continued investment and development and therefore continued growth of cross-side network effects.

The payments landscape is dynamic and evolving rapidly. Payment products and services are continually developing and innovating and Visa considers that it is important for the Australian payments landscape to benefit from international best practice.

There is a risk that if the merged firm were to develop standards that do not conform to or are interoperable with international standards, and shareholder banks and other key shareholders and stakeholders are incentivised to invest in the merged firm's technology at the expense of others, this could, in turn prevent the Australian public from obtaining the full benefit of all global payments technology innovations.

Further, a closed loop system without open access gives rise to significant barriers to entry. Competing payments service providers could be locked out of an upstream critical input, or access right, that could have the effect of substantially lessening competition in the market for payments services in Australia and give rise to public detriments where competing payments service providers are unable to effectively participate in, develop and enhance the payments landscape in Australia.

Hence, Visa would recommend that the merged entity consider operating within open and globally recognised standards that enable access by other players and continued growth of cross-side network effects.

Visa acknowledges that the merged entity intends to engage with small businesses and other users and intends to establish advisory committees (end user committee and service provider committee) to allay concerns that the merger may be detrimental to small businesses and/or other participants in the Australian payments ecosystem.

However, without appropriate governance systems in place, the merged entity may overtime be incentivised to favour the outcomes of its key shareholders at the expense of smaller business groups and other competitors which may negatively impact the ability of the merged entity to fulfil its goals and realise the public benefits of the conduct.

3. Governance Regime and Information barriers

Should the conduct be authorised, it will be important to ensure that there is a strong governance framework in place that is fit for purpose for the proposed amalgamated entity.

In assessing whether the proposed conduct will substantially lessen competition or give rise to public benefits which outweigh the anti-competitive detriments, Visa submits that the ACCC should consider whether the proposed amalgamation will give rise to information flows that could harm the relevant competitive processes.

There is no reference in the Authorisation Application to the way in which information flows are to be managed between the NewCo subsidiaries or by NewCo; its subsidiaries and their relationships with payment system participants.

In a merger context, competition authorities and interested parties would typically be concerned about the possibility of information flows giving rise to competition concerns in vertical arrangements where the merged entity, by vertically integrating, might gain access to commercially sensitive information regarding the upstream or downstream activities of rivals. Visa envisages situations whereby a NewCo subsidiary may receive confidential and commercially sensitive information from a payment system participant for a particular purpose. Use of that information for the nominated purpose should be governed by an information use policy to protect that participant and their information from misuse or exploitation and an information use policy would also guard against the use of that information for a purpose that could have adverse consequences on other payment system providers. The three payment schemes are described as complements, which may aptly characterise the payment schemes presently. However, the merger rationale includes to co-ordinate innovations, create efficiencies and better compete against existing and future global payment companies.⁵ These innovations may include future developments such that even if information exchange protocols are not presently necessary, they may become necessary in the future.

This amalgamation is unique in that its directors and shareholder participants are largely made up of customers and suppliers of each of the three amalgamating payment schemes and customers of Visa and the other ICS.

⁵ Authorisation Application, pp 6

For example, Visa envisages situations where it may engage in confidential and commercially sensitive discussions with a shareholder customer of the merged firm. It is important for those discussions to remain confidential to Visa and the customer and not shared with the merged firm. There should be robust information barriers in place to ensure such commercially sensitive information does not flow to the merged firm.

Given the large number of shareholders who are competitors of each other and customers or potential customers of NewCo's competitors, the ACCC should ensure, by way of conditions, that appropriate information exchange protocols are hardwired into any authorised conduct and subject to an audit requirement.

4. Principles for consideration

The ACCC, with access to all of the confidential information annexed to the Authorisation Application, including the Confidential Implementation Agreement and the Prescribed Services, is best placed to consider how the merged entity and its governance structures can best accommodate the concerns raised above. In Visa's view, the following principles should be taken into consideration by ACCC in its assessment of the proposed merger:

- information barriers between the three separate operating companies such as in relation to commercial, pricing and sensitive information about competitors; and
- inter-company data sharing protocols, and use and purpose controls.

In Visa's view, the ACCC should not rely on assertions regarding the governance structure and non-discriminatory access but should impose conditions to ensure these outcomes. In the absence of such conditions, these stated benefits should be discounted.

5. Corrections to the record

Visa has reviewed the Authorisation Application and statements made about Visa and its related bodies corporate; its competitors and the analysis about Visa's competitive position. Visa wishes to comment on certain statements and includes a table at **Annexure 1** which identifies the paragraphs and statements and provides comment or corrections for the public record.

Concluding remarks

The ACCC, with access to all of the confidential information annexed to the Authorisation Application, including the Confidential Implementation Agreement and the Prescribed Services, is best placed to consider whether and how the merged entity should deal with confidential and commercially sensitive information and whether it should be required to ensure that there is a governance framework in place for dealing with confidential and commercially sensitive information.

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

Yours sincerely,



Julian Potter
Group Country Manager – Australia, New Zealand and South Pacific

Annexure 1

Reference	Extract of merger application statement	Visa Comment
p.9, 2.7 and pp.104-105, 26.6	BPAY's request to pay service is targeted at a broad range of customers including billers who want to request that payments be "pushed" to them by customers as well as small businesses and P2P; for eftpos' card on file service, the main target is customer and merchant initiated recurring in-app and online payments which is currently dominated by Visa and Mastercard.	<p>The online payments landscape is highly competitive as evidenced by the number of new entrants and payment methods over the last few years, both domestic (Afterpay, Zip, Beem It) and international (Paypal, Apple Pay), and diversity of participants, such as the introduction of payment gateways and facilitators, in addition to the traditional parties in the four-party model in the face to face environment. Accordingly, it is not appropriate to say that any party dominates the complex and fast changing online environment which is evolving at an unprecedented pace – and will continue to do so.</p> <p>The domestic and international players have launched capability which enable consumers to safely and securely transact in the online environment, which has a higher security and fraud risk than the face to face environment. At any time one player may have more market share than its competitors, in particular where a player provides new functionality or capability that meets the consumer's needs.</p>
p. 31-32, 10.2(d) and	The Industry Committee's non-binding endorsement of the Conduct reflects an expectation that the Conduct will address a number of the critical deficiencies in the current domestic payments industry. These deficiencies, as identified by industry participants include, for example (d) The increasing competitive strength of Visa and Mastercard and the increasing power of Big Tech at the expense of domestic entities, leading to the loss of ability to retain profits and control within Australia with an undesired dependency on international players as a result of commercial decision of the shareholders/members.	<p>While Visa is an international company participating in the Australian payments landscape, Visa is subject to Australian law including by reason of the RBA's designation of the Visa four-party credit card system and the Visa debit system and relevant standards and undertakings.</p> <p>Visa has been an active and committed participant in the Australian payments landscape for over 40 years and have proudly partnered with our clients, industry participants and regulators to bring cutting edge products and services to the Australian payments landscape.</p> <p>Two notable innovations spearheaded by Visa have been the introduction of contactless payments in Australia (functionality that has delivered financial benefits to industry participants and, through the COVID-19 pandemic, enabled merchants to respond to the health concerns of their customers) and the introduction of safe and secure e-commerce capabilities, delivering financial benefit to all industry participants.</p>
p.71 top, 18.3	"– demonstrating the challenge of introducing innovations that have already been preceded by the ICS."	
p.57, 14.2	Australia's payment schemes currently lag behind the ICS, Big Tech and FinTech in terms of technological capabilities and service delivery.	Visa has been operating in the Australian market for over 40 years and has made substantial investment in research and development, technological development and IT systems and capabilities to bring innovation, new functionality and competition to the Australian payments landscape which bring benefits to Australian business and Australian consumers. To support local business and innovation, Visa has used open standards which have both accelerated local adoption of new innovation and allowed domestic players to leverage off the investment Visa has made.
p.58, 14.4	In the future without the Conduct, with a lesser form of amalgamation, the lack of a co-ordinated investment roadmap will cause the gap to grow between the technological capabilities and service delivery of Australia's domestic retail payments systems and ICS, Big Tech	

and FinTech, to the detriment of Australians. The Australian payments schemes will be less able to effectively challenge their global competitors and less able to successfully bring payments innovations to market. □

Payment platforms such as Visa contribute significantly to economic growth, development and the financial inclusion of all Australians and Australian businesses. Electronic payments help the nation boost growth, create jobs, and increase tax revenue; drive innovation and the digital economy; support small and medium-sized enterprises; create transparency in transactions; and deliver enhanced security for financial institutions, businesses, and consumers.⁶

p.70, 18.3

For most transactions at retail merchants, payments via the eftpos system can be cheaper for them to accept than payments via the ICS.

The retail prices of the eftpos and ICS services (i.e. the costs acquirers charge retailers/merchants for the network services) do not appropriately reflect the wholesale prices (i.e. the cost the schemes charge the acquirers). Where a like for like transaction is compared, from a wholesale price point, Visa is competitive. Additionally, a transaction processed by Visa delivers incremental value to both consumers and merchants. For example, sophisticated fraud prevention⁷, tools and processes enable higher transaction conversion rates, and efficient dispute resolution services.

⁶ For further details on the benefits of electronic payments to economies, see the Visa-commissioned report (2017), Cashless Cities: Realising the benefits of digital payments, <https://usa.visa.com/dam/VCOM/global/visa-everywhere/documents/visa-cashless-cities-report.pdf> and Moody's Analytics (2016), The Impact of Electronic Payments on Economic Growth, <https://usa.visa.com/dam/VCOM/download/visa-everywhere/global-impact/impact-of-electronic-payments-on-economic-growth.pdf>

⁷ <https://www.visa.com.au/about-visa/newsroom/press-releases/visa-prevents-more-than560-million-in-fraud-from-impacting-australian-businesses.html>