
From: Wu, Connie
Sent: Wednesday, 9 June 2021 4:53 PM
To: [REDACTED]
Cc: Mitchell, Sophie; Basile, Mark; Staltari, Danielle; Black, Susie; Barlow, Emily; Reed, Alex; Cooke, Nick
Subject: Application for merger authorisation MA1000020 – Information request – eftpos [SEC=OFFICIAL]

Dear Hannah,

We 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 ACCC requires further information to conduct its analysis. We request eftpos' response to the questions below by **close of business on 18 June 2021**.

1. Please provide the most recent version of the eftpos Constitution.
2. Please:
 - a. identify each member of eftpos and state whether they are an Issuer Member or an Acquirer Member (as defined in the eftpos Constitution);
 - b. state:
 - i. the number (and proportion) of votes each member has at a general meeting;
 - ii. the number (and proportion) of votes each member has at an Acquirer Class Meeting (as defined in the eftpos Constitution);
 - iii. the number (and proportion) of votes each member has at an Issuer Class Meeting (as defined in the eftpos Constitution); and
 - iv. The number (and proportion) of votes each director (identified by their name and nominating member/s) has at a meeting of directors.
3. Please:
 - a. describe the extent to which, if at all, the individual Scheme Volume and/or voting entitlements of members of eftpos has fluctuated over time;
 - b. explain what factors have caused such fluctuations;
 - c. explain how frequently the Scheme Volumes are calculated for the purposes of ascertaining the voting rights of members and directors; and
 - d. provide the Scheme Volumes for each member as calculated for the purposes of ascertaining the voting rights of members and directors since 1 January 2019.
4. Describe the types of matters or decisions that are the subject of each type of resolution able to be passed by members (i.e. at general meetings, Acquirer Class meetings and Issuer Class meetings) of eftpos, especially with respect to 'ordinary' member resolutions.
5. By reference to relevant provisions of the eftpos Constitution or other governing rules, please explain how eftpos makes pricing decisions with respect to interchange fees and scheme fees.
6. Please identify the number of directors on the eftpos Board and the composition of the eftpos Board, including which members nominated and/or appointed how many directors, and whether individually or jointly with other members.

7. Please:
 - a. identify the number (and proportion) of votes held by each director (identified by their name and nominating member/s) of eftpos; and
 - b. explain how a member's Scheme Volume (which is a percentage figure) is converted into a number of votes for their nominee director in light of the votes held by the independent directors and Chair.
8. In its statement, eftpos expresses concern that the proposed governance structure for eftpos (following the proposed amalgamation) will enable dividends to be declared in favour of NewCo and for the funding that would support eftpos initiatives to be shifted within the group (i.e. funding will be shifted away from eftpos initiatives such as Beem It and digital ID). Please explain:
 - a. whether eftpos considers the NewCo Board would have an incentive to compel eftpos to pay a dividend, to shift funding away from eftpos or both, and, if the NewCo Board has such an incentive, explain the nature of the incentive(s); and
 - b. the extent to which the NewCo Board could act on any incentives identified in your response to the preceding subparagraph, including details of any limitations on the NewCo Board's ability to act on those incentives.
9. By reference to the relevant provisions of the eftpos Constitution or other governing rules, please explain the process through which eftpos could impose mandates on members to support roll out of new eftpos services.
10. In relation to the following services – 'Core', 'MCR', 'Mobile', 'CNP', 'QR Code', 'Deposit and Withdrawal', and 'Other' – mentioned in the 'eftpos transaction and revenue summary 5 years_5May21' spreadsheet, please explain:
 - a. what services are included in 'Mobile';
 - b. what service is 'Deposit @ ATM', and how it would operate;
 - c. how 'BeemIt – connect ID identify provider' would operate (including whether connect ID would only be operated within the Beem It app);
 - d. the assumptions that have been made in order to calculate the transaction volumes and revenue forecast (including price assumptions) for each of these services, and the basis of those assumptions;
 - e. the amount of forecast investment costs that would be required by eftpos in each of the next 5 years in order to fund the development and/or launch of each of the services;
 - f. how eftpos will fund the development and/or launch of these services;
 - g. how eftpos plans to launch these services, including what actions consumers/merchants would need to take to adopt these services;
 - h. the nature and extent of support (in dollar terms if possible) that would likely be required from eftpos members (by membership type, e.g. the major banks, retailers, and other members) to develop and/or launch those services, and whether any rebates will be paid to members; and
 - i. the level of costs merchants and other customers would be likely to incur to adopt these services.
11. Paragraph 46 of eftpos' statement indicates that eftpos' Deposit and Withdrawal services allow real time transfer in and out of accounts using card rails. Please explain:
 - a. how the services work, including by reference to what card rails (Visa, Mastercard or eftpos) and what schemes (credit or debit) could be used to transfer payments;
 - b. whether and how the services would support eftpos core volumes to grow;
 - c. what would be required for the services to be used for business or government disbursements, and how this would be achieved in practice; and
 - d. how the services would compare to NPPA's services (e.g. account reach, costs, ease of use, and fraud risks).

12. In relation to Beem It, please explain:

- a. what types of cards consumers can use in the Beem It app, and the reasons why particular cards can or can't be used;
- b. whether payments made through Beem It can be routed through the eftpos network, the ICS networks, or both. If both, please explain how the network through which a payment is routed is determined; and
- c. whether the Beem It app relies solely on eftpos' Deposit and Withdrawal services for its real time payment functionality.

13. Please describe the similarities and differences between the use cases for, and functionalities of, eftpos' 'card on file' service and the services offered by BPAY, such as BPAY Payments.

Subject to our consideration of any request for exclusion from the public register, a public version of eftpos' response to this letter with confidential information redacted will be placed on the ACCC's public register. This email will also be published on the public register.

Thanks, and kind regards

Connie

Connie Wu

Assistant Director | Mergers Exemptions and Digital

Australian Competition & Consumer Commission

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The ACCC acknowledges the traditional custodians of Country throughout Australia and recognises their continuing connection to the land, sea and community. We pay our respects to them and their cultures; and to their Elders past, present and future.