

12 May 2021

Australian Competition and Consumer Commission
Your reference: MA1000020
Attention: Alex Reed/Sophie Mitchell

By Email: mergerauthorisations@acc.gov.au

Proposed amalgamation of BPAY, eftpos and NPPA – American Express submission

American Express welcomes the opportunity to comment on the proposed amalgamation of BPAY, Eftpos and the NPPA.

American Express does not oppose the merger Application. However, we make the following observations to provide additional perspective for the ACCC and that of other agencies responsible for regulating payments in Australia.

Firstly, as a point of clarification on certain matters raised in the Application concerning American Express, we would point out that American Express in Australia:

- is not a 'must take' form of payment (in contrast to Visa & Mastercard); and
- does not offer a debit payment product.

NPP is Critical Payments Infrastructure

The NPP is a critical piece of payments infrastructure and must operate to the benefit of all Australians. Whilst a consolidated domestic debit network can support increased competition and innovation in payments capabilities, this can only be fully achieved where the underlying payments infrastructure remains open and accessible to all participants across the economy.

An open-access regime for the NPP was first recommended by the Productivity Commission in its 2018 report into competition in the Australian Financial System and an ethos of open access has remained a key tenet of the NPP's albeit slow development. In its June 2019 paper on 'NPP Functionality and Access' the RBA raised concerns about the delay in NPP capability roll-out and highlighted the potential for 'conflicts of interest' to impede progress.

We note that Osko (owned by BPAY) remains the only authorised Overlay Service Provider under the NPP and that the Mandated Payments Service has been subject to ongoing delays. Whilst there are many factors at play here, the risk of conflicts (if not, their perception) persists in 2021.

Safeguarding Open Access

Whilst the RBA stopped short of recommending the use of its powers to mandate an open-access regime, it may be appropriate for the RBA (with support from the ACCC) to review that position in light of the proposed merger.

An obvious concern is that future owners of the NewCo will not have sufficient commercial incentive or motivation to preserve access on a non-discriminatory basis. To the contrary, NewCo may impose additional barriers to entry, drag their heels or increase cost where it suits the commercial objectives of the owners.

A low-cost, simple, fair and transparent access regime is critical for payments innovation and competition in Australia. It will be important should the merger proceed for the RBA & ACCC to consider what additional legal or regulatory levers could be used to better safeguard such an outcome.

Consideration of Regulatory Reviews Underway

The payments industry is currently undergoing a period of intense disruption and innovation. This change has carried over into the regulatory environment with several reviews currently underway including the Government's review of the Australian Payments System and the RBA's Retail Payments Review. We consider it critical for the ACCC to engage with the agencies leading these reviews to better understand how a merged domestic payments network will fit within the resulting regulatory framework and outcomes stemming from these consultations and reviews.

If the resulting recommendations and regulatory reform coming out of these consultation processes have not properly factored the proposed amalgamation, then they risk being obsolete upon publication.

American Express would be more than happy to discuss any part of this submission in more detail.