Australian Chamber of Commerce and Industry
ABN 85 008 391 795
T: +61 2 6270 8000
info@australianchamber.com.au
www.australianchamber.com.au

17 August 2021

Daniel McCracken-Hewson
General Manager Merger Investigations Division
Australian Competition and Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

Via: mergerauthorisation@accc.gov.au

RE: Proposed amalgamation of BPAY, eftpos and NPPA – proposed undertaking

Dear Mr McCracken-Hewson,

Thank you for the invitation to respond to the proposed undertaking in relation to the proposed amalgamation of BPAY, eftpos and NPPA on 6 August 2021.

In our submission to the ACCC in relation to the authorisation application on 20 April 2021, we stressed the importance of a fairer, more transparent, competitive and innovative payments system that provides user choice and places merchants (customers) at the centre of the payments system. The central issue for small business merchants is the increase cost impost imposed by accepting and making everyday transactions with customers and suppliers together with the ongoing barriers to accessing least-cost routing (LCR). We have also expressed our concerns that the current regulatory regime fails to encourage or incentivise lower transaction costs because merchants (customers) are not a significant party to the overall design and make up of the regulatory system. We have proposed necessary and urgent reforms to the payments regulatory system prior to any decision taken by the ACCC in relation to the proposed amalgamation, which is more than likely to limit rather than enhance user-choice and is almost certainly going to increase transaction costs for small business merchants in the medium-to-long term.

We are pleased that the ACCC has acknowledged a number of issues in its Statement of Preliminary Views released on 4 June 2021 and its 6 August 2021 Invitation to Interested Parties in relation to the proposed undertaking. In particular, the ACCC's 6 August Invitation refers to concerns that the proposed amalgamation may mean a decrease in availability of LCR and reduced support for eftpos. ACCI shares the ACCC's concerns and, as stated in our submission on 20 April 2021, we believe there is a real risk that the proposed merger may in fact increase the transaction costs of digital payments across the economy. The increase in transaction costs are being absorbed by a cash poor and cash sensitive small business community significantly impacted and stressed by the ongoing COVID-19 pandemic. Now is certainly not the time to place at risk a low-cost payment rail,

Canberra
Commerce House
Level 2
24 Brisbane Avenue
Barton ACT 2600
PO Box 6005
Kingston ACT 2604

Melbourne
Level 2
150 Collins Street
Melbourne VIC 3000

Sydney
Level 15
140 Arthur Street
North Sydney NSW 2060
Locked Bag 938
North Sydney NSW 2059

particularly when a greater proportion of businesses are accepting online and digital payments from their customers.

The centrality of the issue at hand is whether the proposed undertaking will be effective in addressing the bona fide concerns about reduced access to LCR and support for eftpos in driving competition and user-choice for merchants, especially those small business merchants that cannot realistically negotiate individualised arrangements with their payments providers. Whilst it is positive that the proposed undertaking commits eftpos to 'doing all things in its control' to make LCR available as well as maintaining its payments infrastructure, systems and schemes and delivering on a range of Prescribed Services, some of which will enable LCR in the digital transactions environment, we are significantly concerned that these commitments are only for three years. This does not provide medium-to-longer term certainty for small business merchants, at which point small business merchants will undoubtedly be facing significant changes to their mix of customer transactions, with an accelerated move away from cash to debit cards and a rapid increase in online purchasing and the use of mobile phones and other devices (like watches) at point-of-sale. Without a longer-term commitment (emphasis added) to competition and choice in digital payments providers, there is a high likelihood that small business merchants will end up paying more for these transactions. ACCI is also not aware of any proposals in Australia or internationally to replace domestic debit card payments platforms with account-to-account based platforms like the NPPA, which would require the costly and risky transition of hundreds of thousands of merchants.

Our concerns on the medium-to-longer term competition challenges faced by decisions made today are further exacerbated by the current lack of well-articulated regulations for transitioning to digital payments with the necessary parameters to encourage and incentivise lower transaction costs for small business merchants in a competitive digital environment. This does not inspire confidence in the move towards a modern digital economy and should not be a legacy of the Australian digitalisation experience. It is not clear how the proposed undertaking would ensure LCR is available to small business merchants for online and mobile wallet transactions, the latter which is rapidly replacing physical cards at point-of-sale. We are of the view that it is more likely than not, that a merged domestic payments entity (and its shareholders) will lead to an under-investment in the enablement and active delivery of LCR in the digital environment over and above the eftpos-specific commitments in the undertaking. Without such investment, there is a genuine risk that business merchants will suffer an overall loss in their availability of LCR as their day-to-day transactions increasingly move to these new, non-routed digital channels.

The proposed undertaking is behavioural rather than structural, which provides less certainty and comfort for the small business merchants who will rely upon it and the ACCC to monitor and enforce compliance with its obligations. As the ACCC is fully aware, changes in circumstances that may or may not be within the control of the provider of the undertaking, can result in obligations not being met, undercutting the undertaking's pro-competition intent. There is also considerable time and cost for both the ACCC and the provider of the undertaking in ensuring compliance, along with significant additional costs should it be deemed necessary to undertake enforcement proceedings. This is almost guaranteed to increase the deadweight loss to society via an increase in administrative burden, complaints and compliance handling and an ongoing effort to abrogate the concerns of the small business community. This is a cost impost that can and should be avoided.

The inherent risks of a behavioural undertaking are likely to be exacerbated in the complex and rapidly evolving payments environment, where new technologies, new entrants and changing consumer preferences may necessitate modifications to investment and market behaviours. For this reason, clear principles-based regulation and, if necessary, a structural undertaking are more likely to be more effective in addressing the ACCC's valid concerns about a substantial lessening in competition from reduced routing of debit card payments.

The proposed undertaking commits eftpos to taking certain action to make LCR available, however it does not make any commitments on behalf of the acquirers and issuers whose behaviours will largely determine whether the benefits of LCR, both in the physical and the digital environments, will be actively promoted and delivered to small business merchants. As we had previously emphasised in our 20 April submission, the current payments system does not incentivise the major banks to deliver lower transaction costs to small businesses. Banks have considered the transactions environment a lucrative revenue raising model. The hard-won gains over the last few years enticing the major banks, rather begrudgingly, to make LCR available to small business merchants, have been a direct result of the determined efforts of eftpos and a number of merchant and business organisations, including ACCI.

The proposed merger of the three domestic payments providers into a single entity will diminish the independence of eftpos, which will report into a board with strategic priorities that are much broader than competing head-to-head with the international card schemes on debit card payments. At the same time, there is no truly independent small business representation on the board of the merged entity, meaning that small business merchants will not have a direct say in the payments-related decisions that affect the viability of their businesses. Cost impacts to small business will not be a permanent or necessary consideration for Australia's (proposed) amalgamated digital payments infrastructure. Loss of these two crucial pressure points, which have been fundamental in delivering lower transaction costs to small business merchants to date, means there is a real risk that the merger will result in a gradual movement away from LCR in both the physical and online environments. The fact that the proposed undertaking does not make any commitments to maintain either of these two central drivers of LCR provides ACCI with little confidence that it will be effective in addressing the ACCC's concerns.

In summary, ACCI does not consider that the proposed undertaking addresses the competition issues (in the short, medium or long-term) that were raised in our 20 April 2021 submission and which the ACCC has highlighted in its 4 June 2021 Statement of Preliminary Views and 6 August 2021 Invitation to Interested Parties. ACCI continues to recommend a thorough review of the regulation of Australia's payments system before any further consideration or approval of the proposed amalgamation of the payments platforms, on the basis that there is no guarantee that the proposed merger will lower, and in fact, may increase the transaction costs of small business merchants across the economy.

If you require any further information or wish to discuss this submission, please contact [redacted] Senior Advisor in Economic and Industry Policy on [redacted].

Yours sincerely,

[redacted]

Ross Lambie
Chief Economist