



Proposed amalgamation of BPAY, eftpos and NPPA-MA1000020. a second submission by Controlabill Pty Ltd.

18 June 2021

Good afternoon Alex.

Summary

Thank you for the opportunity to provide further information and comment.

Controlabill owns intellectual property regarding "authority/mandate" management services for all forms of customer authorised payments. All banks are aware of our IP, including granted patents, and have executed NDAs with Controlabill dating back to 2007.

Controlabill's issue remains with NPPA's behaviour toward us and their intended deliberate breach of our Patents and Copyright materials via its MPS. If it occurs every bank, including the RBA, will be party to this breach. It is an abuse of market power and unconscionable conduct!

Despite Banking Enquiries, Codes of Practice, the Banking and Finance Oath and Royal Commissions, the industry is as arrogant as ever in not respecting the rights of a small business, seeking to radically simplify and solve a long-standing banking problem.

The proposed merger will create an even more unmanageable beast which creates inefficiencies and higher costs than the current semi competitive entities/systems. We believe that innovative solutions available from FinTech's like Controlabill will struggle even more under this monopoly.

In particular I refer you to the synopsis of Controlabill below which is pertinent to your inquiry and to the fate of the MPS.

While much of the material for proper and further assessment remains redacted and not available to all parties we have had the opportunity to read the submissions from various parties in the last round, our observation would be that this application has been extremely divisive, and that division is likely now to be entrenched. This is a view supported by senior industry analysts, participants and commentators.

It seems the industry cannot collaborative with itself, let alone work with external innovators such as ourselves. It would appear to us that the industry should have got its own story correct first and sorted out external issues by some attempt at collaboration and redress of conflict before making this application.

Intended Breach of Patent by NPPA

Our issue remains with NPPA's behaviour toward us and their intended deliberate breach of our Patents and Copyright materials via Its MPS, and their behaviour toward us which we believe represents proof of an Abuse of Market Power and Unconscionable conduct by 13 of the largest financial institutions toward a small company with documented and patented IP.

Overlay services in the NPP

At this point the Application and analysis by the ACCC are both silent on the fate of the MPS under NPPA or NEWCO and we would ask that the ACCC ascertain and make clear its strategic path under this proposal.

Advice from our legal counsel is such that we should now seek an interim injunction which may affect this application. Perhaps, Newco may be dissuaded from acquiring the MPS under this arrangement, because of a potential contingent liability and high likelihood of extensive reputational damage spreading across multiple Financial Institutions and Regulators who have all been involved and informed.

We raised this matter to the attention of the ACCC in the first round, but it is not among the issues being pursued. The issue of NPPA being involved in developing overlay services was specifically raised by ourselves and Bpay and we both questioned why the NPPA is the vehicle for the MPS.

From our reading, the NPP was never meant to develop overlay services, so why is it developing the MPS?

For the purpose of understanding this matter in the application we need to understand who approved the MPS and why and how is it funded? This is a matter of concern and public interest particularly if RBA funds were used.

The MPS

Treasury has been pressing the payments industry for more than a decade to develop a system that will help people manage their recurring payments and the authorities/ mandates that drive them and aid switching as an integrated solution. Over greater than those ten years the payments industry has not come up with an effective solution. It would appear that that the industry likes being able to show its working on it but without actually delivering anything useful

So, the question is, why is the MPS (in an area of payments that mostly does peer to peer transactions) and why will this merger assist the switching situation at all. Our solution would cover NPP, BECS, Cards and perhaps OSKO 2 and 3 (who we would be delighted to work with).

Another strategic question is why doesn't this application include BECS (the payments heavy lifter) why is it left out and not the vehicle for the MPS?

While we appreciate it is relatively early in the history of real time payments, our examination of the last few months payments statistics published by the RBA reveals that without the Overlay Service of Bpay (Osco) growth numbers for the NPP may be plateauing at a level a tiny fraction of Direct Entry. My read is around 10m transactions a day for BECS mostly recurring payments. Around 1.5 million recurring payments per day for OSKO and 0.5m for NPPA mostly peer to peer.

MPS development in NPPA seems unsound particularly given the wholesale cost of NPPA is twice that of the retail payment cost for BECS. Eftpos has no relevance to this analysis and we appreciate the RBA statistics lack granularity of purpose this area to be entirely accurate.

The serious question we ask and for the ACCC to consider is why does the NPPA still exist? Wasn't it just a project and isn't the project over?

What then is the point of the NPPA's MPS? It may be a faster transaction but, it's not cheaper than the DE system and is never likely to be given the complexity of its processes.

Direct Entry is cheap because the service provider does most of the work and there is no value to users of the Direct Entry system in real time settlement (it already happens six times a day) for the primary users who are batch processors.

The RBA did an ABC on payment channels in recent years and even after the high set up cost of a direct debit authority, which we solve, (we believe we can return an efficiency dividend to billers nearing \$1.0bn), direct debit was the cheapest channel. Our read of the NPP transaction process is likely to put a break point in the biller's sales process and raise some privacy issues around third parties looking into accounts they have no relationship with.

Strategically, we have concerns as to why is NPPA the vehicle for this development. We developed the solution regarding authority centralisation and the consumer app and the biller integration via API back in 2007 and this was patented in 2012 and we have been promoting this to the industry under NDA which will be breached by any party using the MPS.

Achieving treasury's objective in providing a mechanism for switching could not have been started in a worse place.

Payments Industry Behaviours toward Controlability

Much is made throughout this application of the benefits to innovation from allowing this amalgamation which we strongly doubt. In turning an oligopoly into a monopoly, held mostly by just a few there is no incentive to move beyond the status quo and indeed there is a strong financial incentive to block innovation.

For this to be believable the board structure of Newco would need to be, four representing suppliers(banks), four representing users(billers), and four being consumer and SME advocates. I strongly doubt the big four will allow this. Their proposed structure still allows far too much influence.

As an observation, regulators might consider a similar structure for Auspaynet and it should report to the RBA's Payment Systems Board. The role of the Payment Systems Council seems to offer little added utility. Under these arrangements external innovators might expect a fair hearing and a path forward.

Our experience with payments industry oligopoly and NPPA is a disgraceful example of stonewalling behaviour in a process that they own end to end and for which there is no process of appeal or an ability to raise a complaint other than through the Courts. Our experience we believe is a classic example of Abuse of Market Power and may have elements of Unconscionable Conduct. Which as you know Alex, we have asked the ACCC for assistance regarding these sections of the ACT.

We first heard of the existence of the NPPA project to centralise authorities known over time as the AMS, MPS and now known as PayTo, from a sales meeting with Deanne Keetelar of Australia Post.

We subsequently called a meeting with NPPA and had a half hour meeting with the general counsel whose presentation to us gave us no reason to be concerned but turned out to be a misdirection.

We hold the presentation which discloses the NPP and its relationship with overlay services should the ACCC require a proof point that at that time NPPA appeared to have no interest in overlay services.

A few months later, they released detail of the AMS and their intent to breach our IP became clear.

We attempted via numerous channels to engage with NPPA and its CEO and offered to work together. This was denied by Adrian Lovney.

Given the nature of our complaint we tried to engage with the NPPA Board. Again, this was stonewalled.

We subsequently tried to tell our story to the Shareholders of NPPA and their Boards again no response.

We attempted to engage with the Regulator. The RBA. We received an informal reply from Tony Richards sending us back to NPPA. The subject of his response will be raised as an official complaint to the RBA.

We ultimately received a threatening letter from King, Wood, Mallesons who represent NPPA, threatening an expensive and long drawn out court process and specific personal threats of counter suits.

At absolutely no point in any part of months of plights to discuss, did we get one offer to talk. We believe most people would find strange that these institutions we once had some trust in would not sit down to at least discuss.

ACCC process going forward

It was always our last intention to arrive at a situation that might involve legal action and we are surprised that given the parties involved that the shareholders really want a process that will call into account the integrity of so many involved.

However, the current structures such as a separate NPPA entity offer Controlabill a clear legal remedy from a company with a revenue stream.

We are concerned that a decision by the ACCC to allow the merger into Newco may interfere with that remedy given there is no detail as to the intentions of Newco toward the MPS

Accordingly, we would ask the ACCC give its effective date some months from the decision date to allow parties to consider their legal positions.

Overall the behaviours of this industry do not give confidence in their application. One might have expected more effort to clean up internally and externally before making this Application.

Yours
Sincerely

Bernard Wright
Founder Director
Controlabill Pty Ltd

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Email [REDACTED]



Controlabill history for the ACCC

Controlabill was founded in early 2006 by Stephen Coulter & Bernard Wright. With more than 40 years of collective banking and utilities experience, they identified a solution to a fundamental problem in the widely used direct debit system – and any other customer “authorised” systems where an authority must be created and held.

- Predominantly paper, or phone based - direct debits are difficult to change whenever an account number changes, or a customer chooses to change banks or credit card. Moreover, the difficulty in changing direct debits is a known barrier to switching.
- Stephen & Bernard devised a solution allowing payment “authorities” to be managed centrally and electronically by the customer or any authorised participant in the payment system – e.g., banks and billers. While this solution may seem obvious in 2021, it still does not exist.
- Stephen & Bernard worked with top-end IP lawyers, Griffith Hack, to document their solution as intellectual property and lodged multiple patents and trademarks to protect their intellectual property.
- The solution and Intellectual Property are relevant globally as direct debit systems exist in most major countries with the same outdated processes.
- Stephen & Bernard believed a major bank, international bank or payment scheme like Visa or Mastercard would be keen to license/acquire such a solution due to the many advantages it would bring – especially to a first mover.
- All major banks, second tier banks, Cuscal, Indue, Card schemes and selected international banks were targeted and briefed after a Non-Disclosure Agreement had been signed by each organisation. Other organisations briefed included the Reserve Bank of Australia, APCA (Auspaynet), EFTPOS, Bpay and Australia Post. All meetings were held on a “commercial in confidence basis” and documentation clearly labelled as such. Patents were advised to all meeting participants and provided as a reason why they should engage with Controlabill to bring a protected solution to market.
- Bank executives involved included some at the highest level, others who have gone on to industry positions in organisations like NPPA, BPAY and EFTPOS.
- Many meetings were held with all banks since 2006. No Bank committed to engage and pay Controlabill for its solution and IP. It seemed Banks did not see it in their interest to enable a customer friendly method of changing payment authorities – the bankers “club” seem to prefer making it difficult for customers to change banks.
- Over the last 15 years, while under public pressure, the Banks undertook several failed projects to make it appear they were addressing “account portability” to enable customers to change banks as easily as mobile-phone customers can change telco providers. Despite the industry spending more than \$500 million on projects including “Tick & Flick”, “MAMBO”, CDR and more recently the “New Payments Platform Australia” NPPA, no simple customer solution has been launched.

- All these projects and the current "Mandate Payment Service" being proposed as part of the NPPA breach Controlabill's IP are regarding "Authorities" Management. (Mandate is another word for Authority.)
- Despite many attempts, Controlabill has been ignored and bullied by the banks, industry associations, their lawyers and at least one regulator.
- Controlabill would be delighted for the NPPA or Newco to launch a Mandate Payment Service for customer benefit – provided Controlabill is paid for its IP.
- The NPPA is owned by 13 Australian financial institutions most of whom have signed Non-Disclosure Agreements with Controlabill and are aware of Controlabill's patents.
- Any launch by the NPPA or its owners now or in future will be a knowing and blatant breach of Controlabill's IP.
- Stephen & Bernard, as the Founders of Controlabill, have personally invested years and hundreds of thousands of dollars in developing Controlabill and its IP.
- The relatively recent Banking & Finance Oath does not seem to have changed behaviour. We have dealt with executives who are and aren't signatories who behave the same. We could not find a single payments executive that has signed the oath other than the Governor of the RBA.

Despite Banking Enquiries and Royal Commissions, the industry is as arrogant as ever in not respecting the rights of a small business, seeking to radically simplify and solve a long-standing banking problem