



14 June 2021

Mr. Daniel McCracken-Hewson
General Manager
Merger Investigations Branch
Australian Competition & Consumer Commission

Dear Mr McCracken-Hewson,

Re: Application for merger authorisation MA1000020 – ACCC's Preliminary Views and issues about which it is seeking further information

Thank you for your note dated 4 June 2021 in which you seek further information about the merger between BPAY, eftpos and NPPA.

To us, fundamentally the dilemma is to balance our desire as a country to embrace technology in the digital payments landscape and its many benefits whilst ensuring that the costs to Australians and their rights to privacy remains unfettered. Given the past cartel-like practices of the major banks in Australia and some big banks' culpability in serious corporate offences more recently, it is unlikely that the large banks, who will essentially control the amalgamated entity, not pursue profits at the expense of regulatory and community expectations.

Given the tight deadline in which to respond, we focus on two aspects of the ACCC's Preliminary Views; competition and least cost routing.

Competition

In section 2.12 of the ACCC's Preliminary Views, the ACCC identified four different payment services shared between eftpos, NPPA and BPay. It is important to note that control of these four payment services by one entity (in addition to other capabilities accruing to this entity), will make the entity the most powerful force in the electronic payments landscape within Australia.

It is clear to us that there is overlap between the four payment services and it really is semantics to argue that the services offered are not close substitutes and there is a degree of competition between them (see section 2.15). The only way to determine this matter quantitatively is to require the data to substantiate the claim that the owners' are operating 'complementary assets' in these different payment services. In fact, the ACCC itself has, in section 2.21, identified such overlaps in these payments segments. The issue here essentially relates to the degree of overlap and by association, the degree of ensuing competition and therefore, the incentives to even need to compete if the amalgamation is approved.

In a nutshell, currently there is competition between the three existing providers and the two major overseas international card schemes. If the merger goes ahead, there will only be one all-powerful Australian payment provider competing with the two major overseas international card schemes. Even at a simplistic level, this remains a cause for concern.

Least Cost Routing (LCR)

One option available to the ACCC to ensure the short-term viability of LCR is to pre-condition any approval to the amalgamation on a written undertaking from the amalgamated entity (with a sunset clause of perhaps 10 years) that LCR will always be the default option on eftpos debit card transactions. This is directly within the merged entities capability.

Required Oversight

As a country, we do need to move forward and embrace the digital payments revolution. The key issue is how to manage that process for the betterment of all Australians. If the ACCC approves the amalgamation, the ACCC should also consider the empirical evidence originating from the academic literature on how to manage such cartel-like entities and we would be happy to assist the ACCC further with this. There are a number of mechanisms available to monitor the merged entity if the amalgamation is approved. We detail below some of the more significant monitoring initiatives already identified as being relevant to monitoring oligopolistic behaviours more generally.

One key component relates to the need for effective oversight of management by the board of directors of the new entity. For example, one key actor requiring oversight by the board will be the CEO of the new entity and aligning the CEO's behaviour, particularly remuneration, to the strategic objectives of the new entity rather than rewarding short-term performance. The system of compensation should not be focussed on the achievement of a goal such as profit but rather on the way or means of achieving profit. Another necessary requirement is for regulators to have robust financial and criminal penalties to punish companies and executives who engage in deceptive, misleading or illegal conduct. Yet another useful option is to legislate that companies do have a legal requirement to consider the broader society when formulating strategy and engaging in specific operational activities. This then exposes the companies and guilty executives to liability if the company behaves wrongly.

Thank you and please let us know if you have any queries.

Kind regards.

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[Redacted]

Dr Harjinder Singh
School of Accounting, Economics & Finance
Curtin Business School
Curtin University
Email: [Redacted]

Associate Professor Nigar Sultana
School of Accounting, Economics & Finance
Curtin Business School
Curtin University
Email: [Redacted]