

FACEBOOK

April 22, 2021

Simone Warwick
General Manager (A/g), Merger Investigations
Australian Competition and Consumer Commission
Level 17, 2 Lonsdale Street
Melbourne VIC 3000

Dear Ms Warwick,

Proposed amalgamation of BPAY, eftpos and NPPA - interested party consultation

I refer to your letter dated 30 March 2021 seeking submissions in relation to Industry Committee Administration Pty Ltd's application for authorisation to amalgamate ownership of BPAY Group Pty Ltd, BPAY Pty Ltd, eftpos Payments Australia Limited and NPP Australia Limited under a new entity (the **Application** and the **proposed transaction**).

Facebook is grateful for the opportunity to comment on the Application.

Information contained in this letter that is marked **[CONFIDENTIAL]** is confidential and commercially sensitive to Facebook and, subject to the ACCC's usual confidentiality terms, Facebook requests that it not be disclosed to any third party without Facebook's express written consent.

Overview

The Application overstates the extent and significance of Facebook's participation in the payments sector, both globally and particularly in Australia, and the constraint it would impose upon the merged business. Given its limited participation in the Australian payments sector, Facebook is not in a position to make detailed submissions regarding the proposed transaction. However, this submission provides the ACCC with evidence on Facebook's limited role and participation in the Australian payments sector and makes a number of specific observations regarding the way in which the Application characterises the competitive threat posed by Facebook and "Big Tech" generally.

Facebook’s participation in the Australian payments sector

As the ACCC is aware, Facebook provides a range of innovative services to Australians and people around the world, including its core social media network Facebook.com, Instagram, Facebook Messenger, WhatsApp and Oculus. Facebook’s services give people the tools to connect and communicate, which includes ways to easily move value between one another. Facebook operates in a highly competitive and dynamic industry. To attract and retain users, Facebook invests heavily in innovation and continuously seeks to improve its existing services and offer new services to its users, including payment services.

While Facebook does have some products and activities related to payments (described further below), the extent and significance of its participation in the payments sector, both globally and particularly in Australia, is significantly overstated by the Application. For instance, the Application: (i) refers to Facebook as a much larger competitor in the payments landscape than the proposed merged entity;¹ (ii) overstates the functionality of Facebook Pay in Australia and future plans for its development;² and (iii) exaggerates the competitive threat of “Big Tech” (which is defined to specifically include Facebook) as a “powerful competitive constraint” upon the Australian payments sector.³

Facebook’s payments-related products and activities are very limited and confined to the following:

- **Facebook Pay** is an add-on feature intended to improve user experience on Facebook and Instagram by allowing users to make payments on those services. It is not a standalone payments service. In Australia, Facebook Pay’s functionality is currently limited to allowing users to make charitable donations to Facebook Fundraisers and purchase subscriptions to support creators of video streaming content on Facebook. Further, as acknowledged in the Application, Facebook Pay operates using existing payments infrastructure, utilising a user’s credit card, debit card or PayPal account to make and receive payments;⁴ Facebook does not have its own payments infrastructure. Facebook Pay is therefore materially different from the services that would be offered by the merged entity.
- **Novi Financial, Inc. (Novi)** is an indirect Facebook subsidiary that aims to provide financial services that allow people to access and participate in the Diem Payment Network (discussed below). The first product that Novi plans to introduce is a digital custodial wallet for purchasing, holding, sending, and redeeming Diem Coins. As of the date of this letter, the Novi wallet has not yet launched in any country. To launch in Australia would require a local entity being incorporated and several levels of licenses and approvals from regulators in Australia - Novi has neither incorporated an Australian

¹ Application, p 32.

² Application, pp 176-178.

³ Application, pp 8-9, 31-34, 58, 60, 85-86, 106-107, 113-114, 116.

⁴ Application, p 177.

local entity nor applied for Australian regulatory approvals or licenses. Even when it is launched in other countries, the Novi wallet also will not be available for download in Australia or be open for Australian users to register because it is not licensed or otherwise authorised to provide services in Australia. The suggestion in the Application that Novi will soon be available in Australia or could be simply rolled out quickly therefore is simply inaccurate.⁵

- **The Diem Association** is an independent organisation that is governed by its members, currently comprising 26 international companies (of which Facebook’s Novi is just one),⁶ social impact groups and non-governmental organisations. The Diem Association is developing the Diem Payment Network, an open source payments network that will allow people to transact using the Diem Coin cryptocurrency on the Diem Blockchain. Contrary to the suggestion in the Application,⁷ the Diem Association operates independently from Facebook and is open to new members, including the parties to the Application, provided that they meet its membership criteria.⁸ Like Novi, the Diem Association has not taken any steps to obtain, or received, any licenses or approvals to provide services in Australia.

Given this, Facebook’s presence and any competitive constraint it imposes on the Applicants (as defined in the Application) and the proposed merged firm have been significantly overstated in the Application and instead are marginal at best. Because Facebook’s current payment services actually operate using existing payments infrastructure in Australia, Facebook does not consider that it competes with or constrains BPAY, eftpos or NPPA in any significant way.

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Other comments on the Application

Given its limited participation in the Australian payments sector, Facebook is not able to make detailed comments regarding the Application. However, the Application makes a number of references to Facebook and to “Big Tech”, which is defined to include Facebook, that Facebook considers are inaccurate and unsupported.

First, the Application provides a distorted view of the Australian payments sector and the competitive threat posed by Facebook and “Big Tech” generally. For instance, the Application refers to a risk of the Australian payments schemes being “*out invest[ed] and out innovate[d]*” by “Big Tech” companies,⁹ whose operations are said to be “*heavily influenc[ing]...the Australian payments landscape*”¹⁰ and threatening the Australian payments schemes’ ability to “*remain*

⁵ Application, p 178.

⁶ Diem, The Diem Association, <https://www.diem.com/en-us/association/>.

⁷ Application, Schedule 6, section 7.1.

⁸ Diem, Vision, <https://www.diem.com/en-us/vision/>.

⁹ Application, p 60.

¹⁰ Application, p 85.

competitive” with the “*technology giants*”.¹¹ In circumstances where BPAY, eftpos or NPPA together operate all of the major domestic retail payments schemes, the Applicants comprise essentially all of Australia’s major financial institutions, and the penetration of Facebook into the sector is relatively peripheral, this characterisation is exaggerated. The Australian payments and banking sectors have historically been relatively concentrated and undynamic, and new entry by any new companies, including technology companies, should be viewed as a much-needed source of new competition.

Second, beyond these assertions, the Application also considers the constraint imposed by technology companies in a cursory way. For instance, the Application often discusses “Big Tech” companies as if they are homogenous, when in fact there is significant differentiation in the payments-related strategies and services of major technology companies.¹² The Application also discusses the respective competitive strength in payments of the “*dominant*”¹³ international card schemes and “Big Tech” companies as if they were comparable, when in fact the international card schemes are substantially more important market participants.¹⁴ These assertions are not reflective of market dynamics, and a more careful and robust factual analysis is required before the Application’s assertions about Facebook are given any weight in the ACCC’s competitive assessment.

Third, the Application suggests that “Big Tech” companies such as Facebook can “*leverage*” their “*large installed user bases and customer relationships*” and “*ecosystems*” to establish strong positions in the payments sector.¹⁵ No explanation of the mechanism by which this could occur, or any evidence for these claims, is provided in the Application, and such an assertion ignores the regulatory requirements for providing such services in Australia. As noted above, Facebook is a marginal participant in the payments sector, relatively few transactions occur on Facebook’s platforms, and Facebook users have, and will continue to have, well-established relationships with multiple banks, retailers and other payment services providers. Again, proper analysis of any leveraging theory is required before any weight can be placed on those submissions.

We hope these comments are of assistance to the ACCC’s consideration of the proposed transaction.

¹¹ Application, p 32.

¹² See, e.g. Application, pp 6, 8-9, 34, 58, 113-114.

¹³ Application, p 155.

¹⁴ See, e.g. Application, pp 8, 57-58, 60.

¹⁵ Application, pp 9, 85, 113.