

16th of June 2021

The Australian Competition and Consumer Commission (ACCC)
Mergers, Exemptions and Digital

By email: mergerauthorisations@acc.gov.au

RE: Joint Submission Australian Lottery and Newsagents Association (ALNA) & the Australasian Association of Convenience Stores (AACS) MA1000020 – submission

Dear Madam/Sir

This is a joint submission by the Australian Lottery and Newsagents Association (ALNA) & the Australasian Association of Convenience Stores (AACS) in response to the Statement of Preliminary Views MA1000020 – submission.

Collectively we represent thousands of small merchants. Both organisations provided initial and supplementary comments on the Application. Both organisations have members that extensively rely on payment services.

We are of the view that the proposal is fundamentally anti-competitive and no doubt the applying parties are of that view in that they applied for authorisation and not simply seeking an informal clearance.

The fact that an industry committee (ICA) is the applicant is of concern as industry players appear to be co-operating rather than competing. This is in an industry not known for its competitive dynamics.

The ACCC has the option of refusing authorisation or granting subject to conditions or undertakings.

The substantial lessening of competition issue (public detriment)

The proposed amalgamation will remove any incentive of the firms involved to compete with each other, or to compete between financial service products. Instead, there will be a strong incentive in any amalgamated firm to focus on promoting the most profitable services, and to discontinue or reduce the profile of other, less profitable service offerings. Eftpos, credit and debit cards are competing services, with differential degrees of attractiveness to both consumers and small retailers (such as newsagents, lottery retailers and convenience store operators).

Given that credit cards are more profitable than debit and eftpos, there will be a strong financial incentive and commercial logic to reduce or remove least cost routing from the suite of products to be offered by the amalgamated business which is a big concern for our members.

Why would a payments firm continue to offer a financial product that generates less income, and currently has fewer customers, than other more profitable product streams? Indeed, the directors of the amalgamated company will have both a commercial and legal incentive to suppress LCR, as they have a fiduciary duty to act in the best interests of the company, not of consumers. Hence, they will have a strong rationale to suppress LCR. This logic will inevitably lead to less consumer choice, with fewer competing payment options for small business.

It would seem that the amalgamation will freeze the current structure, there will be no opportunity for the amalgamating parties to compete with each other, no chance that one or more will join with international players or join up with a small business association or associations to provide a competitive vehicle.

It cannot be argued that the SLC is minor, it is not, despite what is said it does not add to the competitive dynamics of the sector.

Public benefit

The onus is on the applicant to demonstrate that the public benefit outweighs the public detriment. It is our view that the applicant has not done that, the public benefits claimed are either speculative or essentially private benefits.

As indicated by the ACCC, the claimed benefits are poorly substantiated or illusory. Many it seems to us can be attained without the amalgamation.

It is simply not enough for the Applicants to claim some public benefits, there must be more, in Media Council No.2 (1987 88 FLR 1) the Australian Competition Tribunal stated, *“that all circumstances relating to public benefit must be considered including how the proposed arrangement is likely to operate in practice so as to give rise to public benefits. Consideration is not confined to some narrow or rigid examination of the documents lodged for authorisation”*.

Hence there must be significant and sustainable public benefits.

Some comments on some of the claimed public benefits

- *Reduced uncertainty allowing more efficient deployment of capital, sooner-* is this a public or private benefit?
- *Enhanced speed to market of innovations-* will this not occur if the amalgamation does not proceed?
- *Increased likelihood of hybrid and targeted local innovations-* same comment as above?
- *Reduced risk of stranded payment assets-* again is that a private benefit?
- *Greater import substitution and reduced dependency on foreign payment providers-* highly speculative.
- *Creating policy benefits by ensuring Australia has a strong domestic payments company-* this is the bigger is better argument and is simply unproven.
- *Reduced transaction costs for the three payment schemes and other participants and synergies-* this might be the case but will cost savings be passed on to customers and if so, how?
- *Reduced complexities with complying with three sets of compliance obligations-* there will still be three brands, so what are the chances of this claimed public benefit.
- *Enhanced ownership interest and voting rights of small participants in New Co-* totally uncertain.
- *Enhanced engagement with small business and other participants-* need much more detail and there needs be more than engagement.

Where are the obvious public benefits of lower costs to customers or improved services to customers?

If Authorisation is to be granted

We suggest that the ACCC grant authorisation for a period of 3 years and impose preauthorisation conditions (and not undertakings) that,

- the applicants have successfully implemented an effective and wide ranging LCR model.
- there be appropriate small business representation on all New Co Committees and even the ICA.

The membership of the Australian Lottery and Newsagents Association & the Australasian Association of Convenience Stores appreciates the ACCC carefully considering our comments in further assessing this application.

Kind regards

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