NOTICE OF LODGMENT

AUSTRALIAN COMPETITION TRIBUNAL

This document was lodged electronically in the AUSTRALIAN COMPETITION TRIBUNAL and has been accepted for lodgment pursuant to the Practice Direction dated 3 April 2019. Filing details follow and important additional information about these are set out below.

Lodgment and Details

Document Lodged:	List of Schedules
File Number:	ACT 3 of 2021
File Title:	APPLICATION FOR REVIEW OF MERGER AUTHORISATION MA 1000020 DETERMINATION MADE ON 9 SEPTEMBER 2021
Registry:	VICTORIA – AUSTRALIAN COMPETITION TRIBUNAL

REGISTRAR

Dated: 11/11/2021 10:19 AM

Important information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Tribunal and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

Schedule A – NPPA's Description of their Mandate Payments Service

Downloaded from, https://nppa.com.au/wp-content/uploads/2020/11/NPP-Mandated-Payments-Service-Overview_final-Apr-2020.pdf

Attached

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Schedule B – Excerpt of Full List of Bank Engagement Periods and People Involved

Controlabill Engagement - People		
Company	**Person**	**Year(s)**
ANZ	Brian Hartzer	2007
ANZ	Jenny Fagg	2007
ANZ	Anthony Fitzgerald	2007
ANZ	Tania Turnbull	2007
ANZ	Steve Rubenstein	2007
ANZ	David MacDonald	2007
ANZ	John Walsh	2007
ANZ	Liz Maguire	2010
ANZ	Felimy Greene	2010
ANZ	Mandy Simpson	2010
ANZ	Paul Riley	2010
ANZ	Ray Crociani	2010
ANZ	Maile Carnegie	2016
ANZ	Peter Dalton	2010 2016
ANZ (NPPA Director)	Nigel Dobson	2017-2020
Australia Post (Director Australian Payments Council)	Deeane Keetelaar	2016
Australia Post	Andrew Maitland	2010
Australia Post	Don Patterson	2010
Australia Post	Karen Ryan-Cowell	2006
Australia Post	Ian Andrews	2006
CommBank	Matt Comyn	2014
CommBank	Angus Sullivan	2014
NAB	Gerd Shenkel	2006
NAB	Ahmed Fahour	2006
NAB	Steven Shaw	2006
NAB	Steve Aliferis	2007
NAB	Serg Premier	2007
NAB	Sharon Rode	2007
NAB	John.Salamito	2010
NAB	Chris Smith	2010
NAB	Steve Barnes	2010
NAB	Sam Plowman	2010
NAB (Director EFTPOS& Australian Payments Council)	Alex Twigg	2010
NAB	Monty Hamilton	2010
NAB	Drew Solley	2010
NAB	Lisa Palma	2010
NAB	Antony Cahill	2016
NAB	Deanne Keetelar	2016
NAB	Shane Conway	2016
NAB	Shawn Treloar	2016

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Schedule C – NPPA's Cease and Desist Order, dated 30 September 2021

Attached.

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Schedule D – Hansard 28 October 2021, Corporations and Financial Services Joint Committee

Chamber
House of Representatives on 28/10/2021
Item
COMMITTEES - Corporations and Financial Services Joint Committee
Download Hansard
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Corporations and Financial Services Joint Committee

Report

Mr WALLACE (Fisher) (11:13): On behalf of the Parliamentary Joint Committee on Corporations and Financial Services, I present the committee's report, incorporating dissenting reports, entitled *Mobile payment and digital wallet financial services.*

Report made a parliamentary paper in accordance with standing order 39(e).

by leave—Australia's payment ecosystem is of a foundational importance to Australia's economy and society, supporting around 55 million payments, worth up to $650 billion, each **day**. The system is highly complex and is evolving rapidly. New platforms and technologies are changing the ways in which consumers and businesses transact, with mobile payment predicted to become the most popular contactless way for Australians to pay by the end of 2021. A growing number of powerful multinational technology firms are playing increasingly central roles within Australia's payments architecture, often with little regulatory oversight. The global reach and market dominance of these so-called 'fintechs' has left Australian businesses and consumers using their platforms and services with little influence and few opportunities to negotiate favourable agreements.

The committee's self-referred inquiry began in March this year, aiming to explore these imbalances in bargaining power operating between providers of mobile payment digital wallet services and the merchants, vendors and consumers who rely upon them. The committee looked to assess the adequacy and performance of Australia's regulatory regime compared to the rest of the world, and the implications of mobile payment and digital wallets for competition and consumer protection.

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The committee received 23 public submissions, as well as a range of confidential correspondence and answers to questions on notice. Public hearings were held on 26 and 27 July of this year. The committee found that much of the existing legislation governing the payment space is predicated on outstanding structures and systems, while the effectiveness of the multitude of regulators covering the payments ecosystem has been undermined by outdated concepts of what constitutes a payment platform. These gaps have allowed some of the most important players in the system to operate outside the reach of our regulators.

The committee therefore recommends that the Department of the Treasury report to parliament on gaps in the current self-regulatory model and provide policy advice on the merits of regulating payment platform providers as participants in the payments ecosystem. The committee also calls for the definition of a payments system within key regulations to be expanded to encompass new and emerging payments technologies, and recommends that the Reserve Bank of Australia be given additional powers to request information from mobile payment platform providers related to their fees and costs.

Evidence before the committee suggested that anti-competitive practices, such as restricting third-party access to key technology, may be jeopardising consumer choice, stifling innovation and driving up payment costs. Equally, the breadth of access to sensitive consumer information concentrated in technology companies and the potential for misuse of transaction data concerned the committee. As such, the report recommends that the current inquiry by the Australian Competition and Consumer Commission into Apple Pay consider these matters as part of their investigations.

The committee also heard extensive evidence on Least Cost Routing, a process where merchants rout transactions through the card scheme that attracts the lowest costs. This capability is not currently supported for mobile payments, often driving up the costs of acceptance for merchants and, ultimately, consumers. The committee welcomed the further attention from regulatory agencies on this issue but, at this time, remains unconvinced that legislation is required to mandate Least Cost Routing for mobile payments.

Throughout the inquiry, it was emphasised to the committee that the rapid evolution of Australia's payments ecosystem is likely to continue. The committee believes it is therefore critical that our legislation, regulators and regulatory approaches are nimble and flexible enough to adapt to the future of the sector. The committee considers: first, that legislation and regulations must be updated to keep pace with practice, and become as technology-neutral as possible; second, that the coverage of existing voluntary codes of practice should be expanded and closely monitored; and, third, that new powers should be vested in the government to allow it to designate firms as participants in the payments system, to ensure that they fall under the existing legislation.

The committee would like to thank the individuals and organisations who contributed to this inquiry by preparing written submissions and giving evidence at public hearings. As well, I would like to single out the outstanding performance of this committee's secretariat, led by Dr Patrick Hodder and Mr Jon Bell, Ash Clements, Shelby Bassett and Ele Fionga—without their dedication this committee would not be able to do its work. I commend the report to the House.

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Mr HILL (Bruce) (11:19): by leave—I will pick up where the chair left off, and acknowledge the good work of the secretariat. I also thank the chair for his leadership of the inquiry. I think everyone got a fair say and the evidence was robust and well tested.

The chair said that there was a dissenting report; we tried to style it as 'dissenting comments' in that the Labor members who have signed these dissenting comments agree with the vast bulk of the report and back in the comments the chair has made, even in his tabling statement. So I want to outline on behalf of all Labor members and the deputy chair, who can't be here today, the four areas where we don't agree with the committee's findings and issue these dissenting comments, but overall the report is robust and the recommendations are supported.

The first one relates to the government's poor track record. They are in their ninth year, and there is an optimistic sentence in the report, at 473, where they say:

with the release of the Farrell Review, the committee is cautiously optimistic that much-needed reforms are progressing.

Labor members of the committee don't share the government's unfounded optimism that urgently needed action on payments policy and regulation may finally happen. Whilst we may hope for action, the government is in its ninth year and they've received yet another review but they haven't done anything with the years of reviews they already have. During that time, as the chair well outlined, the payments landscape has transformed rapidly with the rise of Google Pay, Apple Pay and Buy Now Pay Later. It's been transformed in the terms of this government. But the government has received multiple reports over eight years with increasingly urgent recommendations for change, yet has implemented few to none of those reforms. The stored value facility recommendation, to use that as a case study, was recommended to the Abbott government in the 2014 financial system Murray inquiry, then again in the 2018 Productivity Commission report into competition and financial services, by the Council of Financial Regulators in 2020 and now the 2021 Farrell review. The government's done nothing for eight years with these recommendations, so excuse the Labor members if we don't share your optimism that now something might happen. I do note Scott Farrell completed two previous inquiries for this government, the first of which has been responded to, but the government hasn't even responded to his previous inquiry received in October last year and released in December, so I think the context is important. But, look, if something happens, that's terrific.

The second point is the need to avoid the politicisation of payments regulation. Recommendation 1 of the report calls for Treasury to exhibit 'leadership' in the payments space. We're not convinced that

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payments policy and regulation should be led by Treasury under this Treasurer. We do agree that the Treasury clearly needs to enhance its capability and capacity to engage in this. Their performance at the public hearings was woeful; it really was. But, as the chair has kindly written in the report, we'll sheet that home to the systemic issues in Treasury and not the poor bunnies who happened to appear on the day. But we do risk a very different approach under this Treasurer if payments policy is rested off the independent Reserve Bank of Australia, as the government is trying to do. There have been media reports that the well-respected head of payments from the Reserve Bank has quit and that the government's looking to take the entire payments division from the Reserve Bank, where it's been, and put it under the political control of the Treasurer in the Treasury. We've seen this Treasurer's decision-making record—delays, capriciousness, accommodation of vested interest close to the Liberal Party. He has again and again failed to put the interests of consumers first and ensure appropriate policies. So, in our view, significant regulatory changes are absolutely urgently needed in the payments space—there's no doubt—to set the system up for the future, and they may well need to be designed outside, or at least with, the Reserve Bank of Australia. The Reserve Bank is characterised by a very cautious, prudent evolutionary culture. That's probably what you want in a reserve bank, and it might not be the best culture to do rapid policy change, but there may be benefit in allowing payments policy still to be led by an independent regulator or body outside of the direct control of the Treasurer and hence impervious to vested interest, lobbyists, rent-seeking behaviour and politicisation.

The third point, which is of great public interest I know, is access to Apple's NFC chip. It's a controversial issue which has vexed parliaments and regulators across the world. Government members conclude:

the committee does not recommend Apple be forced to grant direct operating-system-level third-party access to its NFC antenna at this time—

going on to note the ACCC's examination of this issue now. Labor members—and we've thought about this carefully—consider the onus needs to be reversed. This is really important. The default position should be a presumption of open access of critical hardware on reasonable commercial terms, and this should include Apple.

Parliament is no stranger to these regulatory issues. Sectors such as the railways, telecommunications and ports have long had regulatory architecture and access regimes to promote competition and innovation and prevent unfair or uncompetitive use of market power or dominance. A reasonable analogy, if you like, is the telecommunications network infrastructure where the network cables that send the signals are subject to open access regulation that the parliament has put in place. This is our point of principle: the presumption of parliament and regulators should be in favour of open access regimes on reasonable commercial terms to maximise competition and innovation, and it should then be up to Apple or any other handset manufacturer to argue why they should be an exception. Of course there can still be controls for security and privacy, and it's acknowledged that new payments technology—we understand QR codes are coming into supermarkets later this year—may mitigate or reduce competitive concerns about Apple's behaviour in banning third-party access to the NFC chip, but Apple can make these arguments to the ACCC.

The final point: recommendation 13, regarding BNPL, is vague and unnecessarily obtuse. We can't go into what happened in the committee, so that will remain a mystery, but industry self-regulation via the BNPL code of practice has been a reasonable approach to date as the sector has developed and matured. But industry self-regulation of BNPL is unlikely to be appropriate forever, and there's a prima facie and growing case for fit-for-purpose regulation of the BNPL sector to entrench consumer protections, to ensure that credit providers are placed on a fair regulatory playing field and promote competition and reduction in fees. Interestingly, on Friday the Reserve Bank saw fit to land a report about merchant surcharging in the BNPL sector. I think it, in some sense, contradicts aspects of the report and backs up this view in favour of competition and consumer regulation and transparency.

This should be the subject of a focused inquiry in the next term of parliament, and it would have been preferable if the committee had simply said so. I will leave it there. I commend the rest of the report, and again thank the chair for his work leading this inquiry.

Stephen Bruce Coulter

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Schedule E – AFR 30 October 2021, Frydenberg on Farrell re Payment Systems Review

Opinion

A payment system fit for digital purposes

Josh Frydenberg *Treasurer*
Aug 30, 2021 – 5.00am

Few Australians may understand the intricacies of our payments system, yet every Australian relies on it.

About 55 million payments, worth about $650 billion, are made in Australia every day.

Online purchases, tap and go, transferring funds, receiving a fortnightly salary or a government payment all depend on the safety, efficiency and effectiveness of our payments system.

A system that is now being transformed by new technologies, new business models, new participants and changing consumer preferences.

The emergence of digital wallets, buy now, pay later, cryptocurrencies and stablecoins to name just a few.

Individually, their impact is profound, collectively it's a revolution.

Yet despite this disruption, the regulatory framework governing the payments system has not evolved.

In fact, it remains largely unchanged from what the Wallis inquiry put in place two decades ago.

No longer is a bank necessarily in control of your payment end-to-end, as was the case when cheques ruled the payments world.

That is why the federal government late last year commissioned lawyer and payments expert Scott Farrell to conduct a review of the regulatory architecture of the payments system.

Supported by Treasury, he consulted widely, received submissions, and has now submitted his report to government.

His recommendations fall into three key areas.

First, he advocates for a stronger role for the federal government, through the Treasurer, in setting the strategic direction of the system.

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This includes enabling the Treasurer to "direct regulators to develop regulatory rules" and "give binding directions to operators of, or participants in, payments systems".

He points out that given the number of regulators with responsibilities for the payments system, including the Reserve Bank of Australia, the Australian Securities and Investments Commission, the Australian Prudential Regulation Authority, AUSTRAC and the Australian Competition and Consumer Commission, there is a need for a consistent policy approach.

This is all the more important as some regulators come under different ministers in different portfolios.

Second, Farrell recommends the regulators strengthen their co-ordination and adopt a more functional approach.

It requires a regulator to look at the nature of the service being provided, not the entity that is providing it.

For example, digital wallets such as Apple Pay and Google Pay are used to make contactless payments just like debit cards issued by a bank but the parties are subject to different regulatory settings.

A functional approach also makes sense in light of the disintermediation of the payments process that has accelerated over recent years.

No longer is a bank necessarily in control of your payment end-to-end, as was the case when cheques ruled the payments world.

Now a bank may receive your salary deposit but a separate payments system process such as Apple Pay sits on top of it.

Ultimately, if we do nothing to reform the current framework, it will be Silicon Valley alone that determines the future of our payments system, a critical piece of our economic infrastructure.

Third, to give effect to this redesigned regulatory system, Farrell recommends a single, tiered licensing framework.

It follows overwhelming feedback that there is confusion as to which regulator a new entrant applies to for authorisation as currently regulators have overlapping mandates.

The need to deal with multiple regulators is leading to delays that add to costs and increase barriers to entry for new players.

As an example, about a quarter of Australian financial services licence applicants took more than 150 days to be considered.

The solution he recommends is one licence that is scalable based on the payment function sought to be provided.

This approach would mean a small new entrant would not face the same regulatory obligations as a larger, more established one performing a wider range of activities with a higher volume of payments.

The Farrell review makes a strong case for reform and its release now offers the opportunity for further industry feedback before the Government finalises its response by years' end.

I am committed to reforming our payments system in order to promote competition and support innovation.

Just as the consumer data right and open banking have increased choice with the exchange of personal data and the regulatory sandbox is empowering businesses to trial new products, so too a modernised regulatory framework for our payments system will further drive Australia's digital transformation.

This will help create jobs, growth and a stronger economy.

Josh Frydenberg is the Federal Treasurer.

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Schedule F – Industry Undertaking of Concessions for Merger to Proceed, 8 Sep 2021

Downloaded from, https://www.accc.gov.au/system/files/public-registers/documents/Applicants%20%E2%80%93%2087B%20Undertaking%20-%2008.09.21%20-%20PR%20-%20MA1000020.pdf

Attached

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Schedule G – 23 Sep 2021, Commonwealth Bank $10m fee concession as part of Industry Undertaking of Concessions for Merger to Proceed

https://www.commbank.com.au/articles/newsroom/2021/09/small-businesses-simpler-pricing.html

23 September 2021

Small businesses to save millions with lower merchant pricing

CBA puts millions back in small business' pockets through lower merchant fees.

- CBA puts millions back in small business' pockets through lower merchant fees.
- CBA takes the hassle out of Least Cost Routing for small business by automatically routing transactions.
- CBA waives $7m in merchant fees before Christmas for businesses hardest hit by COVID.

Commonwealth Bank is making payments simpler for small businesses, announcing new competitive flat rates for all in-store and online payment transactions for eligible merchant customers*.

To lower the cost of doing business, CBA will be offering 1.1 per cent for all in-store card transactions, and 1.5 per cent for online transactions, regardless of the interchange rate or the type of card (debit, credit or Amex).

CBA will also take the hassle out of payments by automatically routing transactions between eftpos and international schemes for eligible small business customers. CBA will centrally route transactions in the most cost effective and competitive way, so businesses don't have to spend their valuable time managing their routing options.

CBA's Executive General Manager, Everyday Business Banking, James Fowle, said today's announcement follows feedback from its merchant customers on Least Cost Routing (LCR) over recent months and the overwhelming message is small businesses want things simpler, easier and cheaper.

"The overwhelming feedback from our small business customers is that they want simple competitive pricing without the hassle. They want the benefit from least cost routing without having to manage the routing themselves," Mr Fowle said.

"Our new flat rates are designed to offer that by removing complex pricing structures and managing the routing of transactions for them. We'll automatically and centrally route transactions in the most cost effective and competitive way, saving businesses a lot of time and money."

Simplifying the process even more, this low cost rate will become the default and eligible small businesses will automatically receive the reduced single rate from October 2021 onwards with no need to 'opt in' or apply.

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"We're taking the guesswork out of it for small businesses who don't have the time to individually assess and compare the costs associated with different schemes. The flat rates also provide our customers with an easy way to recover their costs through surcharging at a single rate," Mr Fowle said.

To provide a further cash injection in the lead up to Christmas, CBA will automatically waive three months of merchant fees for small businesses who have been hardest hit by the latest COVID lockdowns. This equates to more than $7 million dollars back into the pockets of merchant customers.

"From next week, we'll be letting more than 50,000 customers know we are automatically waiving their standard merchant fees for three months from September through to November. This translates into approximately $7million back into their pockets leading up to Christmas," said Mr Fowle.

CBA said a further $3 million has been refunded to merchants experiencing financial difficulty since the start of the pandemic. Any merchant customers experiencing financial difficulty can contact CBA for a refund on a variety of applicable fees for up to 90 days.

Today's announcement complements the recent release of StepPay which is another CBA initiative that's supporting Australian small businesses. While traditional Buy Now, Pay Later (BNPL) products charge merchants a fee of up to seven per cent, StepPay only charges merchants credit card transaction processing fees which are substantially lower than traditional BNPL products. In addition, merchants do not need to incur integration costs or face disruptions with their Point of Sale systems and Online check outs, as StepPay is processed in the same way as credit card transactions are processed today. This puts savings back into the pockets of smaller businesses and helps to level the playing field by allowing them to better compete with those who are able to pay higher BNPL costs.

As CBA has done throughout the COVID pandemic, we will continue to look for ways we can support our small business customers to help them recover as lockdowns are lifted and they open back up.

**Eligible CBA small business customers with turnover equal or less than $250,000 will have the new simple rates automatically applied from October 2021.*

Tags

- Business
- Small business
- Customers

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