

**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: Application to Tribunal for Review

File Number: ACT 3 of 2021

File Title: APPLICATION FOR REVIEW OF MERGER AUTHORISATION  
MA 100020 DETERMINATION MADE ON 9 SEPTEMBER 2021

Registry: VICTORIA – AUSTRALIAN COMPETITION TRIBUNAL



REGISTRAR

Dated: 30/09/2021 3:18 PM

**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.



## FORM I

### APPLICATION TO TRIBUNAL FOR REVIEW

#### **Proposed amalgamation of Bpay, eftpos and NPPA – ACCC Determination.**

1. Controlabill Pty Ltd of level 4, 6 O'Connell Street, Sydney, New South Wales, 2000, Australia ABN 60118423644, ACN 118423644 hereby applies to the Australian Competition Tribunal pursuant to section 101 of the *Competition and Consumer Act 2010* for review of the determination of the Australian Competition and Consumer Commission dated the 9<sup>th</sup> day of September 2021.

Commission file number MA 1000020.

2. (a) Controlabill Pty Ltd was not the applicant for the authorisation to which the determination relates.

(b) Controlabill has an interest in the determination as follows:

#### **Controlabill's grievance with the decision**

Controlabill owns Patented intellectual property regarding "authority/mandate" management services for all forms of customer authorised payments. Patents were granted in 2012 by the Australian Patents Office

All the major banks including the RBA 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 and now deliberate and publicised breach of our Patents and Copyright materials via its Mandated Payment Service (MPS now called PayTo), wherein it proposes to centralise customer authorities in the same manner covered in our patents and is claiming the same functionality. NPPA will not engage with us to discuss settlement of the issue and Controlabill does not have the resources to take 13 of the largest financial institutions through the Court process at this time.

The payment system is characterised by push and pull transactions. Examples of Push transactions are eftpos and Bpay where the account holder sends money to service provider and directly authorises the transaction. Pull transactions are exemplified by Direct Debit, Credit Card Direct Debits and Subscription services and now by the NPPA PayTo service. Each of these transactions must be pre-authorised and the service provider must get permission from the customer in the form of a standing authority or mandate.

Authorities are the driver of BECS direct debit, recurring credit card payments and soon to be NPPA PayTo and cover around 70% of all household expenditure and even more in dollar volume when small business is rolled in. The party that controls these authorities between the billers and the customers controls the payments system. We

have said this should reside in a competitively neutral party such as Australia Post or some other entity such as the CDR. Controlabills invention was to make managing these authorities across all of the pull payment systems easy to manage and to switch. The ACCC decision as it stands embeds NPPA with price competitive parties and enables cross subsidisation of revenues and costs that enable anti - competitive conduct. This merger as it has been approved may allow NPPA pull systems to exist where because of its inherent costs it would fail to compete with Direct Debit. There is a lack of clear econometric modelling and price forecasting in the ACCC decision to analyse this potential matter.

Also, we maintain the theft of our patented IP by a party to the merger is an example of abuse of market power and unconscionable conduct. We believe this behaviour should have led to a different outcome for the MPS or Payto service under the ACCC decision.

Controlabill has raised this grievance with the ACCC and the RBA without response at this time.

As a result of 13 financial of Australia's largest service companies being the owners of NPPA, potential customers for the Controlabill service have evaporated.

Consequently, this has catastrophic financial damage in the millions of dollars. This anti-competitive behaviour should not be allowed by the ACCC.

3. I am dissatisfied with the determination of the Commission in the following respects:

We asked the ACCC the following in our submissions (attached)

a) That the ACCC confirm whether NPPA was operating outside of its remit in developing an overlay service. It is our belief that NPPA was meant to be a wholesale provider and not one that would collect competitively sensitive end user customer data. Wholesale providers should have no interest in end user data See attached agreement with the ACCC.

In other industries such as energy and telecoms regulators have moved to break-up vertical integrations where wholesale and retail functions are the same parties and where price gouging/stacking and regulator gaming are made easy. The ACCC made no reference to the use of the productivity commission for price review where a monopoly has been allowed.

b) that the ACCC confirm with AP+ its intentions regarding the ownership structure of the NPPA. Much is redacted from papers and the decision, but it may be that the RBA, in not moving forward with NPPA and AP+ , wants its investment in the establishment of NPPA returned. This may substantially change the dynamic regarding liability for IP theft. This is not detailed in the ACCC review.

c) NPPA gave the ACCC assurance that it would not develop overlay services, which we believe has been broken. We asked the ACCC whether the rules that will govern AP+ would be the same. This was not analysed. The inception of AP + may be means of getting around the NPPA restrictions on the development of overlay services

d) It is incorrect for the ACCC to cite that there is little competitive overlap between the parties, all wholesale businesses compete fiercely on price and convenience. We recognise that eftpos is different in that is Point of Sale. However, the remaining systems of BPay Cards NPPA and BECS compete strongly for recurring payments. We asked that the ACCC clarify why the largest system was not included in the Merger and why it was not in the analysis. We suspect the merger has little to do with competition and more about capital management, price cross- subsidisation and perhaps tax and depreciation management. The decision has no measure to prevent anti-competitive practices. We suspect NPPA pull payments cannot stand in a competition against existing systems without this happening. Data regarding this could not be found. It may be that NPPA pull payments cannot scale and manage its debt overhead without this scheme. This may be potentially worse if capital is withdrawn by the RBA. If this is the case, then Government and Treasury have been misled regarding the benefits arising from misappropriated IP from Controlabill.

4. The determination that I am seeking from the Tribunal is as follows:

- a) That the decision to allow this merger be placed into abeyance pending further review of the points raised as above.

As the body representing competition and consumer interests, insufficient econometric analysis and long-term impact analysis has been undertaken or not published. Much is made about least cost routing, yet this is one of the smaller issues at stake for the community in this decision.

- b) That the tribunal also reference our submission to the ACCC competition and enforcement branch which is under construction and will be complete within the next few days.
- c) That the ACCC release correspondence regarding our matters that they have received from AP+ and King Wood Mallesons.
- d) That the tribunal take into account our requests of the RBA (attached)

5. Particulars of the facts and contentions upon which I intend to rely in support of the application for review, and a statement of the issues as I see them, are attached to this mail document

6. My address for service for the purpose of regulation 21 of the Competition and Consumer Regulations 2010 is

Bernard Wright, Founder Director, 2A Dargie Street, Everton Park, Qld, 4053 or  
wright.bernard@gmail.com

Dated this 30<sup>th</sup>

day of September 2021

Signed by/on behalf of the applicant - Controlabill Pty Ltd

Yours sincerely

Bernard Wright

Founder Director

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**History**

Form I amended by SR No 330 of 1995, reg 10.1 and 10.2, effective 6 November 1995; SR No 20 of 1996, reg 10.2, effective 31 January 1996; SR No 280 of 2010, Sch 1, effective 1 January 2011 (as amended by SR No 337 of 2010).