

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: Gavan Hugh Farley Affidavit
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 6:19 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.



COMMONWEALTH OF AUSTRALIA

Competition and Consumer Act 2010 (Cth)

IN THE AUSTRALIAN COMPETITION TRIBUNAL

File Number: ACT 3 of 2021

File Title: APPLICATION FOR REVIEW OF MERGER AUTHORISATION MA 1000020
DETERMINATION MADE ON 9 SEPTEMBER 2021

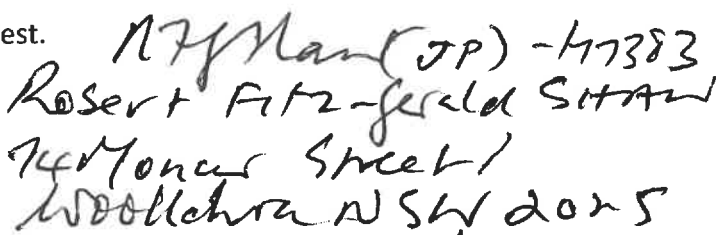
Applicant: Controlabill Pty. Ltd.

AFFIDAVIT

I, Gavan Hugh Farley, of 164 Windsor Street, Paddington, New South Wales, say on oath:

1. I am Chairman of Directors and an investor via the Sydney Angels in Controlabill Pty Ltd.
2. I am the designated Representative of the Sydney Angels investment syndicate
3. I make this affidavit in relation to an interlocutory application filed by Mr Milliner on 6 October 2021 for an order that the application for review be dismissed on the ground that the applicant, Controlabill Pty Ltd (Controlabill), is not a person with a sufficient interest within the meaning of section 101(1AA)(b) of the Competition and Consumer Act 2010 (Cth).
4. I have personal knowledge of the facts and matters referred to in this affidavit, except where otherwise indicated. Where I refer to information that is not within my personal knowledge, I identify the source of the information and believe it to be true.
5. This matter arises as Mr Robert Milliner, represented by King & Wood Mallesons, sought to have Controlabill's application for review dismissed by an interlocutory injunction on the grounds Controlabill is not a person of sufficient interest.

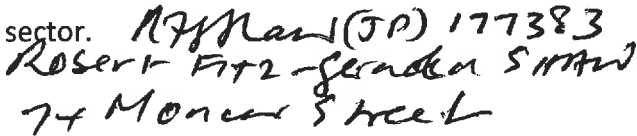

Gavan Hugh Farley


Robert Fitz-Gerald
74 Monas Street
Woolleebra NSW 2025
Witness
11/11/21


- 7. This Affidavit sets out the credentials of Controlabill to establish its sufficient interest in the matter so the review can continue to 2022.
- 8. The Act does not define what is meant by sufficient interest. It is understood sufficient interest does not mean a mere intellectual or emotional concern. For sufficient interest the person must be likely to either gain some advantage or to suffer some disadvantage, other than a sense of grievance or debt for costs, if his action fails.
- 9. In this affidavit I set out the sufficient interest evidence of Controlabill in three parts:
 - a. My credentials and expertise as a capital market professional.
 - b. The financial exposure of myself and fellow members of the Sydney Angels will be clearly and imminently disadvantaged by the merger.
 - c. Controlabill's interest and the detrimental impact of the merger.
 - d. The NPPA's own actions prove they regard Controlabill of sufficient interest.
- 10. My credentials and expertise as a financial services and payments expert are:
 - a. A Diploma in Business, majoring in Hotel Management from Victoria University as well as an MBA from University of Birmingham UK.
 - b. My experience can be summarised as a general management executive with a lot of international experience in a wide variety of industries. I am an experienced public company director, corporate adviser with particular interest in early-stage technology companies
 - c. My executive role is as a director – Corporate Advisory at Novus Capital Ltd – a corporate advisory firm
 - d. My role at Controlabill is as non-executive chairman of directors representing a group of investors from the Sydney Angels group. Those investors hold around 14% of the shareholding in Controlabill.

11. I have gained experience in the payments sector through my association with Controlabill, which I believe allows me to comment at a high level on that sector.


 Gavan Hugh Farley

Witness 
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- 12. The Sydney Angels group of investor interest in Controlabill qualifies me to comment and have sufficient interest in this matter.
- 13. My personal financial exposure and that of the Sydney Angels group of investors as shareholders of Controlabill will be disadvantaged by the matter.
 - a. The Sydney Angels group have contributed over \$300,000 as equity and a further \$70,000 by way of secured loans to Controlabill.
 - b. I have been a non-executive director of Controlabill since March 2014 and have received no remuneration for the activities of the company since that time. In my role as a corporate advisor, my income is significant. The lack of income from Controlabill whilst developing the business for sale has also been significant with the anticipation that would be compensated with Controlabill's future success.
 - c. Should the NPPA, BPay, EFTPOS merger go ahead unchallenged, my ability to recover Director's loans, let alone the potential value of the Sydney Angels group's shares will be virtually impossible due to the new organisation offering competing services and controlling access terms to the new payments platform.
- 14. On a personal interest basis, I have a sufficient interest in progressing this matter.
- 15. Controlabill itself has a sufficient interest in this matter, which will be detrimentally affected.
 - a. Controlabill since registering as an Australian Company in early 2006 has invested hundreds of thousands of dollars in developing intellectual property and securing patents around payment authorities/mandates, management, bill smoothing, bill payments and budgeting.
 - b. Controlabill has net liabilities of more than \$300,000 and accumulated losses of more than \$600,000. The merger will remove any opportunity of achieving income to offset these losses and repay shareholders and directors their direct contributions, let alone any potential for growth in value for their money, time and patience.
 - c. Controlabill raised \$300,000 from angel investors and a similar amount in grants from the Australian Government. All Controlabill's shareholders will be disadvantage by the merger.



 Gavan Hugh Farley

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16. Controlabill’s intellectual property and patents will be detrimentally affected if the merger goes ahead and NPPA delivers its Mandate Payment Service (PayTo)– which directly competes with Controlabill and in our analysis, breaches various claims in our patents.

17. Most major shareholders of NPPA, BPay and EFTPOS have received detailed briefings on Controlabill’s IP under mutual nondisclosure agreements.

Actions by the NPPA and associated banks and entities prove they regard Controlabill as having sufficient interest in the matter. Why else would they make such actions and consume significant resources and legal costs against an insufficient person? Actions by the NPPA and related parties which demonstrate they regard Controlabill as having sufficient interest include:

- a. Major banks and other major industry players had multiple meetings with Controlabill over multiple engagement periods from 2006 to 2019. While a single meeting may be said to indicate token interest, multiple meetings and correspondence prove continued interest by major NPPA shareholders proving they regard Controlabill of sufficient interest.
- b. On September 30, 2021, less than an hour after Controlabill lodged its request to review the merger, the NPPA served a cease-and-desist order(attached) on Controlabill threatening to seek to have our patents revoked. If NPPA are unconcerned by our patents, why would they seek to go to the significant cost of seeking their revocation? This could be construed as intimidation abuse of market power. In any case it shows they regard Controlabill as having sufficient interest.
- c. The NPPA’s attempt to seek an inter locutory injunction based on Controlabill not being of sufficient interest, further proves the NPPA’s concerns and that they do regard Controlabill of sufficient interest.
- d. The Australian Competition Tribunal’s acceptance of Controlabill’s Request for Review after analysis by their relevant administrator(s) is further evidence there was no doubt it was a valid request by an affected and sufficiently interested organisation.

Sworn by the deponent
At Sydney in NSW
On 11 November 2021 Before me:


Gavan Hugh Farley

Robert Fitz-Gerald Shaw
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