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16 April 2021

Ms Simone Warwick
Acting General Manager, Merger Investigations
Australian Competition & Consumer Commission
23 Marcus Clarke St
ACTON ACT 2600
Email: *mergerauthorisations@accc.gov.au*

Dear Ms Warwick,

Proposed Amalgamation of BPay, eftpos and NPPA (MA 100 00 20)

Summary of COSBOA Position

COSBOA accepts the merger on the basis of a commitment to;

- A real reduction in the cost of using the banking and payments systems for small business
- Monitoring and remedies on small business banking costs.
- A timeframe to implement Least Cost Routing
- Keeping the Dual Network "Rails" available.
- Creating an environment for competitive innovation
- A small business voice in decision making.
- A proportional increase in enforcement powers for the regulator
- A preference for two players rather than one.

COSBOA accepts that the Australian economy is best served by markets that comprise both big and small businesses. That said, the successful co-existence of big and small business requires that national competition laws provide smaller businesses with protection against anti-competitive conduct by businesses that hold a significant share of a given market.

In order to be effective, these laws should not only provide a process for remediation of damage to competition – they must provide an effective deterrent against the action occurring in the first place. Further, small business should have reasonable access to remedies for competitive damage caused by the actions of larger businesses.

> *COSBOA is committed to working with all stakeholders to ensure that national competition laws provide an effective deterrent to any damage to competition created by the actions of other businesses – with a particular focus on preventing larger businesses from misusing their market position. Such laws should also provide businesses suffering loss in these circumstances with ready access to remedy.*

COSBOA Advocacy Framework

This has been COSBOA's policy for many years. It needs no editing, even when the matters change, the issues remain the same and our policy perennial.

"The issue comes down to what sort of economy we want; one benefitting consumers and allowing small business to thrive, or one that allows the strong to grow stronger by whatever means." From ACCC National Press Club address by Rod Sims.

In assessing the amalgamation application which will create a banking entity NewCo, COSBOA understand the Australian banking industry is seeking to remain competitive from giant global competitors. Australia's debit transactions are less than 1.7% of the global market for the mega global financial corporations Mastercard and Visa. An Australian "NewCo" entity that can compete makes sense, and we perfectly understand the dilemna that Australian Banks face in a global financial market. Big vs small is a familiar fight to COSBOA.

While largely supportive of the rationale, it's noted this situation has arisen from a historical lack of agility and innovation over many years by the Australian banking industry that allowed larger competitors to gain market share. The Australian Banks remain recipients of very large payments from their international competitors to access the market, customers, and infrastructure.

The banking industry is now seeking to recover it's market share by unifying with this application which will no doubt deliver benefits to the shareholders. By sharing costs and strategies, increasing efficiency and working together, rather than competing, the Applicants hope to present a competitive and profitable alternative to international competitors. We recognise, understand and support this intent.

Our experience is that the benefits to be gained by the banks will not transfer as reduced costs to small businesses. Our submission seeks to gain a commitment to real benefits flowing from the merger. At present **the merger appears with an unacceptable level of risk and uncertainty that small business will experience a reduction of choice and increased costs in digital banking services,** an extension and exacerbation of the current situation.

Under sections 46 Misuse of market power and Section 50 Prohibition of acquisitions, the Competition and Consumer Act 2010 prohibits corporations with substantial market power engaging in conduct or making acquisitions that lessen competition, now or in the future. COSBOA contends that over time, competition in the financial services of payments would be significantly reduced by this merger, under the definition of the law.

COSBOA acknowlege ACCC as one of the best competition regulators in the world, striving to enhance the welfare of Australians through the promotion of competition and fair trading and provisions for consumer protection however currently our merger laws cannot and do not prevent all inappropriate increases in market power.

COSBOA does not have the resources to engage lawyers and consultants to research and create detailed reports. We have real, practical, on the ground experience of how small business works and the impact of banking fees on their viability and profitability. COSBOA has actively voiced it's concern over the increasing pressure placed on small businesses as market power is accumulated by a few. This concentration does not create a dynamic vibrant economy that shares the benefits of increased productivity. Market power that reduces competition and jeapordises the health of small business, impacts the entire Australian economy.

The proposed merger offers no benefits and considerable risks to small business. As such, an in keeping with our nature of practical, hands on people, this submission presents our concerns and seeks commitments that will give small business a level of comfort in supporting the merger.

A real reduction in the cost of using the banking and payments systems

The competition that currently exists between four banks and their digital service providers, will be extinguished, while the ability for banks and large retailers to compete with international providers and be more profitable will be enhanced. If there will be productivity and profitability gains, these must be shared with small business customers.

A good example is the rapid transformation of digital payment systems. Small business is traditionally adaptive and innovative, driving technology adoption over the last 30 years. The NPP was, by contrast, established in 2018. With technological efficiencies, the expectation of lower priced payment services has not been realised. Any savings made are kept by those offering the services. We have seen an increased market power of banks even when innovative products are available. Case studies are attached to this submission regarding the development of Buy Now Pay Later and Least Cost Routing. Both are good examples of how financial organisation both regulated and unregulated disregard small business interests in the quest for increased profitability. There is nothing intrinsically wrong with this, it is the nature of business to maximise profitability. However….

"We need as a society to ask how much market concentration do we want to tolerate?" Rod Simms

Therefore….

A commitment to monitoring and remedies on small business costs.

The merger should include conditions that monitor independently the costs of banking and payment systems to small businesses. This sector lacks the ability to bargain collectively and is at a disadvantage both in bargaining power and volumes. Small business has operated on unfair terms compared to big business for a long time. If market power is to be concentrated, there needs to be an effective remedy in place to deal with abuse.

The recently regulated reporting payment times to small business is a good case where monitoring and reporting is already creating behavioural change to align with community expectations. Our experience is that without these structures, change does not happen.

A commitment to Least Cost Routing

This must also include a commitment to a timeframe for the implementation of Least Cost Routing. This issue has been pursued for over five years. There is wide spread acceptance that it "should" be available and glacial progress. The merger proposal has noticeably interfered with projected and promised progress. Banks and providers are now actively implementing disincentives, by way of other fees and charges, to stymie the implementation of least cost routing. We are very concerned that the merger will further derail LCR implementation.

A commitment to keeping the Dual Network "Rails" available.

This is an international standard that encourages competition. It is the access to the infrastructure that allows choice to be exercised and competition to exists. COSBOA sees a need for discussion on how exemptions for smaller fin tech entry participants can be managed. Larger players in the market are already moving away from the dual network, which has inhibited some service providers to offer lower cost options to small businesses.

Dual Rails must continue to be offered and practically available to all providers in the market place.

A commitment to creating an environment for competitive innovation

The proposal, in creating the NewCo banking payment and processing entity, will inhibit the development of innovative fin techs domestically who have been developing competitive products. These have been a great hope for small businesses looking for innovative payment solutions. These innovators will require access to payment rails and the space to grow competitive product in our domestic market. Rather than facing four competitive entities, they will have to negotiate with one, whose best interest are served by removing these solution providers. This does not create an environment for innovation.

A commitment to having a voice in decision making.

Small Business has been absent in the consideration of banks, despite our size in numbers and contribution to GDP. Small business must be represented in the decision making process going forward. This must not be a patronising, lip service, representaton of millions of small businesses on a token consultative committee.

A commitment to these commitments

Taking on trust, that banks will not abuse their market powers, is not prudent. As the Hayne Royal Commission identified, the culture in Australian banks has resulted in non-compliance of regulator requirements and dismissal of of public benefit in favour of private individual or corporate gain. The profit motive of companies can and has therefore worked against the interest of consumers and our society. This merger clearly amalgamates market power in a key developing area of digital financial services. It is imperative therefore that the powers of our regulators match the challenge of our times.

COSBOA is wholly supportive of the Charter and role of the Australian Consumer and Competition Commission (ACCC) as the national regulator of Australian Competition and Consumer Law. This support extends to ensuring that the ACCC is resourced in such a manner as to ensure that it is capable of effectively fulfilling its role as the protector of market competition in Australia.

Notwithstanding the above, COSBOA believes that the resources of the ACCC should be largely devoted to enforcement activities with only a limited role in policy and advocacy.

> *COSBOA is committed to working cooperatively with the ACCC and relevant stakeholders to ensure that the organisation is properly equipped to operate as an effective enforcer of competition law within Australia.*

COSBOA Advocacy Framework

There must be a demonstratable increase in the ability of the regulator to properly enforce competition law. The law must be adequate for the increased challenges that this merger presents. Dealing with abuses of market power after they occur is not acceptable. If the merger increases the banks ability to address foreign competition, there must be corresponding protections in place that address anticipated domestic issues before they occur. We concur with the current ACCC Chairman that Sections 46 – 50 regarding competition, fall short of their desired intentions.

“*Our consumer and small business laws deal with some damaging uses of market power, but not directly or comprehensively.” Rod Sims*

Changing the laws after the merger, is like closing the gate after the horse has bolted. The priority and political will for these changes must be addressed before the merger is approved.

A preference for two players rather than one

COSBOA's small business pragnatism positions us to make the best of what appears to be an inevitable power play. We have worked diligently with all banks and financial services over the years and and Australian Banking Association. We value our relationships with them and acnowledge our reliance on their operations.

Our final comment would be that there's another option that leaves EFTPOS free to continue to compete and not form part of the merger. Our nature is to find practcal solutions and this one is appealing. It maintains some competition with a service provider who has clearly articulated a road map of digital financial services and a commitment to understanding and working with small businesses. This would maintain a degree of competitive tensions within the Australian domestic digital financial services market with a company that has demonstrated solutions and the capacity to deliver. This would not overly inhibit the planned merger.

Yours sincerely,

Peter Strong
Chief Executive Officer
Council of Small Business Organisations Australia (COSBOA)

ABOUT COSBOA The Council of Small Business Organisations Australia (COSBOA) is the national peak body representing the interests of small business. Collectively, COSBOA's members represent an estimated 1.3 million of the 2.5 million small and family businesses that operate in Australia.

COSBOA is the big voice for small businesses people since 1977. As a collaboration of peak organisations, we promote small business with independent, tenacious advocacy to powerful decision-makers to get a better deal for millions of small businesses people and a better economy for all Australian people.

Small and medium sized enterprises (SMEs) are major contributors to the Australian economy. SMEs employ 68% of Australia's workforce. In GDP terms SMEs together contribute 56% of value added. For this reason, small and medium businesses will be the key partners with Government in re-building the Australian economy.

Case Studies

Least Cost Routing (LCR)

Since 2017 COSBOA and the Fairer Merchants Fees Alliance have been advocating for Least Cost Routing. This would allow merchants to <u>choose</u> the least cost route for tap and go transactions made with a customer's dual network debit card.

This <u>choice</u> became an issue when merchants noticed an inexplicable increase in their merchant fees charged to debit transactions. These transactions where being routed through expensive international networks. Merchants saw fees in some cases double and triple. The fees are not transparent or easy to calculate, often being bundled with other services, tied to volumes and values, with a complex fee structure, which further obscures the cost. Lower cost options are available but are not automatically enabled. The infrastructure they ran on wasn't readily available from the banks who provided the merchant machines to process payments. Numerous calls for action were resisted by the banks who were making money from these transactions, infrastructure and deals.

It took Industry and Association advocacy to get attention, and even then, progress was glacial. The task of understanding fee structures was so difficult, it spawned a new service industry to help business people understand, benchmark and shortlist different service providers. In the meantime, a handful of major Government reviews, also recommended LCR, including the RBA which estimated banks were gouging $500m in tap and go fees as recently as February 2020.

In 2019 some banks began offering LCR, with conditions attached that impacted the LCR capabilities. More obstruction. The RBA noted that even with some movement, small businesses were paying significantly higher costs (>33% - 50%) in merchant fees than larger businesses.
How much could a business save by Least Cost Routing?

- An independent supermarket with an average basket size of $44 could save $26,391 per annum* on the cost of debit transactions.
- An independent petrol station with an average ticket size of $44 could save $13,196 per annum* on the cost of debit transactions.
- An independent newsagent with an average ticket size of $36 per annum could save $3,167 per annum* on the cost of debit transactions.

*Source: RBA Statistical Tables, March 2020
It took a pandemic in 2020 for the banks to move, and even now only 6% of debit transactions are LCR, so there's a long way to go.

- Westpac, CBA and NAB all rolling out variations of LCR.
- Westpac proactively switching 55,000 terminals to LCR, saying 37,000 small businesses will have lower debit transaction processing costs.
- CBA has written to 50,000 customers, plus launched advertising campaign, and is pledging to do more.
- NAB's LCR has flat rate of 1.15 per cent.

The NAB's flat 1.15% compares poorly with big merchants processing more than $10M, paying half this fee, 0.6%.

Least Cost Routing has been a story of big banks collaborating and gouging fees from small businesses. Providing no transparency and obstructing change, even when alternatives existed.
At the end of 2020, the worst year since the Great Depression for small business, banks have done little but lip service to address LCR.

EFTPOS has led LCR progress, providing a competitive choice for merchants. That role is now in jeopardy, with the announcement of the merger of EFTPOS, NPP and BPAY. It is inconceivable, based on experience, that a mega entity of big banks and retail giants will guarantee a competitive environment for new players, innovative less expensive products and services or pay any heed to regulators. This new mega entity, has demonstrated convincingly that it views the role of small business as a free, eat as much as you want, buffet.

Buy Now Pay Later

While small businesses were fighting fees between 1 – 3%, a new innovative product came into the market, which made small businesses feel much better about those fees. Buy Now Pay Later charges merchants between 3 – 7%.

Buy Now Pay Later (BNPL) the modern version of lay-buy, without the wait, is targeted at young people wary of credit card debt who can have it now without interest, by entering a payment plan for a specific purchase. The scheme is growing, largely unregulated and earned almost $400 million mostly from small business in 2018-19 and by all accounts this has increased in 2019-20. ASIC recently looked at the schemes and issued a report, read it here. This report focused on the services offered and the customers, and largely ignored the merchants in the middle, who pay between 3-7% of the transaction. COSBOA is surveying the "missing middle," the merchants who use and pay for BNPL and whose voice has been absent from meaningful discussions around regulating this new "fin-tech". BNPL supports it's fees claiming it is a marketing service however, for the majority of small businesses using the service, there is no way of calculating this marketing value. Worse, it collects the small businesses customer's data. A huge resource that it can, and is, monetising. BNPL pits the consumer's desire (for free credit) against the merchant's desire (and fear of missing out "FOMO") for a sale and takes a fee from the resulting transaction. Of course the merchant is under no compulsion to offer BNPL. However the lure of free credit will tempt the most loyal customer.
Unlike credit card fees, the merchant is prohibited from on charging (surcharing) the fee. BNPL claims it is an innovative FinTech and there's good evidence it is consuming market share of the traditional credit card market. For the consumer 0% interest, compared to 10- 15% on a credit card, spread over fortnightly payments, that align with wages, is a good deal and a manageable way to stay in control of debt. However Choice and other consumer groups have raised concerns about the nature of unregulated debt facilities like BNPL and the late fees they charge. However the merchant fees dwarf the late fee revenues.

COSBOA, does not support BNPL being self regulated. COSBOA has also called for BNPL to be treated in the same way as other forms of credit at point of sale, allowing merchants to place a surcharge on BNPL transactions.