



## Australian Banking Association

# Australian Banking Association response – Inquiry into mobile payment and digital wallet financial services

## Introduction

The Australian Banking Association (ABA) welcomes the opportunity to provide a submission to the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into mobile payment and digital wallet financial services. The ABA advocates for a strong, competitive and innovative banking industry that delivers excellent and equitable outcomes for customers. We promote and encourage policies that improve banking services for all Australians, through advocacy, research, policy expertise and thought leadership.

This inquiry raises a cross-section of policy considerations. Many of these policy issues have been or are being considered in other inquiries, though a whole-of-economy perspective may still be needed to ensure these initiatives support Australia’s digital economy and help to retain digital talent. These issues are also under consideration in other jurisdictions, some of which have passed legislation or proposed regulatory reform.

Australian consumers have driven the take up of digital wallets and mobile payments, making mobile devices an essential means of making payments. This makes mobile devices critical gateways between consumers and service providers including for payments. Mobile payment and digital wallets benefit consumers and businesses by providing a seamless user experience for consumers, low cost payments and more ways to meet user demand.

The Reserve Bank of Australia (RBA) found more than 30% of consumers have used in-app payments, more than 20% of consumers have used contactless ‘tap and go’ payments, and a much higher percentage of consumers are aware of these payment methods.<sup>1</sup> In 2019, around 40% of online payments were initiated via mobile apps.<sup>2</sup> Use of mobile payments and digital wallets increased by up to 90% during the COVID-19 pandemic, and has been predicted to become the most popular contactless way to pay in-store by the end of the year, if current trends continue.<sup>3</sup>

Some providers of digital wallets and mobile payment services have significant market share. The Australian Competition and Consumer Commission (ACCC) has found Apple and Google have close to 100% of the only mobile operating system providers in Australia and globally (excluding China); and in Australia, Apple and Google each have around 50% of the mobile Operating System (OS) market.<sup>4</sup>

## Policy considerations

The fact of Apple and Google’s significant market share raises a number of policy questions, relating to competition and access, data and privacy, regulation of payments providers and consistency of the application of regulation.

## Competition and innovation

Apple and Google’s market share gives them significant ability to set the terms of access to their platforms as well as access to mobile device features. The ACCC’s second interim report from the digital platform services inquiry and the US House Report on Competition in Digital Markets have stated that accepting the terms and conditions imposed by Apple and Google ‘are “the cost of doing business”

<sup>1</sup> Reserve Bank of Australia (RBA), Submission to Payments System Review, January 2020 at pg 11: available at: [https://treasury.gov.au/sites/default/files/2021-02/147719\\_rba\\_0.pdf](https://treasury.gov.au/sites/default/files/2021-02/147719_rba_0.pdf)

<sup>2</sup> RBA, Consumer Payment Behaviour in Australia: Evidence from the 2019 Consumer Payments Survey, June 2020 at pg 22

<sup>3</sup> Commonwealth Bank of Australia, CBA predicts digital wallets set to become the most popular contactless way to pay, May 2021, available at: <https://www.commbank.com.au/articles/newsroom/2021/05/digital-wallets-contactless-soar.html>

<sup>4</sup> Australian Competition and Consumer Commission (ACCC), Digital platform services inquiry, Interim report No. 2 – App marketplaces (Second Interim Report), March 2021 at pg 19, available at: <https://www.accc.gov.au/system/files/Digital%20platform%20services%20inquiry%20-%20March%202021%20interim%20report.pdf>



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given the lack of options'.<sup>5</sup> The issues described by these reports also have an impact on competition neutrality and innovation in digital wallets and mobile payments.

Where Apple or Google compete with service providers rather than just providing a gateway, competition questions may arise because of their ability to self-preference first-party apps.

An issue affecting competition innovation is access to near field communication (NFC) technology. The ACCC's second interim report highlighted Android has supported third-party use of NFC functionality including 'tap and go', while Apple continues to cite security concerns and reserve some aspects of NFC functionality, such as 'tap-and-go' payment functionality for its own Apple Pay app (although Apple has made exceptions in specific overseas markets).<sup>6</sup> The ABA notes the German parliament has passed laws requiring providers of technical infrastructure (such as the NFC antenna in mobile phones) to provide access to those technical infrastructures to [regulated] payment service providers. These laws came into effect on 1 January 2020.<sup>7</sup>

The ABA believes there is merit in enforcing greater transparency and oversight of the terms and conditions of access to mobile devices, and providing for external dispute resolution, in order to enhance competition and foster innovation.

### Data and privacy

Recent inquiries into digital platforms and fintech have raised questions about collection and use of consumer data by large technology companies.<sup>8</sup> Comparable questions may arise about the collection and use of data by digital wallet and mobile payment providers, including data minimisation, the extent to which data collected can be used for profiling, how data is stored, who can access the data, and who has oversight of these arrangements.

The ABA believes many of these privacy questions can best be addressed by a consistent privacy regime for Australia's digital economy. The ABA has provided submissions raising concerns about likely inconsistencies between the outcomes of the Privacy Act review, the proposed digital identity legislation, and the Consumer Data Right (CDR) regime. A consistent privacy regime for the digital economy would also help to bring certainty and clarity to the provision, protection and use of consumer data in mobile and digital payments.

### Regulation

The payment system has evolved to become a diverse ecosystem, with new entities offering services or products that have 'relied on existing payment rails for clearing and settlement of transactions – i.e. supplementing existing card payment methods with new features, channels or business models'.<sup>9</sup> The ABA has stated that business models not predicated on the existing regulatory premise of prudential stability of the payments system are putting pressure on the effectiveness of co-regulation and incentives to invest in payments infrastructure. The RBA considers 'there is merit in establishing arrangements that would allow all entities that play a material role in facilitating payments to be regulated where doing so would promote competition and efficiency and control risk in the payments system', possibly including mobile wallet providers.<sup>10</sup>

Payments regulatory issues relevant to mobile payment and digital wallets are under consideration by the Treasury Payments System Review, the RBA Retail Payments Review, and ASIC's review of the ePayments Code. In addition to payments regulation, ABA has highlighted other areas where the coverage and application of existing regimes should be reviewed. Specifically: data reciprocity within

<sup>5</sup> US House of Representatives, Subcommittee on Antitrust, Commercial and Administrative Law of the Committee of the Judiciary, Investigation of Competition in Digital Markets: Majority Staff Report and Recommendations, October 2020 at pg 11, available at [https://judiciary.house.gov/uploadedfiles/competition\\_in\\_digital\\_markets.pdf](https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf), quoted by the ACCC, Second Interim Report at pg 6

<sup>6</sup> ACCC, Second Interim Report at pg 59

<sup>7</sup> Bird & Bird LLP, New German legislation allows access to the iPhone's NFC antenna, February 2020, available at: <https://www.twobirds.com/en/news/articles/2020/germany/new-german-legislation-allows-access-to-the-iphones-nfc-antenna>

<sup>8</sup> See ACCC, Second Interim Report at 136; Select Committee on Australia as a Technology and Financial Centre, Second Interim Report, April 2021 at pg 43, available at: [https://www.aph.gov.au/-/media/Committees/fintech\\_cttee/second\\_interim\\_report.pdf](https://www.aph.gov.au/-/media/Committees/fintech_cttee/second_interim_report.pdf)

<sup>9</sup> RBA, Review of Retail Payments Regulation – Issues Paper, November 2019, at pg 2, available at: <https://www.rba.gov.au/payments-and-infrastructure/review-of-retail-payments-regulation/pdf/review-of-retail-payments-regulation-issues-paper-nov-2019.pdf>

<sup>10</sup> RBA, Submission to Payments System Review at pg 1 and 15



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the CDR regime from all participants including technology companies; and addressing gaps in the detection and prevention of financial crime, which can become more difficult to achieve where a single entity does not have visibility of the entire transaction path. More broadly, the ABA has recommended the standards underpinning the digital economy be aligned across all developments. Ways to do so include leveraging the work of the Data Standards Body in developing aligned and interoperable standards for consent, infosec, technical, and consumer experience.

### **Recommendations**

The ABA submission identifies policy considerations raised by the subject matter of this inquiry. While existing inquiries or reform initiatives touch on these policy issues, the issues are not confined to any single legislative framework or the responsibility of any single agency. They need a holistic assessment of potential policy solutions and their impact on consumers and the economy as a whole. A siloed approach may fail to consider the impact of specific recommendations or reforms on the Government's policy to foster Australia's digital economy and retain digital talent.

As such, the ABA recommends robust coordination on policy and implementation that sees the oversight of mobile payment and digital wallet as a key plank of Australia's digital economy.