Australian Payments Plus

Independent Commercial and Compliance Committee Charter

Document Location

AP+ Intranet

Document History

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Approval and Distribution

The following table lists the Reviewers (R), the Approver (A) and the Distribution (D) of this document.

Name	Position	R/A/D	Signature	Date
Nancy Bryla	General Counsel	R		30 September 2025
ICC Committee	ICC Committee	A		17 October 2025
Board	Board	A		17 October 2025

CONTENTS

1. PURPOSE OF CHARTER

This charter (**Charter**) sets out the role, functions, structures and processes of the Independent Commercial and Compliance Committee (**Committee**) of Australian Payments Plus Ltd (**AP+**) and each of its wholly-owned subsidiaries (the **Company**).

2. COMMITTEE OBJECTIVES

Due to the composition of the Board of the Company, which comprises independent directors and directors who are nominees of member organisations, the Committee serves to allow AP+ to operate efficiently and compliantly and manage conflicts and competition risks across AP+ members by ensuring that director nominees with potential obligations to their employers, or who may have another role, are not put in a position of risk having regard to their directors' duties and obligations under the *Corporations Act 2001* (Cth) and other obligations under the *Competition and Consumer Act 2010* (Cth).

The Committee was established by the Board of the Company (**Board**) through delegated authority under the Company's constitution to assist the Board in fulfilling the Board's duties where an actual, potential, or perceived risk of anti-competitive conduct, or conflict of interest arises that cannot be managed using the Board's standard competition and conflicts protocols. The Committee will in those circumstances, assist the Board to discharge their duties by overseeing such matters which may include, but are not limited to:

- the participation in and access to schemes, including membership, suspension and termination of such access, in accordance with applicable scheme rules of eftpos, NPP, BPAY, ConnectID and any other scheme rules which may operate from time to time;
- the compliance and enforcement regime of the scheme rules of eftpos, NPP, BPAY, ConnectID and any other scheme rules which may operate from time to time;
- any pricing determinations across the Company's various products and services to its scheme members or participants, together with their financial impacts for the Company;
- the suspension, termination, imposition of reporting requirements on, or the taking of other action, in relation to representative and subsidiary facilitation arrangements under the scheme rules of eftpos, NPP or BPAY;
- the resolution of disputes between members, in accordance with the scheme rules of eftpos, NPP and BPAY; and
- any other matters involving a participant, a member, or a third party which may be or perceived to be as commercially sensitive in nature to the extent the associated conflicts and competition risk cannot be managed using the Board's standard competition and conflicts protocols; and.
- any other matter that requires delegation to the Committee in accordance with the AP+ Competition and Conflicts Guidance based on its conflicts and competition risk profile.

3. POWERS AND RESPONSIBILITIES

The Committee has the authority and necessary powers to exercise the role and responsibilities set out in this Charter and granted to it under any separate resolutions of the Board from time to time.

Consistent with the objectives of this Charter, the Committee has the following powers and responsibilities (although this is not intended to be an exhaustive list):

1. The Committee has delegated authority to exercise the powers and functions of the full Board in relation to the determination of participation and access applications for each of the schemes as applicable from time to time, including but not limited to the powers and functions as set out in Annexure A.
2. The Committee has delegated authority to make pricing determinations (including scheme fees and member-to-member fees) from time to time, together with their financial impacts for the Company including but not limited to the powers and functions as set out in Annexure A.

3. The Committee has delegated authority to make assessment of grounds for suspension or termination, in accordance with the relevant scheme rules including but not limited to those entities set out in Annexure A.

4. The Committee has delegated authority to suspend, terminate, impose additional reporting requirements on, or require the taking of other action, in relation to representative and subsidiary facilitation arrangements, in accordance with the scheme rules of eftpos, NPP and BPAY.

5. The Committee has delegated authority to determine disputes between members and direct affiliates, in accordance with the scheme rules of eftpos, NPP and BPAY.

6. The Committee has delegated authority to approve commercially sensitive contracts between the Company and a member or third party, that would otherwise go to the Board under the Company's Delegation of Authority.

7. To decide or approve any matter delegated to the Committee in accordance with the Board's Competition and Conflicts Guidance.

4. GOVERNANCE

(a) *Committee Membership*

1. The Committee is comprised of the independent directors on the Board and the Chief Executive Officer.

2. The Chair of the Committee will be appointed by the Board from one of the appointed members.

(b) *Proceedings of Committee*

1. The Committee will meet at least once every quarter and more frequently as deemed necessary to fulfill its role.

2. The quorum for a meeting of the Committee is a simple majority of Committee members.

3. Video or conference call participation by Committee members, or other attendees, requires the Chair's approval.

4. Committee members will be invited to disclose conflicts at the commencement of each meeting, and Committee members must self-report conflicts in accordance with the Board Conflict Management Protocol.

5. The Committee will seek to make unanimous decisions in the first instance. If unanimity cannot be reached and the matter requires a decision, the Committee may vote on the matter. Each member has one vote other than the Chief Executive Officer. Support of a simple majority of voting members present is required for a decision to be made.

6. The Committee Chair may invite non-members to attend all or part of its meetings, including members of management, to provide advice from time to time and may also call on independent expertise as required.

7. The Company Secretary or another designated person will undertake the duties of secretariat. Management will provide support to the Committee as required.

8. In addition to the matters set out in this Charter, the provisions of the Constitution that apply to meetings and resolutions of directors, apply to meetings and resolutions of the Committee.

(c) *Authority and Accountability*

1. The Committee is established by the Board, under its Constitution.

2. The Committee is authorised to:

   - obtain, at the Company's reasonable expense, external legal or other professional advice on any matter pertaining to the powers or duties of the Committee or falling within the remit of the Committee, subject to Board approval; and

- seek any information it requires from employees, who are directed to co-operate with the Committee's requests, or from external parties.

(d) ***Reporting***

The Committee will report to the Board in accordance with the ICCC Reporting Framework (see Attachment B of the Board's Competition and Conflicts Guidance) and otherwise within a reasonable period, as required, and will exercise its powers in accordance with any directions of the Board.

(e) ***Review of Charter***

1. The Committee may at any time review the adequacy of this Charter for current circumstances on a periodic basis and no less than every two (2) years and the Committee may make recommendations to the Board in relation to the Committee's responsibilities, functions or otherwise.
2. The Board may amend this Charter in its own right or on the recommendation of the Committee.

5. GLOSSARY

Words defined in the Constitution or scheme rules have, unless the contrary intention appears, the same meaning in this Charter.

ANNEXURE A – COMMITTEE DELEGATIONS APPLICABLE TO SCHEMES

	NPP, eftpos and BPAY
Applications for Membership	The Committee has delegated authority to accept Applications for Membership (Scheme Rule 3.2)
Fees	The Committee has delegated authority to determine, review and vary all fees and charges payable by Members and Direct Affiliates, including the power to impose additional fees or charges (Scheme Rule 7.4)
Determinations of non-compliance with a Compliance Requirement **Application of Non-Compliance Charges**	The Committee has delegated authority to make determinations of non-compliance with Compliance Requirements, and any Non-Compliance Charges (Scheme Rule 11.2)
Suspension and termination in relation to membership	The Committee has delegated authority to suspend or terminate a Member or Direct Affiliate (Scheme Rules 4.1 and 4.4)
Suspension, termination and other action in relation to Subsidiary Facilitation and Representative arrangements	The Committee has delegated authority to suspend, terminate, impose additional reporting requirements on, or require the taking of other action, in relation to Subsidiary Facilitation and Representative arrangements (Scheme Rule 10.4)
Determinations of Disputes between Involved Participants	The Committee has delegated authority to consider and determine Disputes involving Members and/or Direct Affiliates, that the scheme rules provide are to be considered and determined by the Board (Scheme Rule 19.4)
Approval of commercially sensitive contracts with a member or third party	The Committee has delegated authority to approve commercially sensitive contracts between the Company or an entity of the Company and a member or third party that would otherwise go to the Board under the Company's Delegation of Authority.

ANNEXURE B - COMPETITION AND CONFLICTS GUIDANCE

HERBERT SMITH FREEHILLS

Australian Payment Plus Board

Competition and Conflicts Guidance

Approved by the Board on 18 June 2025

Contents

HERBERT SMITH FREEHILLS

Table of contents

HERBERT SMITH FREEHILLS

1 Background and Introduction

The AP+ Board comprises 13 directors, including four independent directors (**Independent Directors**) and the remainder being directors who are appointed by shareholders who are also member organisations (**Nominee Directors**). Each of the shareholders who can appoint a Nominee Director are actual or potential competitors with other shareholders and member organisations of AP+ (with respect to the supply or acquisition of certain payment services and more broadly). This potentially leads to conflicts of interest concerns and competition law issues arising through the decision-making of AP+'s board.

The AP+ Board has established the Independent Commercial and Compliance Committee (**ICCC**) of the Board, comprised solely of Independent Directors to assist the Board to manage conflicts of interest and competition issues that may arise for Nominee Directors under the *Corporations Act 2001* (Cth) (**Corporations Act**) and the *Competition and Consumer Act 2010* (Cth) (**Competition and Consumer Act**). Key requirements under these respective Acts are set out in Annexure A.

Delegating decision-making to the ICCC protects AP+ and the Board from concerns that it is engaging in anti-competitive conduct. However, this must be balanced against ensuring that AP+'s Board continues to be the primary decision-maker as the Board is ultimately responsible for oversight of the management of AP+. In addition, each director has a personal duty of care and diligence which requires them to inform themselves of key matters and decisions affecting the strategy and performance of AP+.

Accordingly, while it is important to protect against competition and conflicts concerns, an overly conservative approach of delegation to the ICCC may:

- lead to decisions being delegated to the ICCC that can, and should, be dealt with by the AP+ Board; and
- unduly limit the information available to directors who are not on the ICCC, making it more difficult for them to satisfy their duty of care and diligence.

2 Purpose

The purpose of this document is to:

(a) provide guidance on what decisions can be made by the AP+ Board and which should be delegated to the ICCC, in order to manage AP+'s competition and conflicts risks, while ensuring that the primary decision-making role of AP+'s Board is retained; and

(b) set out principles that should be considered by AP+ to determine whether a matter can be decided by the Board or should be delegated to the ICCC, and how those decisions delegated to the ICCC are reported back to the AP+ Board.

3 Approach to managing competition and conflicts risks

The following are principles to apply in managing the competition and conflict risks that arise under the AP+ governance structure and should be used by the Board to determine what matters should be considered by the ICCC in accordance with the ICCC Charter.

3.1 Board to retain decision-making responsibility where possible

(a) The AP+ Board is the primary decision-making body for AP+ and matters should be delegated to the ICCC only where necessary to manage competition law or conflicts risks.

Board matters that do not need to be delegated to the ICCC to manage competition or conflicts risks should be determined by AP+'s Board utilising the Board's standard conflicts and competition protocols.

For example, where competition and conflicts considerations only apply to some of the Nominee Directors but not all of them, the starting presumption (absent other special factors or considerations) is that the remaining directors should consider the matter as a Board rather than delegating the matter to the ICCC for consideration (see further below).

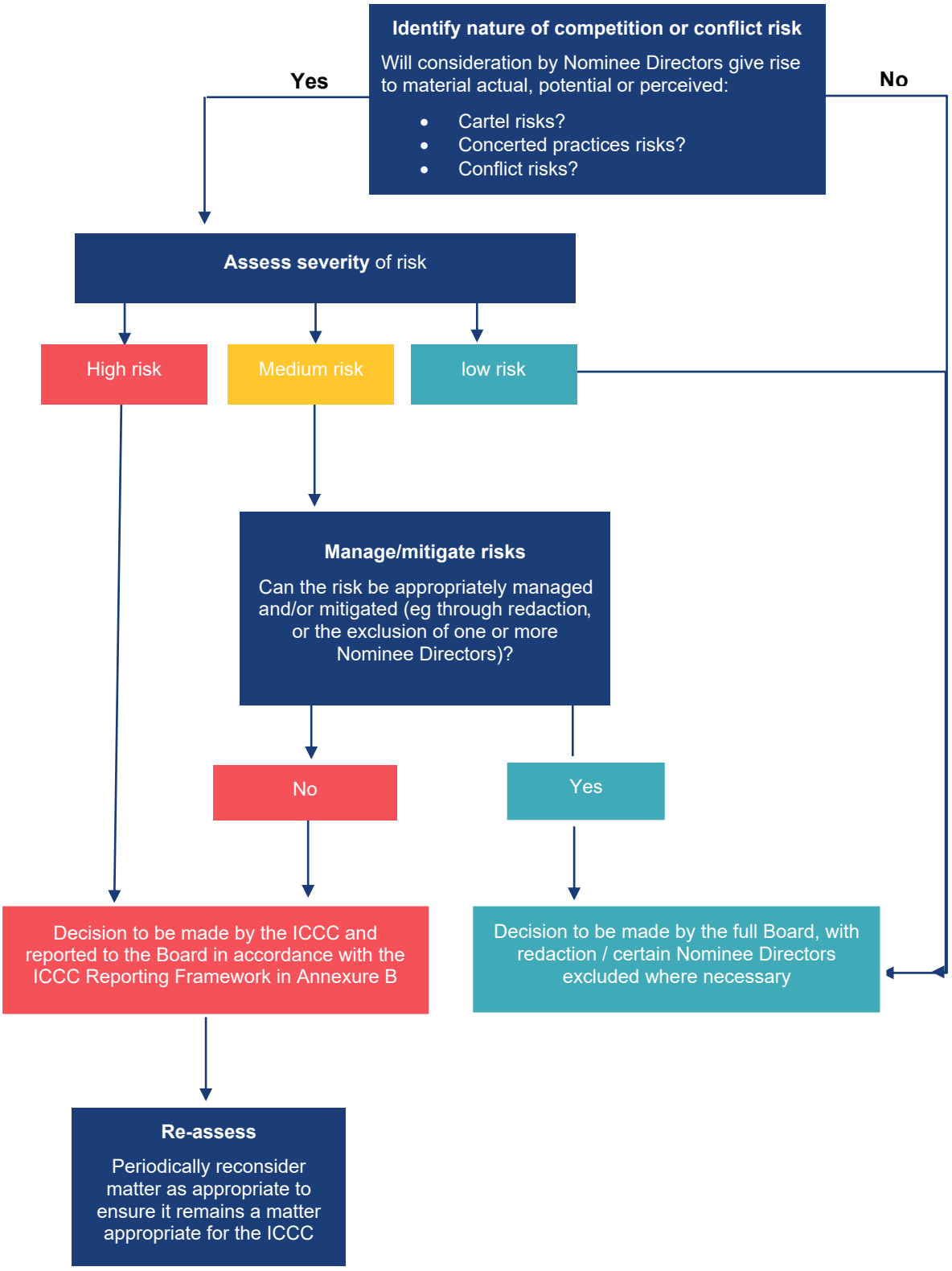
(b) The overarching objective is to ensure that directors receive as much relevant information as possible to effectively perform their duties, while avoiding an unacceptable level of competition and conflict risks.

3.2 Board Chair to assess competition and conflict risks

The Board Chair, with the support of management and the AP+ General Counsel, will assess whether matters are appropriate for consideration by the Board (and if so, whether some or all of the Nominee Directors need to be excluded from receiving papers, participating in discussion and/or voting) or require delegation to the ICCC.

Without constraining the matters the Board Chair may consider appropriate to take into account when assessing the competition and conflict risks associated with a particular matter, it is expected that the following steps will be undertaken as part of any assessment.

3.3 Compeition and Conflicts Asessment flow chart



3.4 Competition and Conflicts Asessment

(a) **Identifying the nature of the competition and conflict risks**

As an initial step, the ICCC will consider the extent to which the matter in question gives rise to cartel, concerted practices or other conflicts risks.

(1) Cartel risks

A cartel arises where a contract, arrangement or understanding is entered into between competitors or potential competitors that has the purpose or effect of fixing price or has the purpose of restricting outputs in the production and supply chain, allocating customer, suppliers or territories, or bid-rigging.

Example – BECS Framework case study

- **Proposed conduct:** (section 2.2(10)(b)(v) of the Proposed Conduct)
  Australian Payments Network Limited (**AusPayNet**) and AP+ propose to engage with one another in order to reach an agreed position on the framework that will be implemented by the payments industry to enable improved arrangements for account to account (**A2A**) payments in Australia, and to reach (but not implement) an in-principle agreement on the proposed implementation of that framework including the transition process to move payments away from BECS and the capacity of NPP to service those payments including how to deal with liquidity and credit risks if they arise.
- **Without authorisation this conduct would involve the following cartel risks:**
  - Reaching an arrangement or understanding restricting supply by AusPayNet and AP+ agreeing the mechanisms which will apply on an industry wide basis for A2A payments; and
  - Reaching an arrangement or understanding on how to treat the credit risk levels of specific other payment systems e,g, agreeing that credit risks of a certain level will be charged a particular surcharge (e.g. 3%) more than other entities with lower credit risks levels.

(2) Concerted practices risks

A concerted practice arises where there has been some information flow or information exchange which removes an element of uncertainty that would otherwise exist in the competitive process. It does not require the same notion of "consensus" or "meeting of the minds" as is required for a cartel.

A concerted practice only arises where there is a purpose, effect or likely effect of substantially lessening competition.

If commercially sensitive information is being provided, be clear about why the other party needs that information and consider whether it could be used by that party to be less vigorous in any aspect of its competitive behaviour.

Directors also cannot permit the sharing of competitively sensitive information, regardless of whether such information is required to make a decision.

Example – BECS Framework case study

- **Proposed conduct:** (section 2.2(10)(b)(v) of the Proposed Conduct)

  AusPayNet and AP+ propose to *meet, discuss and share information about the information needed to track and monitor progress in hitting the target end-date for the closure of the BECS Framework. This will include tracking the volumes of payments and accounts processed through each of the BECS and the NPP, the capacity and capability of the NPP, the proposed timeline and approach to new NPP products which will support increased efficiency in processing BECS payments, as well as issues associated with any migration away from BECS to the NPP including operational issues and solutions.*
- **Without authorisation this would involve concerted practices risk**

  This involves competitors being given information about competitors' business transaction volumes, and/or information regarding what stage competitor businesses are at with respect to implementing the transition. This information is relevant to competitive decisions which are being made such as the timing of offers to consumers or decisions to introduce or to hold off on introducing a new product.

(3) Conflict risks

Conflicts can be actual, potential or perceived, and can be either personal to a director or arising due to the director's separate duties, such as to their employer or appointing organisation.

A director cannot be present, vote or partake in decision-making in relation to:

- the organisation which the director is appointed or employed by, or where the director otherwise has a material personal interest in the matter; or
- a matter which deviates from agreed policies or criteria which gives rise to conflict issues for any Nominee Directors.

Example – Illustrative Nominee Director conflicts risks

- **Membership:** assessing a businesses' eligibility for membership according to eligibility requirements under scheme rules where the business is a competitor (or potential competitor) of the Nominee Director's appointer.
- **Price setting**: making a decision which impacts price setting for the Nominee Director's appointer or their competitor (or potential competitor).
- **Contractual arrangements:** involvement in a particular deal or contract involving the Nominee Director's appointer or their competitor (or potential competitor).
- **Non-compliance and disputes:** assessing alleged non-compliance on a matter for the Nominee Director's appointor or their competitor (or potential competitor).
- **Other operational matters:** involvement in operational matters that give rise to a perceived or actual conflict of duties or interests between their appointer and AP+, for example a cyber incident which has a significant impact on the Nominee Director's appointer or their competitor.

(b) **Assessing severity of risk associated with the matter**

Having identified the potential risks associated with a matter, the ICCC will consider the severity of these risks. While the guidance below is illustrative rather than definitive, it is intended to help inform the ICCC's assessment of the level of competition and conflict risk associated with a matter.

(1) High Risk – Information that should not be provided to Nominee Directors

Information will be considered high risk if it relates to price or is likely to directly impact the competitive response of another party.

Decisions by Nominee Directors in the same industry which involve discussion of pricing strategies, supplier/customer lists, and/or sales and revenue also carry high risk of being perceived as anticompetitive.

While consideration should be given by the ICCC to what, if any, mitigating actions might be available to reduce the risk to an acceptable level (see section (c) below), in general, it will not be appropriate for Nominee Directors to receive information or be involved in decisions regarding matters assessed as 'high risk'.

Examples of information which if disclosed involves a high level of competition risk (to the extent it relates to a competitor or potential competitor)

- Confidential information about:
  - a customer or supplier intention to stop acquiring or supplying a key product line, in a particular geographic area or through a particular distribution channel.
  - commercially sensitive contractual terms (current or proposed) between AP+ and any counterparty.
- Information on a member's pricing strategies, supplier/customer lists, and/or sales and revenue figures.
- Information with the potential to:
  - directly benefit a Nominee Director's organisation or cause detriment to one or more of their competitors; or
  - enable a Nominee Director's organisation to obtain a more preferable position vis-à-vis a key customer or supplier in their value chain.
- Decisions regarding:
  - the enforcement of compliance obligations for each of the schemes;
  - participation and access applications for each of the schemes, including grounds for suspension or termination; or
  - pricing determinations including operating charges, joining and transaction fees, interchange and rebates.

(2) Medium risk – Information that may be provided to the Board

Non-price information and information that is not likely to directly impact the competitive response of another party involves a more manageable level of risk and is capable of being managed through mitigation actions.

Example – medium risk of competition and conflict risks

- Consideration of whether or not to approve a contract involving the specification of services per the agreed eligibility criteria provided to a member or potential member that is the appointor or a competitor (or potential competitor) of the Nominee Director.
- Information that relates to a Nominee Director's appointor organisation or a competitor (or potential competitor) organisation (including, as relevant, a customer of or supplier to those organisations).

(3) Low risk – Information that will generally be appropriate to provide to all members of the AP+ Board

Information will be considered low risk where it does not relate to specific members, or relates to general feedback, information in the public domain or market commentary that would not provide the Nominee Directors with competitively sensitive insight into their actual or potential competitors.

Sharing information that could otherwise give rise to a competition risk in a de-identified and aggregated form significantly reduces this risk, where the aggregation and de-identification does not enable any reverse engineering to disclose the competitively sensitive information. In some circumstances, that mitigation step will not be feasible if the Board requires more granular data to appropriately inform its decision-making.

Examples – low risk of competition and conflict risks

- Information about customers that has been aggregated and anonymised so that the relevant customers or suppliers cannot be identified. This might include information about:
  - the effect of AP+ pricing on different financial institutions according to their relative size.
  - participation and reimbursement fees.
  - member non-compliance, remediation plans.
- Public information on pricing information, product developments or policies such as from press releases or marketing materials.
- Information that is publicly available or not competitively sensitive, such as financial statements.
- General feedback and market commentary on the products/service offerings.

(c) **Availability of actions to manage and/or mitigate risks**

Having assessed the nature and level of risks associated with a matter, the ICCC will then consider the extent to which those risks can be managed or mitigated. While not intended to be exhaustive, this section summarises some of the considerations that will be relevant in considering whether/how to manage and mitigate competition and conflicts risks.

(1) Importance of the competitive / conflicted information to the decision

Consider whether any risk mitigation steps can be meaningfully implemented using competition and conflict protocols to enable the matter to be considered by the full Board without impacting the integrity of the decision making.

For example:

(A) whether the competitive information is required to inform the decision or can be removed, aggregated or anonymised and the matter then dealt with freely by the Board;

(B) whether redaction of a limited amount of information in Board Papers and associated Board documents for Nominee Directors would be practical and enable meaningful decision making by the Board to occur;

(C) where the competitive information only impacts a specific segment of the decision-making process, whether it would be appropriate for only part of the decision-making process

to be delegated to the ICCC, with the remainder of the decision to remain with the Board.

(2) Number of Directors impacted

Consider the number of Directors impacted by any competition and conflict issues identified.

Where a matter presents competition or conflict concerns for only some but not all Nominee Directors, the Board Chair will consider whether the remainder of the Board can meaningfully consider the matter with only those conflicted Nominee Directors being recused in line with the Board's standard conflict of interest protocols.

Examples – where mitigation strategies are likely to be effective

- A decision which only gives rise to competition concerns for Nominee Directors that are appointed by or competitors of retail stores, but not the other members.
- A decision to enter, amend or terminate, or a decision to exercise or not exercise any rights or discretions under, a contract with an organisation that a Nominee Director represents or a competitor (or potential competitor) of that organisation.
- A decision that relates to a dispute with an organisation that a Nominee Director represents or a competitor (or potential competitor) of that organisation.

These are situations in which a decision could be made by the full Board with the potential conflict risks being managed through the usual Board Competition and Conflicts Protocols under the Board Charter.

3.5 Delegation to ICCC where appropriate

After considering the above, those matters that cannot be appropriately dealt with by the Board should be delegated to the ICCC for decision making (in full or in part) in accordance with the ICCC Charter.

Matters that will be delegated to the ICCC include those matters where:

- the risks to AP+ and the Nominee Directors of a competition and conflicts issue remain at an unacceptable level even having regard to available mitigations available; or
- it is impractical for the Board to deal with the matter given the level of redaction that would be required.

The ICCC reporting framework (in Annexure B) sets out the process of how decisions are reported back to the Board.

3.6 Re-assessment of competition and conflicts risk

Where a matter has been delegated to the ICCC, it should be re-assessed as appropriate to ensure it remains appropriate for the matter to remain within the remit of the ICCC.

There may be circumstances where after an initial decision is made, the competition and conflicts risks have been resolved or reduced to a more acceptable level, and the matter could be appropriately dealt with by the Board using competition and conflict protocols.

For example, where a policy or set of criteria has already been determined by AP+ (whether by the Board or ICCC) and cleared for future application from a competition law perspective, latter applications of that policy or criterion may not involve the same level of competition or conflict risk, as they will be applied equally to all members.

While matters need to be assessed on a case-by-case basis, it may be possible to share information with Nominee Directors and involve them in the implementation of matters

that they were excluded from originally determining. Relevant considerations to be taken into account by the ICCC include:

- Whether involvement of the Nominee Directors would provide them with competitively sensitive insight into their actual or potential competitors.
- Whether there is a heightened risk the policy / eligibility criteria will be deemed to have an anti-competitive purpose if the Nominee Directors are involved in applying it.

In addition, changes to the AP+ business over time and/or changes to its Board composition may in turn impact the assessment of the competition and conflicts risks associated with a particular matter.

4 Case study – decommissioning of the BECS Framework and transition to the NPP Scheme

AusPayNet and AP+ applied to the ACCC for authorisation to undertake certain activities which will enable the industry to agree a process for the decommissioning of the BECS Framework and transition to the NPP Scheme. This application is a useful case study to assist in identifying the types of cartel conduct and concerted practices risks the Board may encounter. The conduct considered for the purposes of this case study is some of the conduct which was identified in the ACCC application and is currently the subject of interim ACCC authorisation. The context for each of the examples of conduct considered below, as set out in the application, is:

> *Two or more of the Proposed Authorised Parties propose to discuss and share information for the purpose of, and only to the extent it is reasonably necessary for, the development of a common industry vision supported by the RBA and Treasury regarding the future of A2A payments infrastructure in Australia and the in-principle agreement as to how that desired future state should be achieved In particular, via the Roundtable, PSMW and the ARSC, the Proposed Authorised Parties.*

An authorisation may be granted by the ACCC where the public benefit arising from the conduct outweighs the competition concerns (detriment) from the conduct.

Data sharing principles

For each of the below examples risk mitigation can be achieved through data de-identification and aggregation. The permissible granularity of data, or degree of aggregation required, will depend upon a range of factors including:

- The number of data entries;
- The number of data providers / sources;
- The type of data e.g. is it already aggregated by the data providers in some form (yearly as opposed to daily transaction volumes);
- The age of the data; and
- The potential to identify the data source based on existing data points or publicly available information, or the capacity to cross-reference between data sources to identify the source.

4.1 Example 1 – concerted practices risk

(a) **Proposed conduct**

AusPayNet and AP+ propose to meet, discuss and share information relating to the government and the RBA's expectations for A2A payments infrastructure modernisation and the future state for A2A payments in Australia.[1]

(b) **Potentially relevant competitively sensitive information**

In order for the Proposed Authorised Parties to set expectations for infrastructure modernisation, the following types of potentially competitively sensitive information may need to be shared and discussed:

- **cost structures** (interest rates, fees, transaction costs);
- **service time** (transaction speed, customer service response time);
- **accessibility** (quality of online banking systems, availability of service at physical branches, mobile app functionality);
- **customer satisfaction** (feedback and reviews);
- **market metrics** (market share, costs incurred to acquire new customers);
- **usage by consumer businesses** (e.g. uptake by retail sector according to brand reputation, availability, efficiency etc); and/or
- **unique product and service offerings infrastructure** (e.g. digital wallets and payment solutions).

(c) **Reason for seeking ACCC authorisation**

This information would influence the competitive decision-making of representatives of the Proposed Authorised Parties. For example, the information could be useful in determining pricing or marketing strategies, which the organisations of the representatives of the Proposed Authorised Parties compete over. As a result, the sharing of this information is likely to substantially lessen competition and give rise to a concerted practice risk. The authorisation was sought by the Proposed Authorised Parties to remove this risk.

4.2 Example 2 – cartel conduct risk

(a) **Proposed conduct**

Reach a common position that needs to be implemented by industry regarding the above desired future state of A2A payments in Australia, and to reach (but not implement) an in-principle agreement reflecting that common position including any transition process to move payments away from BECS and the capacity of NPP to service those payments. It is expected the in-principle agreement would likely cover the following matters: a plan to ensure stakeholder and end-user perspectives are given due and ongoing consideration throughout the migration process.[2]

(b) **Reason for seeking ACCC authorisation**

Agreeing a common position on pricing or market allocation carries a cartel conduct risk. The Proposed Authorised Parties sought authorisation to reduce the cartel conduct risk that may arise should the conduct result in establishing a

[1] This conduct is set out at section 2.2(10)(a)(i) of the Proposed Conduct in the Application for authorisation by AusPayNet and AP+ on behalf of their members and others dated 21 February 2025 <https://www.accc.gov.au/system/files/public-registers/documents/Application%20Received%20-%2021.02.25%20-%20PR%20VERSION%20-%20AusPayNet.pdf?ref=0&download=y>, pp. 9.

[2] This conduct is set out at section 2.2(10)(b)(ii) of the Proposed Conduct in the Application for authorisation by AusPayNet and AP+ on behalf of their members and others dated 21 February 2025 <https://www.accc.gov.au/system/files/public-registers/documents/Application%20Received%20-%2021.02.25%20-%20PR%20VERSION%20-%20AusPayNet.pdf?ref=0&download=y>, pp. 10-11.

system of information sharing whereby pricing transparency is facilitated between the Nominee Directors, through data collection and reporting via the AP+ Board which is obtained from the Nominee Directors' institutions.

(c) **Reducing the risk**

There is an inherent tension arising from the ACCC's guidance, on the one hand that consumer access to information, such as pricing, is beneficial and ought to be facilitated by businesses, and on the other hand, the risk of the ACCC identifying tacit collusion in concentrated markets in the form of hub-and-spoke cartels.

In order to manage the fine line between ensuring access to information for consumers and the risk of coordinated collusion, AP+ Board members must be conscious of the need for thorough legal oversight, clear policies on information dissemination, and proactive measures to prevent discussions or exchanges that could indirectly influence market behaviour among competitors.

4.3 Example 3 – cartel conduct and concerted practices risk

(a) **Proposed conduct**

Reach a common position that needs to be implemented by industry regarding the above desired future state of A2A payments in Australia, and to reach (but not implement) an in-principle agreement reflecting that common position including any transition process to move payments away from BECS and the capacity of NPP to service those payments. It is expected the in-principle agreement would likely cover the following matters: a plan to deal with capacity issues and potential solutions for bulk files processing / large volumes.[3]

(b) **Reason for seeking ACCC authorisation**

In order for the Proposed Authorised Parties to reach a common position on the management of capacity issues and bulk files processing, it may be necessary to agree a common position on pricing or market allocation.

Accordingly, and as noted above, a cartel conduct risk arises because the Proposed Authorised Parties may establish a system of information sharing whereby pricing transparency is facilitated between the Nominee Directors, through data collection and reporting via the AP+ Board, which is obtained from the Nominee Directors' institutions.

Price fixing may also arise should the Proposed Authorised Parties seek to deal with capacity issues by agreeing to the imposition of standard fees or surcharges.

Similarly, a market allocation or restriction of supply risk arises should the Proposed Authorised Parties attempt to allocate capacity for large volumes payments amongst their respective institutions.

The nature of the information shared between the Proposed Authorised Parties may also include competitively sensitive information that could give rise to a concerted practices risk.

4.4 Example 4 – cartel conduct and concerted practices risk

(a) **Proposed conduct**

[3] This conduct is set out at section 2.2(10)(b)(iv) of the Proposed Conduct in the Application for authorisation by AusPayNet and AP+ on behalf of their members and others dated 21 February 2025 <https://www.accc.gov.au/system/files/public-registers/documents/Application%20Received%20-%2021.02.25%20-%20PR%20VERSION%20-%20AusPayNet.pdf?ref=0&download=y>, pp. 10-11.

Reach a common position that needs to be implemented by industry regarding the above desired future state of A2A payments in Australia, and to reach (but not implement) an in-principle agreement reflecting that common position including any transition process to move payments away from BECS and the capacity of NPP to service those payments. It is expected the in-principle agreement would likely cover the following matters: the types of information required to be exchanged in order to implement the in-principle agreement.[4]

(b) **Reason for seeking ACCC authorisation**

ACCC authorisation is required so that the any potential cartel conduct and concerted practices risks can be managed.

The type of cartel conduct will depend on the specific factual scenario. However, reaching a common position on the types of information to be exchanged may result in pricing or market allocation.

As above, agreeing a common position on pricing or market allocation may involve establishing a system of information sharing whereby pricing transparency is facilitated between the Nominee Directors, through data collection and reporting via the AP+ Board, which is obtained from the Nominee Directors' institutions, and is likely to lead to cartel conduct risk.

Similarly, to the above, a concerted practices risk arises because competitively sensitive information may be exchanged for the purpose of identifying the types of information required to be exchanged.

5 General

5.1 Legal advice

Legal advice may be sought to assist with the application of Competition and Conflicts Guidance.

5.2 Periodic review of ICCC decisions

AP+ will periodically conduct an external review of the matters that were brought before the ICCC and consider whether this framework is being applied appropriately having regard to the guiding principles outlined above.

This report will be shared with the Board in accordance with the ICCC Reporting Framework in Annexure B.

5.3 Periodic review of this guidance

The Board will periodically review this Competition and Conflicts Guidance and its application to ensure it remains appropriate and make adjustments as necessary.

[4] This conduct is set out at section 2.2(10)(b)(vi) of the Proposed Conduct in the Application for authorisation by AusPayNet and AP+ on behalf of their members and others dated 21 February 2025 <https://www.accc.gov.au/system/files/public-registers/documents/Application%20Received%20-%2021.02.25%20-%20PR%20VERSION%20-%20AusPayNet.pdf?ref=0&download=y>, pp. 10-11.

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Annexure A

1 Key competition law prohibitions

The main obligations under the Competition and Consumer Act relevant to the AP+ Board and the ICCC are:

- **Cartel conduct:** The Competition and Consumer Act includes a prohibition on entering, or attempting to enter, into a contract, arrangement of understanding with a competitor (or potential competitor) that fixes price, that restricts output, allocates a market or rigs bids.

  Although decisions of AP+'s Board are decisions of AP+ and not of a Nominee Director's appointing organisation, there is a risk that communications at AP+'s Board may extend to other agreements that fix price, restrict output, allocates a market or rig bids between competitors. This need not be a formal agreement. The sharing of information to AP+'s Board with an expectation on participants to act on that information may be sufficient to amount to a contract, arrangement or understanding.

  Cartels are automatically prohibited under Australian law regardless of whether there is any purpose, effect or likely effect of substantially lessening competition. The guidance provided reflects a low level of risk tolerance for cartel conduct as a result.

- **Concerted practices:** The Competition and Consumer Act includes a prohibition on engaging in conduct that may facilitate coordinated conduct that has the purpose, effect or likely effect of substantially lessening competition. This is generally considered to include the sharing of competitively sensitive information that may reduce uncertainty between competitors.

  Nominee Directors are likely to hold other roles in their member organisations in which they may make decisions in competition with other member organisations or AP+. A concerted practice risk arises if directors either receive information relating to AP+ or members who are competitors, which may influence their competitive decision making in their other roles and potentially increase the risk of coordination.

  A concerted practice only arises where there is a purpose, effect or likely effect of substantially lessening competition. The sharing of information without such a purpose, effect or likely effect is not sufficient. The guidance provided reflects that AP+ can have a greater tolerance to the sharing of information when compared with cartel conduct as a result.

There are other prohibitions in the Competition and Consumer Act, but these are unlikely to affect decision-making by the AP+ Board and shape the principles around when matters should be delegated to the ICCC.

2 Key Corporations Act conflicts obligations

The Corporations Act imposes obligations on directors in relation to disclosure of interests. Specifically, the Corporations Act provides that:

(a) a director who has a material personal interest in any matter that relates to the affairs of the company is required to give the other directors notice of the interest, except in certain circumstances specified in the Corporations Act (e.g. where the director is a member of the company and the interest is an interest in common with other members of the company);

(b) directors may choose to give standing notice about an interest to each of the other directors; and

(c) a director who has a material personal interest in a matter that is being considered at a Board meeting must not:

(1) be present while the matter is being considered at the meeting; or

(2) vote on the matter,

unless the remaining directors pass a resolution specifically allowing the conflicted director's participation in the meeting or an exception applies.

Directors also have specific statutory duties to:

(d) act in the best interests of a company and for a proper purpose; and

(e) not improperly use their position or information they have obtained in their position to gain an advantage for themselves or another person, or to cause detriment to the company.

At common law any material conflict of interest needs to be managed carefully or avoided. A conflict of interest occurs where a director's interest is different to, and conflicts with the interests of AP+. A conflict of interest can be actual or perceived. Any interest or relationship that could have the appearance of affecting the judgement, objectivity or independence of a director in carrying out their role, gives rise to a potential conflict of interest.

Conflicts of interest may arise for Nominee Directors' in relation to AP+ dealings that directly or indirectly impact their appointing organisations (or their appointing organisation's actual or potential competitors). These conflict risks are heightened where Nominee Directors hold roles at their appointing organisation that are directly connected with the payment systems, services and operations of their appointer.

Conflicts of interests impacting AP+ Board are managed in accordance with [AP+'s conflicts of interest policy].

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Annexure B

ICCC Reporting Framework

1 Background

The ICCC Charter provides the following in respect of reporting to the Board:

> *The Committee will report to the Board within a reasonable period, as required, and will exercise its powers in accordance with any directions of the Board.*

This document seeks to formalise AP+ processes for reporting from ICCC to the Board and establishes a clear framework around what will be reported, and what will not be reported due to conflicts / competition issues.

2 Purpose

The purpose of this framework is to set out how the ICCC will report back to the Board in respect of matters considered within its remit.

This reporting framework seeks to strike a balance between supporting directors to discharge their duties of due care and diligence and to make informed decisions in the best interests of AP+, whilst ensuring conflicts and competition risks are appropriately navigated in accordance with the *Corporations Act 2001* (Cth) and the *Competition and Consumer Act 2010* (Cth).

3 ICCC Reporting Requirements

3.1 Reporting to the Board

To ensure appropriate Board oversight over the ICCC, the ICCC will report to the Board as follows:

(a) Copy of agenda

A copy of the ICCC agenda will be shared with the Board as soon as it is practical to do so having regards to any redaction required.

Items from the agenda may be redacted where necessary in accordance with the principles set out in section 3.2.

(b) Copy of ICCC papers

ICCC papers will not ordinarily be shared with the full Board.

Certain ICCC papers may be shared with Nominee Directors in exceptional circumstances if this has been agreed by the Chair of the Board and the AP+ General Counsel. Any ICCC papers shared with Nominee Directors will be redacted in accordance with the principles set out in section 3.2.

(c) Summary of decisions

A high-level summary of ICCC decisions will be shared with the Board following each ICCC meeting that sets out:

(1) a high-level overview of each topic covered, including key considerations; and

(2) any recommendations, actions taken or resolutions passed.

The summary will be prepared to ensure the protection of any competitive information and conflicts of interest.

The summary will be prepared by the AP+ General Counsel and approved by the CEO before it is shared with the Board.

(d) Verbal updates

The Chair of the ICCC will supplement the above reporting requirements by providing additional verbal updates to the Board from time to time.

3.2 Principles for the ICCC sharing information with the Board

(a) The ICCC will share with the Board information that is relevant to ensuring Nominee Directors have a sufficient understanding of the matters being considered by the ICCC to enable them to discharge their ongoing director's duties (including duties of due care and diligence and to make informed decisions in the best interests of AP+), whilst ensuring that conflicts of interest and competition obligations under the *Competition and Consumer Act 2010* (Cth) and the *Corporations Act 2001* (Cth) are appropriately managed by AP+.

(b) In determining what information is provided to the Board and what information should be redacted, the ICCC should only redact information where necessary to manage competition and conflicts risks.

Examples - Low risk – limited / no redaction required

Only limited redaction is more likely to be required for information concerning:

- decisions applicable equally to all customers and members
- non-customer / member specific financial information
- high level updates
- aggregated stakeholder feedback or information
- information about agreed policies and their impact

(c) To the extent possible without taking on an unacceptable level of competition or conflict risk, redaction should be kept to a minimum in respect of information that is of significant ongoing relevance to AP+'s ongoing strategy, financial position and long-term interests.

Examples

Information that is likely to be of material relevance to AP+ long-term strategy, financial position or long term interests includes:

- Information on the financial position of AP+ (and information necessary to test the accuracy and robustness of that information).
- Information impacting AP+ strategic direction.

(d) Matters will be redacted by the ICCC where the information:

(1) contains competitively sensitive information that may reduce uncertainty between competitors;

(2) could provide the Nominee Directors with competitively sensitive insight into their actual or potential competitors;

(3) relates to AP+ or members who are competitors, which may influence a Nominee Director's competitive decision making in their other roles and potentially increase the risk of coordination; or

(4) relates to a matter where a director has a material personal interest (with the redaction only being required for the impacted director see section 3.2(e)).

Examples

Information that will fall into this 'higher risk' category and should be redacted includes information concerning:

- specific financial or strategic business information relating to an organisation represented by a Nominee Director (or their competitor), including information that may indicate an organisation's:
  - pricing, margin, sales or revenue data;
  - supplier/customer lists; and
  - broader business strategy;
- specific information about the entry into or the negotiation of contractual relationships with customers or suppliers (for example, the terms of a commercially sensitive contract).

Redaction for specific Nominee Directors

(e) It may only be necessary to redact information for specific Nominee Directors and not all Directors (for example to manage conflicts and competition risks where only particular directors are impacted), in which case those Nominee Directors will receive a redacted version, and other Board members (for whom there is no potential competition or conflict issues in receiving the relevant information) will receive unredacted copies.

Level of redaction may change over time

(f) Where a matter has been delegated to the ICCC, it may be appropriate for the redaction approach to be re-assessed to ensure it remains appropriate.

There may be circumstances where after an initial decision is made, the competition and conflicts risks have been resolved or reduced to a more acceptable level, and the information can be appropriately shared with the Board or only redacted for a more limited number of Nominee Directors.

While matters need to be assessed on a case-by-case basis, it may be possible to share additional information with Nominee Directors that they were excluded from originally having access to. Relevant considerations to be taken into account by the ICCC include:

- Whether sharing the additional information with the Nominee Directors would provide them with competitively sensitive insight into their actual or potential competitors.
- Whether there is a heightened risk the decision, policy or eligibility criteria will be deemed to have an anti-competitive purpose if the

Nominee Directors are involved in accessing the additional information.

In addition, changes to the AP+ business over time and/or changes to its Board composition may in turn impact the assessment of the competition and conflicts risks associated with sharing information on a particular matter.

Example

The level of redaction may change over time for decisions regarding pricing strategy, which may initially require the ICCC to consider confidential client pricing and business information which would present competition issues if shared with the Board. However, once the pricing strategy is decided by the ICCC, the strategy decided on by the ICCC will apply equally to all customers and products, and therefore the resulting strategy and discussions of the ICCC regarding the strategy (but not the underlying customer information) should be shared with the Board to the full extent possible.

Responsibilities for redaction

(g) The AP+ General Counsel, in consultation with the Board Chair as appropriate, is responsible for redacting ICCC materials and arranging circulation to the Board. Additional legal advice may be sought to assist with the determination.

3.3 Legal advice

Where it is unclear which approach to apply, the relevant information should not be provided to the Board without obtaining legal advice.

3.4 Periodic review of ICCC reporting framework

The Board will periodically review this reporting framework and its application to ensure it remains appropriate and make adjustments as necessary.