

## **Comments to the Reserve Bank of India on the Draft Framework for Authorisation of a Pan-India New Umbrella Entity (NUE) for Retail Payment Systems dated 10 February 2020**

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Dvara Research<sup>1</sup> is an Indian not-for-profit policy research and advocacy institution guided by our mission of ensuring that every individual and every enterprise has complete access to financial services. Our work addresses emerging issues in policy and regulation for consumer protection, given the sweeping changes that are reshaping retail financial services in India. The effects of disintermediation in finance, including through the growth of fintech, is a core area of our recent research.

In this Response, we present our comments on the RBI's Draft Framework for Authorisation of a Pan-India New Umbrella Entity (NUE) for Retail Payment Systems (Reserve Bank of India, 2020) (hereafter 'Draft Framework'). Our comments are organised into two sections.

Section I recognises five overarching concerns (summarised below), which will seek to convey and substantiate the following feedback to the Draft Framework.

1. Clearer regulatory objectives must guide the vision and design for NUE.
2. The definition and Scope of Activities need clearer articulation and greater alignment with regulatory objectives.
3. The Draft Framework must clarify if these regulations will apply to the NPCI, retrospectively.
4. The Draft Framework must incentivise interoperability to ensure competitiveness among NUE(s).
5. The Draft Framework needs to outline a robust consumer protection framework.

Section II concludes the document with a summary of recommendations.

This Response seeks to provide constructive comments to the Draft Framework. We hope that the concerns we raise and the recommendations we suggest, will be considered and addressed in future iterations of the Framework for Authorisation of a Pan-India New Umbrella Entity (NUE) for Retail Payment Systems.

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<sup>1</sup> Dvara Research has made several contributions to the Indian financial system and participated in engagements with key regulators and the Government of India. We were the technical secretariat to the RBI's Committee on Comprehensive Financial Services for Small Businesses and Low Income Households chaired by Dr. Nachiket Mor. We acted as peer reviewers for the customer protection recommendations made by the Financial Sector Legislative Reforms Committee. Our recent research has given us the opportunity to consult on and extend discrete research inputs to various Committees set up by the RBI and the Government of India, including the Committee of Experts (on data protection) under the Chairmanship of Justice B.N. Srikrishna, RBI's Committee of Fintech & Digital Banking, the RBI's Expert Committee on Micro, Small & Medium Enterprises and the RBI's Committee on Deepening of Digital Payments.

## SECTION I: OVERARCHING COMMENTS

### 1. Clearer regulatory objectives must guide the vision and design for NUE.

Section A of the Draft Framework describes its objective to “*set up new pan-India umbrella entity / entities focussing on retail payment systems*” (Reserve Bank of India, 2020). While this describes the limited purpose of the Draft Authorisation Framework, it does not shed any light on the fundamental regulatory objectives or welfare compulsions prompting the RBI to create a new class of entities- the NUE(s), under the Payment and Settlement Systems Act 2007 (Government of India, 2007), (hereafter ‘PSSA 2007’). It is submitted that the Draft Framework must clearly articulate the market failures that it seeks to remedy and the regulatory objectives it seeks to support, for reasons set out below.

Financial regulations are often designed to remedy market failures (Government of India, 2013). Objectives of financial regulations include (1) sustaining systemic stability, (2) maintaining the safety and soundness of financial institutions, and (3) protecting the consumer (Llewellyn, 1995). A lack of clarity on regulatory objectives adversely affects the performance of a regulator (Roy, Shah, Srikrishna, & Sundaresan, 2019). Further, a lack of clearly articulated objectives can lead to uncertainty among regulated entities in relation to the regulators’ expectations of them. A clear articulation of regulatory objectives helps in assessing the necessity, effectiveness, adequacy and proportionality of regulatory interventions being proposed.

Further, there is a strong precedent in the RBI to integrate the regulatory objectives guiding the creation of new entities, **within** their authorisation frameworks. The Guidelines for Licensing Payments Banks (Reserve Bank of India, 2014) for instance set out the objective for creating payments banks in Section II.2 (*Objectives*) as

*“further[ing] financial inclusion by providing (i) small savings accounts and (ii) payments/remittance services to migrant labour workforce, low income households, small businesses, other unorganised sector entities and other users”.*

A similar statement of objectives is also found in the Guidelines for Licensing of Small Finance Banks which sets out their objective in Section II.2 of the Guidelines for Licensing of Small Finance Banks in the Private Sector (Reserve Bank of India, 2014) as:

*“furthering financial inclusion by (i) provision of savings vehicles primarily to unserved and underserved sections of the population, and (ii) supply of credit to small business units; small and marginal farmers; micro and small industries; and other unorganised sector entities, through high technology-low cost operations.”*

Similarly, the RBI’s policy document on regulation and supervision of the Financial Market Infrastructure (FMI) sets aside 24 principles for regulating and supervising FMIs (Annex 2, (Reserve Bank of India, 2013).

The Draft Policy Paper on Authorisation of New Retail Payment Systems (Reserve Bank of India, 2019(a)) identifies the regulatory objectives for establishing NUE(s) as (i) minimising

the concentration risk in retail payment systems from a financial stability perspective and (ii) fostering innovation and competition in the retail payments space.

It is unclear if the current Draft Framework seeks to achieve these and/or other objectives. The proposed Draft Framework will also benefit from a similar articulation of regulatory objectives. A clear articulation of regulatory objectives will enable the assessment of effectiveness and proportionality of the Draft Framework.

**Recommendation 1: Future iterations of this Draft Framework should clearly articulate the regulatory objectives that it seeks to achieve.**

The text of provisions in Section H (*Scope of Activities*) contains some indications of the potential regulatory objectives guiding the creation of NUE(s). These are set out below:

- *To uphold developmental objectives such as enhancement of awareness about the payment systems:* The first provision in Section H empowers the NUE(s) to undertake activities that take care of developmental objectives. This can be further elaborated to steer the activities to meet regulatory objectives.
- *To fulfil policy objectives to ensure that principles of fairness, equity and competitive neutrality are applied in determining participation in the system:* The Draft Framework urges NUE(s) to adhere to principles of fairness, equity and competitive neutrality. These could serve as important regulatory objectives, especially considering the emphasis laid on reducing concentration in retail digital payments various policy documents of the RBI (Reserve Bank of India, 2019(c)) (Reserve Bank of India, 2019(a)).

These principles can serve as a starting point to creating well-defined regulatory objectives guiding the RBI to authorise the creation of NUE(s).

## **2. The definition and Scope of Activities need clearer articulation and greater alignment with regulatory objectives.**

There is considerable uncertainty and ambiguity in the Draft Framework around what kind of entities qualify as NUE(s) and what their mandated functions are. This uncertainty arises primarily from the absence of a clear definition of the terms ‘NUE’ and ‘retail payments’ in the Draft Framework or in any other policy document of the RBI. Further, the Scope of Activities as currently constructed is too broad and it runs the risk of bringing several existing regulated entities in the ambit of NUE(s) and duplicating regulation. These uncertainties are summarised below.

### **2.1. The term NUE is not defined.**

Currently, the Draft Framework does not define the term New Umbrella Entity. The term is also not defined under the PSSA 2007 (Government of India, 2007), the parent statute authorising the RBI to create these entities.

Even when there are instances of several RBI Policy Documents referring to the National Payments Corporation of India (NPCI) as an umbrella entity for retail payments (Reserve Bank of India, 2019), (Reserve Bank of India, 2019(a)), there is no explanation of the basis on which the NPCI is characterised as an umbrella entity for retail payments.

This ambiguity around the definition of a NUE defeat the objective of the Draft Framework. It is difficult for the Draft Framework to achieve its objective of facilitating the creation of NUE(s), when the ecosystem does not understand what a NUE is.

### **Recommendation 2: The Draft Framework must clearly articulate the criteria used to identify NUE.**

The RBI must clearly define what NUEs are, the criteria considered for identifying organisations as NUE and the regulations applicable to them.

International best practices require central banks to set out their oversight policies in the public domain (Bank for International Settlements, 2005). It is advisable to have one common document per regulated entity, setting out the central bank’s oversight responsibilities, policy requirements and criteria for determining the organisations that they apply to (Bank for International Settlements, 2005). Extending this approach, the RBI can also consider setting out the parameters that guide its decision of identifying a retail payment system participant as a NUE. A similar approach is adopted in the RBI’s determination of Financial Market Infrastructure (FMI), which are systemically important payment systems. Considering that the PSSA 2007 does not define FMI, the RBI set out the parameters that it considers when recognising a payments system operator as an FMI. These include (i) volume and value of transactions; (ii) share in the overall payment systems; (iii) markets in which it is operating; (iv) degree of interconnectedness and interdependencies; (v) criticality in terms of concentration of payment activities. (Reserve Bank of India, 2013). The future iterations of the

Draft Framework could consider suggesting a similar principle-based criterion to determine when an entity performing functions associated with retail payments qualifies as a NUE.

## 2.2. The proposed Scope of Activities for NUEs is too broad and generic.

Section H of the Draft Framework sets out the Scope of Activities for the proposed NUE(s). It outlines a set of four, vague and generic activities that fall under the purview of the NUE(s). These include:

- Setting-up, managing and operating new payment system(s) especially in the retail space including but not limited to ATMs, White Label PoS; Aadhaar based payments and remittance services. The entities can also develop new payment methods, standards and technologies and take care of developmental objectives like enhancement of awareness about the payment systems.
- Operating clearing and settlement systems; identifying and managing risks such as settlement, credit, liquidity and operational risks. Preserving the integrity of the system(s); and monitoring retail payment system to avoid shocks, frauds and contagions.
- Fulfilling policy objectives and ensuring that principles of fairness, equity and competitive neutrality are applied in determining participation in the system; frame rules and processes to ensure the safety and efficiency of the system.
- Taking up any other business which strengthens the retail payments ecosystem in the country.

We submit that the current construction of Scope of Activities is very broad and generic. This further confounds the understanding of functions that NUE(s) are expected to perform, due to the following reasons:

**2.2.1. The ambit of the Scope of Activities is unclear:** Currently it is unclear if NUE(s) are expected to perform any or all of the activities contained in the Scope of Activities. The lead-in language in Section H, reads, “*The scope of activities of the NUE shall be, **inter alia**, to*” (emphasis added.). The choice of the phrase *inter alia* implies that NUE(s) could perform any or all of the functions set out in the provision and also those which may resemble these functions but are not specifically articulated in the provision. This makes the Scope of Activities extremely vast and potentially indeterminate.

Further, the Scope of Activities as set out in Section H contain several objectives which do not map to a business activity and reflect regulatory objectives instead.

For instance, Section H.4 enables NUE(s) to,

*“carry on any other business as suitable to further strengthen the retail payments ecosystem in the country.”*

In general, the Scope of Activities under a licensing regime should set out the permissible business activities that entities being licensed can undertake. For instance, the Scope of Activities set out in Section 6 of the RBI’s Master Directions on Peer to Peer Lending Platform (Reserve Bank of India, 2019) set out the activities that P2P NBFCs can perform.

Simultaneously, they also clearly articulate activities that P2P NBFCs cannot undertake such as making loans on their own loan book or cross-selling other financial products (S.6(iii), S.6(vii), (Reserve Bank of India, 2019)).

However, the Scope and Activities in the Draft Framework lack a clear articulation of commercial activities that proposed NUE(s) can undertake. Instead, it conflates the scope of commercial activities with the regulatory objectives. This conflation of regulatory objectives and Scope of Activities makes the Scope of Activities wide. While it gives some indication on what the regulator seeks to achieve through NUE(s), it does not clarify the precise business activities that can be conducted by an entity that obtains the NUE license. It will be helpful for the Draft Framework to bright-line the activities that prospective NUE(s) can undertake.

**2.2.2. The current formulation of Scope of Activities creates the risk of asymmetric regulation:** In its current formulation the Scope of Activities includes several payments functions already regulated by the RBI, such as operating and managing White Label ATMs. Given this articulation, there is significant overlap between the activities proposed for the NUE(s) and entities already regulated under the PSSA 2007. This overlap makes it harder to differentiate NUE(s) from other existing regulated entities, authorised under the PSSA 2007 and performing the same function<sup>2</sup>.

Consequently, the Draft Framework runs the risk of also catching these existing regulated entities in its framework. This can lead to these entities being doubly regulated by the same regulator and under different provisions of the same legislation.

**Recommendation 3: The Draft Framework must clearly define the Scope of Activities.**

It should articulate a definite set of necessary and sufficient activities that entities must undertake in order to get qualified as a NUE. The drafting should avoid any legal uncertainty that can arise from the interpretation of activities, leading to duplication of regulation or regulatory arbitrage. Once there is a clear indication of the individual activities that constitute the Scope of Activities, it will also be useful to set out definitions of each activity. This will be helpful as many of these activities have not been formally defined by the RBI such as the definition of White Label PoS Machines. By clearly articulating the (i) definite set of activities that constitute the Scope of Activities of the NUE(s) and (ii) further defining every activity within the set, future iterations of the Draft Framework can create substantial certainty for all stakeholders.

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<sup>2</sup>(As of 14 February 2020, there are 8 White Label ATM Operators authorised by the RBI under the PSSA

**3. The Draft Framework must clarify if these regulations will apply to the NPCI, retrospectively.**

Competitive neutrality in regulation is indispensable for promoting competition in the market (Committee on Digital Payments, 2016). Regulators must (i) create a level-playing field for all players and (ii) remain neutral to all players in the market in order to promote competition. Any deviation in these principles carries a risk of moral hazard that can dampen competition between players. The Draft Framework could contravene these principles, considering that it does not specify **if these regulations will retrospectively apply to the existing umbrella entity- the NPCI.**

Several policy documents of the RBI recognise the NPCI as the first umbrella entity for retail payments in India, (Reserve Bank of India, 2019(a)), (Reserve Bank of India, 2019(c)). Further, the NPCI website identifies itself as “*umbrella organisation for operating retail payments and settlement systems*” (NPCI, Retrieved in 2020). However, the Draft Framework is silent on its application to the NPCI. In the Draft Framework, it is unclear if the NPCI will be subject to the same obligations as other umbrella entities which will be created through the new authorisation regime.

Regulatory theory emphasises the need for institutional neutrality and functional regulation. Seminal scholarship on regulation establishes the relative superiority of regulating financial activities as opposed to institutions performing the activity (Merton, 1995). The Financial Sector Legislative Reforms Committee Report also emphasises the need for regulators to adopt a functional approach to regulation, that focuses on treating entities that perform the same functions and pose similar risks, similarly (Government of India, 2013). Further, international best practices emphasise that central banks must apply comparable oversight principles, consistently to comparable payment and settlement systems, including those operated by the Central Banks (Bank for International Settlements, 2005).

By not specifying if these regulations also apply to the NPCI, the Draft Framework raises concerns around its differential treatment of the NPCI. These concerns are further aggravated by the exclusive privileges given to the NPCI, because of its status as the only retail umbrella entity in the country. The NPCI, for instance, has the exclusive access to the National Financial Switch (NFS) which was developed by the Institute for Development and Research in Banking (IDRBT) at the behest of the RBI (NPCI, retrieved in 2020). The PSSA 2007 empowered the NPCI to run the NFS and the system has grown manifold since. Further, the NPCI operates certain payment systems on behalf of the RBI. For instance, it operates the Cheque Truncation System on behalf of the RBI (Reserve Bank of India, 2019(a)). A Draft Framework inviting applicants for more NUE(s) in the ecosystem must clarify how the access and management of these legacy systems will be made symmetric across NUE(s) – both existing and proposed. Such clarity is needed to ensure level playing field among entities.

Another issue closely related to the principle of institutional neutrality is the dual role of the RBI in the provision of retail payments. The RBI both regulates retail payments under the PSSA 2007 and offers retail payments solutions such as the National Electronic Funds Transfer (NEFT) and the Real Time Gross Settlement System (RTGS). Though this has been conventionally recognised as a conflict of interest because the provision of these function

makes the RBI both a competitor and the regulator of the NPCI. This conflict will get further entrenched with multiple NUE(s) in the system. This issue was discussed in detail in the Committee on Digital Payments (Committee on Digital Payments, 2016) chaired by Ratan Watal (The Watal Committee) which highlighted the distortion caused by the RBI performing both regulatory and commercial functions:

*“The most notable distortion in the market, is the case of RTGS, NEFT and NECS, where the RBI performs both commercial functions, as well as regulatory functions. This leads to a conflict of interest and goes against the principles of competitive neutrality... In order to eliminate any conflict of interest, the Committee recommends that the RBI should focus on its role as the banking regulator and not combine with the role of operating payment systems”* (Committee on Digital Payments, 2016).

This relationship of the RBI with NUE(s) needs to be carefully considered for its effects on institutional neutrality.

Over the years, two salient policy alternatives have been proposed to address this conflict of interest: (i) *creation of a Payments Regulatory Board (PRB) within the RBI* or (ii) *transferring payment system operations to an independent entity.*

Though these alternatives require a recalibration of the Payments Systems, it is an issue that needs to be addressed to ensure institutional parity across payment system participants in the long run.

#### **Recommendation 4: The RBI must clarify whether the Draft Framework is applicable to the NPCI.**

We submit that Draft Framework must uphold principles of functional regulation, institutional neutrality and proportionality when regulating umbrella entities. Considering its recognition as a NUE, principles of institutional neutrality demand that the NPCI be subject to the same regulations as other NUE(s). Further, the Draft Framework needs to address the issue of NPCI’s exclusive access to legacy systems and propose a plan that ensures all NUE(s) have symmetric access to existing infrastructure and are placed on a level playing field.

Any divergence in the regulatory treatment of NPCI should arise from the differences in the risk it poses. The parameters for assessing risk should be clearly set-out in the Draft Framework and an explanation of how risks posed by the NPCI vary from those posed by NUE(s) should be clearly articulated.

Further, the Draft Framework should set out a clear transitional path, including the time available to the NPCI to comply with its regulatory objectives. Ideally, the completion of the transition of the NPCI should coincide with the licensing of the NUE(s).



#### **4. The Draft Framework must incentivise interoperability to ensure competitiveness among NUE(s).**

In its current articulation we note that the Draft Framework does not include adequate elements to ensure that presence of multiple umbrella entities improves the contestability of the retail payments space and yields welfare gains. Specifically, the Draft Framework lacks provisions to encourage interoperability.

It is widely recognised that the presence of multiple system providers, is not a sufficient condition for ensuring competitiveness in the retail payments space [(Reserve Bank of India, 2019(a)) (Committee on Digital Payments, 2016) (Bolt, 2012)]. Despite multiple system participants, consumers may not be able to move across platforms offered by different participants or transact seamlessly with users of other platforms. The Watal Committee Report paints this scenario as consumers being stuck on siloed ‘islands’ unable to move to platforms offered by other participants or transact with those on other “islands” (Committee on Digital Payments, 2016)

The Draft Policy Paper on Authorisation of New Retail Payment Systems (Reserve Bank of India, 2019(a)) also resonated the fear that presence of multiple payments system providers alone cannot address the risk of concentration of consumers along one provider or the risk of non-substitutability of providers (Reserve Bank of India, 2019(a)).

Interoperability, i.e. the ability of consumers to transact across commercially and technologically independent payment platforms (Committee on Digital Payments, 2016) can address these market failures. By ensuring that underlying platforms are technologically compatible with each other, interoperability can help consumers avail of the multiple, competing products offered by different platforms. It helps consumers realise the benefit of multiple payment instruments available to them by addressing the problem of non-substitutability of products (Reserve Bank of India, 2019(a)). Further, it can encourage competition among providers which can result in greater innovation.

Interoperability is also an integral component of legislations across jurisdictions. Legislations such as Payments Services Act, 2019 (of Singapore, (Monetary Authority of Singapore, 2019)) empowers the Monetary Authority to mandate interoperability. Similarly, Australia’s National Payment Platform encourages interoperability of payment systems through API(s) (Reserve Bank of Australia, 2019). The Payment Systems Directive 2 of the European Union also upholds the principle of interoperability to ensure the free flow of important information among payment system participants (Official Journal of the European Union , 2015).

**Recommendations:** Considering the significant implications of these provisions for ensuring level-playing field and competitiveness in retail payments we make the following recommendations.

**Recommendation 5: The Draft Framework could consider encouraging interoperability among the various players of the payments systems.** A measured approach to interoperability could prevent dominance of a single provider and improve the contestability of the payments space. The incentive structure for encouraging interoperability should aim to

realise gains from interoperability while assuaging any concerns that it may raise for innovation in the market and effect on proprietary business models.

The International Telecommunication Unit (ITU) recognises interoperability at three distinct levels (International Telecommunication Union, 2016) (Committee on Digital Payments, 2016):

- *Electronic Money Interoperability* which refers to the interoperability between payment system providers, such as the ability to move money from one mobile wallet to the other.
- *Interoperability with Financial Institutions* which refers to the ability to move money from banks to non-bank entities such as sending money from a mobile wallet to a bank account
- *Interoperability with Payment Networks* which refers to the ability to move money across different payment networks such as mobile wallets connecting with card schemes.

The Draft Framework can consider the optimal levels of interoperability that can increase competitiveness in the payments space while preserving incentives for innovations.

**Recommendation 6: The Draft Framework should encourage NUES to comply with common standards in relation to acceptance infrastructure.** While the recommendations in the previous section ensure that payments systems do not discriminate across payment instruments, types of institutions and payment networks, it is also important for NUES to adhere to some common standards among themselves. The Payment Services Act 2019 of Singapore allows some guidance on achieving interoperability across major payments institutions (Monetary Authority of Singapore, 2019(b)). An interesting power of the regulator is the power to mandate institutions to adhere to common standards for acceptance infrastructure, encouraging the use of same acceptance infrastructure regardless of the Payment Institution. This can allow the use of common adoption infrastructure saving significant costs for the merchants and consumers. (Monetary Authority of Singapore, 2019(b)).

## **5. The Draft Framework needs to outline a robust consumer protection framework.**

The Draft Framework does not envisage specific conduct guidance or consumer grievance redress mechanisms for NUE(s). While the authorisation conditions for payments systems (under Form A referred to in Section K of the Draft Framework) will require entities to describe a proposed grievance redress mechanism, the Draft Framework is silent on the pathway for escalation of complaints and the rights and liabilities of consumers. Specifically, we note three shortcomings in the Draft Framework in relation to consumer protection:

**5.1. The Draft Framework lacks guidance on grievance redress framework:** The inadequacy of grievance redress mechanisms, especially in the context of retail payment systems operator (PSO) has been emphasised in recent policy documents of the RBI. The RBI's Payment and Settlement System in India Vision: 2019-2021 Document ("Vision 21 Document") (Reserve Bank of India, 2019(c)) emphasises need for payment system operators to formalise an internal ombudsman within the PSOs for swift and cost-effective complaint redressal mechanism within the organisation. Similarly, the Report of the Committee on Deepening of Digital Payments (Reserve Bank of India, 2019) emphasised the need for a strong, online dispute resolution framework for payment system operators, to ensure quick turn-around time for complaints. The Draft Framework does not set out any guidance for NUE(s) to design their grievance redress framework and align it with each other's.

**5.2. The Draft Framework does not oblige NUE to protect users' personal data:** The Scope of Activities set out in Section H of the Draft Framework empowers NUE(s) to undertake the designing, management and operation of several digital payment instruments such as Aadhaar-based payment systems, ATMs etc. Operating payment systems often involves the flow of users' sensitive personal data along with their money. However, the Draft Framework for NUE(s) does not contemplate any obligation on the NUE(s) in relation to the safety of users' personal data. Further, the PSSA 2007 does not set out any general obligations for regulated entities to protect users' personal data. This is a major setback to consumer protection considering the wide recognition of security threat to personal data as an important source of systemic risk in data-driven financial systems (Financial Stability Board, 2017), (Rehn, 2019). This urgency to protect users' personal data is at the heart of several payment systems' legislations, globally. The Payment Systems Directive 2 of the European Union for instance emphasises the need to protect users' personal information and ensures open access does not compromise the security of users' personal information (Official Journal of the European Union, 2015).

**5.3. The Draft Framework does not contemplate safeguards to test the impact of innovation in payments system on consumers:** We note that the Scope of Activities set out in Section H of the Draft Framework encourages NUE(s) to innovate new instruments for payments. However, it stops short of prescribing mechanisms to test the impact of these innovations on consumers and ensure they do not inflict new vulnerabilities on the consumer. Rolling out new payment instruments for consumers' consumption without assessing their

impact on them could expose the consumers to new harms and leave providers and regulators unprepared to deal with them.

These are significant misses in creating a robust framework for consumer protection.

**Recommendations:** In order to address these deficiencies in the consumer protection framework, we make the following recommendations.

**Recommendation 7: The RBI must integrate the grievance redress framework for NUE(s) with existing grievance redress systems and strengthen them:**

The Draft Framework should identify the redress mechanisms and channels of recourse that consumers can avail of in case of troubles with transactions involving NUE(s). Efforts should be made to integrate the grievance redress mechanism of the NUE with existing mechanisms, given the disabling and overwhelming effect that multiple and fragmented redress channels have on consumers (Government of India, June 2016).

Considering that the NUE(s) will be regulated under the PSSA 2007, the [Ombudsman Scheme for Digital Transactions, 2019 \(the Scheme\)](#) which was created to resolve complaints arising from digital transactions undertaken by system participants under the PSSA 2007, appears to be a natural forum for escalating complaints arising from the NUE. Learnings can be borrowed from licensing conditions of other payment instruments such as the Prepaid Payment Instruments (PPI(s)) (Reserve Bank of India, 2019b). Section 16.2 of the Master Directions on the Issuance and Operations of Prepaid Payment Instruments in India requires PPI(s) to (i) publicly disclose the grievance redress framework, (ii) designate nodal officers for handling complaints, (iii) clearly layout the escalation path for complaints as well as (iv) stipulating timelines for resolving complaints. It also mandates availability of grievance redress in vernacular languages, toll free customer care helplines and methods to provide consumer, greater visibility on the status of their complaints. A similar mechanism for raising complaints to NUE(s) which is well-staffed and accessible to remote, rural Indians with limited literacy and digital access can significantly empower consumers.

**Recommendation 8: The RBI must prioritise the creation of a unified redress front-end for consumers which will include consumers of the NUE:**

We further reiterate the need for grievance redress frameworks across NUE(s) to be compatible, interoperable with each other at the backend and unified at the consumer-facing front-end. For consumers transacting across NUE(s), it is hard for them to identify the point of failure in the transaction and reach out to the responsible NUE. It renders grievance redress expensive, inaccessible and ineffective for consumers constrained for time, money and agency. It is especially true of consumers who are first-generation users of digital finance in India. Our findings from the field suggest that users find themselves ill-equipped to seek redress, especially in the digital economy due to lack of digital literacy and familiarity with the digital economy (Dvara, CGAP, & Dalberg, 2017). Considering the users' lack of familiarity with the digital ecosystem, vesting them with the responsibility of ascertaining the faulting entity can disempower them further. We recommend that NUE(s) should adhere to common standards

and similar procedures for grievance redress and offer the consumers a unified front-end to lodge complaints, regardless of the faulting entity (Chugh, Srinivas, Singh, & Stanley, 2019).

**Recommendation 9: The Draft Framework must incorporate the protection of users' personal information as an obligation of the NUE(s), to align itself with forthcoming data protection obligations:**

The Draft Framework should provide for protection of personal data by NUE(s). It should require the processing of personal data to be aligned to the data protection legislation in the country. Further, designs of payments networks, payments instruments and other complementary infrastructure must integrate Privacy by Design (PbD) principles. PbD is a widely recognised approach that addresses the emerging systemic effects of rampant use of personal data in the economy. PbD requires that infrastructure designed for sharing information should be designed in a privacy-protecting manner. This avoids trade-offs between the privacy of the individuals and the efficiency of the infrastructure. Principles to enable such technological design are incorporated in the PbD framework (Cavoukian, 2011), (Raghavan & Singh, 2020).

**Recommendation 10: The RBI's Regulatory Sandbox (RS) must be used to assess the effect of new innovations by NUEs for consumers:**

We note the potential for testing these innovations in the RBI's RS before making them available to consumers *en masse*. Equipped with sufficient redress mechanisms for users being tested, the RS can provide a safe space for testing the implications of innovations for users. Learnings from the RS will allow NUE(s) to finetune their processes to minimise any harms that may be caused to the user, through the innovation. Moreover, the RS framework appears to be open to the testing of retail payments solutions, considering that the objective of the first cohort of RS entities is to test retail payment solutions (Reserve Bank of India, 2019(c)).

## SECTION II: SUMMARY OF RECOMMENDATIONS

1. **Future iterations of this Draft Framework should clearly articulate the regulatory objectives that it seeks to achieve.** A clear articulation of regulatory objectives will benefit all stakeholders. It will bring certainty to practitioners in relation to the regulator's expectations of them. Clarifying regulatory objectives will also help in assessing the effectiveness and proportionality of the regulation. The text of provisions in Section H (*Scope of Activities*) outlined below can serve as a starting point to creating well-defined regulatory objectives: (i) *to uphold developmental objectives such as enhancement of awareness about the payment systems* and (ii) *to fulfil policy objectives to ensure that principles of fairness, equity and competitive neutrality are applied in determining participation in the system*. These can be further elaborated to steer the activities to meet regulatory objectives.

2. **The Draft Framework must clearly define the term NUE.** The ambiguity around the definition of a NUE defeats the objective of the Draft Framework. It is difficult for the Draft Framework to achieve its objective of facilitating the creation of NUE(s), when the ecosystem does not understand what a NUE is. The RBI must clearly define what NUEs are, the criteria considered for identifying an organisation as NUE and the regulations applicable to it. The RBI can set out principle-based criteria that can guide its decision of identifying a retail payment system participant as an NUE like it did for defining Financial Market Infrastructure (Reserve Bank of India, 2013).

3. **The Draft Framework must clearly define the Scope of Activities of NUE(s).** Currently the Scope of Activities is very broad and generic, making it difficult to understand the functions that NUE(s) are expected to perform. The Draft Framework should clearly articulate a (i) definite set of necessary and sufficient activities that NUE(s) are expected to perform and (ii) further define the activities within the set to avoid any legal uncertainty that can arise from their interpretation.

4. **The RBI must clarify whether the Draft Framework is applicable to the NPCI.** The NPCI is identified as the first umbrella entity for retail payments in India, (Reserve Bank of India, 2019(a)), (Reserve Bank of India, 2019(c)). However, it is unclear in the Draft Framework if the NPCI will be subject to the same obligations as the NUE(s). The Draft Framework should (i) be made applicable to the NPCI to uphold principles of institutional neutrality (ii) set out a clear transitional path, including the time available to the NPCI to comply with its regulatory objectives and (iii) address NPCI's exclusive access to legacy systems and existing infrastructure, and propose a plan that ensures all NUE(s) are placed on a level playing field.

5. **The Draft Framework could consider encouraging interoperability among the various players of the payments systems.** The Draft Framework lacks adequate elements to improve competitiveness and innovation in the retail payments space (Reserve Bank of India, 2019(a)). The Draft Framework can consider (i) electronic money interoperability (ii) interoperability with financial institutions and (iii) interoperability with payment networks as

a means to increase competitiveness while preserving incentives for innovations in the payments space (International Telecommunication Union, 2016) (Committee on Digital Payments, 2016).

6. **The Draft Framework should encourage NUEs to comply with common standards in relation to acceptance infrastructure.** This harmonisation of infrastructure will save significant costs and cognitive load for the merchants and consumers (Monetary Authority of Singapore, 2019(b)).

7. **The RBI must integrate grievance redress framework for NUE(s) with existing grievance redress systems and strengthen them.** The Draft Framework should also (i) publicly disclose the grievance redress framework, (ii) designate nodal officers for handling complaints, (iii) clearly layout the escalation path for complaints (iv) stipulate timelines for resolving complaints and (v) make grievance redressal available in vernacular languages and through toll free customer care helplines. This would increase access to grievance redressal and significantly empower all consumers.

8. **The RBI must prioritise the creation of a unified redressal front-end for consumer which will include consumers of the NUE.** Consumers are not suitably placed to identify the point of failure in a transaction and reach out to the responsible NUE for redressal. Therefore, vesting consumers with the responsibility of identifying the faulting entity for redress can disempower them. Requiring NUE(s) to provide consumers a unified front-end to lodge complaints by adopting common standards and procedures for grievance redressal regardless of the faulting entity can provide better redress (Chugh, Srinivas, Singh, & Stanley, 2019).

9. **The Draft Framework must incorporate the protection of users' personal information as an obligation of the NUE(s), to align itself with forthcoming data protection obligations.** The Draft Framework should emphasise on the protection of users' personal information which often characterise payments transactions. It should also require NUEs to integrate Privacy by Design principles in their products and infrastructure to avoid trade-offs between the privacy of the individuals and the efficiency of the infrastructure.

10. **The RBI's Regulatory Sandbox (RS) must be used to assess the effect of new innovations by NUE(s) for consumers** before making them available to consumers *en masse*. The RS can provide a safe space for testing the implications of innovations for users, and at the same time create learnings that will allow NUE(s) to finetune their processes to minimise consumer harms.

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