#### Senate Standing Committee on Economics

### ANSWERS TO QUESTIONS ON NOTICE

**Treasury Portfolio** 

Additional Estimates 2012

15 - 17 February 2012

Question: AET 1245

Topic: Financial Blockade - MasterCard

Hansard Page: 15 Feb 2012, pg 128

### Senator LUDLAM asked:

Senator LUDLAM: Interesting. Do I have any recourse to these companies, or MasterCard in particular, to lift that blockade? I would understand, for example, if this were a criminal entity. If they had been accused of organised crime offences or whatever, I would understand that. In this instance the organisation has not. It is a publishing organisation. It was given a Walkley Award last December. None of its staff have been accused or convicted of particular crimes. So what are my avenues as a consumer? What can I do to MasterCard or, better yet, what can you as the regulator do to them?

**Mr Gregson:** My response is not going to be very helpful for you. I probably do need to know a bit more detail. I am sorry, I have not come with those tonight but I would be happy to take any of that on notice, and try to assist you.

#### Answer:

Generally speaking, the ACCC considers matters raised with it under the provisions of the *Competition and Consumer Act 2010* (the CCA). The CCA is fundamentally concerned with preventing anti-competitive conduct and providing appropriate safeguards for consumers.

There are provisions of the CCA that prohibit action by corporations, either individually or in concert with others, which adversely impact on competition. Whether competition concerns arise will depend on the circumstances.

In this case, the ACCC has not seen any evidence or information to suggest collusive decision making between card payment service providers.

<u>Turning to any independent action by the card payment service providers, Aa</u> key consideration in these circumstances <u>raised by the question</u> is oftenwould be the purpose behind the decisions not to process payments. In this case, the ACCC has not seen any evidence or information to suggest collusive decision making between card payment service providers.

<u>The ACCC is aware of statements made to the media by Aa number of companies with headquarters overseas</u> who stopped processing payments. <u>The statements explain have</u> made statements in the media as to why they decided on that course of action. Some of t<u>Thosee</u> statements <u>also</u> indicate concerns about compliance with their terms and conditions for service or for processing payments, including concerns about the facilitation of illegal conduct associated with Wikileaks.

The ACCC makes no assessment of the substance of those concerns. However their nature purpose described seems not to be anti-competitive. This means that without information

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to the contrary, it is unlikely that the action could be characterised as being undertaken for an anticompetitive purpose and therefore unlikely to raise concerns under the CCA.

The decisions to block payments to Wikileaks seem to have been make outside Australia. Nevertheless, the conduct involves businesses operating within Australia and affects Australian consumers. In these circumstances if the ACCC considered that there was an appropriate basis for investigating a contravention within our compliance and enforcement priorities we would do so.

In terms of avenues available to consumers to raise their concerns about this issue, concerned consumers may in the first instance contact their financial service provider.

# How WikiLeaks received most donations:

Visa and MasterCard provided payment card acceptance services to Teller (a member/licensee) through Korta, their Iceland-based agent. DataCell processed payments to WikiLeaks through Teller/Korta.

Teller/Korta prevented DataCell from providing gateway payment processing services from Visa, on the request of Visa. This impacted all clients of DataCell. On its own initiative Teller/Korta also prevented MasterCard-linked donations from going through. MasterCard did not request this service be reinstated.

## Other payment options for WikiLeaks

- can receive money via traditional checks, cash payments and transfers through companies such as MoneyGram International Inc
- also using mobile banking, direct bank-to-bank transfers

# From the point of view of a MasterCard customer, under competition law, what are the avenues of redress regarding the financial blockade of Wikileaks?

• A consumer with a MasterCard product can contact the FOS

## Do I have an implied right to transact with whichever party I so choose?

- Financial services companies such as MasterCard do not have contracts with individuals but with their bank/financial institution
- Financial services providers such as MasterCard are free to set the terms and conditions for their products/services

# Does Wikileaks have any particular rights under the CCA to put a complaint to you?

• WikiLeaks is able to lodge a complaint with the ACCC

# Did the ACCC see what was behind these events when they first occurred?

• The ACCC does not regulate financial services providers

# Can you provide a breakdown of how many complaints the ACCC has received on this matter it its broadest extent?

- 43 Trackit results for Wikileaks, all between 17 Jan 2011 7 Dec 2011
- Almost all refer to MasterCard or Visa and many are from consumers who use products provided by MasterCard or Visa

# Why might the ACCC be concerned with the distributed denial of service by MasterCard (and Visa)?

# Part IV Restrictive Trade Practices

Division 1 Cartel Conduct Division 2 Other provisions 45 CAU that restricts dealings or affect competition 46 Misuse of market power 46.1.b and 46.1.c

## Is the ACCC the relevant Australian regulator to investigate this issue?

- ASIC is the financial services regulator and the consumer credit regulator
- The FOS resolves disputes between consumers and its member financial services providers

Senator Ludlam also asked the DPMC Finance and Public Administration Committee if the interdepartmental Wikileaks task force still exists on 13 Feb Additional Estimates. He asked if the PM had apologised to WikiLeaks for accusing the organisation of committing crimes, a claim refuted by the AFP. QON by Dr McCarthy.