## **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.

Turning to any independent action by the card payment service providers, a key consideration in the circumstances raised by the question would be the purpose behind the decisions not to process payments.

The ACCC is aware of statements made to the media by a number of companies with headquarters overseas who stopped processing payments. The statements explain why they decided on that course of action. The statements also 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 the purpose described seems not to be anti-competitive. This means that without information 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.

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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.