Makkinga, Elizabeth

From:

Buik, Jessica

Sent:

Friday, 16 March 2012 5:15 PM

To:

Bezzi, Marcus, Schroder, Matthew, Webb, Rose

Cc:

Gregson, Scott; Ridgway, Nigel; Fleming, Richard; Kang, Phia; Ayres, Lisa Anne;

Makkinga, Elizabeth; Sood, Anjali

Subject:

For approval - responses to QoNs [SEC=UNCLASSIFIED]

Importance:

High

Security Classification:

UNCLASSIFIED

Good afternoon Marcus, Matt and Rose

Below is the list of QoNs that ECD Exec are coordinating/responsible for.

Marcus – these are all now attached for your review and approval. I note that we are waiting on input from Finance in relation to 1002-1007.

Matt – we have liaised with Fuel in relation to 101-105, and look forward to any feedback you may have on this final version. Given the content of 1248, Enforcement has not commented on the response prepared by Fuel.

Rose – Monica Bourke kindly provided input into 106-114, and I look forward to any feedback you may have on this final version.

Responses are due by midday Sunday. Can all changes please be marked in track.

Please let me know if you have any questions or concerns.

Kind regards

Jess

- 101-105 Williams Predatory Pricing Petrol Station Operators Enforcement (lead) and Fuel D12/33323
- 106-114 Edwards ACCC Act Supermarkets and Suppliers - Enforcement (lead) and Mergers –
 D12/33322
- 270 Bushby Climate Change OCEO (lead) and AER D12/33320
- 1002-1007 Bushby Government Advertising Compliance Strategies (lead) and Finance –
 D12/33289
- 1225 Cormann Anticompetitive Arrangements Superannuation System <u>D12/41353</u>
- 1241 Ryan Component Pricing Airline Tickets Enforcement <u>D12/34790</u>
- 1242-1243 Ryan Consumer Law Repair Notices Compliance Strategies D12/34789
- 1244 Cormann Default Superannuation Funds Enforcement <u>D12/34788</u>
- 1245 Ludlam Financial Blockage Mastercard Enforcement <u>D12/34787</u>
- 1246 Ludlam Financial Services Blockage Enforcement D12/34793
- 1248 Xenophon Supermarket Fuel Discounts Market Analysis Enforcement (Lead) and Fuel –
 D12/34791

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.

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates 2012 15 – 17 February 2012

Question:

AET 1246

Topic:

Financial Services Blockade

Hansard Page:

15 Feb 2012, pg 129

Senator LUDLAM asked:

Senator LUDLAM: I would appreciate that. On notice, could you provide us with a breakdown, consistent with your privacy obligations, of how many complaints you have received on this matter in its broadest extent.

Mr Gregson: We would be able to do that.

Answer:

The ACCC has received around 40 contacts in relation to the refusal of companies to process payments to Wikileaks, including the correspondence from Senator Brown as referred to by Senator Ludlam at the ACCC's appearance at Additional Estimates on 15 February 2012. The majority of these contacts were made in November 2011 and appear to have been made predominantly by consumers.