WIKILEAKS BRIEF

22 March 2012

Key points

- In December 2010 Visa Europe, MasterCard and other financial services providers stopped allowing donations to be made to WikiLeaks using their services.
- Other FSPs followed: Bank of America; American Express; Western Union; Paypal
- Visa stated that it was investigating 'whether it [enabling donations to go through to WikiLeaks] contravenes Visa operating rules'
- MasterCard stated that the suspension will remain 'until the situation is resolved'
- Since August 2011 WikiLeaks has been able to receive donations through MasterCard, Visa and American Express.
- During the blockade WikiLeaks could receive money via traditional checks, cash payments and transfers through companies such as MoneyGram International Inc, and direct bank-to-bank transfers.
- WikiLeaks also lodged a complaint with the Directorate-General for Competition of the European Commission accusing Visa and Mastercard of breaching antitrust provisions set out by the EU Treaty (July 2011).
- The ACCC received around 40 contacts in relation to this matter including correspondence from Senator Brown received on 17 January 2011. A response to Senator Brown was provided on 4 March 2011.

Financial Services regulation

- The ACCC does not typically regulate card payment services providers
- **ASIC** is the Australian financial services and consumer credit regulator. As part of the *Trade Practices Amendment (Australian Consumer Law) Act (No.1) 2010*, implemented in January 2011, ASIC administers the unfair contract terms law in relation to unfair terms in consumer contracts for financial products and financial services (This amends the *Australian Securities and Investments Commission Act 2001*).
- The **Financial Ombudsman Service** (FOS) resolves disputes between consumers and member financial services providers. The ACCC advises consumers to lodge complaints with their bank or other financial institution, or with FOS.

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Consumer transaction rights

- Providers typically have contracts with financial institutions, such as banks, rather than with individual customers. This is set out in their publicly available terms and conditions.
- FSPs are free to set the T&Cs for their services.

European Commission Overview of EC Antitrust provisions http://ec.europa.eu/competition/antitrust/overview en.html

Covers two prohibition rules set out in the *Treaty on the Functioning of the European* Union

- Article 101 First, agreements between two or more firms which restrict competition are prohibited by Article 101 of the Treaty, subject to some limited exceptions. This provision covers a wide variety of behaviours. The most obvious example of illegal conduct infringing Article 101 is a cartel between competitors (which may involve price-fixing or market sharing); For more information on cartels see the cartels section.
- 2) Article 102 Second, firms in a dominant position may not abuse that position (Article 102 of the Treaty). This is for example the case for predatory pricing aiming at eliminating competitors from the market.

All national competition authorities are empowered to apply fully the provisions of the Treaty in order to ensure that competition is not distorted or restricted. National courts may also apply these prohibitions so as to protect the individual rights conferred to citizens by the Treaty.

Filed complaint with Directorate-General for Competition of the European Commission accusing Visa and Mastercard of breaching antitrust provisions set out by the EU Treaty

July 2011 – Wikileaks and Datacell filed a complaint to the DG for Competition accusing Visa and Mastercard of breaching antitrust provisions set out by the EU Treaty. Wikileaks wanted a full investigation.

Decision about whether investigation would go ahead expected November 2011- can't find a record of this

Complainant – DataCell/WikiLeaks Visa Europe Ltd; MasterCard Europe Sprl

Alleged infringement of Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) and Articles 53 and 54 of the European Economic Area (EEA) Agreement

18 Oct 2012 – DC entered into a Merchant Agreement with T through Korta. T/K aware of intention to accept WL donations.

7 December 2010 – Teller notified DC payment card acceptance services were being suspended at request of VE. Day after DC's merchant account with T closed. T advised this was to carry out a due diligence investigation to ensure neither VE or T were running the risk by facilitating payments for WL. VE cited brand image. T also suspended MC payments, citing same reason.

Results of investigation by T in Iceland – Sunshine Press hadn't contravened Visa's rules or Iceland's national legislations. However, T concluded that DC had acted

contrary to Visa's rules by facilitating donations to third parties. T informs DC will need a special certification from VE for T to resume services.

DC tried to use an acquirer in Switzerland, was declined with obstruction from VE and MCE cited.

9 June 2011 – DC sent letter to T, MCE, VE requesting Merchant Agreement be reinstated. No results.

12 June 2011 – DC applied for merchant agreement with Valitor and Bergun. Signed with V 15 June but 8 July V notified agreement had been terminated due to violations of the acquirers terms and as international card organisations don't allow the services that DC provides to WL, which was not mentioned in DC's application. Argues violates antitrust provisions of the TFEU and the EEA Agreement.

Previous action taken by the European Commission MasterCard and Visa were separately found to have violated Article 1

The MasterCard decision of 2007

The Commission issued a decision against MasterCard MIFs applicable to crossborder payment card transactions with MasterCard and Maestro consumer debit and credit cards in the European Economic Area (EEA). The decision found that MasterCard MIFs violate Article 101 TFEU in that they restricted competition between acquiring banks and inflated the cost of card acceptance by retailers without leading to proven efficiencies under Article 101(3) TFEU. MasterCard was given six months to conform to the Commission's order to set its MIFs in compliance with the EU antitrust rules.

MasterCard appealed the decision before the General Court and the judgment is expected in 2012. However, pending the judgment, MasterCard undertook to reduce its cross-border MIFs to 0.30% of the transactions value for consumer credit cards and 0.20% of the transactions value for consumer debit cards.

The VISA decision of 2010

Following the expiry of an exemption decision in December 2007 and the adoption of the MasterCard Decision the Commission opened an antitrust investigation against Visa Europe, Visa Inc. and Visa International Service Association. In line with the MasterCard decision of 2007, the Commission's preliminary view was that Visa Multilateral Interchange Fees MIFs harmed competition between merchants' banks, inflated merchants' costs for accepting payment cards and ultimately increased consumer prices. Unlike in the MasterCard case, the Statement of Objections issued by the Commission in April 2009 covered all the consumer MIFs directly set by Visa Europe, which apply not only to cross-border transactions but also to domestic transactions in a number of EEA countries. Further, the Commission raised concerns against Visa Inc. and Visa International Services Association as regards the potential application of the Inter-Regional MIF by default. In response to the Commission's objections, Visa Europe committed to reduce the maximum weighted average MIF for consumer debit cards for cross-border transactions and national transactions in those EEA countries where it sets the MIF directly to 0.20%. The Commission is of the view that the MIF rate proposed by Visa Europe is consistent with the Merchant Indifference Test *. The proposed maximum weighted average MIF may be modified if reliable new information on the cost of cards compared to the cost of cash becomes available.

Visa's commitments also provide for a number of measures to increase transparency and competition in the payment cards markets, which are an important complement to the proposed MIF reduction.

Following a market test, the commitments were made binding on Visa Europe in December 2010 for four years by a decision under Article 9 of Regulation 1/2003.

Overview of complaints received by the ACCC regarding the WikiLeaks banking blockade as at 22 Feb 2012-03-01

- 43 contacts made
- One ministerial contact Senator Brown
- 6 international contacts made
- 1 complaint about ACCC

Overview of parties

DataCell

- data centre and software hosting provider
- also offers payment gateway services for businesses, NGOs and others which don't/choose not to have their own merchant account to accept payment cards
- processed payments for donations to WikiLeaks through Teller.
- Had a contract with ie customer of Teller to process payments through Teller's licensee in Iceland, Korta, terminated by Teller on 7 December 2010.
- Founded by Olaf Sigurvinsson, CEO Andreas Fink equal ownership

Sunshine Press Productions

• Corporate division of WikiLeaks, Icelandic

Financial institutions

Visa

• 67.6% market share for payment cards in Europe, Visa reserves the right to suspend payments when a merchant doesn't abide by local laws or Visa's operating regulations

MasterCard

• 27.7% market share Europe

Visa and MasterCard market share similar internationally, not sure in Australia **Bank of America**

- anyone using the Bank of America cannot transfer payments to WikiLeaks
- created and originally owned Visa

PayPal

• owned by eBay

• suspended account tied to Wikileaks as violation of PayPal's Acceptable Use Policy which prevents an organization from using the service if "it encourages, promotes, facilitates or instructs others to engage in illegal activity."

Post Finance

• Swiss-based, banking arm of state-owned corporation

Teller A/S

- Denmark-based payment services provider, licensed to process transactions on behalf of card companies
- A member/licensee of MasterCard Europe and Visa Europe

Korta

• Iceland-based agent for Teller

Valitor and Borgun

- Payment services providers, Iceland-based
- Members/licensees of Visa Europe/MasterCard Europe
- For a few days provided services to DataCell
- Not included in EC complaint, complainant not excluding their possible contravention of competition laws
- Before availability of dual and multi-acquiring V was sole franchisee of Visa in Iceland and B sole franchisee of MasterCard in Iceland

Amazon

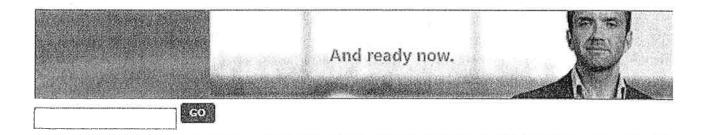
• Hosted WikiLeaks' servers

<u>____e Tech Herald</u>

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Bank of America hits WikiLeaks with financial 'Denial of Service' attack

by Steve Ragan - Dec 18 2010, 10:16



Sponsored by Financial Times

Joining Visa, MasterCard, PayPal and Post Finance, Bank of <u>America</u> said on Friday it would decline to process payments made to WikiLeaks. News of the <u>payment</u> denial arrived just 24

Earlier this month, rumors started to spread that WikiLeaks has details on a major financial institution. Could BoA be the subject of the next leak? Is this the reason for the moves it is now making? No one yet knows, and its press statement is lacking in detail.

According to the Reykjavik Grapevine, the Icelandic Parliamentary General Committee has met to discuss the ban placed on WikiLeaks by Visa and MasterCard. The committee meeting centered on what legal grounds the two credit firms had for the ban, requesting proof that their actions were more than a decision taken because of foreign sources.

Meanwhile, DataCell, the company that processed Visa and MasterCard transactions for WikiLeaks, said it will be taking legal action against both companies.

"We can not believe WikiLeaks would even create scratch at the brand name of Visa. The suspension of payments towards WikiLeaks is a violation of the agreements with their customers," the DataCell statement said.

"Visa users have explicitly expressed their will to send their donations to WikiLeaks and Visa is not fulfilling this wish. It will probably hurt their brand much, much more to block payments towards WikiLeaks than to have them occur," it added.

The major issue is one of financial freedom. You can't use a debit or credit card from your bank without it coming from MasterCard or Visa most times. Likewise, you cannot close your BoA account in protest if it is the only bank in town, or its rates and fees make switching cost prohibitive.

It's your money, but it doesn't matter. Banking institutions can and will tell you what to do with it. Scary, eh?

Around the Web





MasterCard pulls plug on WikiLeaks payments

MasterCard is pulling the plug on WikiLeaks a few days after PayPal did the same, drying up another source of funds, CNET has learned.

by **Declan McCullagh** | December 6, 2010 2:37 PM PST

MasterCard is pulling the plug on payments to WikiLeaks, a move that will dry up another source of funds for the embattled document-sharing Web site, CNET has learned.



There are some things you can't buy with MasterCard.

"MasterCard is taking action to ensure that WikiLeaks can no longer accept MasterCard -branded products," a spokesman for MasterCard Worldwide said today.

That further limits the revenue sources for WikiLeaks, which has seen its finances systematically attacked in the last few days, as the Swiss authorities <u>shut down</u> [http://www.google.com/hostednews/ap/article/ALeqM5gXMx4nWkMrOog docId=91ae98d274de4b2a920fc4cdea133f71] a bank account used by editor Julian Assange, and PayPal permanently restricted

[http://www.cnet.com/8301-13578 3-20024649-38.html] the account used by the group. WikiLeaks has responded with an increasing number of fund-raising requests that <u>urge</u>

[http://twitter.com/wikileaks/status/10567274838622208] supporters to "KEEP US STRONG."

Assuming that MasterCard blocks payments, the only easy way to donate electronically would be with a Visa credit card through a Web page **<u>hosted</u>**

[https://donations.datacell.com/] by Iceland-based DataCell.com.

Representatives of Visa did not respond to requests for comment from CNET today. (WikiLeaks also solicits payments sent through the U.S. mail.)

MasterCard said it was cutting off payments because WikiLeaks is engaging in illegal activity. "MasterCard rules prohibit customers from directly or indirectly engaging in or facilitating any action that is illegal," spokesman Chris Monteiro said.

The move to cordon off WikiLeaks comes as a noose appears to be tightening around the neck of editor Julian Assange, who is the target of an arrest warrant issued today in

3/05/2012