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17 October 2008

Mr Darrell Channing
Director
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Dear Mr Channing:

Re: Sydney Cricket and Sports Ground Trust: Exclusive Dealing Notification N93527

Thank you for providing MasterCard with an opportunity to make a submission on the likely effect on competition and likely public benefits from the conduct notified by Sydney Cricket and Sports Ground Trust (SCSGT) in its Notification of Exclusive Dealing dated 25 July 2008 (N93527).

Introduction

MasterCard Asia/Pacific (Australia) Pty Ltd (**MasterCard**) is the Australian subsidiary of MasterCard International Inc. Globally, the MasterCard business includes the development and marketing of payment solutions to facilitate payments between financial institutions, merchant and other businesses and cardholders.

MasterCard has a number of serious concerns about the likely anticompetitive effect of the conduct described in the Notification. Moreover, MasterCard is of the view that the conduct, as described, will offer little, if any, real benefit to the public. While MasterCard is of the view that the public benefits stated by SCSGT are, at best, illusory, it also has genuine concerns that the conduct set out in the Notification will actually have a significant public detriment. In summary, MasterCard's concerns are:

- (1) Although the notified conduct is sought to be justified by consequent investment in new technology or innovative payment methods, there is no obligation or other positive incentive on the relevant parties actually to introduce any such initiatives. Rather, the investment in and implementation of such technology remains at the sole discretion of one party;
- (2) The exclusive dealing conduct with respect to which immunity is sought is to be engaged in for *at least* 4 years, without any explanation as to why such a long term is necessary or justifiable. Such a term is excessive;
- (3) The notified conduct is likely to reduce incentives for the investment of new technologies in other areas of commerce;

- (4) The notified conduct is likely to reduce incentives for sponsorship agreements with sporting teams or associations;
- (5) The contemplated implementation of credit/debit and contact-less payment systems at the Grounds does not require the level of investment that would be necessary to justify the exclusive dealing arrangement;
- (6) The conduct does not offer any public benefit that would not (or could not) be obtained without engaging in the conduct; and
- (7) In excluding all those consumers who do not possess a credit card issued by one particular issuer, the claimed public benefits are illusory.

Nature of conduct

From the outset, it is readily apparent that the conduct the subject of the Notification is limited to a four year sponsorship agreement in which Macquarie Bank Limited (**Macquarie**) acquire exclusive access to all credit/debit card transactions for food and beverages conducted at the premises under the care, control and management of SCSGT (**Grounds**). There is no obligation or other positive incentive for Macquarie to introduce any new technologies or innovative payment systems. Indeed, the Notification states only that Macquarie “will consider” applying new technologies and that Macquarie “may” develop a contact-less payment acceptance system. Without any requirement to do so being an integral part of the conduct, it is not possible to claim that any public benefit is likely to arise.

Further, the conduct comprises a 12 month period in which only Macquarie cards will be accepted by food and beverage vendors. Following this, there will be a period of *at least* 3 years in which Macquarie *must* agree to the acceptance of any other card before it can be used at the Grounds. This effectively provides Macquarie with a very long term exclusivity arrangement which may (on the basis of the information provided) continue indefinitely. In light of the factors raised below, MasterCard is concerned that this long term arrangement will have a significant detrimental effect on competition between card issuers and payment service providers.

In preparing this Submission, MasterCard is aware that a similar arrangement has been entered into between Visa International Services Association (**Visa**) and Stadium Australia Management Limited (**Stadium Australia**) in respect of ANZ Stadium (N93500). A separate Submission is made in respect of that Notification. However, it is important to note the aggregate effect of the two arrangements on competition. It is also noteworthy that MasterCard’s principal competitor, Visa, benefits from both arrangements.

Relevant markets

While the Notification expresses Macquarie’s view that the relevant market is “the market for the supply of payment acceptance services”, it is MasterCard’s view that such a definition is inadequate. While it is possible that there may exist a market for the supply of payment acceptance services *to merchants*, it is also possible that other relevant markets exist. MasterCard has not performed a comprehensive market definition analysis, but notes that relevant fields of competitive behaviour may include:

- (1) the supply of credit/debit card services to issuers (such as the supply of Visa card services to Macquarie Bank);
- (2) the acquisition of sponsorship funding by sporting venues; and
- (3) the acquisition of sponsorship funding by sporting bodies and associations.

Accordingly, this Submission also makes reference to the likely effects of the conduct in these other areas.

Effects on competition

New payment acceptance technologies

In assessing the likely effect of the conduct on competition, it is important to examine the role played by major sporting venues of national (and international) significance such as the SCG and SFS (and other venues such as Stadium Australia). It is noteworthy that the Notification does not provide any information on this subject.

Sporting venues offer a unique marketing and sales opportunity for suppliers of payment acceptance services. Perhaps more so than most other environments, patrons are likely to place considerable value on the speed and efficiency of a payment system when acquiring food, beverages and other merchandise. Given the nature of most sporting events, patrons will be reluctant to be absent from the game or other event for longer than strictly necessary. A system such as “contact-less” payment is likely to see a considerable degree of consumer acceptance in this environment. Noting that the Grounds enjoy at least one million total spectators per year, they are capable of providing a considerable degree of leverage to any firm that is able to secure exclusive provision of payment systems.

In order to obtain the necessary network of card holders and merchants offering card facilities, while ensuring wide consumer choice and vibrant competition between card issuers, it is generally desirable for merchants to accept all cards. The restricted acceptance of cards in a major public venue to those supplied by one issuer is, therefore, likely to be inherently anticompetitive. The detrimental effect on consumers of such anticompetitive arrangements will be significantly amplified where it involves the introduction and acceptance of new technologies. By restricting the ability of other card issuers to obtain the necessary critical mass of merchants that accept their respective cards, there is likely to be significant disincentive against those issuers investing in new technologies.

It follows that the notified conduct is likely to reduce incentives for investment in new payment technologies in locations outside the Grounds. In particular, it is likely to have a flow on into other fields of commerce where technologies such as contact-less systems might be expected.

Sponsorships

In MasterCard's experience, venues such as those operated by SCSGT generally secure sponsorship from one company from each industry sector. Thus, for example, a venue will secure sponsorship from only one company in the financial services sector, one from soft drink manufacturer and so on. To the extent that the conduct limits SCSGT's capacity for further sponsorship, this may be taken to be commercially rational for SCSGT. However, MasterCard is concerned for the ACCC to examine whether the notified conduct will reduce the incentives for card issuers other than Macquarie to sponsor smaller sporting venues when they are unlikely to attract the volume of customers necessary to counterbalance those accessed by Macquarie.

More importantly, however, MasterCard is deeply concerned that the conduct will dramatically reduce the incentives for it to sponsor sporting bodies such as Cricket Australia. MasterCard currently has a [redacted] sponsorship agreement with Cricket Australia worth [redacted]. Under this agreement MasterCard has exclusive credit/debit card marketing rights in respect of events conducted by Cricket Australia, including international test matches, one-day international, Twenty20, domestic 4-day and domestic 1-day matches. Clearly, the notified conduct severely interferes with the efficacy of that commercial arrangement and will lead to the confusing and damaging situation where MasterCard's promotional rights are infringed by the fact that only Macquarie branded Visa cards may be used at the venue. This will necessarily cause MasterCard to reconsider the value of its sponsorship arrangements with Cricket Australia. More generally, the notified conduct is likely to cause all card issuers (that is, banks and other financial institutions) to question the value of their sponsorships of sporting teams or associations.

Investment and the need for an exclusive payment service provider

It is implicit in the Notification that the investment required in order to provide new technologies such as "contact-less" systems is of a level that mandates an exclusive arrangement between the merchant and the service provider. No information to support this contention is provided. It is readily apparent that it is without foundation.

A standard swipe and dip card payment system will cost a merchant between AUD\$300 and AUD\$1000 to buy outright. Many merchants elect to rent the necessary equipment, incurring an average cost of about AUD\$23 per month. The incremental cost of upgrading a terminal to facilitate contact-less transactions is similarly negligible requiring only an investment of about AUD\$100 to buy a contact-less card reader outright.

Further, the costs associated with the introduction of contact-less technology to credit/debit cards is insignificant. The approximate cost of embedding contact-less technology into a credit card itself, is US\$1 per card.

Even if a greater degree of investment were required to implement contact-less or other payment facilities, the Notification fails to explain why it is necessary to engage in the conduct in order to secure that investment. MasterCard is not in a position to quantify the likely increase in sales to be enjoyed by SCSGT following the introduction of a contact-less system. Certainly, with access limited to holders of Macquarie cards, the increase in sales is likely to be significantly sub-optimal. One would anticipate however, that the increased volume of sales that would be expected to flow from the introduction of a system that accepted all cards may be sufficient to warrant direct investment by SCSGT.

To the extent that the Notification suggests that Macquarie “may also develop other related payment technology including mobile and wireless payment systems”, it is difficult to see what “development” is required. Such technology already exists and is widely used throughout Australia, including in taxis and at local markets. Again, the only cost associated with implementing such technology at sports venues is the relatively minimal cost of a terminal unit.

It follows that there is no rational basis for the contention that any real investment is required in order to secure the use of new payment technologies in this case.

International experience

New payment technologies are currently being implemented throughout the world. In particular, North America, Europe and Asia have seen increasing consumer and merchant acceptance of contact-less payment systems.

The experience of these regions suggests that the provision of contact-less payment services at major sporting venues (where transaction speed is of central importance to a consumer), is fundamental to the introduction of more wide spread consumer and merchant acceptance of the technology. Such venues and the types of purchases that occur within them are conducive to consumers transacting with a degree of confidence that may be absent in other environments. Both the physical security of most sports stadia and the relatively low value of food and beverage purchases allow consumers to gain confidence in the new technology without the perceived risk that is sometimes associated with an unfamiliar system. Once comfortable with the new system, consumers appear to be more willing adopt it for more general transactions, such as groceries.

Public benefit

As raised above, the conduct, as described in the Notification, does not necessarily include anything other than Macquarie having the exclusive right to provide card payment services. Without any obligation to provide, at its own cost, new payment technology systems, no true public benefit can be said to arise from the conduct other than the introduction of credit/debit card payment facilities. We note that all facilities other than food and beverages outlets already accept card payments. The Notification argues that this is in itself a public benefit as it will provide consumers with a payment option in addition to cash. The current lack of credit/debit card payment facilities to pay for food and beverage is not, however, the appropriate counterfactual. Rather, the ACCC should compare the notified conduct with what is likely to occur if the SCSGT were to permit the use of all issuers' cards for such transactions. In that context, there are no public benefits that will arise from the conduct that would not otherwise arise in the absence of the conduct.

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Indeed, the only consumers to benefit from the conduct will be holders of Macquarie issued cards. According to its website (at www.macquarie.com.au) Macquarie currently offers two Visa credit cards to customers. Other card brands are not offered. MasterCard is not aware of the number of cards Macquarie has issued, but believes it to be less than 100,000.

Moreover, given its business as an investment bank, Macquarie cardholders are likely to be considerably more affluent consumers than average. As it is likely that patrons of sporting events represent a significantly broader cross-section of consumers, the overwhelming majority of food and beverage customers are likely to be excluded from using their existing credit/debit card.

Macquarie attempts to address this by suggesting that it will offer patrons "the opportunity to purchase a Macquarie credit/debit card in the Ground during sporting events". The Notification does not explain how the usual regulatory, prudential, or credit-check requirements for the application and issue of such cards will allow this to occur. In any event, the issue of a further card (with its associated costs to the consumer) that merely duplicates the functionality of existing cards cannot of itself be of benefit to an individual consumer.

Conclusion

For the reasons outlined above, MasterCard submits to the ACCC that the conduct, the subject of the Notification, has the purpose or has, or is likely to have the effect of substantially lessening competition within the meaning of section 47 of the *Trade Practices Act 1974*. Further, in MasterCard's submission, the conduct is highly unlikely to result in any benefit to the public that could not be obtained in the absence of the conduct. Certainly, any benefit to the public that is likely to result from the conduct, is not reasonably capable of outweighing the detriment to the public constituted by the lessening of competition that will result from the conduct.

Accordingly, MasterCard submits that the ACCC should revoke the Notification.

MasterCard is grateful to the ACCC for this opportunity to comment and is available to provide any further information sought by the Commission.

Yours sincerely,



Hiang Choong
Managing Regional Counsel
Asia/Pacific region