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# Blake Dawson

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## Also by email

**19 December 2008**

Dear Dr Chadwick

### Exclusive dealing notification lodged by Stadium Australia Management Limited on 9 July 2008 (N93500)

Your reference  
C2008/1110

Our reference  
PJA CWF 02 1383 8501

We act for Visa International Service Association (**Visa**).

**Partner**  
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We refer to our recent correspondence, in particular:

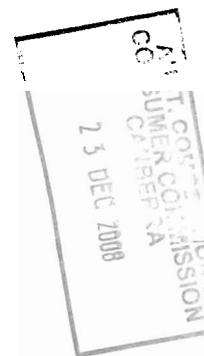
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1. your letter to us of 27 November 2008 enclosing a draft notice proposing to revoke the exclusive dealing notification lodged by Stadium Australia Management Limited on 9 July 2008 (**Draft Notice**);
2. the pre-decision conference held on 16 December 2008 at the Commission's offices in Sydney; and
3. your email to us of 19 December 2008 attaching the record of the pre-decision conference.

We **enclose**, on behalf of Visa and Stadium Australia Management Limited (**Stadium Australia**), a submission in response to the issues raised by the Commission in the Draft Notice. We note that this submission supplements the oral submissions made by Visa and Stadium Australia at the pre-decision conference.

If you have any queries, please do not hesitate to contact Peter Armitage on (02) 9258 6119 or Clare Fawcett on (02) 9258 6405.

Yours faithfully



**STADIUM AUSTRALIA MANAGEMENT LIMITED AND VISA INTERNATIONAL SERVICE  
ASSOCIATION**

**SUBMISSION TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION –  
EXCLUSIVE DEALING N93500 LODGED BY STADIUM AUSTRALIA MANAGEMENT LIMITED  
ON 9 JULY 2008 ("Notification")**

Note:

This submission responds to the Draft Notice issued by the Commission on 27 November 2008 in respect of the Notification.

This submission supplements the information and arguments set out in:

- the Notification;
- the submission dated 7 November 2008 provided to the Commission by Visa and Stadium Australia; and
- the matters discussed in the pre-decision conference, held on 16 December 2008 at the Commission's offices in Sydney.

**1. PAYMENT METHODS AT ANZ STADIUM**

- 1.1 Stadium Australia wishes to make the following submissions in relation to the current and proposed payment methods accepted at ANZ Stadium.
- 1.2 Currently, cash is the only payment method accepted for the purchase of food and beverages at ANZ Stadium. From around 1 July 2008, contactless payment readers were deployed in the food and beverage outlets in the members area of ANZ Stadium (the Western Stand) as a pilot. Since this time members of ANZ Stadium have been able to use the contactless payment services offered by Stadium Australia by purchasing their food and beverages using a Visa contactless card.
- 1.3 From approximately March 2009 Stadium Australia proposes to introduce debit and credit card acceptance by magnetic strip (swipe) and/or EMV chip (dip) at ANZ Stadium. Visa and MasterCard payment systems will be accepted as a minimum and cards issued by any bank will be accepted. These cards will be accepted at all the food and beverage outlets within ANZ Stadium.
- 1.4 At the same time, Stadium Australia also intends to extend the notified conduct by deploying contactless payment readers at food and beverage outlets throughout ANZ Stadium.
- 1.5 This means that, if the Commission does not issue a Notice in respect of the Notification, from approximately March 2009, customers will be able to purchase food and/or beverages using one of the following methods of payment at any food and beverage outlet within ANZ Stadium:
  - (a) a credit or debit card by swipe/dip (Visa and MasterCard at a minimum with cards issued by any bank);
  - (b) cash; or
  - (c) a Visa contactless card.
- 1.6 By way of example, this means that, for the duration of the notified conduct, a MasterCard PayPass cardholder will be able to use their card at the food and beverage outlets point of sale but not by the contactless ("wave") method.

## **2. EXTENT OF EXCLUSIVITY**

- 2.1 Visa and Stadium Australia have entered into a sponsorship arrangement that Stadium Australia will only use Visa's contactless payment system (Visa payWave) in its contactless payment readers for approximately three and a half years (with, at the time of writing, approximately three years of the exclusivity period remaining).
- 2.2 Visa submits that the period of the exclusivity is not particularly long or significant having regard to the relatively limited trading hours of ANZ Stadium (as compared with other merchants supplying food and beverages).
- 2.3 This view is based on the following information:
- (a) ANZ Stadium holds an average of 45 events each year;
  - (b) for each event, ANZ Stadium retail areas typically trade for 3 hours;
  - (c) this equates to 405 operating hours over three years, which is equivalent to approximately 33.75 days (calculated on a 12 hour day basis);
  - (d) within that 3 hour period, there is a limited window during which attendees purchase their food and beverages at outlets within ANZ Stadium – typically 20 minutes before the event and 10 minutes during half time/interval (with the exception of AFL matches which have quarter time);
  - (e) 75% of food and beverage purchases made at an event occur in this limited window and there are only a finite number of attendees that can be served within this window; and
  - (f) based on the above calculations, Visa's exclusivity for contactless payments at ANZ Stadium amounts to approximately 34 days (over the remaining three year exclusivity period).

## **3. THE COUNTERFACTUAL**

- 3.1 The Commission's view of the counterfactual is set out in paragraphs 5.10 to 5.12 of the Draft Notice. Based on the information currently before it, the Commission considers that, in the absence of the immunity provided by the Notification, it is likely that Stadium Australia would seek to implement contactless payment options as well as credit and debit card facilities at ANZ Stadium.
- 3.2 For the reasons outlined below, Stadium Australia and Visa submit that this is not the appropriate counterfactual to identify and assess the effects of the notified conduct.

### *Stadium Australia's position*

- 3.3 Since the Stadium opened in 1999, Stadium Australia has only accepted cash as a payment method for the purchase of food and beverages. In the absence of Visa's sponsorship Stadium Australia would not introduce credit and debit card facilities at ANZ Stadium.
- 3.4 Stadium Australia's position is that it would not have sought to implement any credit and debit card facilities at ANZ Stadium in the absence of the sponsorship arrangement with Visa for the following reasons:
- (a) there are considerable operational costs and risks associated with introducing credit and debit card facilities at a stadium venue including:
    - (i) rolling out between 300-400 terminals in the food and beverage outlets;

- (ii) training staff who are typically casual and transient in nature (which could increase the risk that the processing of credit and debit card payments would be slower than cash payments),
  - (b) The nature and volume of transactions that take place at ANZ Stadium make recovery of the costs involved in the implementation of contactless payment options as well as credit and debit card facilities uncertain and improbable. The capital expenditure required to introduce and maintain credit and debit card facilities at ANZ Stadium is significant, especially at a time when Stadium Australia is only prepared to incur capital expenditure which is essential. The limited time period within which attendees make food and beverage purchases (as discussed above in paragraph 2.3) mean that Stadium Australia could not prudently rely on any increase in sales and/or revenue to cover these significant costs.
- 3.5 Stadium Australia submits that, in the absence of the notified conduct there are no sound commercial reasons for introducing credit and debit card facilities at ANZ Stadium and that cash would remain the only payment method for the purchase of food and beverages at ANZ Stadium.
- Visa's position*
- 3.6 Visa submits that it would not have entered into the arrangement with Stadium Australia without exclusivity on contactless payments for the following reasons:
- (a) MasterCard has introduced its contactless payment technology (PayPass) in Australia first. Visa's contactless payment technology (Visa payWave) is the second to market in Australia. ANZ Stadium is one of the first locations in Australia to offer Visa payWave.
  - (b) Visa considers that, if its contactless technology is to compete effectively with MasterCard's contactless system, consumers, merchants and issuers should have the opportunity to observe the features and performance of the Visa payWave system without any risk of confusion with MasterCard's existing system.
  - (c) Visa's arrangement with Stadium Australia enables Visa to showcase Visa payWave, in a setting in Australia, where the performance of its contactless system will not be confused with MasterCard's contactless system.
- 3.7 Visa does not typically provide financial support to a merchant to assist in introducing payment acceptance infrastructure. It is for the reasons stated above that Visa has been prepared to pay a very substantial sum in sponsorship to Stadium Australia, in exchange for exclusivity on contactless transactions at ANZ Stadium for a period of approximately three years.
- 3.8 As noted above in section 2, given the actual time period in which ANZ Stadium holds events, Visa submits that the exclusivity period is not very long or significant.
- 3.9 Visa considers that revocation of the Notification will, however, have a material adverse impact on its introduction of contactless technology in Australia. It will mean that MasterCard's advantage as first mover will be reinforced and Visa's ability to communicate a clear message to consumers, merchants and card issuers about the distinctive features of Visa's contactless system will be significantly diminished. This is because, at every location at which Visa might wish to introduce its contactless technology, MasterCard will be able to offer its technology and the likelihood of confusion between features of the two contactless systems will be increased.
- Information before the Commission*
- 3.10 Visa and Stadium Australia submit that there is no evidence or information currently before the Commission to suggest that the counterfactual is contrary to that as outlined above by Stadium Australia and Visa in paragraphs 3.3 to 3.9 above.

#### **4. OTHER MATTERS**

- 4.1 Stadium Australia confirms that there are currently four automated teller machines (**ATMs**) located at ANZ Stadium. Prior to 2008, there had been two ATMs located at ANZ Stadium.

#### **5. TIMING**

- 5.1 Based on comments made by the Chair at the pre-decision conference on 16 December 2008, Stadium Australia understands that the Commission expects to issue its final decision in relation to the Notification in early February 2009.
- 5.2 As noted above, Stadium Australia intends to introduce credit and debit card facilities throughout ANZ Stadium in or around March 2009 (to coincide with the start of the football season).
- 5.3 Stadium Australia notes that the timing of this roll out will be delayed significantly if the Commission's final decision is not issued until early February 2009. Stadium Australia has already invested a considerable amount of time and resources to ensure that the introduction of credit and debit facilities throughout ANZ Stadium occurs in early March 2009 (to the benefit of attendees). Stadium Australia considers that it would need to place a stop on its planned roll out of credit and debit card facilities throughout ANZ Stadium until the Commission's final position on the Notification is published.

**19 December 2008**