



NATIONAL BILLING GROUP PTY LTD
ACN 107 408 579

SUBMISSION TO THE ACCC

**"NOTIFICATION OF EXCLUSIVE DEALING" lodged by First Class
Taxis Pty Ltd – Register Number N95566**

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“NOTIFICATION OF EXCLUSIVE DEALING” lodged by First Class Taxis Pty Ltd – Register Number N95566

INTRODUCTION

National Billing Group Pty Ltd (NBG) and its subsidiary Cabfare Payments Pty Ltd have reviewed the Notification of Exclusive Dealing filed by First Class Taxis Pty Ltd (First) (Register Number N95566).

The Notification as filed by First:

1. Details a series of business objectives at Clause 1(b) of the Notification that the applicant relies on and asserts that these can only be met by the ACCC approving the conduct when this is not the case.
2. Specifies a set of “Criteria” for an EFTPOS system at Clause 2(b) of the Notification that include matters that fall outside the ambit of an EFTPOS system. Further the “Criteria” First specifies for an EFTPOS system are so prescriptive and narrow that none of the current providers of EFTPOS facilities for Taxis meet. Finally the “Criteria” omits characteristics that would achieve First’s stated “Public Benefits” of Accountability, Transparency, and Quality Control. By specifying the “Criteria” in the way described in the application they actually create significant public detriment. This intended consequence of their actions has not been addressed in the application.
3. Fails to establish the Public Benefits that will arise from granting the application although it does detail a number of “private benefits” to First that cannot be seen as delivering inferred Public Benefits.
4. Inadequately documents the Public Detriments that would arise from granting the application.
5. Inadequately analyses the potential for foreclosure arising from the behaviour for which Notification is being sought.
6. Contains a Market Definition that is inadequate or inappropriate to the purpose in that its Geographic, Product, and Functional aspects are flawed.
7. Has the potential to Substantially Lessen Competition if agreed to by the ACCC.

The Notification as filed is flawed in numerous areas and should be rejected by the ACCC. The Public Benefits are questionable, the Public Detriments significant, and it has the potential to exacerbate foreclosure and vertical integration with a substantial lessening of competition in the functional, geographic and product markets

BUSINESS OBJECTIVES OF THE APPLICANT [(CLAUSE 1(B))]

The premise underpinning First's application is that:

- First asserts that the data from the EFTPOS terminal is essential to the operation of its back office systems.
- First maintains that it needs EFTPOS payment systems that hardwire the EFTPOS terminal to the taximeter. This is in addition to the MT Data Dispatch system that is already hard wired to the Taximeter. Hard wiring the EFTPOS terminal to the taximeter it is asserted is the only solution to system integration in the Taxi.

First does not advance any technical proof of the need for the hard wiring of the EFTPOS terminal to the taximeter.

NBG is aware that since the Dispatch system is connected to the Meter the same fare information that is available by hardwiring an EFTPOS terminal to a taximeter can be pushed wirelessly from the dispatch system to an EFTPOS terminal in a taxi. This would deliver the functionality that First is seeking without the need for a hard-wired connection.

Management Reporting and integration into First Back Office

Detailed data and management reports are available to First from the MT Data dispatch system and can be downloaded over the internet and integrated into an accounting package such as MYOB. Dispatch transactions data shows both cash payments and electronic payments whereas the EFTPOS system only collects data for electronic transactions in the taxi.

Modern Dispatch systems collect all data that First requires for its business systems including its reporting responsibilities to the ATO and the QLD Government.

Bailment Agreement

First claims that all Bailees operate on a "commission" basis BUT no copy of the Bailment Agreement is available for comment even though it is this document into which they wish to insert very detailed requirements with respect to the type of EFTPOS. The Bailment Agreement is clearly central to their argument as it details the current and proposed arrangements.

The standard Bailment agreement in operation in Queensland as approved by the Taxi Council has drivers paying a % of the shift takings with a shift report being printed at the end of the shift as evidence of the work undertaken in the shift. This covers cash as well as credit card and EFTPOS transactions. Such reports are generated from the taximeter.

First does NOT specify what commercial arrangements will be in place between it and its Bailees over the treatment of the "service fee". Again the inability to review the proposed Bailment Agreement terms makes it difficult to comment.

Inserting a requirement into the Bailment Agreement restricting the Bailee's use of EFTPOS terminals potentially will remove an income source from the Bailee. The largest provider of EFTPOS payment systems does NOT pay any of the 10% service fee paid on EFTPOS transactions to the Bailee. All independent EFTPOS providers have commercial arrangements in place that have an ability for a % of the service fee to be paid to the Bailee.

Credit Card queries

First is not the operator of the EFTPOS payment system nor is it the merchant. It should refer all customer queries to the operator of the EFTPOS Payment system. These operators offer dedicated help desks to resolve such disputes and they are liable to the Credit Card companies for "charge backs" from the card provider from disputed transactions.

First claims that it has to process 5 credit card queries a week from its 75 taxis and this is an onerous and time-consuming activity.

NBG notes that disputes over credit card payments will occur regardless of the systems in the Taxi. Further the operator of the EFTPOS system is best positioned to resolve customer queries. It is able to deal with all parties (Drivers, Customer, Credit Card provider/Bank).

Existing EFTPOS Terminal and Taxi Meter Infrastructure in First's Fleet of 75 Taxis

First fails to disclose the existing infrastructure in its fleet. In the absence of this information we can only infer that it has EFTPOS Terminals and Taxi Meters that are supplied by Cabcharge. We form that view as Cabcharge maintains that its Terminals are installed in 98% of Australia's Taxi fleet.

We do know that First has installed the MT Data dispatch system connected to Gold Coast Cabs.

This information is important when considering the potential for foreclosure as well as the lessening of competition impacts associated with the ACCC granting the Notification.

FIRST'S CRITERIA OF EFTPOS SYSTEMS [(CLAUSE 2(B)]

Underpinning First's analysis of the way to achieve its business objectives is to specify a set of Criteria for EFTPOS Facilities.

"All" of the Criteria are to be satisfied to become an Approved Supplier by First. The following table sets out those criteria and how each of the principal suppliers in the Australia Market meets those criteria.

CRITERIA	CABCHARGE	TAXI LIVE	GM CABS	CABFARE
Provide a charge account system which gives passengers a line of credit to pay taxi fares and related charges. ¹	√	X	X	X
Provide a payment system which allows the Bailee to process non-cash payment systems and other payment systems as mandated by law	√	√	√	√
Provide processing services which facilitate the distribution between First Class Taxis Pty Ltd and the Bailee of passenger fares received by way of EFTPOS	√	√	√	√

¹ This is a function of a "Card Issuer" and not an EFTPOS facility. The functions of Card Issuing, and EFTPOS facilities are mutually exclusive activities. Ideally all EFTPOS providers should be merchants of any card they choose. To date Cabcharge has excluded other EFTPOS facility providers from becoming merchants of Cabcharge cards.

<p>Provide EFTPOS terminals that will be hardwired to taxi cab meters so as to allow real time visibility and recording of all transactions by First Class Taxis Pty Ltd</p>	<p style="text-align: center;">X</p> <p>Terminals are hardwired to the meter</p> <p>BUT</p> <p>Cabcharge does NOT provide real time visibility and recording of all transactions.</p> <p>Cabcharge EFTPOS will only provide visibility of electronic transactions, therefore will not meet the requirement to provide visibility of ALL transactions (excludes cash transactions)</p> <p>Cabcharge's terminals exposes the Bailee to fraud from cancelled and stolen cards with loss of income in store and forward mode.</p>	<p style="text-align: center;">X</p> <p>Terminals are NOT hardwired to the meter.</p>	<p style="text-align: center;">X</p> <p>Terminals are NOT hardwired to the meter.</p>	<p style="text-align: center;">X</p> <p>Terminals are NOT hardwired to the meter</p> <p>Cabfare HAS real time visibility and recording of all electronic transactions.</p> <p>End Users, Drivers, Operators, and Card providers can view all transactions in real time.</p>
<p>Provide a payment system which does not permit payment of any monies into an account other than accounts designated by First Class Taxis Pty Ltd</p>	<p style="text-align: center;">√</p>	<p style="text-align: center;">√</p>	<p style="text-align: center;">√</p>	<p style="text-align: center;">√</p>

ACCEPTED INDUSTRY STANDARDS FOR EFTPOS FACILITIES:

The following table sets out “Criteria” that would meet Firsts objectives and its claimed Public Benefits but which are absent from their “Criteria”. Accordingly if they revised their criteria to meet Industry Standards, which they state is their desire then the following acknowledged standards for EFTPOS Facilities should be included in order to deliver First’s desired Public Benefits of:

- Transparency
- Accountability, and
- Quality Control

STANDARD	CABCHARGE	TAXI LIVE	GM CABS	CABFARE
PCI-DSS Compliant	X	X	X	√
PA-DSS Compliant	X	X	X	√
EFTPOS terminal is EMV certified (Chip card transactions)	X	√ (Only on some terminals)	X	√
Zero Card Data Exposure	X (Acquires transactions on their own switch) and (processes paper vouchers in operation)	X (Processes paper vouchers in operation)	X (Acquires transactions on their own switch) and (Processes paper vouchers in operation)	√ (No paper vouchers processed in operation)
Acquirer has authority under the Banking Act to carry on a banking business as a Specialist Credit Card Institution (SCCI)	X (Acquires transactions on their own switch)	?	?	√
Acquirer operates under the supervision of the Australian Prudential Regulation Authority (APRA)	X (Acquires transactions on their own switch)	?	X (Acquires transactions on their own switch)	√

EFTPOS Terminals have an APCA certification	√	√	√	√
EFTPOS Terminals are PCI-PED and PCI-PTS certified and the terminal manufacturer follows the latest security guidelines from PCI	?	?	?	√

If First specified these "Criteria" as preconditions for EFTPOS Facilities then it could legitimately claim the Public Benefits of Transparency and Accountability and Quality Control.

CONFUSION OF THE FUNCTIONS OF CARD TRANSACTION PROCESSING AND CREDIT PROVISION WITH EFTPOS FACILITIES.

First has included in its "criteria" for EFTPOS facilities criteria that are NOT part of an EFTPOS facility. Specifically they wish to mandate that:

The EFTPOS Facility MUST "provide a charge account system which gives passengers a line of credit to pay taxi fares and related charges."

The industry definition of an EFTPOS facility does NOT include this requirement and the provision of "credit and issuing of Cards etc", EFTPOS processing, Payment Acquiring are mutually exclusive activities.

Good competition practice would seek to ensure adequate structural separation of these functions to deliver effective competitive outcomes as well as least cost highest quality solutions for maximum consumer benefit.

The Reserve Bank's Payment Systems Board processes seem to reinforce this distinction as does APRA, the two relevant regulators in this regard.

PUBLIC BENEFITS ANALYSIS (CLAUSE 4a)

FIRST'S PUBLIC BENEFITS	FIRST'S CLAIM	NBG COMMENT
<i>Transparency and Accountability</i>		
	The public will benefit from a transparent and accountable EFTPOS System	This is a public benefit BUT will not be achieved by Firsts "Criteria". The inclusion of Industry Standards for Payment Systems including PCI-DSS and PA-DSS compliance; APCA certification, and requiring the acquirer of the EFTPOS transactions to be an APRA approved ADI would deliver these benefits. More details on the standards required of EFTPOS facilities are detailed above.
	First will receive a weekly report of all transactions with details of time, amount and Driver Authority numbers.	This is a Private Benefit to First and not a Public Benefit. Similar data can be obtained by First from the Dispatch System.
	First can use the weekly report for dispute resolution and anti fraud confirmation to manually locate disputed receipts and verify transaction status.	This is a Private Benefit to First and not a Public Benefit. Such activities should be referred to the EFTPOS facility provider who has both the systems to resolve the disputes. Under PCI guidelines, cardholder data should not be stored at any time by the merchant.
	The recording system, ensuring transparency and accountability, cannot be achieved unless the EFTPOS terminal is hardwired to the taxi cab meter	This is factually incorrect. Similar data can be obtained by First from the Dispatch System.
	The weekly report of all transactions will be used for the ATO, PAYG, and GST reporting by FIRST and yearly reporting to the QLD Govt	Whilst it might be argued that improved reporting to the ATO is a Public Benefit the same outcome can be achieved from the Dispatch System. Further the Bailee is responsible for their own reporting and are required to obtain an ABN. Similar data can be obtained by First from the Dispatch System.

	The system will ensure Bailees are accountable to the ATO and Dept of Immigration and Citizenship	The Bailee is required to obtain an ABN and to have a current Drivers License, Drivers Authority, and Visa. First is responsible for verifying this information before they enter into the Bailment Agreement and commence driving the vehicle. The use of an EFTPOS terminal will not remedy this.
Quality Control		
	First will benefit from uniform EFTPOS terminals	This is a Private Benefit to First and not a Public Benefit.
	First will benefit as the EFTPOS reporting system can be integrated into its Bailee pay-in system	This is a Private Benefit to First and not a Public Benefit.
	First will benefit as it will be able to reduce its costs in short and long term monitoring.	This is a Private Benefit to First and not a Public Benefit.
	First will benefit as EFTPOS Data will be provided automatically to First in a form acceptable to First to assist its reporting to the ATO delivering "back of house" efficiencies to First.	This is a Private Benefit to First and not a Public Benefit.
	Enable First to provide training to Bailees on the operation of EFTPOS terminals	This is a Private Benefit to First and not a Public Benefit.
	First will benefit by minimising product problems	This is a Private Benefit to First and not a Public Benefit.
	The public will benefit from the use of terminals with warranties and compliance with Australian Standards	This is a public benefit but only if Industry Standards and approvals are specified. The relevant standards are PCI-DSS, PA-DSS, ePAL, and APCA but these are not specified.

PUBLIC DETRIMENTS ANALYSIS

FIRST'S STATED DETRIMENTS	NBG COMMENT
Taxi Passengers will benefit if First negotiates favourable trading terms and supply conditions	It is unclear how this is a Public Detriment but it is a Private Benefit to First
There is no foreclosure	This statement ignores and inadvertently drives the potential for Vertical Integration and foreclosure. This integrates Card Issuing, EFTPOS Facilities, Taxi Payment Systems, and Taxi Management. Further the inclusion of MT Data also integrates Taxi Dispatch. The outcome is a less competitive environment that delivers a reduction of innovation. <i>(NBG addresses the Foreclosure impacts of First's proposal later in this submission – see below)</i>
Bailees can chose which supplier they use as long as it is one chosen by First	This is a Public Detriment to the Bailee Consumer as they may be forced to adopt an EFTPOS Facility that reduces or potentially eliminates their income.
Bailees can approach First to approve a non approved terminal provided it meets First's "Criteria"	This is a Public Detriment to the Bailee Consumer as they may be forced to adopt an EFTPOS Facility which reduces or potentially eliminates their income.
There is no detriment to suppliers of EFTPOS terminals provided they meet First's Criteria	See our analysis of First's Criteria. As drafted, no EFTPOS facilities meet all of First's criteria and as such would remove all EFTPOS facilities from First's fleet of 75 Taxis. Accordingly this is a Public Detriment to the end user of Taxi services.

NBG believes that the following Public Detriments need to be included in any assessment of the First proposal. Many of these result from the inadequate specification of Criteria for EFTPOS Facilities. These are:

FURTHER ITEMS OMITTED BY FIRST THAT MAY RESULT IN PUBLIC DETRIMENTS'	NBG COMMENT
No Acquiring Service Levels have been defined so unless these are known the Public Detriment is high.	Standard Acquiring Service levels definition may include: <ul style="list-style-type: none"> • Transaction switching system uptime 99.99% • Transactions processing service level of 24 hours per day 7 days a week • Transaction processing response time <4 seconds 95% of time • Help desk response time <4 minutes 95% of time • Merchant and card transaction enquiry in real-time via web access • Transaction reporting and reconciliation information online and in real time. • Charge backs if any, electronically reported daily

<p>No Disaster Recovery & Failover Capabilities have been defined so unless these are known the Public Detriment is high.</p>	<p>Standard Service definition may include: Automatic fail-over within the data centre and automatic switch-over between data centres in a live-live architecture within and between its two geographically separate data centres</p>
<p>Increase risk of Fraud from THE USE Emergency Dockets in the event the approved EFTPOS facility is down. This is omitted and the public detriment from relying on Paper as a back up is omitted.</p>	<p>There is a potential for Fraud and Identity theft from Emergency Paper Dockets. Some EFTPOS providers rely on paper dockets in the event of systems failure. This is a high-risk activity with fraud prevalent in the use of blue/green paper dockets and "Cabcharge eTickets" being the two common instruments used in the Taxi Industry. The practice of claiming the "Cabcharge" system is down and defaulting to "appear" is a major source of public complaint in Taxis. The use of multiple EFTPOS terminals in Taxis minimises this practice.</p>
<p>Loss of Income by Bailees</p>	<p>Not all EFTPOS Facility providers offer part of the "service fee" to Bailees as a direct payment. Accordingly the Bailee faces a loss of income if the Facilities that First approves do not provide a payment to the Driver/Bailee.</p>
<p>Questionable employment practices under State Legislation</p>	<p>Workplace regulators have questioned Bailment, and the conditions imposed in Bailment Agreements. First has not provided a copy of its existing or proposed Bailment Agreement so it is not possible to assess the impact on employment practices at First and whether they contravene any State or Commonwealth legislation. The potential for this Public Detriment needs to be tested by the ACCC.</p>

MARKET DEFINITION

First's Market Definition in terms of "geography" is too broad and not appropriate to the Notification. The geographic market clearly is NOT Australia but rather the Declared Metered Taxi Service Areas of the Gold Coast as specified by the Queensland Department of Transport and Main Roads.

First's "product market" is the supply of EFTPOS services

There is no Functional Market definition but we believe it to be the "electronic acceptance of taxi fares and charges by taxi passengers (the Electronic Processing Market)".

NBG is of the view that this is the appropriate Market Definition for this Notification.

POTENTIAL FOR FORECLOSURE AND ITS CONSEQUENCES ON COMPETITION

First asserts that there will be no foreclosure but fails to enumerate why this is the case. Their position seems to ignore the literature on the subject of foreclosure and integration. The Taxi industry is an industry dominated by one company (Cabcharge) which is major vertically and horizontally integrated player who is also a provider of EFTPOS facilities and is a Card Issuer and .

Cabcharge is the incumbent supplier of First's EFTPOS Terminal infrastructure (Cabcharge Fareway), linked to the taximeter. Further First's taximeters most likely are supplied by Cabcharge and the MT Data Dispatch system operated by Gold Coast taxis is linked into Cabcharge's national booking and dispatch systems. Cabcharge has an ability to influence the operations of Taxi 131-008 Limited the operator of the major national Taxi Booking system which Gold Coast Cabs uses². Operators, such as First join Gold Coast Cabs Network Dispatch systems with access to these numbers as they derive work from the network's booking system and the Network derives bookings from the national brand marketing of these dispatch numbers.

This proposal as drafted will assist in further vertical integration and foreclosure in the Gold Coast market by the inclusion of a requirement in Bailment Agreements for approved EFTPOS facilities to be ones in which *"The EFTPOS Facility MUST provide a charge account system which gives passengers a line of credit to pay taxi fares and related charges."* This condition appears to have been drafted specifically to describe the Cabcharge Fareway EFTPOS system and exclude all third party providers.

Accordingly the proposal as drafted, with the requirements integrate Card Issuing into EFTPOS Facilities, Taxi Payment Systems, and Taxi Management and Taxi Dispatch. This will exacerbate vertical integration and foreclosure in the market for EFTPOS Payment systems for Taxi Services in the Declared Metered Taxi Service Areas of the Gold Coast Queensland for electronic payment of taxi fares by taxi passengers.

² Today, 287 taxi services have the advantage of access to Australia's only nationally recognised taxi booking phone number - 131-008, including taxi services in every major city and town in Australia, and many smaller towns

THE NOTIFICATION POTENTIALLY WILL LEAD TO A SUBSTANTIAL LESSENING OF COMPETITION

By applying the Criteria as defined with the lack of reliance on open systems and common industry standards for EFTPOS payments systems is a significant flaw.

The approach being pursued by First has the effect of lessening competition in the provision of EFTPOS payment facilities. However the application of accepted EFTPOS industry standards would strengthen the potential for competition. Standards may include PCI-DSS, PCI-PED and PCI-PTS, specifying standards for the "acquirer" of the transactions and specifying acquiring service levels and disaster recovery strategies.

IN SUMMARY

The Notification as filed is flawed in numerous areas and should be rejected by the ACCC as the Public Benefits are questionable, the Public Detriments significant, and it has the potential to exacerbate foreclosure and vertical integration with a substantial lessening of competition in the relevant functional, geographic and product markets.

ABOUT CABFARE PAYMENTS PTY LTD (CABFARE)

CabFare is a private company that offers secure electronic payment services to taxis and limousines around Australia.

Fast

average 8 seconds transactions time means passenger convenience and driver efficiency

swap-and-go policy for faulty terminals means your Hire Car or Taxi doesn't sit in a workshop in order to have the EFTPOS repaired and both the Operator and Driver cannot work the vehicle to make money

Simple

real-time online account gives real-time transaction information so that Operators can view the performance of their fleet as it happens and Drivers can check all their transactions during or just after their shift.

arrange payments to suit your business we can split fare + commission payments between Operator and Drivers. CabFare can even pay Drivers directly by bank transfer if required by the Operator

Secure

CabFare and Tyro are PCI-DSS compliant so that an Operator and Driver can be sure all transactions are legitimate and not paid using defrauded credit cards **only provider to offer 'chip' card** (also known as EMV) transactions when combined with customer PIN entry gives 100% guarantee of payment.

CabFare's Mission

To provide the taxi and limousine community with technology and services that will deliver the highest standard of services to the public.

CabFare's Strategies

1. Deliver enabling technology to the taxi and limousine operators and drivers in order for them to better and more effectively deliver services to the public
2. Change the financial model in the taxi and limousine market so that the disenfranchised such as the operators and drivers receive a greater share of the profits
3. Deliver real-time transaction information to all parties (cardholder, driver, operator, network, card issuer and government) in order to streamline business transactions
4. Partner with credible and established companies that will deliver value to the service delivery of our services (Tyro, Indue, AMEX, NAB)
5. Drive open and standards based service delivery so that many can play and enhance service delivery while still meeting industry standards (PCI-DSS, PA-DSS, APCA, APRA, ePAL)