

23 May 2012

Dr Richard Chadwick
 General Manager
 Adjudication Branch
 Australian Competition and Competition Commission
 GPO BOX 3131
CANBERRA ACT 2601

Dear Dr Chadwick

Notification 95824 – Lodged by First Class Taxis Pty Ltd

We are writing with respect to the Notification of Exclusive Dealing lodged by First Class Taxis Pty Ltd (First).

National Billing Group (NBG) has reviewed the notification and believes that with minor modifications this application could be improved significantly to better deliver the “Public Benefit Claims” outlined in the Notification. The improvements outlined in this letter will:

1. Improve the Transparency and Accountability detailed by the application as the primary Public Benefit and
2. Will enhance the Quality Control which is the second public benefit detailed in the application.

First’s Proposed Conduct and Suggested Improvements with Enhanced Public Benefits

First has indicated that it will approve its Bailee’s using EFTPOS Facilities from Suppliers that meet a defined set of Criteria. The following table compares these criteria with some minor modifications that will deliver the Public Benefits for Passengers, Bailees, and First.

First’s Proposed Criteria for Approved EFTPOS Suppliers	NBG’s Suggested Improvement (in Yellow)	Public Benefit Enhancement
Provide a payment system which allows the Bailee to process non-cash payment systems	No Change required - Agree with this Criteria	No Comment
Provide a payment system which does not permit payment of any monies (excluding Bailee commissions, rebates) into an account other than those accounts nominated by First Class Taxis Pty Ltd in conjunction with the Bailee. First Class Taxis Pty Ltd shall require the Bailee to accept as a condition of the First Class Taxis Pty Ltd Bailment Agreement that ALL monies from EFTPOS Transactions (excluding Bailee commissions, rebates) be deposited into a bank account nominated by	Provide a payment system which does not permit payment of any monies (excluding Bailee commissions, rebates) into an account other than those accounts nominated by First Class Taxis Pty Ltd in conjunction with and the Bailee. First Class Taxis Pty Ltd shall require the Bailee to accept as a condition of the First Class Taxis Pty Ltd Bailment Agreement that ALL monies from EFTPOS Transactions (excluding Bailee commissions, rebates) be deposited into a bank accounts nominated by	The minor change proposed will ensure that the Bailee is not exposed to potential insolvency by First. The recent experience of contracted Courier Drivers (who are in a similar position to a Bailee) with First Fleet Transport (In Administration) highlights the necessity for the payments due to Bailee being quarantined from the Operators Banking arrangements. If the Bailee’s payments are included in the Operator’s Banking,

<p>First Class Taxis Pty Ltd in conjunction with the Bailee.</p>	<p>First Class Taxis Pty Ltd in conjunction with and the Bailee.</p>	<p>and an Operator enters into external Administration then the Bailee would be unable to access their funds.</p> <p>Enabling the funds due to the Bailee to be paid to an account, separate to the Operator’s control, should provide them with a level of security in the event of First ceasing to trade.</p> <p>What is proposed offers the Bailee the opportunity to be insulated from the Operator’s insolvency and consequential loss of income at a significant social cost.</p> <p>The suggested wording still allows both First and the Bailee to elect to have the funds paid into the Operator’s account but this then is a conscious decision taken by the Bailee.</p>
<p>Provide processing services which facilitate the distribution between First Class Taxis Pty Ltd and the Bailee of passenger fares received by way of EFTPOS. First Class Taxis Ply Ltd shall require the Bailee to accept as a condition of the First Class Taxis Pty Ltd Bailment Agreement that a copy of all transaction reports (daily, bi weekly, weekly or monthly) issued by the EFTPOS Supplier also is sent to First Class Taxis Pty Ltd for accountability, reconciliation, auditing and record keeping purposes.</p>	<p>Provide processing services which facilitate the distribution between First Class Taxis Pty Ltd and the Bailee of passenger fares received by way of EFTPOS. First Class Taxis Ply Ltd shall require the Bailee to accept as a condition of the First Class Taxis Pty Ltd Bailment Agreement that a copy of all transaction reports (daily, bi weekly, weekly or monthly) issued by the EFTPOS Supplier also is sent to or made available on-line to First Class Taxis Pty Ltd for accountability, reconciliation, auditing and record keeping purposes.</p>	<p>By making the transaction reports also available on-line opens the potential for Bailees, and Operators (First) to have visibility of their transactions in real time. By making the data available to all parties on-line the potential for disputes between the Driver and the Operator are minimised. It also ensures that the Operator has accurate data for its management and ATO record keeping as does the Bailee. This proposed enhancement to the First proposed criteria will increase the level of Transparency and Accountability.</p>
<p>NEW CRITERIA</p>	<p>EFTPOS Terminal must be APCA, Certified; and the EFTPOS Payment system must meet PCI-DSS certification;</p>	<p>Adherence to industry security standards should be the minimum standard companies should achieve in order to demonstrate the Transparency and Accountability in the payment process envisaged by First. These standards are now required of all EFTPOS terminal providers and all merchants in the Australian payments industry. The exclusion of such minimum standards demonstrates a disregard for the management of fraud and cardholder data and opens the driver, taxi operator and the government to liability if fraud is perpetrated in a substandard payment system.</p>
<p>NEW CRITERIA</p>	<p>EFTPOS Terminal must provide for the Driver Authority Number to be used during login to authenticate the driver before the driver can use the EFTPOS terminal. The driver’s Authority Number is printed on the Passenger’s receipt</p>	<p>Driver authentication by the use of the Driver Authority Number during login will achieve the Transparency and Accountability in the payment process envisaged by First. The benefits of Driver authentication are:</p>

		<p>(i) It will assure the public that the driver is sufficiently trained and authorised by the Dept Transport and Main Roads to deliver taxi services to the public.</p> <p>(ii) The Driver Authority Number will be printed on the passenger receipt and will facilitate identification of the Driver by both the passenger and Government agencies in the event of a dispute.</p> <p>(iii) Given the Cardholder can be identified by the Card Issuer and the Driver can be identified by the EFTPOS provider the potential for Fraud is reduced and the record keeping for all parties simplified.</p>
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First's Notification of 18 April 2012 is a considerable improvement on its initial Notification submitted on 21 September 2011.

First's current proposal, however, fails to address the most critical issues contained within the stated Public Benefits being "Transparency, Accountability and Quality in EFTPOS transactions". The Reserve Bank of Australia's "Consumer Payments Use Study" published in June 2011, as part of its "Strategic Review of Innovation in the Payment System", identifies concern about "fraud" being the most significant concern reported by consumers in the use of the EFTPOS payment system.

The additional "criteria" NBG has proposed will deliver First's "public benefits" for its Notification. These criteria will address the principle concerns that consumers have identified in the EFTPOS payment system.

In addressing the Notification, the Commission should introduce the amended criteria NBG has specified so that there is a stronger focus on Security and Fraud for approved EFTPOS Suppliers. This is best achieved by applying the applicable minimum industry standards for EFTPOS payments systems and equipment, we have outlined.

Use of Payment Industry Security Standards (PCI) as the Criteria for the approval of EFTPOS suppliers can deliver First's own corporate objectives and deliver the public benefits of a secure EFTPOS environment, for the Taxi end user at no cost to either itself or the end user. We would be pleased to meet with Commission staff to expand further on the matters raised in this submission. I can be contacted on either (03) 9014 7225 or 0412355633.

Yours sincerely,



David R. Hamilton
General manager
Strategy and Regulation