

31 July 2013

Australian Competition and Consumer Commission  
(Attention M/s Marie Dalins)  
BOX 3131  
**CANBERRA ACT 2601**

Dear M/s Dalins

**Visa Worldwide Pte Limited & Ors Application for Authorisation A91379 & A91380**

We refer to the application by Visa and MasterCard for Authorisation of their PIN@POS program. National Billing Group Pty Ltd (NBG) and its trading operations CabFare Pty Ltd have reviewed the application and supporting documentation. The Applicants have sought authorisation of two actions and there are three elements to the application that need to be assessed. These are:

1. Mandating the use of PIN@POS (EMV) for all card present transactions by all Visa and MasterCard Cardholders and Merchants in Australia.
2. Joint implementation timeframes by Visa and MasterCard of mandatory PIN@POS.
3. Joint marketing by Visa and MasterCard to consumers of the benefits as well as the cut over to mandatory PIN@POS.

**Summary:**

1. NBG supports the applications to mandate the use of PIN@POS (EMV) for all card present transactions by all Visa and MasterCard Cardholders and Merchants in Australia
2. NBG supports joint implementation timeframes by Visa and MasterCard of mandatory PIN@POS. The technology is well established and the card roll out of EMV enabled cards and EFTPOS terminals have been completed for some time.
3. NBG would prefer a far earlier implementation timeframe for mandating the use of PIN@POS into the Australian market than that proposed in the application. We believe that the benefits to merchants and cardholders from an enhanced security profile for EFTPOS payments are significant. NBG is unable to see any reason advanced for the relaxed deployment timeframe by allowing 45% of consumers to continue to opt out of PIN@POS until well into 2014 and an unknown number of merchants to foster sloppy security practices. This only allows the known costs of card fraud to continue unabated for a period longer than is necessary adding to the costs of all conforming cardholders and conforming merchants.
4. In approving the application NBG believes that as a condition of authorizing PIN@POS, the ACCC should obtain binding undertakings from the Applicants that where merchants provide PIN@POS (EMV standard compliant) technology and it involves a card present

transaction, then financial risk and liability for the transactions is borne by the Cardholder or the Card Issuer and not by the Merchant. (I.e. the practice of “**Chargeback**” as part of the dispute resolution process is not required because of the use of PIN@POS technology).

5. NBG agrees to joint marketing arrangements. The approach outlined at 4.11 is unlikely to have any significant impact on cardholder behaviour ahead of the mandated PIN@POS date.
6. Paragraph 4.11 should be supplemented by a program of pricing and incentives to encourage adoption of PIN@POS by the 45% of cardholders who have eschewed it to date. Removing Card Issuers access to **Chargebacks** imposed on Merchants (as a method of managing risk) and higher Merchant Service Fees on non-complying merchants will alter behaviour and drive up opt-in rates. The evidence from other product markets seeking to increase opt-in behaviour is that only pricing based incentive strategies modify laggard behaviour.
7. NBG observes that all card companies (especially AMEX) should deploy PIN@POS transactions as soon as possible. Maintaining signature only approval card products in the Australian community serves to confuse consumers and leaves a gaping lacuna in the EFTPOS security framework in Australia open to fraud and imposition of higher costs on merchants and ultimately consumers.

## **Introduction**

### *Why NBG/CabFare is an Interested Party*

National Billing Group Pty Ltd (NBG) and its subsidiary CabFare Pty Ltd (CabFare) have been in the payment systems market since early 2008 offering EFTPOS and payment processing services to operators in the taxi and limousine (Hire Car) markets across Australia. NBG is an SME with a high exposure to EFTPOS as it underpins its primary business offering.

Our primary focus has been to offer simple, fast and secure electronic transaction services to our customers. NBG partners with Tyro Payments Limited (an APRA licensed ADI) providing customers with a fast and secure real-time EFTPOS payment system. It is the only payment system operating in Taxis in Australia that offers customers, drivers, and operators with real time online transaction reporting to better manage their business. The Taxi Industry is a high-risk industry prone to card fraud and identity theft via skimming and card not present fraud.<sup>1</sup> Accordingly it presents special challenges in the development and operation of EFTPOS systems.<sup>2</sup>

NBG's business is as a Merchant Network Service Provider (MNSP) servicing the Taxi and Limousine industry. Therefore NBG is not only a Merchant but also a Payment Service Provider.

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<sup>1</sup> APCA Fraud Statistics Report for 2012 highlighted the growth of such fraud in Taxis.

<sup>2</sup> AMEX categorizes EFTPOS in Taxis as being high risk on a level equivalent to On Line Gambling and Personal Services (i.e. Sex Workers and Brothels) and prices risk accordingly.

As such NBG provides service aggregation and payment services to a market segment characterized by parties who are:

1. Disenfranchised by the traditional banking systems; and/or
2. For whom there are specific payment system requirements and the cost of meeting these for an individual is too high; and/or
3. For whom the costs of regulatory compliance are too high<sup>3</sup>.

NBG assumes these costs and risks and prices them into its service offering for drivers and operators in the Taxi and Limousine Industries.

### **General Observations**

1. NBG supports the introduction of PIN@POS as it is a proven technology with the ability to significantly reduce fraud particularly in a high-risk industry such as the one in which NBG operates.
2. NBG is concerned that existing practices by consumers signing for transactions when using Chip (EMV) enabled cards places at risk all consumers and adds to the cost structures of merchants as well as consumers. It also gives rise to flawed risk mitigation strategies such as “chargebacks” and higher service fees used by Card Issuers. Compulsory PIN@POS requirements will enable Card Issuers to address these existing approaches to pricing and managing risk. Logically they should lead to lower fees placed by Card Issuers on consumers and merchants.
3. If Visa and MasterCard were to implement the PIN@POS regime in different timeframes then merchants would face higher complexity and higher costs so the joint implementation approach to PIN@POS is to be supported.
4. Whilst it is recognised that it cannot form part of the Commission’s consideration of this application, NBG believes that it is regrettable that AMEX and Diners Club will not deploy PIN@POS in the same timeframe as Visa and MasterCard. Until those cards align with the security profile adopted by Visa and MasterCard, Merchants will continue to face capricious and arbitrary full recourse chargebacks from AMEX and initiated by AMEX cardholders who chose to exploit the AMEX full recourse chargeback process.
5. The movement from a signature to a PIN environment has been completed in comparable jurisdictions (e.g. EU, UK and New Zealand) without widespread consumer confusion. The principle market that has resisted PIN technology to date has been the USA.

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<sup>3</sup> In the industries in which NBG operates there are specific regulatory requirements imposed by the ATO and State based regulators not found in other industries. A significant part of the business of NBG is meeting these requirements for its customer base.

6. All acquirers of Visa and MasterCard products in Australia are participants in ASIC's ePayments Code. This affords consumers with adequate protection and effective dispute mechanisms for unauthorized transactions. PIN@POS ensures that the cardholder is present at the time of the transaction.

### **Discussion of the With and Without Test**

The Applicants had three distinct business strategies to achieve the security profile that the conduct, subject of the application, seeks to address.

These are:

1. *Maintain the current evolutionary strategy* and allow cardholders to opt-in to PIN@POS transaction authorisation. Since 45% of the cardholders have opted-out some 4 years after the roll out indicates that this is likely to be ineffective.
2. *Introduce a mixed evolutionary strategy involving both the active promotion of the benefits of PIN@POS and a range of incentives* to encourage switching behaviour by both Merchants and Cardholders to opt-in. This is the type of strategy that should have been pursued 2 years after the soft launch of the technology in 2008. It would have delivered the opt-in rates of 90% + now being sought and avoided the need for mandatory PIN@POS. The economic welfare cost of not pursuing this strategy has been the systemic fraud cost incurred on Australian Cards in that period.
3. *Pursue a mandatory program* to force switching and supplement this with a consumer awareness program given the high levels of consumer inertia exhibited to date.

### **NBG Comments on the strategic alternatives:**

1. The amount of data provided by the Applicants limits quantitative analysis so only heuristic observations can be made.
2. *The current evolutionary strategy* is ineffective as 45% of cardholders opt-out. It should be rejected and the timeframe in which use of a *mixed evolutionary strategy* could have been pursued has passed.
3. This leaves Visa and MasterCard only with the option to resort to a *Mandatory PIN@POS* program six years after the technology roll out. What is concerning is that the strategy proposed to encourage consumers to opt-in is based purely on the simplistic soft advertising "carrots" outlined at Paragraph 4.11. The switching strategy contains no pricing incentives to influence switching behaviour. The clear evidence from other industries<sup>4</sup> seeking to influence mass consumer switching behaviour, when 45% of the customers are voluntarily opting-out, is that unless a consumer derives some demonstrable benefit, their behaviour is unlikely to change. Accordingly the proposed

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<sup>4</sup> Wolak, F.A (2013) Economic and Political Constraints on the Demand-Side of Electricity Industry Restructuring Processes. Review of Economics and Institutions Vol 4(1) reports on the factors necessary to influencing electricity consumers to opt in for flexible tariffs and the adoption of interval meters.

promotion campaigns are likely to prove ineffective and only delay the public benefits until mandatory implementation kicks in at sometime during 2014.

4. Pricing incentives/disincentives would include immediate termination of “**Chargeback** rights” to those consumers who opt-out; and higher merchant service fees for those merchants with non-complying technology. Such a program is within the administrative control of the Card Companies and their members. It could be operational from 1 October 2014 delivering the benefits of higher opt-in behaviour in the near term and leaving the final laggards to come across via the mandatory cut over.

### **Comments on the Public Benefits and Detriments**

NBG believes that the heuristic **public benefits** of the proposed arrangements are to be found in:

1. More secure EFTPOS payments systems.
2. Lower levels of Fraud with the Cardholder present both to commence the transaction and at the end to PIN approve it. This overcomes the problems of authenticating signatures assuming the cardholder secures their PIN as the ePayments code requires. Thus the practice of “**Chargeback**” as part of the dispute resolution process is not required because of the use of PIN@POS technology.
3. Preventing unscrupulous cardholders exploiting the “full recourse chargeback” system operated by Card Issuers adding to merchant operating costs thus exacerbating the fraud profile of selected markets defined by Card Issuers.
4. Potentially lowering Cardholder and Merchant costs if card companies adopt more sophisticated risk management systems and pricing.
5. Aligning Australia with comparable jurisdictions in managing fraud at the transaction approval level.

NBG believes that the **public detriments** as outlined in the application present a worst case. We can advise that the Applicant’s concerns regarding tipping in Taxis are unfounded. NBG’s systems, used in Taxis since 2008, allow for tipping with PIN transactions. Alternatively, as is common practice in taxis and cafes, Cardholders can tip the driver or waiter with cash to ensure that they are rewarded directly and not the business owner.

### **Conclusion**

As stated at the outset, NBG would encourage an earlier introduction of compulsory PIN@POS transactions and the abolition of all signature approved transactions for all cards not just Visa and MasterCard. Ahead of the introduction of mandated PIN@POS, the proposed promotional program should be strengthened with a pricing and incentives program in the form we have outlined to encourage early switching by cardholders and merchants who have opted-out to date.

In approving the application NBG believes that as a condition of authorizing the conduct, the ACCC should obtain binding undertakings from the Applicants that where merchants provide PIN@POS (EMV standard compliant) and it involves a card present transaction, then financial risk and liability for the transactions is borne by the Cardholder or the Card Issuer and not by the Merchant (i.e. the practice of “**Chargeback**” as part of the dispute resolution process is not required because of the use of PIN@POS technology).

We are available to meet with the Commission officers to discuss any of the matters contained in this submission.

Yours sincerely



**David Hamilton**  
**General Manager**  
**Strategy and Regulation**