

19 July 2013

Your Ref:
Our Ref: KBE: 91739

Ms Marie Dalins
Director
Adjudication Branch
Australian Competition and Consumer Commission
23 Marcus Clarke Street
CANBERRA ACT 2601

By email: *Hayley.Parkes@accc.gov.au*

Dear Madam

Visa Worldwide Pte Ltd & Ors – Applications for Authorisation A91379 and A91380
Our client: American Express Australia Limited

We act for American Express Australia Limited (**AEAL**) and have been instructed to provide submissions on the likely public benefits and effect on competition, or any other public detriment, from the proposed arrangements outlined in the applications for authorisation A91379 and A91380 (**Applications**).

1 Introduction

This submission addresses only the application for interim authorisation to enable Visa Worldwide Pty Limited, Visa AP (**Visa**) and MasterCard Asia/Pacific Pte Limited (**MasterCard**) (collectively, the **Applicants**), in conjunction with the specified financial institutions, to commence a communications strategy to encourage the voluntary adoption of PIN@POS by cardholders and to jointly fund and agree to a public communications strategy concerning the implementation of voluntary PIN@POS in Australia (**Interim Authorisation Application**). A further submission on the application for final authorisation will be made in accordance with the Commission's timetable of 9 August 2013.

Doc Ref: 651728_1

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2 Confidentiality

AEAL has highlighted in yellow and preceded with the word “**CONFIDENTIAL**”, those parts of this submission which contain commercially sensitive information pertaining to the business of AEAL and/or other members of the American Express group of companies and in respect of which it asks the Commission to exclude from the public register and not to disclose to any other person (including the applicants) unless AEAL expressly waives such confidentiality. This confidential information has been deleted and replaced with **[CONFIDENTIAL INFORMATION DELETED]** in the public version of this submission.

3 AEAL is broadly supportive of the application for interim authorisation

AEAL is supportive of the Applicants’ application for interim authorisation, subject to certain conditions described below. AEAL considers those conditions necessary to ensure that the implementation of PIN@POS and the communication to encourage the voluntary adoption of PIN@POS by cardholders, is truly representative of all participants in the industry, such that it can be correctly identified as an industry wide approach, and not simply the imposition of the requirements of the two major participants in the payments technology industry.

4 AEAL’s competitive position

AEAL holds an Australian Financial Services Licence and an Australian credit licence. It is the issuer of American Express cards (proprietary cards) to individuals and businesses in Australia, a provider of insurance services to third parties and is also a merchant acquirer, meaning it directly contracts with Australian merchants to allow them to accept transactions on the American Express network. American Express Limited, a US company, licenses the four major Banks in Australia to issue American Express branded credit cards on the American Express network. Only merchants who have been acquired by (or on behalf of) AEAL and have signed a merchant agreement with American Express may accept and process American Express card transactions (for both proprietary and bank issued American Express cards).

AEAL differs from Visa and MasterCard in that Visa and MasterCard are network service providers only, meaning that they do not issue their own proprietary cards or acquire their own merchants, but rely on banks and other financial institutions to do so – this is called an ‘open loop’ or ‘four party’ model. AEAL maintains a ‘closed loop’ network meaning it is a card issuer, the merchant acquirer **and** a network service provider. American Express operates a ‘three party’ model in that there are only three major parties involved in every transaction – the cardholder, the merchant and American Express. AEAL competes directly and vigorously with Visa and MasterCard, including in relation to acceptance of their respective cards by merchants at POS. **CONFIDENTIAL:**

[CONFIDENTIAL INFORMATION DELETED].

Many Australian cardholders of American Express cards also hold one or both of a Visa or MasterCard. One reason for this is that many of the American Express branded cards issued by Australian banks are dual cards where the cardholder is issued with both a Visa or MasterCard and an American Express card, with both cards being linked to the one credit card account. As a result, most American Express cardholders will have a choice of credit cards to use at the point of sale.

As is the case with the Applicants, AEAL does not supply or own point of sale (**POS**) terminals or hardware. The majority of the POS terminals through which American Express card transactions, as well as those of Visa and MasterCard, are processed are owned by the banks or other financial institutions, major retailers and/or vendor companies who provide POS terminals. In order for American Express technology specifications or changes (software) to be implemented in the POS terminals, AEAL needs to reach agreement with the POS owners. As the smaller player in the market, holding only approximately 18% of market share¹, AEAL has very limited ability to control or influence POS functionality.

Given the competition which occurs between Visa and MasterCard, and AEAL for merchant acceptance of their respective cards, any factor which significantly impacts on the POS experience, for both cardholders and merchants, including, importantly where that experience differs for Visa and MasterCard cards on the one hand and American Express cards on the other hand, will detrimentally impact on the ability of AEAL to compete in the markets for the provision of credit cards and the acquisition of merchants in Australia. AEAL is also concerned to ensure that its cardholders are not disadvantaged at POS by the adoption of processes which could effectively shut them out of the ability to use their card of choice, should it be American Express, at POS.

The adoption of PIN@POS is, therefore, a critical factor which has the potential to impact on the POS experience, for both cardholders and merchants. It is, therefore, a matter in respect of which AEAL needs to understand what is, or may be proposed and to have sufficient time to formulate and adapt its own approach, if it is to remain competitive with Visa and MasterCard. The proposed public campaign to encourage the voluntary adoption of PIN@POS, which is the subject of the Interim Authorisation Application, is a crucial first step towards any change to the POS experience and, as such, and for the reasons set out in section 7 below, one in which AEAL seeks to have a role.

5 AEAL's attitude to PIN@POS

AEAL agrees that card fraud, as referred to in the Applicants' submission, involves significant detriment to all participants in the system – cardholders, merchants, issuers and acquirers. It welcomes any initiative which will assist in reducing card fraud, including the introduction of PIN@POS.

¹ According to statistics published the Reserve Bank of Australia, AEAL holds approximately 18% of the market for credit cards in Australia, with the remaining 81% being held by Visa and MasterCard and 1% or less by Diners.

AEAL also recognises that there are very substantial costs associated with changes to the POS process, both in terms of technology changes and education of merchants on the new requirements, and that, as the smaller player in the market, it has a limited ability to influence those changes. It recognises that there are public benefits in an industry wide move. However, an "industry wide" approach, must of necessity accommodate the requirements of all participants. While AEAL will comment further on the introduction of mandatory PIN@POS in its submission in respect of the application for final authorisation of PIN@POS, it submits that any authorisation in respect of PIN@POS, whether relating to encouragement of its voluntary adoption, or its mandatory introduction, should only be made after it and any other card issuer or network services provider, or financial institution which wishes to do so, has had an opportunity to fully understand what is involved and to participate in the decision making process.

6 The Industry Steering Committee

AEAL was invited to participate in the Industry Steering Committee (**Committee**) referred to in the applications for authorisation. AEAL representatives attended initially but, as a result of concerns to ensure that no possible breach of the *Competition and Consumer Act 2010* (Cth) (**CCA**) could occur regarding potential outcomes of those meetings, AEAL determined that it would not continue to participate in the Committee. Those concerns arise from its policy and practice of not collaborating with its scheme competitors or its issuing bank competitors on any matters and its concerns that discussions and agreement on matters relevant to any jointly funded marketing campaign, or the coordinated timing and terms of the mandatory introduction of PIN@POS could stray into areas where breach of the CCA could occur.

AEAL does not suggest that any breach of the CCA has occurred and its actions in withdrawing from the Committee should not be interpreted as suggesting the same. It believes that, in this case, participation in the Committee is critical to ensure that it is not placed at a competitive disadvantage vis a vis Visa and MasterCard. For so long as it remains unable to participate in Committee meetings without the protection of authorisation it will be placed at a competitive disadvantage, which could be sufficient to create substantial anti-competitive detriment that outweighs the public benefit of the otherwise valuable initiative to combat fraud.

AEAL believes that Visa and MasterCard and the financial institutions will welcome the participation of AEAL and other card providers in the Committee. It welcomes the fact that the Applicants have sought authorisation both on an interim basis for the publicity campaign to encourage voluntary adoption of PIN@POS and on a final basis for the coordinated implementation of mandatory PIN@POS. Provided that all competition concerns are addressed to the Commission's satisfaction, AEAL would seek to participate in the Committee, both in respect of the matters which are the subject of the Interim Authorisation Application (reasons for which are given in section 7 below) and the matters which are the subject of the applications for final authorisation (reasons for which will be provided in its submission in respect of final authorisation).

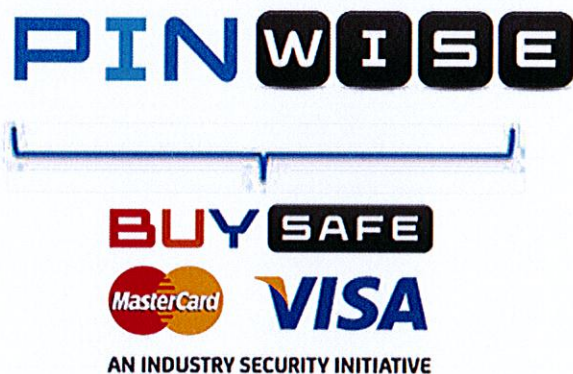
7 The Application for Interim Authorisation

As noted above, AEAL supports the Interim Authorisation Application and the proposed communication of the benefits of voluntary PIN@POS but considers that the conditions described in this section should be imposed on any such grant, in order to ensure that:

- a truly indicative industry wide approach is reached and communicated;
- consumers (cardholders) and merchants are given information which accurately reflects the views (and technological capabilities/requirements) of all industry participants; and
- the process does not result in an outcome that disadvantages AEAL and any other smaller competitors of Visa and MasterCard, especially when it comes to acceptance of cards at POS.

AEAL notes that the Applicants propose that “the joint communications will be at an industry wide level to ensure a common and consistent message to cardholders and merchants and to avoid confusion” (emphasis added). AEAL is supportive of a cardholder and merchant communications strategy which is truly representative of industry views.

AEAL has been provided with a copy of an email which it understands has already been sent to the cardholders of at least one financial institution, which contains the following logo:



A copy of the advertisement is attachment A to this letter.

AEAL is concerned, not just that the conduct for which interim authorisation is sought may have already commenced, but that, absent its participation in the publicity and marketing campaign to encourage voluntary participation of PIN@POS, such marketing:

- is misleading when it states that PINwise is an “industry security initiative” in circumstances where AEAL has had no involvement in the initiative;
- has significant potential to mislead cardholders and merchants, including into believing that use of a PIN is the only way to “Buy Safe”, that only MasterCard and Visa offer cards by which it is possible to “Buy Safe” and that, by omission of any

reference to American Express, American Express must by inference not offer cards by which it is possible to "Buy Safe".

AEAL is also concerned that the proposed campaign may advocate matters in respect of which AEAL, as an industry participant, does not agree. It is, however, in somewhat of a "chicken and egg" situation, in this respect as, unless it has the ability to participate fully in discussions and decisions regarding all aspects of the proposed campaign, it cannot know what such matters may be and cannot, therefore, provide specific details to the Commission.

Conditions Sought

AEAL considers that interim authorisation should be granted on condition that it and any other card provider or financial institution which wishes to do so (**Participants**) be permitted to participate in each of the matters raised in the submission made by Visa and MasterCard (at page 17). In order to ensure that the campaign does not result in any anti-competitive detriment to AEAL or mislead cardholders, merchants or potential cardholders or merchants, such a condition should, in AEAL's view extend specifically to permitting AEAL and such other Participants as wish to do so:

- (a) to have the right to have its name, and branding applied to all communications (including on the PINwise website, the PINwise logo, any cardmember communication and any point of sale advertising) with equal placement and prominence as that given to Visa and MasterCard;
- (b) the right of final approval of all campaign materials (including the PINwise website) on which its name and logos are used;
- (c) the removal of any reference to "industry initiative" on campaign materials (including the PINwise website) for which AEAL has not agreed to the use of its name and logos and/or which, in AEAL's opinion, acting fairly and reasonably, do not reflect its views.

AEAL considers that this is critical to ensure that American Express cardholders (and those of any other Participants) also understand the benefits of obtaining and activating a PIN for use at POS and that they do so voluntarily in a timeframe that is convenient to them. It is also critical to ensure AEAL is not placed at such an unfair competitive disadvantage that it substantially lessens competition. For instance, if 'industry' communications suggest (as we believe the current drafts do) that the only way to 'be safe' from fraud is to use Visa and MasterCard, this would not only be misleading but would do extreme damage to AEAL's ability to compete.

AEAL is happy to contribute to the costs of the campaign on a fair and reasonable basis.

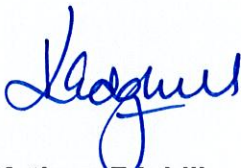
AEAL also considers that, in order for such participation to occur, it will also be necessary for AEAL (and any other Providers) to participate in future Committee meetings at which such matters are discussed and agreed, noting that discussion and agreement on the terms and timing of the implementation of any mandatory PIN@POS by the Applicants or any other party must not occur pending a grant of final authorisation. Accordingly, AEAL seeks that a condition be placed on any interim approval allowing its right of participation in future Committee meetings.

Finally, AEAL asks the Commission to require, as a grant of interim authorisation, that no further communications be issued (including, importantly those which contain the logo copied above) until such time as the conditions referred to above have been imposed and met. In this regard, AEAL submits that there will be no decrease in public benefits, or in fact, any public detriment in delaying the commencement of the proposed communication program. Even if there was to be any decrease in public benefit or increase in public detriment, AEAL considers that the potential for significant anti-competitive detriment would far outweigh it. In this regard, AEAL notes that it was first approached in relation to the Committee and proposed PIN @ POS changes in Australia in September 2012. It is not aware of any notable increase in card-present fraud statistics since that time and so does not consider that there can be any sudden urgency surrounding the launch of the voluntary public communications campaign.

AEAL would be happy to elaborate on any matters raised in this submission should the Commission require it.

Yours faithfully

TRUMAN HOYLE



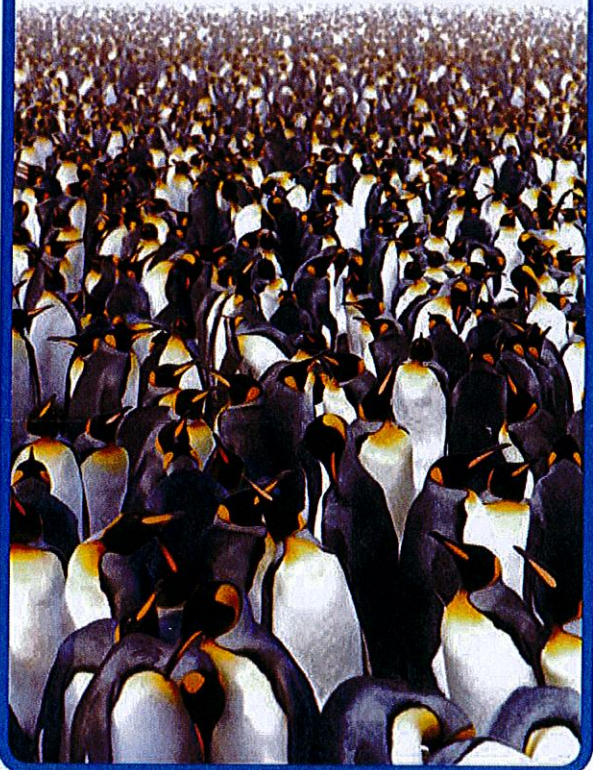
Kathryn Edghill

Partner

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One of these
penguins is your
credit card *PIN

This is how hard it is for someone to guess it.



Be *PINWISE

BUY SAFE
MasterCard VISA
AN INDUSTRY SECURITY INITIATIVE

There is only a one
in 10,000 chance of
someone guessing
your *PIN

Using your PIN for credit card purchases is safer than signing. There is only a one in ten thousand chance of someone guessing your PIN. And your signature is there for all to see, but only you know your PIN.

So instead of signing be PIN wise.

If you don't know your PIN, call us on
1300 135 538 anytime of the day or night
and we will send you a new one.

Be *PINWISE

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