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2 September 2013

**BY EMAIL**

**PUBLIC REGISTER VERSION**

Ms Hayley Parkes & Ms Marie Dalins  
Assistant Director / Director  
Australian Competition & Consumer Commission



Dear Ms Parkes and Ms Dalins

**Authorisations A91379 & A91380**

We refer to the above applications for authorisation.

Please find enclosed:

- amended versions of Form A and Form B, to include American Express in the conduct;
- application for interim authorisation for American Express to assess the feasibility of it implementing a PIN@POS mandate and for it to participate in the conduct for which the parties have sought interim authorisation.

The Applicants submit that:

- the public benefits set out in the original submission increase with the participation of American Express in the conduct; and
- no public detriment arises as a result of the participation of American Express.

The Applicants also note that the participation of American Express in the proposed conduct does not raise any additional issues to those the subject of the ACCC's consultation process. The participation of American Express will address the concerns raised by American Express in its submission on the initial application for interim authorisation. Further, the Reserve Bank of Australia has expressly noted that it would not object to the participation by other card schemes in the PIN@POS initiative.

For these reasons, and on the basis of the public benefits outlined in the original submission, the Applicants submit that the ACCC should authorise the proposed conduct.

The Applicants also submit that interim authorisation should be granted for American Express to participate, for the reasons outlined in the attached document.

Finally, the Applicants wish to note the following matters for completeness. As the ACCC may be aware, Diners Club is represented in Australia by Citigroup, which is one of the Participating Financial Institutions. Diners Club supports the authorisation. The Applicants understand that Diners Club has decided that its logo should be included in the various PIN@POS materials and that Diners Club will make a unilateral decision as to mandating PIN@POS on its own network.

AUSTRALIA BELGIUM CHINA FRANCE GERMANY HONG KONG SAR INDONESIA (ASSOCIATED OFFICE) ITALY JAPAN PAPUA NEW GUINEA  
SAUDI ARABIA SINGAPORE SPAIN SWEDEN UNITED ARAB EMIRATES UNITED KINGDOM UNITED STATES OF AMERICA

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226422420.02

Yours faithfully

A handwritten signature in blue ink that reads "Ashurst Australia". The signature is written in a cursive, flowing style.

**Ashurst Australia**

# Form A

Commonwealth of Australia

*Competition and Consumer Act 2010 — subsections 88 (1A) and (1)*

## EXCLUSIONARY PROVISIONS AND ASSOCIATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Competition and Consumer Act 2010* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act.
- to make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision within the meaning of section 45 of that Act.

*(Strike out whichever is not applicable)*

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

### 1. Applicant

(a) Name of Applicant:

A91379 Visa Worldwide Pte Limited and Visa AP (Australia) Pty Ltd (collectively, **Visa**) and  
MasterCard Asia/Pacific Pte Ltd (**MasterCard**) (collectively, the **Applicants**)

(b) Description of business carried on by applicant:

**Visa Worldwide Pte Limited and Visa AP (Australia) Pty Ltd**

Visa is a global payments technology company which, under the Visa brand, provides payment processing services to its financial institution clients. Those services include transaction processing, risk management and information services. Visa does not directly contract with cardholders for the provision of such services; specifically it does not issue cards, extend credit or set rates or fees for merchants and cardholders. Visa's financial institution clients would enter into the relevant contractual relationships with cardholders.

Visa Worldwide Pte Limited holds relationships with Australian financial institutions. Visa AP (Australia) Pty Ltd provides a supporting role to Visa Worldwide in managing and supporting these relationships.

#### **MasterCard Asia/Pacific Pte Ltd**

MasterCard is a technology company in the global payments industry. It operates the world's fastest payments processing network, connecting cardholders, financial institutions, merchants, governments and businesses in more than 210 countries and territories. MasterCard's products and solutions make everyday commerce activities – such as shopping, traveling, running a business and managing finances – easier, more secure and more efficient for everyone.

- (c) Address in Australia for service of documents on the applicant:

c/- Peter Armitage  
Partner  
Ashurst Australia  
Level 35, Grosvenor Place  
225 George Street,  
SYDNEY NSW 2000

## **2. Contract, arrangement or understanding**

- (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:

See 2(b) below.

- (b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, exclusionary provisions and (if applicable) are, or would or might be, cartel provisions:

The conduct for which authorisation is sought is, from the date of authorisation or interim authorisation if granted:

- (a) the Applicants and American Express and/or Participating FI's (together, **Participating Third Parties**) making arrangements and/or arriving at understandings containing provisions that:

(i) -MasterCard will implement a PIN@POS mandate in terms and timing the same as, or substantially similar to Visa's current PIN@POS mandate (the key aspects of Visa's mandate are contained at 4.8 of the supporting submission); and/or

(ii) American Express will implement a PIN@POS mandate that has the same or substantially the same effect as Visa's current PIN@POS mandate, although the terms of that mandate may be different to take account of the differences in the American Express card scheme.

- (a) -and giving effect to those arrangements or understandings;
- (b) the Applicants (or one of them) and Participating ~~FI's~~Third Parties, making arrangements and/or arriving at understandings and giving effect to arrangements and understandings which contain provisions that they, or some of them, will jointly fund the preparation, modification and implementation of a public communications strategy concerning the implementation of mandatory PIN@POS in Australia;
- (c) the Applicants (or one of them) and Participating ~~FI's~~Third Parties, making arrangements and/or arriving at understandings and giving effect to arrangements and understandings which contain provisions that they, or some of them, will jointly agree upon the terms on which the public communications strategy concerning the implementation of mandatory PIN@POS in Australia will be implemented; and
- (d) the Applicants (or one of them) and Participating Third Parties~~FI's~~, making arrangements and/or arriving at understandings and giving effect to arrangements and understandings which contain provisions that they or some of them will adopt and adhere to the public communications strategy.

This conduct is referred to in the attached supporting submission as "the Arrangements".

For the avoidance of doubt, the Applicants do not seek authorisation of the conduct outlined in sections 4.6 and 4.11 of the supporting submission, to the extent already engaged in.

The Applicants do not concede that the Arrangements, for which authorisation is sought, do, or would, contravene the CCA, but wish to have the certainty and protection afforded by authorisation.

There is nothing in this conduct that would preclude the Applicants from competing generally, or specifically, in respect of other card transaction security measures.

- (c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

Refer to the supporting submission.

- (d) The term for which authorisation of the provision of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

Authorisation is sought for the period ending 30 June 2015. For more details, refer to the supporting submission – section 12.

### **3. Parties to the proposed arrangement**

- (a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

The Arrangements will be entered into and given effect to by the Applicants and the Participating ~~Financial Institutions~~Third Parties or some of them.

Refer to the supporting submission – sections 2.1, 2.2 and 4.4.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:

For details of the Participating Financial Institutions, refer to section 4.4 of the supporting submission. Each of them carries on business as a financial institution.

American Express Australia Limited is the holder of a Financial Services Licence and an Australian credit licence. It is the issuer of American Express 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's contact details are:

c/o Kathryn Edghill  
Partner  
Truman Hoyle Lawyers  
Level 11, 68 Pitt Street  
Sydney, NSW 2000  
PH: 9226 9888

#### **4. Public benefit claims**

- (a) Arguments in support of application for authorisation:

Refer to the supporting submission – section 8.

- (b) Facts and evidence relied upon in support of these claims:

Refer to the supporting submission – sections 3 and 4.

#### **5. Market definition**

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

Refer to the supporting submission – section 6.

#### **6. Public detriments**

- (a) Detriments to the public resulting or likely to result from the contract arrangement or understanding for which authorisation is sought, in particular the likely effect of the contract arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:

No detriments to the public are likely to result from the Arrangements. Refer to the supporting submission – section 9.

- (b) Facts and evidence relevant to these detriments:

Refer to the supporting submission – section 9.

#### **7. Contracts, arrangements or understandings in similar terms**

- (a) This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding:

- (b) Is this application to be so expressed?

No.

- (c) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:

Not applicable.

- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

Not applicable.

- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

Not applicable.

## 8. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?

No.

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Not applicable.

- (c) If so, by whom or on whose behalf are those other applications being made?

Not applicable.

## 9. Further information

- (a) Name, postal address and telephone contact details of the person authorised by the applicant seeking authorisation to provide additional information in relation to this application:

Peter Armitage

Partner

Ashurst Australia

Level 35, Grosvenor Place

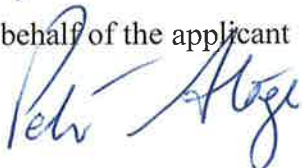
225 George Street

SYDNEY NSW 2000

+61 2 9258 6119

Dated 2 September 2013

Signed by/on behalf of the applicant



Peter Armitage  
Ashurst Australia  
Partner



## DIRECTIONS

1. Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

In lodging this form, applicants must include all information, including supporting evidence, that they wish the Commission to take into account in assessing their application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which authorisation is sought.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, exclusionary provisions. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and
  - (b) to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
  6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
  7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for authorisation.
  8. Provide details of the detriments to the public, including those resulting from any lessening of competition, which may result from the proposed contract, arrangement or understanding. Provide quantification of those detriments where possible.

9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.
10. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, and descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.

## Form B

Commonwealth of Australia

*Competition and Consumer Act 2010 — subsections 88 (1A) and (1)*

### AGREEMENTS AFFECTING COMPETITION OR INCORPORATING RELATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Competition and Consumer Act 2010* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act).
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act).
- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

*(Strike out whichever is not applicable)*

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

#### 1. Applicant

(a) Name of Applicants:

A91380 Visa Worldwide Pte Limited and Visa AP (Australia) Pty Ltd (collectively, **Visa**) and  
MasterCard Asia/Pacific Pte Ltd (**MasterCard**) (collectively, the **Applicants**)

- (b) Short description of business carried on by the Applicants:

**Visa Worldwide Pte Limited and Visa AP (Australia) Pty Ltd**

Visa is a global payments technology company which, under the Visa brand, provides payment processing services to its financial institution clients. Those services include transaction processing, risk management and information services. Visa does not directly contract with cardholders for the provision of such services; specifically it does not issue cards, extend credit or set rates or fees for merchants and cardholders. Visa's financial institution clients would enter into the relevant contractual relationships with cardholders.

Visa Worldwide Pte Limited holds relationships with Australian financial institutions. Visa AP (Australia) Pty Ltd provides a supporting role to Visa Worldwide in managing and supporting these relationships.

**MasterCard Asia/Pacific Pte Ltd**

MasterCard is a technology company in the global payments industry. It operates the world's fastest payments processing network, connecting cardholders, financial institutions, merchants, governments and businesses in more than 210 countries and territories. MasterCard's products and solutions make everyday commerce activities – such as shopping, traveling, running a business and managing finances – easier, more secure and more efficient for everyone.

- (c) Address in Australia for service of documents on the Applicants:

c/- Peter Armitage  
Partner  
Ashurst Australia  
Level 35, Grosvenor Place  
225 George Street,  
SYDNEY NSW 2000

**2. Contract, arrangement or understanding**

- (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:

See 2(b) below.

- (b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, cartel provisions, or that do, or would or might, have the effect of substantially lessening competition:

The conduct for which authorisation is sought is, from the date of authorisation or interim authorisation if granted:

(a) the Applicants and American Express and/or Participating FI's (together, **Participating Third Parties**) making arrangements and/or arriving at understandings containing provisions that:

(i) -MasterCard and/or American Express will implement a PIN@POS mandate in terms and timing the same as, or substantially similar to Visa's current PIN@POS mandate (the key aspects of Visa's mandate are contained at 4.8 of the supporting submission); and/or

(ii) American Express will implement a PIN@POS mandate that has the same or substantially the same effect as Visa's current PIN@POS mandate, although the terms of that mandate may be different to take account of the differences in the American Express card scheme.

- (a) and giving effect to those arrangements or understandings;
- (b) the Applicants (or one of them) and Participating ~~FI's~~Third Parties, making arrangements and/or arriving at understandings and giving effect to arrangements and understandings which contain provisions that they, or some of them, will jointly fund the preparation, modification and implementation of a public communications strategy concerning the implementation of mandatory PIN@POS in Australia;
- (c) the Applicants (or one of them) and Participating ~~FI's~~Third Parties, making arrangements and/or arriving at understandings and giving effect to arrangements and understandings which contain provisions that they, or some of them, will jointly agree upon the terms on which the public communications strategy concerning the implementation of mandatory PIN@POS in Australia will be implemented; and
- (d) the Applicants (or one of them) and Participating ~~FI's~~Third Parties, making arrangements and/or arriving at understandings and giving effect to arrangements and understandings which contain provisions that they or some of them will adopt and adhere to the public communications strategy.

This conduct is referred to in the attached supporting submission as "the Arrangements".

For the avoidance of doubt, the Applicants do not seek authorisation of the conduct outlined in sections 4.6 and 4.11 of the supporting submission, to the extent already engaged in.

The Applicants do not concede that the Arrangements, for which authorisation is sought, do, or would, contravene the CCA, but wish to have the certainty and protection afforded by authorisation.

There is nothing in this conduct that would preclude the Applicants from competing generally, or specifically, in respect of other card transaction security measures.

- (c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

Refer to the supporting submission.

- (d) The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

Authorisation is sought for the period ending 30 June 2015. For more details, refer to the supporting submission – section 12.

### **3. Parties to the proposed arrangement**

- (a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

The Arrangements will be entered into and given effect to by the Applicants and the Participating ~~Financial Institutions~~Third Parties or some of them.

Refer to the supporting submission – sections 2.1, 2.2 and 4.4.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:

For details of the Participating Financial Institutions, refer to section 4.4 of the supporting submission. Each of them carries on business as a financial institution.

American Express Australia Limited is the holder of a Financial Services Licence and an Australian credit licence. It is the issuer of American Express 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's contact details are:

c/o Kathryn Edghill  
Partner  
Truman Hoyle Lawyers  
Level 11, 68 Pitt Street  
Sydney, NSW 2000  
PH: 9226 9888

#### **4. Public benefit claims**

- (a) Arguments in support of authorisation:

Refer to the supporting submission – section 8.

- (b) Facts and evidence relied upon in support of these claims:

Refer to the supporting submission – sections 3 and 4.

#### **5. Market definition**

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

Refer to the supporting submission – section 6.

#### **6. Public detriments**

- (a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:

No detriments to the public are likely to result from the Arrangements. Refer to the supporting submission – section 9.

- (b) Facts and evidence relevant to these detriments:

Refer to the supporting submission – section 9.

#### **7. Contract, arrangements or understandings in similar terms**

This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.

- (a) Is this application to be so expressed?

No.

- (b) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:

Not applicable.

- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

Not applicable.

- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

Not applicable.

## 8. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?

No.

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Not applicable.

- (c) If so, by whom or on whose behalf are those other applications being made?

Not applicable.

## 9. Further information

- (a) Name and address of person authorised by the Applicants to provide additional information in relation to this application:

Peter Armitage

Partner

Ashurst Australia

Level 35, Grosvenor Place

225 George Street

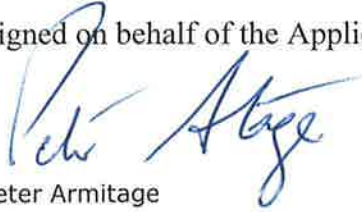
SYDNEY NSW 2000

+61 2 9258 6119

Dated

2 September 2013

Signed on behalf of the Applicants

A handwritten signature in blue ink, appearing to read 'Peter Armitage', is written over the printed name.

Peter Armitage  
Ashurst Australia  
Partner



## DIRECTIONS

1. Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

In lodging this form, applicants must include all information, including supporting evidence, that they wish the Commission to take into account in assessing the application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions. Provide details of those provisions of the contract, arrangement or understanding that do, or would or might, substantially lessen competition.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and
  - (b) to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
  6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.

7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the authorisation.
8. Provide details of the detriments to the public which may result from the proposed contract, arrangement or understanding including quantification of those detriments where possible.
9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.

## **INTERIM AUTHORISATION FOR AMEX TO PARTICIPATE**

The Applicants seek interim authorisation, for the period from the date of interim authorisation, if granted, until final authorisation comes into effect or is refused, to enable the Applicants and one or more of the Participating Financial Institutions (**FI's**) to:

- (i) participate in meetings and discussions with American Express (**Amex**) (including Steering Committee meetings) with a view to Amex assessing the feasibility of it implementing a PIN@POS mandate that has the same or substantially the same effect as Visa's current PIN@POS mandate;
- (ii) agree with Amex on the terms, if any, on which Amex will share in the funding of the preparation, modification and implementation of a public communications strategy concerning the promotion of the adoption of PIN@POS in Australia;
- (iii) agree with Amex upon the content of, and terms on which the public communications strategy concerning the promotion of the voluntary adoption of PIN@POS in Australia will be implemented, including but not limited to, the terms on which the Amex name and trademarks and references to "industry initiative" will or will not be used in the public communications strategy; and
- (iv) agree with Amex to adopt and adhere to the public communications strategy agreed pursuant to paragraphs (ii) and (iii) above in relation to the promotion of the voluntary adoption of PIN@POS in Australia.

For the avoidance of doubt, agreement by Amex to implement a PIN@POS mandate would not be reached unless and until final authorisation of that conduct is granted by the ACCC.

The Applicants submit that interim authorisation should be granted for the following reasons:

### **(a) The interim arrangements are not anti-competitive and will have no anti-competitive impact on any relevant markets**

The interim arrangements for which authorisation is sought are not anti-competitive and will have no impact on any relevant markets for the following two reasons.

Firstly, the discussions contemplated in (i) are purely exploratory. They are designed to facilitate Amex gaining an understanding of what might be involved if it were to implement a PIN@POS mandate that had the same or substantially the same effect as Visa's. Those discussions would enable Amex to assess whether such action would be possible from its perspective, in all the circumstances (for example, taking into account any technical and other constraints).

The discussions contemplated in (i) will not result in any agreement by Amex with the Applicants to implement a PIN@POS mandate (or equivalent) with the same effect as Visa's. Interim authorisation is sought in relation to these discussions only for the abundance of caution. For these reasons, the arrangements in (i) will have no effect on competition whatsoever.

Secondly, the agreements contemplated in (ii)-(iv) are (as described in authorisation applications A91379 and A91390) not in any material sense anti-competitive and will do no harm to competition in the period of interim authorisation. The fact that Amex would also be participating in those agreements if this application for interim authorisation is approved would not, from a competition perspective, change the nature of those agreements.

**(b) The urgency of the request is clear**

The urgency considerations which the parties have previously submitted exist in relation applications A91379 and A91390 also apply to the conduct described in (ii)-(iv) above.

In addition, the parties submit that there is an urgent need for authorisation of the conduct in (i), to enable Amex to commence exploration of whether it is feasible for it to introduce a PIN@POS mandate in terms and timing the same as, or substantially similar to Visa's current PIN@POS mandate. This exploration will take some time. The urgency in relation to this aspect is the result of Amex's recent decision that it wishes to participate in the PIN@POS initiative. If Amex does not commence these discussions urgently, then it will not be in a position to participate in the PIN@POS initiative in conjunction with Visa and MasterCard. The potential consequences of this are discussed further below.

**(c) Interim authorisation will not harm other parties**

Interim authorisation of the conduct described in (i)-(iv) above will not harm other parties.

The discussions in (i) are exploratory and no agreement would be reached between the Applicants or Participating FI's and Amex in relation to implementation by Amex of the PIN@POS mandate.

Further, participation by Amex in the activities in (ii)-(iv) will not cause any harm to other parties and will, for the reasons described in A91379 and A91390, materially assist the current timetable to be observed.

**(d) Counterfactual**

In the event that interim authorisation is not granted for the conduct described in this application (though assuming for present purposes that it is provided in relation to the interim conduct described in A91379 and A91390), the likely outcomes would be:

- (i) Amex's understanding of its ability and willingness to participate in a joint PIN@POS mandate would be significantly delayed, and would not commence until (if and when) the ACCC granted final authorisation to the parties;
- (ii) roll-out of joint marketing material would not include Amex, while the parties awaited the ACCC's decision on the final authorisation;
- (iii) roll-out of voluntary then mandatory PIN@POS would be fragmented as Amex would not be in a position to be able to introduce mandatory PIN@POS at the same time as Visa and MasterCard, which would result in additional costs for participating FI's;
- (iv) a fragmented roll-out of PIN@POS would also have an impact on the joint marketing material that could be issued, as Amex could not participate in joint marketing that advertised the key dates for mandatory PIN@POS by Visa and MasterCard and would need to run its own communications campaign for its own implementation timetable; and
- (v) as a result of any delays, fraud perpetrators would have a longer period in which to continue to take advantage of the existence of signature as opposed to PIN as a means of verifying a chip card at POS.