



**Visa Worldwide Pte Limited & Ors –
application for authorisation A91379 & A91380
Interim authorisation decision
18 September 2013**

Decision

The Australian Competition and Consumer Commission (the ACCC) has granted interim authorisation in respect of the application for authorisation lodged by Visa Worldwide Pte Limited, Visa AP (Australia) Pty Ltd and MasterCard Asia/Pacific Pte Ltd (the **Applicants**) on 4 July 2013.

The interim authorisation the subject of this decision differs from the scope of the application for substantive authorisation which is described in more detail below.

Interim authorisation is granted to enable the Applicants and one or more of the Participating Financial Institutions¹ to make arrangements and/or arrive at understandings and give effect to those arrangements and/or understandings to jointly:

- fund the preparation, modification, and implementation of a public communications strategy concerning the promotion of the voluntary adoption of PIN@POS in Australia;
- agree upon the terms on which the public communications strategy concerning the promotion of the voluntary adoption of PIN@POS in Australia will be implemented; and
- agree to adopt and adhere to the public communications strategy in relation to the promotion of the voluntary adoption of PIN@POS in Australia,

(collectively, the **interim arrangements**).

Interim authorisation commences immediately and will remain in place until it is revoked or the date the ACCC's final determination comes into effect.

¹ The Participating Financial Institutions are Australia and New Zealand Banking Group Limited, Bank of Western Australia Ltd, Citigroup Pty Ltd, Commonwealth Bank of Australia, Cuscal Limited, GE Capital Finance Australia, HSBC Bank Australia Limited, Indue Ltd, National Australia Bank Limited and Westpac Banking Corporation.

The application for authorisation

The Applicants seek authorisation to make and give effect to arrangements between themselves, American Express and Participating Financial Institutions regarding the implementation of **mandatory** use of PINs at points of sale ("**PIN@POS**") (i.e. the removal of signatures as a method of authorisation).

In general terms, the Applicants are seeking authorisation to make and give effect to arrangements with each other and Participating Financial Institutions that provide that:

- (a) MasterCard will implement mandatory PIN@POS on the same terms and with the same timeframes as Visa's existing rules in relation to mandatory PIN@POS,
- (b) American Express will implement mandatory PIN@POS that has the same or substantially the same effect as Visa's existing rules in relation to mandatory PIN@POS, although the terms of the mandate may be different; and
- (c) the Applicants, American Express and Participating Financial Institutions will jointly fund a public communications strategy, agree on and adhere to terms regarding that strategy.

American Express was included in the application following amendments made by the Applicants on 2 September 2013.

The Applicants have sought authorisation until 30 June 2015, as the scheduled date for final changes to be made in relation to the implementation of mandatory PIN@POS (currently 30 June 2014) may require extension.

The Applicants also made a further request for interim authorisation (on 2 September 2013) to allow the parties to agree a range of matters with American Express regarding the public communications strategy for the adoption of PIN@POS in Australia. This request will be assessed in a subsequent decision by the ACCC.

The authorisation process

Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (the Act). Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition.

The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

Interim authorisation

Section 91 of the Act allows the ACCC to grant interim authorisation where the ACCC considers it appropriate to allow the parties to engage in the conduct while the ACCC is considering the substantive application for authorisation.

The Applicants requested interim authorisation on the basis that:

- the interim arrangements are not anti-competitive and will have no anti-competitive impact on any relevant market;
- the urgency of the request is clear; and
- the grant of interim authorisation will not harm other parties.

Consultation

The ACCC invited submissions from interested parties in order to consider the request for interim authorisation.

In addition to the submissions made by the Applicants, the ACCC has received a number of submissions from 22 interested parties, on issues relating to both the applications for substantive and interim authorisation.

The majority of these submissions support the joint implementation of mandatory PIN@POS by the Applicants and financial institutions, and did not specifically raise concerns regarding the granting of interim authorisation.

Submissions specifically in support of the granting of interim authorisation were received from a range of parties including retailers (Australian Retailers Association), the Reserve Bank of Australia (RBA) and financial institutions (CBA and Bendigo Bank).

These submissions note that substantial time is necessary for consumer and cardholder education to occur prior to the switch to mandatory PIN@POS. In this regard, granting interim authorisation to permit the initial phase of the communications campaign will provide benefits to cardholders, merchants and financial institutions.

The RBA noted a concern that the industry campaign should not disadvantage other competitors for payment transactions (e.g. EFTPOS). In the context of the application for substantive authorisation, PayPal also raised a similar concern. The Applicants responded to this concern by noting that the marketing materials are intended to change the behaviour of consumers and do not in any way suggest that other payment systems are not a secure way to make a payment.

American Express initially raised a number of concerns in relation to the proposed marketing campaign which will be the subject of interim authorisation. American Express was concerned to ensure that any marketing material truly represented the views of the whole industry (not just Visa and MasterCard) and would not disadvantage American Express. It sought a number of conditions on any granting of interim authorisation to resolve those concerns.

Amex has now advised that its concerns have been addressed by Visa and MasterCard and that it no longer seeks any conditions on the ACCC's approval of interim authorisation. Amex has advised that it will have the opportunity to include by way of incorporating its name and marks on the PINwise logo to be used in the campaign.

The ACCC notes that the Applicants have made a further request for interim authorisation (see above) and amended the substantive request for authorisation in a way that would permit Amex to participate, should substantive authorisation be granted.

The Applicants have also advised that the Diners Club logo will be included in the various PIN@POS communications materials and that Diners Club will make a unilateral decision as to mandating PIN@POS on its own network.

Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's website www.accc.gov.au/authorisations.

Reasons for decision

The ACCC has decided to grant interim authorisation for the following reasons:

- Granting the interim authorisation would permit the Applicants and participating financial institutions to jointly fund and coordinate in relation to an awareness campaign that is designed to encourage the voluntary take up of PIN usage by cardholders.
- As the concerns raised by American Express have been resolved by the parties, the ACCC does not consider that granting interim authorisation would cause harm to the interested parties. The ACCC notes that the public communications campaign will not require any technology or systems changes by banks or merchants, and therefore will not result in any substantive changes regarding the processing of transactions at the point of sale.
- A coordinated approach from industry in relation to the marketing of PIN usage is likely to reduce customer confusion and provide some efficiencies by combining resources between the card schemes and financial institutions (i.e. common branding, common public campaign website).

The ACCC's decision to permit the card schemes and financial institutions to engage in a joint marketing campaign does not also constitute approval of any marketing materials that will be the subject of that campaign.

The ACCC notes that it is currently considering whether Visa, MasterCard, American Express and specific financial institutions should be permitted to coordinate their activities in relation to the removal of signatures as a method of authentication for particular types of credit card transactions.

Reconsideration of interim authorisation

The ACCC may review the interim authorisation at any time. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.