



**Australian
Competition &
Consumer
Commission**

Our Ref: 60537
Contact Officer: Fei Wu
Contact Phone: (03) 9290 1987

GPO Box 3131
Canberra ACT 2601
23 Marcus Clarke Street
Canberra ACT 2601
tel: (02) 6243 1111
fax: (02) 6243 1199
www.accc.gov.au

28 July 2016

Sent by email

Dear Sir/Madam

Bendigo and Adelaide Bank & ors – applications for authorisation A91546 & A91547 – interested party consultation

The Australian Competition and Consumer Commission (the **ACCC**) has received applications for authorisation and interim authorisation from Bendigo and Adelaide Bank, Commonwealth Bank of Australia, National Australia Bank and Westpac Banking Corporation (together, the **Applicants**).

The Applicants are seeking authorisation to collectively bargain with providers of 'third party' mobile wallets (**Third Party Wallet Providers**), such as ApplePay, on issues relating to the supply of mobile wallets or mobile payment services. A mobile wallet is a smartphone application or service that facilitates mobile payments and may also store other information, such as merchant stored value or loyalty cards. The Applicants are also seeking authorisation to enter into a collective boycott to prevent individual negotiations while collective negotiations are on foot. The Applicants are requesting that the authorisation extend to other card issuers who wish to participate in the collective bargaining.

The ACCC invites you to comment on the applications and the request for interim authorisation. Please see the ACCC's online publication [Authorisation process - the basics](#) for a summary of the authorisation process and how to make a submission to the ACCC.

The applications for authorisation

The Applicants are Australian financial institutions providing a range of personal, retail, business and institutional banking services. The Applicants have each developed a range of mobile wallets for their own cards and cardholders.

Third Party Wallet Providers (e.g. Apple, Google and Samsung) develop and offer mobile wallets to card-issuing financial institutions such as the Applicants. Third party wallets do not include the mobile wallets developed by the Applicants or by card schemes (e.g. Visa or MasterCard).

Collective bargaining

The Applicants are seeking authorisation to collectively bargain with Third Party Wallet Providers in relation to the following issues:

- **Non-exclusivity:** not being prevented or restricted from:
 - accessing payment functionalities built in to devices manufactured by or for Third Party Wallet Providers or used in operating systems developed or distributed by Third Party Wallet Providers (e.g. near-field communication technology used in contactless cards and certain smartphones), or
 - in any other way deploying, developing or participating in other mobile wallets or mobile payment services on any mobile devices or platforms.
- **Industry standards:** the adoption of agreed industry standards or guidelines, or the agreement of best practice principles and technical standards relating to the safety, security and stability of mobile payments systems in Australia.
- **Efficiency and transparency of fees:** the ability to disclose and pass through to cardholders any fees or charges imposed by Third Party Wallet Providers.

Collective boycott

The Applicants are also seeking authorisation to enter into a limited collective boycott where the Applicants and any other card issuers who elect to participate will agree not to negotiate individually with the relevant Third Party Wallet while the collective bargaining is ongoing.

Duration

Authorisation is sought for a period of three years. Once commenced, any collective bargaining and collective boycott would continue for a maximum of 12 months, unless extended by the agreement of the collective bargaining group.

A full copy of the applications for authorisation is available on the ACCC's website www.accc.gov.au/AuthorisationsRegister. A copy of the application and supporting submission is also enclosed with this letter.

Interim authorisation

The Applicants have requested urgent interim authorisation.

Interim authorisation is sought to enable the Applicants, and any other card issuers who wish to join, to commence collective negotiations on the above issues while the ACCC is considering the application. The Applicants submit that this is a critical time for mobile wallets and mobile payments in Australia and that, without interim authorisation, it is likely that individual card issuers will be forced to accept terms and conditions on the above issues that are not desirable.

Any collectively negotiated terms would be subject to final authorisation by the ACCC.

The ACCC endeavours to deal with requests for interim authorisation quickly. In making an assessment as to whether it is appropriate to grant interim authorisation, the ACCC is not required to undertake a full assessment of the benefit and detriment likely to arise as a result of the proposed conduct.

Request for submissions

The ACCC invites you to comment on the applications and the request for interim authorisation. Please see specific questions below.

The ACCC encourages you to read the supporting submission to the applications prior to lodging a submission.

Submissions should be emailed to adjudication@acc.gov.au with the subject 'A91525 & A91546 & A91547 – Bendigo and Adelaide Bank & ors – submission'.

The authorisation review process is a public process. Accordingly, submissions—including oral submissions—are placed on the ACCC's public register unless a confidentiality claim is made. When making a submission, please confirm that you consent to the submission being placed on the public register, or make a request that your submission (or parts thereof) be excluded from the public register. If you wish to exclude some or all of your submission from the public register, please see the ACCC's online publication [Guidelines for excluding information from the public register](#).

Please feel free to forward this letter to any other party who may wish to make a submission to the ACCC regarding the applications.

Submissions on interim authorisation

The ACCC decides whether to grant interim authorisation on a case by case basis. Should an applicant request interim authorisation, the ACCC will usually consider a range of factors, including:

- harm to the applicant and other parties if interim authorisation is or is not granted
- possible benefit and detriment to the public
- the urgency of the matter
- whether the market would be able to return to substantially its pre-interim state if the ACCC should later deny authorisation.

If you intend to provide a submission on the interim authorisation application, having regard to the above factors, please do so by **4 August 2016**.

Submissions on substantive application

The ACCC invites you to make a submission on the likely public benefits and effect on competition, or any other public detriment, that may arise from the proposed conduct. You are also free to comment on any other issue you consider relevant to the ACCC's assessment.

In particular, the ACCC would appreciate your views on the following issues:

The ACCC notes that the proposed conduct relates to collective negotiations with Third Party Wallet Providers. In the first instance, this will likely involve negotiating with Apple regarding ApplePay. However please feel free to respond to the below questions in relation to any Third Party Wallet Providers.

Likely future without

1. Please comment on how contactless payments are likely to develop in Australia over the next five years.
2. Absent the proposed collective negotiations, do you see the use of ApplePay becoming widespread in Australia? For example, are banks likely to accept the terms offered by Apple?
3. How would the situation be different with the collective bargaining/boycott?

Areas of competition

4. Please provide any comments regarding the area(s) of competition that may be affected by the collective bargaining/boycott.

Public benefits and detriments

5. To what extent do consumers value ApplePay and expect their bank to offer payments via ApplePay?
6. The Applicants submit that the negotiations will relate to:
 - a. enabling card issuers to participate in any mobile payment/wallet services (e.g. on Apple devices)
 - b. standards regarding fraud and security (such as the APCA Third Party Digital Wallet Security Industry Guidelines)
 - c. the ability of issuers to pass on fees imposed by third party wallet providers.

Do you consider that these issues are important in the context of mobile payments? Do you expect that collective negotiations with Apple in relation to these issues will be successful?

7. Please comment on the bargaining power of the Applicants and of Apple.
8. Please comment on the proposed collective boycott conduct.
9. To what extent do other providers of digital wallets constrain Apple/ApplePay?
10. The Applicants submit that transaction fees for ApplePay overseas are in the vicinity of 0.07% and 0.25%. Please comment on the size of these fees.
11. Please provide any other comments regarding the public benefits claimed by the Applicants or other public benefits of the proposed collective bargaining/boycott.
12. Please provide any other comments regarding the public detriments claimed by the Applicants or other public detriments arising from the collective bargaining/boycott.

Period of authorisation

13. The Applicants have sought authorisation for a period of three years. Please provide any comments on the period of authorisation.

If you intend to provide a submission on the substantive authorisation application, having regard to the above questions, please do so by **18 August 2016**.

Timetable

The ACCC will progress its assessment of the applications in a timely manner. An indicative timetable is set out below for your information.

26 July 2016	Lodgement of applications and supporting submission, including request for interim authorisation.
28 July 2016	Public consultation process begins.
4 August 2016	Closing date for submissions from interested parties in relation to the interim authorisation application.
August 2016	ACCC decision regarding interim authorisation.
18 August 2016	Closing date for submissions from interested parties in relation to the substantive authorisation application.
September 2016	Applicant responds to issues raised in relation to the substantive authorisation application.
October 2016	Draft determination.
October 2016	Public consultation on draft determination, including any conference if called.
December 2016 / January 2017	Final determination.

Please advise if you do not wish to make a submission at this time, but would like to be informed of the progress of the applications at the draft and final determination stages. If you are able to, please provide a nominated contact email address for future correspondence.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please contact Fei Wu on (03) 9290 1987 or at adjudication@acc.gov.au.

Yours sincerely



Lyn Camilleri
Director
Adjudication

List of Interested Parties – Bendigo and Adelaide Bank & Ors – applications for authorisation – A91546 & A91547

Aldi Stores
American Express
Apple Inc.
Australian Transaction Reports and Analysis Centre
Australia and New Zealand Banking Group
Australia Post
Australian Bankers' Association
Australian Federal Police
Australian Federation of Travel Agents
Australian Payments Clearing Association
Australian Retail Association
Australian Securities & Investment Commission
Australian Settlements Limited
Australian Small Business Centre Pty Ltd
Big W
BPAY Pty Ltd
Bunnings Group Ltd
Chamber of Commerce & Industry of Western Australia
Choice
Citigroup Pty Limited
Coles
Consumer Action Law Centre
Consumer Affairs Victoria
Consumers' Federation of Australia
Council of Small Business Australia
Council of Small Business Organisations of Australia
CPA Australia
Cuscal Limited
David Jones
Eftpos Payments Australia Limited
GE Capital
Good Guys
Google Inc.
Harvey Norman
Heritage Bank Limited
HTC Australia
Huawei
Indue Limited
ING Bank (Australia) Limited
JB Hi-Fi
Kmart
Latitude Financial
Lenovo (Australia & New Zealand) Pty Ltd

LG Electronics
MasterCard
Members Equity Bank Limited
Microsoft Australia
Myer
National Association of Retail Grocers of Australia
National Independent Retailers Association
National Online Retailers Association
National Retail Association
Office of Fair Trading (Qld)
Office of the Small Business Commissioner (NSW)
Office of the Victorian Small Business Commission
Optus
Pacific Brands Limited
PayPal Australia Pty Limited
Public Transport Authority WA
Qantas
Rabobank Australia Limited
Reserve Bank of Australia
Retail First
Retail Traders Association (ACT)
Samsung
Small Business Association of Australia
Small Business Commissioner (SA)
Small Business Development Corporation
Sony
Suncorp-Metway Limited
Target
Telstra
The Australian Wagering Council
Transport for NSW
Travelex
Victorian Transport Association
Virgin Australia
Visa
Woolworths Ltd