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Australian Competition and Consumer Commission
Adjudication Branch
Lyn Camilleri
Director

Dear Lyn

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

Tyro is Australia's only independent EFTPOS banking institution and is the first new entrant in the banking business in more than 18 years. Tyro holds an authority under the Banking Act to carry on a banking business as an Australian Deposit-taking Institution (ADI) and operates under the supervision of the Australian Prudential Regulation Authority (APRA).

Tyro provides credit, debit, eftpos card acquiring, Medicare and private health fund claiming and rebating services as well as a transaction and deposit account integrated with Xero cloud accounting. Tyro takes money on deposit from and offers unsecured cashflow-based lending to Australian EFTPOS merchants. For more information, visit www.tyro.com.

Tyro supports the applications and the request for interim authorisation.

It is in the Australian public interest to maintain choice for consumers, merchants and banks as to mobile wallet solutions and the applications that they enable. While Apple allows third parties to connect free of charge via Wi-Fi, 3G, Bluetooth and other network protocols to its phone product range, it does not do so for NFC.

Eliminating third party access to the Apple NFC function is particularly effective in stifling innovation and competition, because it is the only available and highly secure connectivity option that is ubiquitously available across the entire card payment infrastructure and terminal fleet.

Any third party card payments innovator would either be forced to pay the Apple fee on top of the card fees, face only partial acceptance and inconsistent user experience for its mobile payment solution using other connectivity options or need to fund and complete a significant infrastructure and terminal fleet replacement program offering an alternative connectivity option. None of these is a commercial alternative.

Similar to the card interchange fees the Apple fee is not negotiable, paid by the banks, then merchants and ultimately consumers. In that it shares and exacerbates the characteristics of an interchange fee. The Apple fee has thus the potential to frustrate the efforts of regulatory interventions that have been seeking over years to lower the interchange costs of electronic payments for consumers, since market forces have failed.

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Apple restricting the usage of NFC by third parties has secondary effects in markets beyond the card payment space alone.

Third party wallet providers of services with regards to transport, passports, driver licences, loyalty solutions and many other innovations not yet imagined that require the wallet and NFC connectivity to the phone will face this access barrier and cost disadvantage.

New ideas beyond the wallet model are unable to leverage the NFC at all. For example security systems such as car parks, building lifts, premises access etc. where the tight proximity enables additional security from snooping/eavesdropping or a new payments scheme that does not use the conceptual form factor of cards with PANs etc., e.g. PayPal with usernames and no interchange will not be possible.

In summary, the refusal to grant access to the NFC functionality of the Apple product range will:

- Stifle the innovation in and development of third party wallet and other NFC and wallet dependant solutions given added costs and reduced ubiquitous acceptance on EFTPOS terminals.
- Lead to inconsistent consumer experiences and refusals of service to the extent that providers are forced to use other connectivity options, which may or may not be available on EFTPOS terminal generations of different banks.
- Add inefficiencies due to the added costs as operators need to deploy and support diverse connectivity options on the payment infrastructure and EFTPOS terminals.
- Slow the ApplePay acceptance in Australia due to reduced interest by the banks and third party providers to partner with Apple and to timely support the infrastructure and upgrade the terminal fleet and to develop and deploy wallet and other NFC-enabled applications.

Today, Australian consumers experience the nuisance of the ApplePay functionality working on most terminals but not on all. Visibly some banks may not have made it a priority to upgrade their entire terminal fleet to accommodate the ApplePay solution.

Innovation and competition thrives where dominant platform providers and market participants are forced to offer open standards, be it in terms of connectivity, programming interfaces or data access.

Apple has singled out the critical NFC capability as the restricted connectivity option making it a substantial revenue generating option. While acting in each local market, Apple has to consider the impact that a divergent approach in a specific geography has on its other global markets. As a global dominant player, even the negotiation position of powerful Australian banks is thus weak in that regard.

A collective bargaining/boycotting capability over a meaningful time horizon would bolster the currently faible negotiation position of the Australian banks, since Apple could not apply the “divide and conquer” negotiation strategy. An outcome of open access to the Apple NFC capability would be in the public interest.



As a side observation, to give the local bank oligopoly (whose position has been created over years and is still reinforced by a special regulatory status) an exemption from competition rules to strengthen its position versus a strong global player (who has achieved its position by the pure operation of the market) seems prima vista counterintuitive.

The major Australian retail banks should themselves embrace a culture of allowing innovation and competition and commit to their own Open Access, Open Wallets, Open APIs and Open Data standards so that the best idea wins. In that regard Tyro has recently submitted its position to the Productivity Commission Inquiry into Data Availability and Use: http://www.pc.gov.au/_data/assets/pdf_file/0008/201878/sub007-data-access.pdf

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