

4 August 2016

Ms Fei Wu
A/g Senior Analyst Adjudication
Australian Competition & Consumer Commission
Level 35, 360 Elizabeth Street
MELBOURNE VIC 3000

Dear Ms Wu

Applications A91525, A91546 & A91547 – interested party consultation

Heritage Bank Limited [**Heritage Bank**] is headquartered in Toowoomba in regional Queensland and is Australia's largest mutual bank. Heritage Bank offers savings and transaction accounts, term deposits, credit cards, personal loans and mortgages, along with other, primarily retail, products and services.

Heritage Bank's customers are able to access their accounts through a variety of channels, including a proprietary mobile banking app. Since July 2015, customers with NFC enabled Android mobile phones have been able to make contactless payments at point of sale by downloading Heritage MobilePay and adding their Heritage Bank Visa Debit or Visa Credit cards to their eligible mobile phone.

Heritage Bank is the biggest issuer of prepaid cards in Australia, including the MasterCard Cash Passport, Qantas Cash and Australia Post Load & Go cards amongst others. Heritage Bank also issues Cash By Optus, a SIM based mobile payment facility available to Optus customers with NFC enabled Android phones.

Given Heritage Bank's significant industry role in payments including mobile payments, Heritage Bank has a strong interest in the application currently before the Commission.

Heritage Bank's experience in negotiating with the Third Party Wallet Providers reflects that described by the Applicants in their submission. The three issues which the Applicants wish to address through collective bargaining are also Heritage's primary concerns arising from the negotiations to date with Third Party Wallet Providers.

It makes sense for the issues set out by the Applicants to be negotiated collectively since the issues are relevant for all industry participants who wish to offer their customers mobile payments.

As it currently stands:

- Competition is reduced due to access to some mobile devices being denied to all but the Third Party Wallet Provider's wallet.

- The industry is not able to develop and enact agreed Australian standards relating to the safety, security and stability of mobile payments systems for which issuers, not Third Party Wallet Providers, primarily hold the risk.
- Fees and other charges levied by Third Party Wallet Providers on issuers may not be able to be passed through to users of the service. This reduces competition since the decision to pass fees to customers of issuers (or not) and the level of those fees may not be negotiable when contracting with Third Party Wallet Providers who control mobile devices.

While Heritage Bank is an independent and successful competitor in mobile payments, Heritage Bank consequently supports the application and intends to join the collective bargaining and collective boycott if invited by the Applicants.

With regard to the factors that the ACCC wishes to assess concerning the application for interim authorisation;

1. Harm to the applicant and other parties if interim authorisation is or is not granted

- Harm to the Applicant

Heritage Bank submits that if the interim authorisation is not granted, it increases uncertainty with regard to the final determination. This is likely to reduce the involvement of other issuers and, as demonstrated by the case studies in other markets, lessens the likelihood that the Applicants will achieve the objectives set out in their submission.

If interim authorisation is granted it will provide a level of clarity that will allow the Applicants to invite other issuers into collective negotiation with the Third Party Wallet Providers and for that negotiation to commence while the ACCC assesses their final determination.

Given the lack of success of extended negotiations sometimes lasting years in other jurisdictions, it is unlikely that such negotiations in Australia will reach a conclusion during the period of interim authorisation envisaged by the ACCC.

- Harm to other parties

No harm is likely to occur to any other party as a result of interim authorisation by the ACCC since it is unlikely that the status quo will change during the interim period.

More issuers may join the Applicants in their collective negotiations and actual negotiations may commence during the interim period. The issues that the Applicants wish to collectively negotiate with the Third Party Wallet Providers are not new and the Third Party Wallet Providers have not changed their position on these issues through negotiations globally over an extended period.

In any case, any collectively negotiated terms under the interim authorisation would be subject to final authorisation by the ACCC.

Any authorisation by the ACCC for the applicants and other issuers to bargain collectively with Third Party Wallet Providers does not preclude those issuers who do not wish to join the collective bargaining from negotiating terms independently with the Third Party Wallet Providers.

2. Possible benefit and detriment to the public

The only current options available to those with NFC enabled iPhones who wish to use their phones to make contactless payments is as customers of American Express or ANZ. Those with NFC enabled Android phones can choose from a broad range of issuers who support mobile payments. iPhone users are consequently disadvantaged by the lack of access provided by Apple to issuers who offer their customers the option of a mobile payment wallet other than Apple Pay. This is unlikely to change during the period of interim authorisation.

Any issuer who is currently willing to accept the terms of the Third Party Wallet Providers could do so today or could continue to negotiate directly by standing aside from the proposed collective bargaining and collective boycott. The granting of interim authorisation will not change this situation.

As a result, interim authorisation neither benefits nor harms the public relative to the current situation.

3. The urgency of the matter

Changes in technology, particularly fintech, are happening at an accelerating rate. Heritage Bank believes that this matter should be addressed urgently so that the Applicants, other issuers and Third Party Wallet Providers can address the issues set out in the application in a coordinated and efficient manner, allowing longer term product and service decisions to be made and implemented in this fast changing marketplace.

4. Whether the market would be able to return to substantially its pre-interim state if the ACCC should later deny authorisation.

Given that the ACCC believes that the interim authorisation is only likely to remain in force for a period of not more than five months, Heritage Bank does not believe that the negotiations will be concluded in that time. The current position is consequently likely to remain in place at least until the ACCC's final determination is released.

Irrespective, any collectively negotiated terms under the interim authorisation would be subject to final authorisation by the ACCC.

Heritage Bank appreciates the opportunity to make this submission and please contact Mr Peter Cavanagh, cavanagh.p@heritage.com.au for further information if required.

Yours sincerely



Peter Lock
Chief Executive Officer