



23 August 2016

Lyn Camilleri
Director,
Adjudication
Australian Competition and Consumer Commission
23 Marcus Clarke Street
CANBERRA ACT 2601

Dear Ms Camilleri,

Authorisation Applications A91525, A91546 & A91547 – Bendigo & Adelaide Bank & Ors – submission

On 28 July 2016, Google Asia Pacific Pte. Ltd (GAP) was informed by the ACCC of Applications for authorisation from Bendigo and Adelaide Bank, Commonwealth Bank of Australia, National Australia Bank and Westpac Banking Corporation. The applicants seek authorisation to engage in collective negotiation and collective boycott conduct with providers of third party mobile wallet services. The ACCC invited GAP to comment on the Applications.

As noted in the Applications, GAP recently began offering Android Pay in Australia in partnership with a number of Australian banks. The Android Pay service allows users to pay for goods and services with a simple tap of their phone against a compatible point-of-sale terminal with near-field communication (NFC).

There is no allegation or evidence in the Applications or submission that GAP or any other Google entity has engaged in any conduct detrimental to the applicants or that an ability to negotiate collectively and engage in a collective boycott is required for negotiations relating

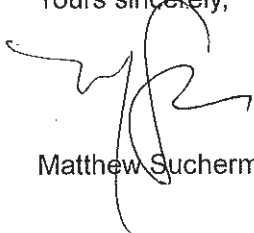
to the Android Pay service. There is no claim, for example, that GAP has restricted access to Android's NFC interface. To the contrary, the applicants and other parties can offer payment or wallet apps on the Android platform because the Android API for NFC is open to all. As the submission recognizes, "any developer can easily supply a mobile payment or mobile wallet app that can take advantage of an Android . . . device's NFC capabilities to allow contactless mobile payments." (Submission at 19; see also at 28)

The Applications also acknowledge that there are numerous mobile wallet services available on Android, including from some of the applicants themselves. (Submission at 2, 3, 10, 11, 12, 13, 22, 24-25, 28, 55, 56) The fact that Google is the developer of the Android operating system gives it no particular advantage in the offering of mobile wallets because Android's open API for NFC creates a level playing field and because Google does not condition access to Android on installing or using Android Pay.

There is also no allegation that GAP prohibits issuers from passing on any added costs of using Android Pay to their cardholders. Instead, the Applications acknowledge that "Google does not charge issuers for participation in Android Pay." (Submission at 20; see also at 29, 52-53) Finally, there is no allegation or evidence that Android Pay inadequately protects against fraudulent activity. In the case of Android Pay, fraud prevention measures are in place consistent with the APCA guidelines the applicants reference (Submission at 2.1). As a result, there is no evidence that Google must implement additional technical fraud prevention measures or be required to formally adopt further industry standards or guidelines. In short, the concerns expressed in the Applications do not extend to the Android Pay service.

GAP requests that the ACCC seek confirmation from the applicants that the Applications are not, in fact, intended to extend to negotiations with GAP for the Android Pay service. If that confirmation is not given, GAP respectfully requests that any grant of authorisation not extend to any negotiations related to Android Pay. In addition, GAP reserves the right to submit a response to the Applications demonstrating that there is no basis on which authorisation should be granted in respect of any negotiations related to Android Pay.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'MS', is written over the typed name 'Matthew Sucherman'.

Matthew Sucherman