

From: Andrew Smith
Sent: Tuesday, 30 August 2016 12:15 PM
To: Adjudication
Subject: Bendigo and Adelaide Bank & Ors - Authorisation - A91546 & A91547

Good afternoon,

I believe the ACCC should not allow the Applicant's submission of forming a collective boycott of third party mobile wallet providers to proceed. My reasons for such a stance are detailed below, where I address the three key areas the Applicants seek to collectively negotiate with third party mobile wallet providers.

Non-exclusivity: The Applicants have sought issue with the fact the Apple does not allow third party access to components in the software and hardware that Apple has designed, created, marketed and eventually sold to millions of consumers around the world. I fail to see why such a stance warrants the ACCC's inclusion in this process. If a company develops a technology and sells it to consumers, why should some other companies be allowed to form a cartel against it to force it to allow them access to its technology? Many commenters in this field would in fact argue that Apple has shot itself in the foot by not allowing third party access to various components (as many consumers would simply pick an alternative platform). So, why then, would Apple have such a stance? As many submission have stated, Apple has a very high stance when it comes to security and, as I believe any person with common sense would agree, security should be at its highest when dealing with consumers money, followed by consumer's privacy. When people buy an Apple product, this is what is expected. The vast majority of Apple product users expect privacy and security from Apple, something they have failed to get from Google and Microsoft. With this comes the understanding that Apple has a so called "Walled Garden". There are *many* features that Apple has not allowed on its operating systems for reason due to security and they are praised for this. So when a consumer purchases an Apple product, they understand they are getting security and privacy but are missing out on some other "fancy" features; third party access to various components being one of them. If a consumer feels like they would rather the "fancy" features over privacy and security, they change phones. For more information about the security that Apple provides, I direct you to Apple's own submission.

Security aside, however, the exclusivity that Apple has taken is not an issue that the ACCC needs to intervene on. I provide proof by example. If I were to approach NAB and say "I would like access to the chip in my credit card provided by NAB so I can make my own app that uses the chip in my card," would this warrant the ACCC's intervention if they said "no?" Surely not. NAB has every right to disallow (or allow) my access to the chip on my credit card on its own, even if I can find a million other consumers who agree with me.

Industry standards: While I applaud the banks in their attempt to disguise the submission as a way to create industry standards for mobile payments, I fail to see why such standards need to be made. Individual negotiations between banks all around the world (I direct you to Apple's own list <https://support.apple.com/en-au/ht206638>) and Apple regarding stringent security measures, tokenisation and privacy seem to work fine. I fail to see what is so special about Australia's circumstance that requires intervention from a Competition and Consumer watchdog. It is widely understood that Apple's stance on security far outweighs that of *any* other platform; including Google's Android system. On this system runs Apple Pay's competitor, called Android Pay. However, these banks have willingly and openly entered into negotiations to run their various cards on Android Pay. But this "industry standard" does not yet exist so why are the banks

allowing their cards on Android Pay? If these industry standards are required (and, furthermore, if the ACCC is required to intervene so that these standards can be formed), then I submit the banks should not have their cards on Android Pay, nor any third party mobile wallet. Obviously, this is a ridiculous statement. The banks want a reason to boycott Apple Pay because it cuts into their bottom line, not because of some imaginary threat to mobile payments.

Fees: Of all the requests the Applicant's have submitted to the ACCC, I find this particular one the most confusing. The ACCC is in place to ensure fair trading and competition. Is it fair for Apple that if a consumer wants to use their Mobile Wallet, the consumer needs to pay for it but if they use another Wallet, they don't have to pay for it? The Applicants might argue that using Apple Pay versus using their own apps should have a discrepancy in costs, as one version is based in-house and the other is outside, which is true. However, they do not charge for the use of Android Pay, which is also not based in-house. And what about Samsung Pay? So, effectively, the only Mobile Wallet that would cost consumers extra is Apple Pay; this hardly seems fair from not only Apple's perspective but from the consumer's also. The Applicant's submission is littered with the statement "consumer's have the right to use any mobile wallet they want," which I agree with. But they are in fact saying "consumer's have the right to use [and pay a little extra for] any mobile wallet they want [as long as it is not ours]". To my understanding, this is the opposite of fair trading. The fees that are negotiated between Apple and the Applicants are up to the negotiating teams. As you might have seen from the above list of banks (even quite small banks!) that have accepted Apple Pay, I find it hard to believe Apple's terms (fees) are unacceptable. If this were the case, many more banks around the world would have submitted a similar application as the Applicants have. Put plainly, the banks do not want to give a cut of transactions fees to anyone (Apple). Therefore, they want to add Apple's fee onto the transactions, which will inevitably fall to the consumer, the producer or both. This is not fair trading. Hence why I am confused the Applicants are seeking to conduct unfair trading from a fair trading commission.

Again, I implore the ACCC to not grant the Applicants authorisation to collectively boycott Apple Pay while negotiations are ongoing. Such an authorisation will definitely cause Australian consumers to be unfairly disadvantaged when it comes to transactions around the world. Apple has recently announced an online platform for Apple Pay that can be utilised on a desktop computer, where the hardware components (such as NFC) these banks speak of *do not exist*. Apple Pay can be used in a browser just like PayPal, or various other online payment mechanisms. Allowing the banks to boycott Apple Pay on phones will also disadvantage Australian consumers using Apple Pay on desktops, where the banks have not developed their own system (app) at all.

Regards, Andrew

Dr Andrew Smith