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**5 September 2016**

**By email**

Ms Lyn Camilleri  
Director  
Adjudication  
Australian Competition and Consumer Commission  
Email lyn.camilleri@accc.gov.au

Dear Ms Camilleri

**Bendigo and Adelaide Bank and others applications for authorisation (A91546 & A91547) — request for further information**

I refer to your request for further information dated 9 August 2016. A preliminary answer to the ACCC's questions is set out below (but note that these answers may need further discussion when the applicants respond to submissions that have been lodged with the ACCC).

**1 Which card issuers may participate in the collective negotiations? For example, does it include retailers with loyalty cards and overseas card issuers?**

All payment card issuers who are eligible to participate in a particular third party wallet in Australia would be entitled to participate in the negotiation, including retailers with loyalty card programs. Overseas card issuers would only be entitled to participate in respect of domestically issued cards.

**2 How long is the period in which other card issuers must respond to the invitation to participate in the collective negotiations?**

The invitation will be made for a reasonable period before a collective negotiation commences. While no specific timeframe has been set, it would be expected to be a number of weeks, or another reasonable time considered appropriate in order to balance the need to:

- ensure that all interested issuers have a reasonable opportunity to decide whether to participate, and
- avoid unnecessary delays in the commencement of negotiations (as any such delay is likely to be detrimental to the participants in the collective negotiation).

**3 Can collective negotiations commence while other card issuers are still deciding whether to opt in? Can a card issuer ever leave, or a new issuer enter (or an issuer re-enter), the collective negotiation group (e.g. during negotiations)?**

*Late opting-in*

The collective negotiation group is not intended to be a closed or exclusive group. It is expected that other issuers will join the applicants (as already suggested in some of the submissions given to the ACCC).

In order to make sure the negotiations run efficiently, it will be best if all issuers intending to participate in the negotiation join before such negotiations commence. That said, it would be possible for other issuers to join after negotiations have already commenced, but as a practical matter this may only be manageable in the early stages of the negotiation process and/or before key aspects of the negotiation have been agreed upon (otherwise the negotiation process may be disrupted or unnecessarily delayed – for example, if a matter has been agreed, it may not be practical to reopen negotiations on that particular matter because a party has joined late).

#### *Leaving*

Card issuers will be entitled to leave the collective negotiation group at any time.

#### *Re-entering*

Issuers will not be prevented from seeking to re-enter the collective negotiation group. However, as a practical matter, the same considerations applying to late opt-ins apply (ie, there may be a point in the negotiation process where re-entering will not be practical, unless the party seeking to re-enter is prepared to accept all key terms that have been agreed in the period while that party was not part of the collective negotiation group).

#### **4 Can participating card issuers individually negotiate with Third Party Wallet Providers at all while the collective boycott is in place (i.e. in relation to issues outside the three set out in the applications)?**

Card issuers will be free to negotiate individually with third party wallet providers on all commercial matters other than the three issues which are intended to be the subject matter of the collective negotiation (as set out in the application). In fact, it is expected that some issuers will seek to commence individual negotiations at the same time as the collective negotiation is progressing (in order to save time and expedite the negotiation process).

Given the likelihood of parallel negotiations (ie, individual negotiations alongside the negotiations to be conducted as part of the collective negotiation), strict protocols and procedures will be put in place to make sure that the scope of the matters that can be discussed as part of the collective negotiation is appropriate and in compliance with the terms of the authorisation.

#### **5 How will the collective boycott be monitored and enforced?**

It is expected that card issuers that wish to withdraw from the collective negotiation will notify the rest of the group as a matter of courtesy, but this will not be enforced. It is also possible that some issuers may not give such notification and the group will become aware of their departure by other means (for example, if they announce they have already entered into an agreement with a wallet provider).

Issuers that withdraw from the collective negotiation because they have signed up with a third party wallet will not be expected to participate further in collective negotiations with that wallet provider (because the need for such negotiation would have disappeared).

Otherwise, there will not be a formal monitoring or enforcement mechanism associated with the collective negotiation. No penalties will apply to those that choose to withdraw.

**6 What are the consequences if a card issuer breaches the boycott?**

It is expected that issuers that withdraw from the collective boycott because they have signed up with a third party wallet will not participate further in the collective negotiation with that third party (because the need for such negotiation has disappeared). No penalties or other consequences will apply.

**7 When would a collective negotiation be deemed unsuccessful?**

The collective negotiation would be deemed unsuccessful by agreement of the collective group, taking into account a number of factors that typically apply to any commercial negotiation, including:

- any progress that may have been made towards a satisfactory outcome;
- the likelihood of any further progress;
- the length of time the parties have spent in negotiations;
- the parties' ability to continue engaging with the process (taking into account that, for some parties, a longer negotiation period will increase the incentives to leave the collective negotiation); and
- the parties' willingness to continue trying to make progress towards some form of agreement.

It is not expected or intended that the parties will spend the entire authorisation period (ie, 3 years) conducting negotiations.

If the collective negotiation is deemed unsuccessful, it is expected that issuers involved in the collective negotiation will revert to individual negotiations.

Yours sincerely

A handwritten signature in black ink, appearing to read 'P. Gilardoni'.

**Paula Gilardoni**

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