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21/09/2016
Paula Gilardoni
Partner
Gilbert + Tobin

Sent by email: PGilardoni@qtlaw.com.au

Dear Ms Gilardoni

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

I refer to the above mentioned applications for authorisation lodged with the Australian Competition and Consumer Commission (the ACCC) on 26 July 2016.

This letter is to request further information on the applications. Please provide responses to these questions by **30 September 2016**. The response will be placed on the ACCC's website and public register apart from material which the ACCC decides to exclude from the public register. If any of the material provided is confidential, please clearly mark it as such and explain the reasons for the claim for confidentiality.

1. Please list the issuers that the Applicants will invite to participate in the collective negotiations, along with: the number of their Australian cardholders; and the proportion of card customers in Australia that each participant represents.
2. Aside from Apple, can you confirm whether the Applicants intend to engage in the collective negotiation and collective boycott conduct in relation to any other third party wallet providers?
3. If so:
 - a. Please specify the identity of these parties.
 - b. Please justify, for each such party, the rationale for the proposed conduct. That is, what problems are currently being experienced and how would the proposed conduct remedy the situation? For example, Google's submission states that access to Android's NFC interface is unrestricted, Android Pay's fraud prevention measures are consistent with the APCA guidelines, and Google does not charge issuers for participation in Android Pay.
 - c. Are each of the issues identified for collective negotiation relevant for each identified party? If so, please explain why for each party.
 - d. If the party is not yet identifiable, please provide as much detail as you can on your reasons for requiring authorisation to engage in collective negotiation in relation to that general group of parties.
 - e. Would the Applicants be impacted if the proposed conduct was narrowed to Apple only? If so, please explain how.

4. Do the Applicants intend to collectively negotiate on issues of access to any hardware or software aside from the NFC functionality on Apple devices? If so, please specify the hardware or software in relation to which the Applicants propose to engage in collective negotiations and the party in control of the hardware or software and explain why collective negotiation and boycott are needed.
5. In relation to the issues the Applicants seek to collectively negotiate on, specifically the second element under the heading 'competition' – 'otherwise preventing or impeding card issuers from developing, deploying or participating in any other mobile payment or mobile wallet services or Third Party Wallets on any mobile devices or platforms' – is this conduct that the Applicants consider is currently taking place? If not, do the Applicants expect this conduct to take place and, if so, what is the justification for this expectation?
6. In relation to the identified issues which the Applicants seek to collectively negotiate on in the context of negotiations with Apple:
 - a. In the event that the Applicants were successful on gaining access to the NFC function on Apple devices in order for the Applicants to offer their own NFC-enabled digital wallets on Apple devices, would they still seek to negotiate on the other issues?
 - b. In the event that the Applicants were not successful on gaining access to the NFC function, would they still seek to negotiate on the other issues?
 - c. Regarding each issue specified as the subject matter of the collective negotiations, if agreement is unable to be reached on the objective specified (for example, under 'efficiency and transparency', if agreement is not reached on a third party wallet provider not restricting the ability of issuers to pass through any fees or charges imposed on issuers), will the collective negotiations cover any alternative resolutions on these issues? For example, in relation to pass through of fees, could it encompass a period of waived fees?
 - d. Could the group decide to abandon some of the collective negotiation issues in favour of others? In other words, could the group 'trade off' some issues for others – e.g. decide to accept exclusivity of NFC-chip access for Apple Pay if Apple agreed to transparency of fees?
7. On the issue of unrestricted access to payment functionalities:
 - a. What is meant by 'partially exclusive' (p30 of submission) or 'relaxation of exclusivity'? (p23 of CRA report).
8. The Applicants submit that Apple has significantly greater market power in negotiations than each of the Applicants individually.
 - a. Please explain how Apple's market power in smartphones provides it with significantly greater bargaining power than each of the Applicants in relation to negotiations regarding Apple Pay.
9. Regarding the objective of requiring industry standards or negotiating best practice principles and technical standards, please detail your specific security concerns in relation to Apple Pay that you hope to address through collective negotiations. In particular, please respond to Apple's statement that the issuing banks are in control of the verification process when adding cards to Apple Pay. If you disagree with Apple's statement, please detail how the Applicants think the process for a customer to add their payment cards works.
10. Given the limited scope of the issues for collective negotiation, and that each issuer will be negotiating with the relevant mobile wallet provider in any event if they want to

reach an agreement, to what extent would the proposed collective negotiations reduce transaction costs?

11. You mentioned in your letter to the ACCC dated 5 September 2016 that strict information sharing protocols will be put in place. Please provide as much detail as possible on these proposed protocols.
12. If authorisation were granted for the 3-year period sought, it has been submitted that this may result in delayed uptake of digital wallets. What impact do you consider this will have on consumers? Why is a 3-year term necessary?

Answers to the following questions are likely to be commercially sensitive and highly confidential to each Applicant. Each applicant should provide their responses directly to the ACCC.

1. For each Applicant, regarding the objective of seeking open access:
 - a. Would you offer both an integrated banking app, as well as being part of a third party digital wallet product such as Apple Pay or Android Pay? Why / Why not?
 - b. For NAB and CBA, why have you not signed up to offer Android Pay?
 - c. Do you intend to create integrated banking apps that offer digital wallet services? That is, will they hold credit and debit cards from other issuers? What about loyalty cards, membership cards, transport cards, etc? If so, in what timeframe do you expect these services to be rolled out?
 - d. What is your ability to adopt alternative technologies to NFC to introduce digital wallet services in Australia (e.g. QR codes or paytags)? Do you intend to offer any such alternative solutions to customers over the period of the authorisation? If so, please detail these planned services.
 - e. Apple has argued that it has been able to provide the 'required level of security with tight integration of hardware, software, and services such as Apple Pay. Apple does not provide banks access to the NFC radio because doing so would undermine the security our customers expect'. Please state whether you agree with this statement and provide reasons to explain your view.
2. Provide any estimates that you have of the proportion of card customers in Australia that have iPhones or Apple watches with NFC capability and how these estimates are projected to change over time.
3. Please provide evidence on the impact of not offering Apple Pay on your business. i.e. do you have any estimates of how many customers you have lost to ANZ since ANZ signed with Apple Pay?
4. What experience have you had with your mobile wallet solutions on Android phones so far? i.e. do you have any estimates of the number of users over time or volume of transactions over time?
5. Have you considered the cost of signing up to Apple Pay compared with expected value resulting from Apple Pay's services. i.e., Apple's argument that the additional security features of Apple Pay will result in reduced costs from card fraud?
6. Please provide any high-level internal documents that support your responses to the above questions.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please contact me on (03) 9290 1973 or at adjudication@acc.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'L. Camilleri', written in a cursive style.

Lyn Camilleri
Director
Adjudication