

# Authorisation Applications A91546 & A91547

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# 1. Introduction

Bendigo and Adelaide Bank, Commonwealth Bank of Australia, National Bank of Australia and Westpac Banking Corporation are seeking to collude in a way that would breach the cartel provisions under the Competition and Consumer Act 2010<sup>1</sup>.

The banks/applicants have recently put out a document regarding their views on Apple Pay and mobile wallet systems in Australia<sup>2</sup>. The applicants believe that Apple has the ability to lock competitors out of iPhone's near field communication system, and that it is unnecessary to implement the lockout in order to prevent security breaches because other companies such as Google and Samsung have been successful without doing such a thing. However, breaches surrounding Samsung Pay and Android Pay have already existed from day 1 with consumers finding a way around Android Pay's 'No root policy'<sup>3</sup>, Samsung Pay's 'LoopPay' breach<sup>4</sup> and the 'flaw' with Samsung Pay's tokenisation system.<sup>5</sup>

The applicants note that "Australian card issuers and merchants have already invested heavily in the infrastructure needed to make mobile payments a success" and compare Australia to the United States, stating that the United States are incomparable to Australia due to its level of development in Mobile Payments. However, the applicants fail to mention other countries such as Canada which is similar to Australia in a way that payment systems such as MasterCard, Visa, American Express and Interac (the Canadian system that is designed to be like EFTPO's) tap and go systems are readily available everywhere. Mobile wallet systems are also developed in the country. However, the country has all major banks such as Scotiabank<sup>6</sup>, Tangerine<sup>7</sup> and CIBC<sup>8</sup> on board with Apple Pay.

Finally, the applicants want Apple Pay to maintain "the levels of security and transparency that apply to other payment options.", with this statement, the applicants seem to want to pass on fees for mobile wallets to the people that actually want to utilise the service. This in a way is contradicting the bank's statement in "competition and innovation" as passing fees would stunt innovation. The statement that Apple Pay should not be exposed to the "cost of inconsistent approaches to security or to hidden costs" seems to cause consumers confusion as there are no hidden costs that Apple Pay gives to the merchant nor the consumer, the cost only is to the bank. Merchants can't even differentiate between a normal purchase and an Apple Pay purchase on records.

Apple Pay is already secure and provides an easy way to pay. The ACCC should strongly reject this application.

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<sup>1</sup> Competition and Consumer Act 2010

<sup>2</sup> Application for authorisation of limited collective negotiation in relation to mobile wallet and mobile payment systems

<sup>3</sup> Use Android Pay with Xposed Without Rebooting with Magisk (xda-developers)

<sup>4</sup> Chinese Hackers Breached LoopPay, the company behind Samsung Pay's secret sauce – fortune.com

<sup>5</sup> Samsung Pay Flaw could allow hackers to intercept and decode Credit Card Info – digitaltrends.com

<sup>6</sup> Apple Pay | Scotiabank

<sup>7</sup> Apple Pay is here | Tangerine

<sup>8</sup> Apple Pay - CIBC

## 2. Negating the executive's summary

### **"Authorisation will provide real public benefits" + "The public benefits cannot be achieved without the authorisation."**

Authorisation wouldn't provide real public benefits as the bank is willing to push fees for the use of mobile wallets to the consumer, therefore pushing users away from innovation.

If the applicants were committed to providing consumers choice, they should be willing to accept Apple Pay and other payment systems such as Android Pay and Samsung Pay. Currently only one of the five applicants support Android Pay, Bendigo Bank<sup>9</sup>. There are no applicants that are willing to support Samsung Pay as well with the only supporters being American Express and Citibank<sup>10</sup>.

All these applicants want to do is keep their customers onto one product/service, allowing the banks to leech off their users instead of being on an open mobile payment platform.

Apple has never made any infrastructure of the contactless system in the United States; they only provided the service on the iPhone so they would never have benefited from users using the service.

Apple Pay is simply a service provided to make contactless purchases, why should it be liable for any fraud? Fraud in many cases rarely would happen with Apple Pay with Touch ID authentication and tokenisation. I don't see the applicants complaining about the lack of fraud prevention in other mobile wallet payment systems.

### **"Further, without the authorisation there will be significant public detriments."**

The applicants describe that without the authorisation, it would significantly "stifle innovation and investment in mobile wallet technology." However, by withholding Apple Pay, the banks are preventing innovation! The banks are currently not only stunting innovation of mobile payments on iPhones but on many other platforms as well. As said before, Android Pay currently only has one applicant onboard and Samsung Pay has none. All three payment services have shown to innovate with Android Pay and Apple Pay having Near-Field-Communication Loyalty at Walgreens in the United States<sup>11</sup> whilst Samsung Pay having their own Magnetic Secure Transmission system allowing purchases on non-NFC terminals<sup>12</sup> and having the ability to be able to pay via your eye on the now defunct Note 7<sup>13</sup>.

The banks aren't forced to use "workarounds such as stickers and wristbands", these workarounds only exist because of the bank's stubbornness to adopt Apple Pay to their system. If the bank doesn't want to use Apple Pay, they don't need to. Furthermore, the applicants state that workarounds "would come at a higher cost than simply using the existing infrastructure – which Apple did not develop but wishes to control.", Apple decided to include Near Field Communication technology on its platform starting with the iPhone 6 on September 19<sup>th</sup><sup>14</sup>, the iPhone is owned by Apple and the banks are trying to force upon their applications onto their platform? Seems kind of unfair and anti-competitive to me.

### **"Authorisations is about choice and competition leading to better outcomes for Australian consumers, not about preventing Apple's entry into the Australian market."**

"Apple suggests that the applicants wish to blunt or delay Apple Pay and its entry into Australia, and to slow innovation and reduce competition. This is exactly backwards.". How is it backwards? There was no reason explained and the applicants even contradicted themselves with the statement "The applicants are under intense pressure to participate in Apple Pay, and risk losing customers to other issuers who offer Apple Pay before them.". This encourages competition within banks with many people that have moved to ANZ and American Express, the only two banks that

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<sup>9</sup> Android Pay – Supported Networks

<sup>10</sup> Samsung Pay – Mobile Payment Service | Australia

<sup>11</sup> Walgreens integrates rewards with Android Pay • NFC World

<sup>12</sup> What is MST (Magnetic Secure Transmission)? - Samsung

<sup>13</sup> Security | Samsung Galaxy Note 7

<sup>14</sup> iPhone 6 - Wikipedia

provide Apple Pay. "The applicants are continuing to innovate and compete by developing their own mobile banking and mobile payment apps on other platforms...", this statement seems completely false.

Currently on Android, the Westpac Banking app only allows tap & go purchases on any Samsung device with HCE<sup>15</sup>, the Commonwealth Bank app tap & go purchases are inconvenient to many users as they have to go through lengthy processes and NAB tap & go purchases only currently work with a Visa Debit or Credit Card, no support for any MasterCard.

On iOS, NAB has no support for Touch ID login. Keep in mind that innovating doesn't come with an average of 2 and a half stars on the App Store.<sup>1617</sup>

"They have no desire to prevent their customers from using Apple Pay...they only wish to offer other alternatives alongside Apple Pay.", once again, if they want choice, why don't they enable Android Pay or Samsung Pay on their systems. Also, in the past where Apple was trying to contact banks, one bank flat out refused communication with Apple. Doesn't seem like the banks "have no desire to prevent their customer from using Apple Pay."

**"Providing choice and competition will in no way undermine security or user experience."**

"Apple objects that providing access to the iPhone's contactless payment functionality would undermine security and consumer experience... Android, Windows and BlackBerry phones all provide access to their NFC contactless payment functionality and there is no evidence that Android Pay, Samsung Pay or any of the mobile payment apps...have affected security."

However, it has been proven in the introduction that apps such as Android Pay and Samsung Pay have been compromised before. Apple Pay has yet to be compromised in its two years of being run by Apple. Why should Apple Pay be insecure just because banks want their own mobile wallet payments on there.

### [An analysis.](#)

"While a number of submissions have criticised the applicants for not simply signing up to Apple Pay... appears to be based on the misapprehension that the applicants wish to promote their own mobile payment solutions to the exclusion of Apple Pay."

This is because in the past, one bank refused to even talk to Apple about Apple Pay. The bank which I believe is one of the applicants here would not want to even add Apple Pay to its systems if this authorisation passes.

Apple using the "take it or leave it" approach makes it so that banks aren't forced to put Apple Pay onto its system, they can simply use other accessories such as wristbands (which is used by Cash by Optus) and tags (which is used by Commonwealth Bank and NAB). The take it or leave it approach also makes it so that other banks are competitive with one another, likewise with the mass amount of credit card and debit card applications in ANZ. Many leaving other banks. The arguments that Apple has made are actually valid and are proven by actually securing sensitive data on phones.

What is terrible is that submissions supporting the application include a bunch of big name companies such as Coles, the Australian Retailers Association, Bluechain, the Australian Payments Clearing Association, Australian Settlements Limited, Indue, Heritage Bank, Tyro Payments, EFTPOS and MasterCard, whilst submissions against this application include a bunch of small consumers likewise myself, Dr David Glance, Joel Hinchliffe, Dr Grischa Meyer, Dr Andrew Smith, Wayne Pullbrook, Trevor Long, Martin Cook, Jason Discount and the Small Business Commissioner of South Australia. This shows that consumers are in favour of the service and are fighting against big businesses who are afraid to take on competition and afraid to take on choice.

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<sup>15</sup> Westpac Mobile Payments

<sup>16</sup> NAB on the App Store – iTunes - Apple

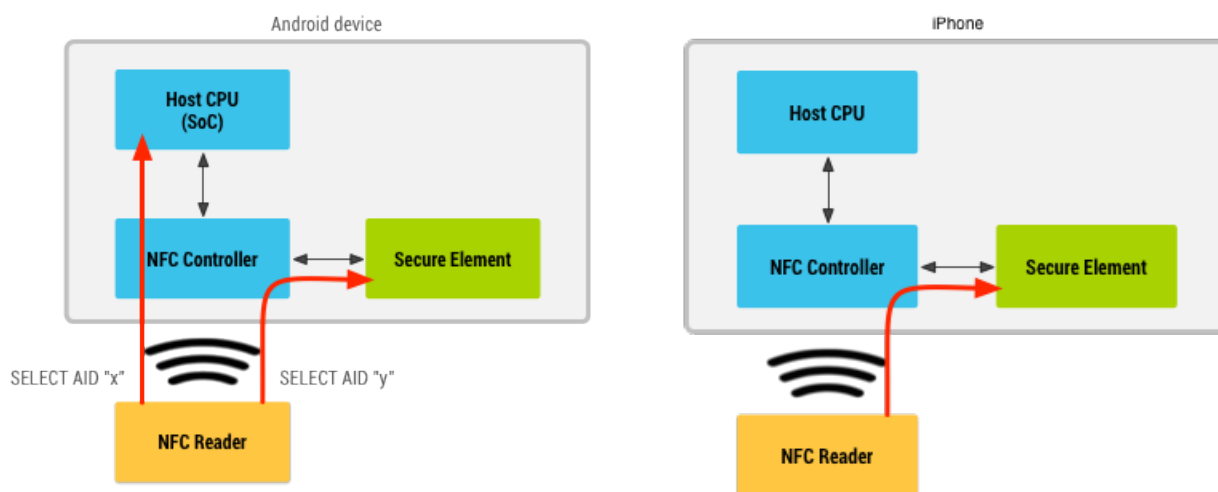
<sup>17</sup> Commbank on the App Store – iTunes - Apple

### 3. Removing the idea of why applicants need to collectively negotiate

- **Apple “controlling” their platform their own way.**

Apple is allowed to control their platform their own way. Of course many users can jailbreak but if the device is made by Apple, the company should be allowed to maintain the device their own way. It's called as Closed source. The major difference with Android and iOS is that Android is open source thus allowing access to their NFC chip whilst iOS is Closed/proprietary. This is why Android is also susceptible to attacks.

Android also uses a different method for payment systems called Host-based card emulation whilst Apple Pay uses the traditional device-based Secure Element.



Source - <http://www.gmarwaha.com/blog/2014/10/02/apple-pay-vs-google-wallet-the-secure-element/>

This allows for Apple to control the secure element embedded in the device “thereby avoiding unnecessary challenges from the MNOs.”<sup>18</sup> This adds on to why Apple has many reasons to contain their NFC chip.

- **Apple making “changes” in relation to Apple Pay**

#### *China*

Apple Pay has had trouble entering the Chinese market due to the establishment of 微信支付 or known as WeChat Pay. The system which uses QR codes allows the user to pay small to big businesses using a QR code. WeChat Pay has been marketed aggressively with not only the ability to purchase items but also the ability to transfer lucky red pocket money for Chinese New Year, transfer money and pay bills. Apple Pay and UnionPay have indeed negotiated to expand Apple Pay being the only card issuer supported in China, however the statement of “use of an NFC-enabled SIM card” is completely false. Nowhere in the article listed does the NFC-enabled sim card appear and doing a simple Google search for it redirects to a page saying that it may cause confusion due to existing NFC sim card solutions such as ones used by China Unicom and China Mobile.<sup>19</sup>

#### *Japan*

Apple Pay's recent launch in Japan includes support for FeliCa chips, the Japanese alternative to Near Field Communication. It is practical for the hardware change because the country seems to use FeliCa all around from purchases to public transport. Speaking of public transport, the applicants say that Apple is “making changes... to its ‘non-negotiable’ security requirements” by

<sup>18</sup> Apple Pay vs Google Wallet: The Secure Element - Ganeshji

<sup>19</sup> Apple Pay reportedly faces uphill battle in China as talks with UnionPay stall

having no TouchID requirement for Suica cards. This is because Suica is not actually owned by a bank but is owned by JRE East. Suica also holds prepaid money that can be used in stores without a pin, the card has no secure outlet. In fact, Apple is making Suica more secure in a way that if you lose your phone, you can disable the Apple Pay feature on Find My iPhone (which is required when setting Apple Pay up). If you lose your Suica card, your funds are practically gone which results in a high fraud rate.

The applicants talk about how Apple makes change from its own practices when clearly the applicants haven't investigated statements enough.

#### 4. Without authorisation there **will not** be any public detriments.

**"No choice, no flexibility and no competition." More like there will be choice, flexibility and competition.**

All around the world users of iPhone devices will have one choice, Apple Pay. The statement is true, but Apple Pay is open. Any bank can use it. In fact, Apple Pay supports freedom of choice. With Apple Pay, you are open to use it with any card from any bank if the bank supports it. For example, if you have a card from Chase, Wells Fargo and CapitalOne you can quickly switch to one using Apple Pay instead of being tied down to a Chase app, CapitalOne app, and Wells Fargo app. Apple Pay supports flexibility of payments between banks.

Apple Pay also supports loyalty cards shown in with Walgreens My Balance Rewards<sup>20</sup> and myCokerewards<sup>21</sup> so the statement "to entice customer take-up (including loyalty points or other incentives to encourage use of particular wallets)" does not make sense. Credit card purchases still act like credit card purchases so if you are paying by Apple Pay with a 'ANZ Rewards Travel Adventures' card for example, you would still earn reward points as the system can't differentiate the difference between a normal credit card purchase and an Apple Pay purchase.



Apple Pay honestly does not act like an app. It acts more like a pop-up, customers that "value the ability to manage payments... [and] check balances" can do so. With Apple Pay, if you need to check your balance in the bank app and pay on the go, you can check your balance and then just hold your card to the terminal for the Apple Pay service to pop up. Pay with your fingerprint and you are back in the bank's application. There's no need for Apple to open NFC due to this reason.

**"Lost opportunity for investment and innovation – Mobile payment solutions without integrated NFC access tend to fail."**

This tends to not be true with Asia having popularity over QR codes, as we talked before 微信支付 (WeChat Pay) has a huge amount of users in China and Hong Kong<sup>22</sup>. Line Pay being released in Japan and Thailand also uses the same technology and still thrives on today. KakaoPay and Payco survive in South Korea. Even if some non-integrated solutions fail, these are examples of mobile solutions that are surviving today. In fact, the applicants have suggested that one of the most criticised payments 'CurrentC' was closed because there was no NFC integration with the service when in fact the service encouraged retailers to disable NFC Payment services so even PayPass

<sup>20</sup> Apple Pay with Balance Rewards at Walgreens – Youtube.com

<sup>21</sup> MCR in Your Wallet – My Coke Rewards

<sup>22</sup> Tencent's WeChat Wallet lands in Hong Kong, beating Apple Pay as public migrates to mobile payments

and PayWave purchases were inapplicable. Walmart, CVS Health and Rite-Aid promptly disabled NFC purchases during the CurrentC trial. CurrentC was also notorious for sharing personal data when an email breach occurred<sup>23</sup> and the privacy policy allowed retailers to collect personal data which was the opposite of what Apple Pay is trying to do. One of the main reasons why CurrentC closed was due to its anticompetitive actions which resulted in a boycott by hundreds of users prompting the service to close. It wasn't because of "there was no NFC integration".

### **"Freeloading into the Australian NFC market."**

NFC isn't Australian and never was. Banks are just trying to rally up consumers with this statement. Contactless payments were introduced to Australia in 2010 and since then that has been the norm not only for us but many other countries. Besides, if Apple Pay is freeloading into the Australian NFC market, wouldn't Android and Samsung Pay be doing the same thing? Besides, if the banks are seriously asking for access to Apple's NFC chip, they'd be freeloading on Apple's device.

## 5. What the applicants actually want from this authorisation.

Commonwealth Bank of Australia, Westpac, Adelaide and Bendigo Bank and National Australia Bank all have incentives in mind.

### - **Leech.**

If the application actually is passed, the banks will start working on their own mobile wallet applications. These banks are actively leeching off their customers as if each customer is tied to the bank's respective mobile wallet app, they will see advertising of their own bank. Each banking application already advertises to their consumers about applying for a new credit card or opening a new savings account. This affects freedom of choice as individuals are unaware if they are better offers elsewhere.

### - **No fees.**

Banks don't want that 0.14% fee affecting their profits (boo-hoo). They'd rather make their own mobile wallet where they have the freedom to be fee-less. Even if they do implement Apple Pay, if this authorisation passes they would most likely deter people into using Apple Pay by setting a fee to use the service, therefore affecting competition and actually going back to that same leech process.

## 6. Closing statement

Whilst we Australians have banks complaining about the banks not opening their system, our brother/sister nation New Zealand has recently got onboard with ANZ allowing Apple Pay transactions on Visa Credit and Debit cards. Our biggest Asian friend China has 23 banks onboard whilst our tiny Asian friend Singapore has 6 major banks onboard with Apple Pay. The US has over 70 banks and credit unions supporting Apple Pay whilst the Maple Leaf country has 10 banks supporting Apple Pay. Russia recently went online with Apple Pay exclusive to 1 bank for 1 month! There are more countries supporting Apple Pay and we are just whining about how there isn't a standard on mobile wallets when clearly, Apple Pay is the standard for iPhones.

I strongly disagree with this authorisation and I would like to think that the ACCC disagree with the rest of the consumers, check out the Whirlpool thread on Apple Pay. It has been watching these submissions since Day #1.

- Brian Tran

High school student.

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<sup>23</sup> Retailers' Apple Pay Competitor has Already Been Hacked, Time.