



Australian  
Competition &  
Consumer  
Commission

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Contact Officer: Fei Wu  
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29/11/2016

Dear Sir/Madam

### **Bendigo and Adelaide Bank & Others – applications for authorisation (A91546 & A91547) – draft determination**

The Australian Competition and Consumer Commission (the ACCC) has issued a draft determination in respect of the applications for authorisation lodged by Bendigo and Adelaide Bank, the Commonwealth Bank of Australia, National Australia Bank, and Westpac Banking Corporation (the **Applicants**) on 26 July 2016.

Please see the ACCC's online publication [Authorisation process - the basics](#) for a summary of the authorisation process and how to make a submission to the ACCC.

The Applicants are seeking authorisation on behalf of themselves and potentially other credit and debit card issuers to engage in limited collective negotiation with Apple. The Applicants also seek authorisation to enter into a limited form of collective boycott to agree not to sign up to Apple Pay while participating in the collective negotiation. This means that they will not individually reach agreement with Apple to allow their cardholders to load their cards on to Apple's digital wallet app while participating in the collective negotiation.

#### **.Draft determination**

A copy of the ACCC's draft determination and summary of its reasons is attached.

For the reasons set out in its draft determination, the ACCC proposes to deny authorisation.

#### **Request for extension to be granted under section 90(10A)**

On 7 September 2016, the Applicants requested an extension of time to provide a written submission to the ACCC and undertook to agree to an extension to the relevant period to consider the applications for authorisation following the issue of a draft determination for the purposes of s.90(10A) of the *Competition and Consumer Act 2010*.

Section 90(10A) of the Act provides that the relevant period may be extended where:

- (a) the ACCC has prepared a draft determination under subsection 90A(1) in relation to the application; and
- (b) the ACCC determines in writing that the period is extended by a specified period of not more than six months; and
- (c) the applicant agrees to the period being so extended.

In accordance with subsection 90(10A)(b) of the Act, the ACCC has determined that the relevant period for consideration of the applications for authorisation has been extended by **three months**, subject to the Applicants' agreement that the relevant period be so extended.

## Next steps

Once the ACCC issues a draft determination, the Applicant or any interested party may make a written submission and/or request that the ACCC convene a 'pre-decision conference'.

If you wish to make a submission in response to the ACCC's draft determination, please lodge your submission by **31 January 2017**. Submissions should be emailed to [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au) with the subject "A91546 & A91547 – Bendigo and Adelaide Bank & Others – submission".

A pre-decision conference provides the opportunity for interested parties to make oral submissions in relation to the draft determination. Conferences are conducted informally and while legal or professional advisers are able to attend they are not entitled to participate in the discussion.

If you wish the ACCC to hold a pre-decision conference in relation to the draft determination you must notify the ACCC in writing by **13 December 2016**.

If a pre-decision conference is called, it will be held at 11am AEST on **Friday 16 December 2016** in Melbourne (with video conference facilities available in some other capital cities).

The ACCC will consider any submissions it receives, including any oral submissions made should a pre-decision conference be called, and will then release a final determination in relation to these applications.

Submissions will be placed on the ACCC's public register subject to any request for exclusion. If you wish to exclude some or all of your submission from the public register, please see the ACCC's online publication [Guidelines for excluding information from the public register](#).

## Timetable

The ACCC will continue to progress its assessment of the application in a timely manner. An updated indicative timetable is set out below for your information.

This timetable is predicated on the Applicants agreeing that the relevant period for consideration of the applications for authorisation be extended by three months.

Indicative date	Stage in assessment process
<b>26 July 2016</b>	Lodgement of applications and supporting submission
<b>28 July 2016</b>	Public consultation process begins
<b>19 August 2016</b>	ACCC decision regarding interim authorisation
<b>29 November 2016</b>	Draft determination
<b>13 December 2016</b>	Deadline to call pre-decision conference
<b>16 December 2016</b>	Pre-decision conference, if called
<b>December 2016/January 2017</b>	Public consultation on draft determination
<b>March 2017</b>	Final determination

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please contact Fei Wu on (03) 9290 1987 or at [adjudication@acc.gov.au](mailto: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