

## Bendigo and Adelaide Bank and others applications for authorisation (A91546 & A91547)

### Summary of net public benefits and Response to Apple's 26 October 2016 submission

#### 1 Executive summary

- ***Real choice, competition and innovation in integrated mobile wallets and payments requires access to the iPhone's NFC functionality.***
  - ***Android access alone is not economically viable, does not drive innovation to the same extent and does not provide iPhone customers choice.***
  - ***Non-integrated solutions (eg, NFC stickers or non-NFC options) do not generate the same benefits. Pointing to a residual potential to invest in unproven alternative technologies in Australia's small market for mobile payments to provide competition in future is not realistic (especially at this stage of adoption). Nor does it detract from the net public benefit of this authorisation.***
- ***Options that allow Apple Pay to continue operating as the bottleneck for integrated NFC payments do not (and cannot) achieve the same public benefits (eg, the iPhone version of the Capital One wallet).***
- ***Apple's assertions about the applicants' participation in multi-issuer third party wallets on the Android platform are factually incorrect. Apple's assertions about the applicants' intentions in relation to this authorisation are based on these factual inaccuracies and do not reflect reality.***
- ***Seamless switching between integrated mobile wallets is already possible on Android. There is no technical reason why Apple could not establish a governance mechanism which does the same.***
- ***The authorisation will result in net public benefits.***

Access to the iPhone's NFC functionality is essential to achieving real consumer choice, competition and innovation in integrated mobile wallets and payments. Access to the NFC functionality on the Android platform alone is not economically viable in a relatively small market such as Australia – by itself it cannot generate the same public benefits.

Similarly, non-integrated solutions (eg, NFC stickers or non-NFC options) cannot substitute for integrated NFC access or provide the same public benefits. Customers have a demonstrated preference for tap and go payments. Any additional friction in the payment process will inhibit consumer adoption of mobile payments. In a small market like Australia, it is not realistic to assume that competition to Apple and constraint on its pricing will be provided by investment in the development of less attractive and more cumbersome alternatives. Further, the applicants have already invested in offering an integrated Android solution (whether that be Android Pay or a bank developed mobile wallet) which is superior to any non-integrated solutions they offer, and want to be able to offer their iPhone customers similar functionality.

Other options that allow Apple Pay to continue operating as the bottleneck for integrated NFC payments cannot be considered a meaningful alternative to having access to NFC functionality. They do not (and cannot) achieve the same public benefits. For example, in recent months a US bank –

Capital One – has added a payment button that links its banking app directly to Apple Pay (the **Apple Pay Button**). However, the ability to provide apps that use the Apple Pay Button does *not* provide real competition to Apple Pay. Instead, under this model:

- Apple remains as the ultimate dictator of the timing and extent of any innovation in integrated mobile payments for iPhone users. The Apple Pay Button option cannot provide the incentives or ability to innovate that NFC functionality access would;
- there is no pressure or domestic competition that would incentivise Apple to respond specifically to the needs and preferences of Australian customers; and
- there continues to be no competitive pressure on Apple to charge competitive fees (or reduce inefficient costs) for Apple Pay.

In contrast, the applicants have proposed a model where Apple Pay, Samsung Pay, Android Pay and other third party wallets that may later enter the market compete directly with any integrated mobile wallets that may be offered by the applicant banks.

Each of these wallets will have its own selling points and may be more attractive to some customer segments than others. In each case, the customer may receive particular benefits depending on a number of factors (eg, the wallet and/or card used, store chosen, products purchased, etc) and may (or may not) pay particular fees. Merchants who have invested in NFC infrastructure will continue benefiting from that investment, as customers will be able to just wave their mobile phones in front of the NFC reader to make payments with the same ease that applies when making “tap and go” payments using plastic cards (but with additional security and intelligence features). All mobile phone owners will have the opportunity of making NFC payments using their preferred mobile wallet with the same level of convenience and by accessing the latest available technology as a default option, without having to rely on outdated stickers or cumbersome procedures. Yet, customers will also have the choice of opening particular apps to make payments (eg, a wallet offered by a major retailer, if the customer happens to be shopping at that retailer’s store) or using their mobile banking app to complete the transaction (eg, if the customer decided to check their account balances and pay some bills or transfer funds between accounts while waiting in the checkout line or at the point of sale). In all these cases, there will be competition between wallets that, together with competition between banks, cards and handsets, will make it possible for consumers to derive real benefits from these new technologies.

Apple insists that this scenario is not possible because it will never agree with the applicants on the issues proposed for collective negotiation. However, simply stating an intention to refuse to engage in collective negotiation cannot be treated as providing legal or economic “evidence” that there would not be a benefit in allowing those negotiations to take place. To do so would undermine the legitimacy of the authorisation process for any collective negotiations in the future – an outcome that would create significant public detriments by itself.

Apple also insists that it will never provide access to the iPhone’s NFC functionality, as to do so would compromise security and customer experience. Even if one believes that Apple has managed to design iPhones to make access to NFC functionality uniquely dangerous and unsafe, it is hard to believe that Apple would lack the technical capability to address any such issues if they arose. Yet, to focus on Apple’s technical “explanations” of why it would never grant access is a distraction in a context where Apple clearly benefits from its status as the monopoly supplier of NFC integrated payments on iPhones. Thus, this application arises in a context where collective negotiation is particularly important and necessary, as in the absence of collective negotiation Apple will continue to behave unconstrained to the detriment of the Australian payments industry and its users, which is to say, all Australians.

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## 2 The application aims to increase competition

**(a) The applicants are responding to the competitive threat of disruption by doing more for their customers**

Apple has argued that the banks view new technology in the finance sector as a threat, and relies on public statements and the fact that one of the applicants has not signed a non-disclosure agreement with Apple to support these claims.

The applicants certainly view Apple and other technology companies as competitors or potential competitors, particularly in relation to mobile wallet and mobile payment services. Many banks developed mobile applications long before Apple Pay was announced. Indeed, the comment selectively quoted by Apple from the Commonwealth Bank's CEO demonstrates that the banks' intention is to directly compete with new entrants and disruptors:

*"Are we going to be able to sit here today and pick the major winners? No. But the disruption is structural. It is only going one way. And I don't think there will ever be a point where me or my successor, or his or her successor, is ever going to sit here and say their war is done and we won. This level of innovation is here to stay.*

*"But we have got customers, we have got distribution, we have got brand, we have got product. So as long as we are adding to that investment and have the right execution focus, we should be able to be really competitive."*

It is also correct that one of the applicants has not signed Apple's "standard confidentiality agreement". That applicant had concerns about the scope and reach of the obligations imposed by that agreement and suggested some changes, which Apple refused to consider. The decision not to sign a "take it or leave it" confidentiality agreement was not made to exclude or delay Apple Pay.

**(b) There is no evidence that the applicants are trying to exclude or discriminate against third party wallets**

Apple argues that the banks' intentions to exclude and discriminate against third party wallets are revealed by their behaviour in relation to their own mobile wallet applications vis à vis other third party wallets that offer access to the NFC function:

*The applicant banks' true objective is evidenced by observing their behaviour with other third party wallet providers. Android Pay and Samsung Pay already appear to provide the applicant banks with everything they are seeking in this application (i.e., independent NFC access, the ability to pass through fees to consumers for use of the wallets). Yet none of the major applicant banks offer their customers access to a multi-issuer third party wallet in the form of Apple Pay, and none of the applicant banks offer the multi-issuer Samsung Pay wallet to their customers.*

*At the same time, the major applicant banks are taking advantage of independent NFC access on Android devices (including Samsung) to offer NFC payment options through their own proprietary banking apps, which are limited to only their own credit and debit cards.*

These comments are inaccurate and misrepresent the relationship between the applicants and Android Pay and Samsung Pay. [c-i-c]. Bendigo and Adelaide Bank is already participating in Android Pay – and has not yet developed its own mobile payment solution for Android – while Westpac has announced its coming participation in Android Pay.

There are substantial costs for any issuer in participating in a third party wallet, with investment in systems and extensive testing required. Issuers need to prioritise this participation and investment. Around the world, many issuers sign up with Android Pay before Samsung Pay for the simple reason that every customer with a Samsung phone can use Android Pay, but not every customer with an Android phone can use Samsung Pay. Samsung Pay has an advantage over Android Pay in markets

where NFC contactless payments are less widespread, since Samsung Pay phones can emulate older magnetic stripe technology; but this is not an advantage in Australia (where pure magnetic stripe cards are no longer issued under the major international payment schemes) and usage of magnetic stripe at point of sale is below 1% for some applicants. Thus, in Australia, most issuers have prioritised Android Pay (with 42 issuers not including Westpac) over Samsung Pay (with only American Express and Citi currently participating).

Apple's comments also fail to recognise that while Android Pay and Samsung Pay announced their intentions to enter Australia in 2015 (and launched in mid-2016), issuers have been able to develop their own NFC-capable mobile wallet and mobile payment applications on the Android platform since 2012. Commonwealth Bank and Westpac announced their Android mobile wallet applications in 2013 and launched them in early 2014, long before Android Pay and Samsung Pay were announced, and NAB launched its mobile payment application in January 2016.

Thus, contrary to Apple's assertions, the applicants' history with the Android platform demonstrates a commitment to investment and innovation in both their own mobile payment applications and third party wallets. Through the application for authorisation they intend to extend this choice to their customers who use iPhones.

**(c) The applicants would not have the ability or incentive to discriminate against Apple Pay**

No ability

The proposed collective negotiation is necessarily predicated on the applicants' participation in Apple Pay. That is, if collective negotiations are successful, each of the applicants will offer Apple Pay, and then also offer their own wallets once these applications are developed.

Commercially, each of the applicants is under pressure from their own customers to offer Apple Pay, with American Express and ANZ both emphasising in their marketing that the major banks do not offer Apple Pay, the recent participation of 31 smaller banks and credit unions to Apple Pay, and frequent customer feedback on social media and elsewhere that they will switch to a bank that offers Apple Pay if the applicants do not introduce it soon.

It is also difficult to envision a scenario where collective negotiations with Apple Pay could lead to an outcome where Apple would agree to grant access to the NFC functionality *unless* the banks agreed to offer Apple Pay. Indeed, participation in Apple Pay is the only thing the banks have to offer to Apple, and without it there can be no negotiation.

Thus, there is no commercial or legal basis to suggest that the applicants could develop their own NFC mobile wallets on the iPhone and not participate in Apple Pay. There is also no possibility that the applicants could use the period of collective negotiation to gain an unfair advantage over Apple Pay by developing their own mobile wallet applications.<sup>1</sup> This is because the applicants cannot effectively compete with Apple Pay without access to the iPhone's NFC function.

No incentive

Apple's submission argues that the applicants have the incentive to discriminate against Apple Pay in order to avoid the competition between issuers that arises at the point of sale from having credit cards from multiple issuers together in a third party wallet. However, customers can already easily switch between the plastic cards in their physical wallets, and will be able to easily switch between differentiated mobile payment applications on their mobile phones. Third party mobile wallets do not provide significantly more competition at the point of sale than already exists and there is no incentive for the banks to avoid them when many of their customers want to use them (and are willing to switch issuers to do so).

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<sup>1</sup> See Pleatsikas Report at p 13.

Apple's submission further argues that applicants have the incentive to charge their cardholders for Apple Pay transactions and not for their own mobile wallet payments in order to prevent their cardholders from using Apple Pay. Dr Pleatsikas also argues that:

*[T]here are other possible (non-price) means of discrimination they could employ to favour their own mobile wallet products over Apple Pay (such as not allowing Apple Pay to be integrated with the bank's own mobile banking app or not allowing their payment cards to be loaded onto Apple Pay).<sup>2</sup>*

Dr Pleatsikas also argues that the applicants do not charge cardholders transaction fees for making payments using credit cards. However, as set out in section 6 below, banks do charge their customers a range of fees for the use of credit and debit cards, including account fees, annual credit card fees and interest charges. These charges are designed to cover a range of transactions including payments through mobile banking. These charges are clearly disclosed to customers, as required by law.

Apple Pay will impose additional costs, and it is not discriminatory if the applicants chose to charge customers for these costs. Customers who see value in the use of Apple Pay will happily pay these charges, but those who do not will be able to avoid that cost by using alternative options. Australian customers are familiar with this type of offering. For example, most issuers offer reward programs to their customers, which result in the payment of additional annual fees for participation. Only a percentage of bank customers opt-in to participate in these reward programs (although these tend to be big spenders and thus tend to represent a higher proportion of total transaction spend).

As set out above, banks that want to have the ability to access the NFC function will have no ability to exclude Apple Pay. The applicants are not sure what Dr Pleatsikas intends when suggesting that the applicants may not allow "Apple Pay to be integrated with the bank's own mobile banking app" – but if this refers to not including a button within the banking app that links to Apple Pay (similar to the Capital One Model), it is difficult to see how that could be considered discriminatory when Apple Pay will always be available, will likely be the default payment application in each iPhone and has the added benefit of operating system driven prompts to add a card to the Apple Pay service.

If access to the NFC function were granted, the banks' mobile applications would all compete with each other and with Apple Pay, and each would have certain advantages and disadvantages. Apple Pay has a significant advantage as the default payment application already installed on the iPhone. It is tightly integrated into the iPhone ecosystem and is at present unique in allowing cards from multiple issuers to be stored on the iPhone. Apple has control of the App Store and has the power to remove any application from that store and prevent it from being installed on the iPhone. The applicants would be constrained by the at least 33 other issuers who participate in Apple Pay without charging any fees. This is competition, not discrimination.

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### **3 Access to the iPhone's NFC function will enhance competition and innovation and provide clear public benefits**

On 11 November 2016, the applicants responded to questions raised by and on behalf of Apple that relate to access to the iPhone's NFC function. In summary:

- Access to iPhone customers, as well as Android customers, is necessary for effective competition, investment and innovation in mobile wallets and mobile payments. iPhone customers are particularly valuable in this context as they drive mass market adoption of new technologies, and tend to spend more than other users. They account for around 40% of smartphone sales in Australia, but 60% of mobile banking interactions, and 70% of application revenues and are expected to be key users of mobile wallets and mobile payments. The importance of these customers is heightened in a relatively small market like Australia, where

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<sup>2</sup> See Pleatsikas Report at p 16.

the size of the addressable market for Android customers is simply not big enough to justify the investment in new technology (or to give it a reasonable chance of success).

- Now that practically all modern smartphones have integrated NFC payment functionality, access to that integrated functionality is essential to effective competition with mobile wallets such as Apple Pay, Android Pay and Samsung Pay. NFC technology is now the global standard for contactless payments and is ubiquitous in Australia with usage rates over 75%; alternative technologies such as QR-code scanners or Bluetooth would require a duplication of this payment infrastructure and would also compromise security and convenience. External NFC stickers are inconvenient and less secure; they are limited in functionality and they interfere with integrated NFC technology; and, above all, stickers are old technology and customers do not want them.
- Mobile wallets that have not had access to iPhone customers, or that have attempted to address the iPhone customer segment through QR codes and Bluetooth, have tended to fail. Recent examples include Semble in New Zealand, Suretap in Canada, CurrentC in the United States and Twint in Switzerland.
- NFC payment technology was designed to be used securely by multiple applications and there is no basis for any claim that providing access to the iPhone's NFC function would put security or customer experience at risk. Apple would be certain to retain tight control over the applications – including NFC applications – that may be installed on an iPhone. Apple would also have the ability to provide a mechanism to manage access to the NFC function for different applications according to user preference. Users who choose to make no changes would find their experience of Apple Pay entirely unaltered.
- The opportunity for a banking application to launch Apple Pay at the time of payment does not substitute for access to the NFC function. It offers a qualitatively inferior user experience, restricts user choice and does not provide opportunities for competition and innovation. In particular, it insulates Apple Pay from price competition and does not allow any downward pressure on Apple Pay fees.

These last two points are examined in more detail below.

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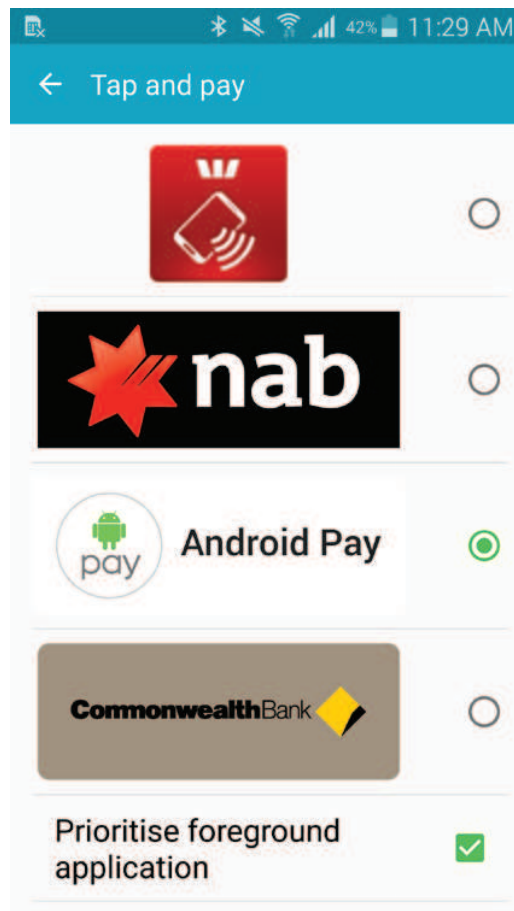
## **4 Access to the iPhone's NFC function will not compromise customer experience**

Apple has claimed that allowing competing applications to access the NFC function would compromise customer experience by requiring the customer to change the device settings every time they wished to use a different application to access the NFC function.

Apple may well choose to compromise customer experience in the manner just described, but there is no commercial or technical reason for doing so. The Android platform, for example, has managed to address this issue as follows:

- when a new NFC application is launched, it can ask the user's permission to register itself as the default application for NFC payments;
- separately, in the device settings, the user can choose whether the default NFC application will always be used, or whether any currently open NFC application will be used instead (by selecting the "prioritise foreground application" option); and
- a user can initiate an NFC payment from within any NFC application by pressing an on-screen button.

A sample of the settings options for choosing a default NFC payment app is reproduced below.



The applicants understand that different settings may need to be changed where different applications use different processing methods (embedded secure element, SIM-based secure element, or host card emulation). It is not yet clear whether competing NFC applications on the iPhone would use the embedded secure element as Apple Pay does, but any additional complexity in providing governance mechanisms for different processing methods would factor into that negotiation.

Indeed, Apple could well provide a better customer experience than the one described above, as Android requires the user to turn on the screen before the NFC functionality is activated, while the iPhone's NFC is always active and an iPhone will "wake" automatically if brought close to an NFC terminal.

In these circumstances there appears to be no basis for Apple's claim that providing NFC access to competing applications would affect the user experience of Apple Pay.

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## 5 The Apple Pay Button approach is not a substitute for NFC access

The applicants have also had the opportunity to further investigate the opportunities presented in version 10 of the iOS operating system to link a card issuer's application to Apple Pay through an on-screen button, as demonstrated by the recent update to the Capital One Wallet application for iPhone.

### (a) The Apple Pay Button approach is inconvenient for users

From a user's perspective, this process offers only an incremental improvement over switching to the Apple Pay application and manually selecting an issuer's card, and still involves unnecessary

duplication and customer inconvenience compared to an integrated banking and NFC payment application. For example, under the Capital One Wallet for iPhone approach:

- a user would have to verify their identity to open the mobile banking application and then verify it again – often using a different verification method – to make the payment through Apple Pay;
- there is no way for the user to select any application other than Apple Pay to launch automatically when a phone is placed by an NFC payment terminal, which is expected to be the most common way for a user to initiate an NFC payment;
- if the user brings their iPhone near an NFC terminal without having pressed the Apple Pay button on the banking application, Apple Pay will launch normally with the user's default payment card selected – and if the user has engaged the fingerprint sensor (by simply holding the phone with a thumb or finger on the home button) then the payment will be made using their default payment card;
- following the payment, the user will remain in the Apple Wallet application and will need to manually return to their banking application; and
- Apple Pay does not return any information about the payment to the banking application.

By contrast, under the Capital One Wallet on the Android platform, which has access to the NFC function:

- users only have to verify their identity once, when launching the application;
- the user can select the Capital One Wallet as the default application to launch automatically when the phone is brought near an NFC terminal;
- the user can complete the payment without leaving the Capital One Wallet application; and
- the banking application has direct access to information about the payment.

As a result of these differences, the Capital One Wallet for iPhone takes twice as many steps to make a payment as the Capital One Wallet for Android does, significantly compromising the user experience in terms of ease and convenience, and also in terms of the information provided.

**(b) The Apple Pay Button approach is not “smart” banking**

By combining information from the NFC function and the payment network, a banking application with NFC access will be able to tell the user whether:

- a payment was successfully initiated and approved;
- a payment was successfully initiated but failed (and the reason for its failure); or
- a payment was not successfully initiated.

This information is particularly important as NFC payments are still developing, there can be incompatibilities with particular payment terminals, and it is not always clear from the terminal whether a payment has been completed.

An integrated mobile wallet can provide a user with comfort that they have made a payment – and not made it twice – but only if the mobile wallet has access to information direct from the NFC terminal and from the payments network. This is not possible where an application needs to link to Apple Pay, as under the Capital One Wallet for iPhone approach.



**(c) Requiring applications to use the Apple Pay Button approach limits competition and innovation**

Similarly, although the Apple Pay Button approach may provide a convenient mechanism for issuers who do not wish to develop their own payment mechanisms, it does not substitute for access to the NFC function in terms of opportunities for innovation, and does not allow for any real competition – particularly price competition – with Apple Pay. This approach would impose no constraint or downward pressure on the price charged for Apple Pay. The continued need to pay Apple the same unconstrained fees for every transaction, whether initiated through Apple Pay or through an issuer's mobile wallet, is also likely to discourage investment in mobile wallet and payment applications and limit customer choice.

Finally, while the Apple Pay Button approach may be useful for some banks, it does not assist with the many possible NFC functions beyond card scheme payments, such as public transport, building access, stored value cards or any of the countless applications that can benefit from a secure, short-range, contactless communications protocol.

Although some of these possibilities could be incorporated into Apple Pay and linked to by other applications, that would require Apple to determine that these were sufficiently high priorities even though they might not generate transaction fees for Apple, and even though they may only appear attractive to customers in some jurisdictions and not others. It would be more efficient and result in more innovation and differentiation if other providers including issuers were able to provide these functions by using their own access to the NFC function, rather than waiting for Apple to provide them.

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## **6 The ability to pass-through fees is efficient and equitable**

Apple submits that the applicants, in arguing for the ability to choose whether to pass on any, some or all of the costs of Apple Pay, have not taken into account the costs Apple has incurred in developing Apple Pay, the costs they have incurred in developing their own mobile applications, or the benefits they will derive from participating in Apple Pay.

The applicants reiterate that they are only collectively negotiating for the right for each issuer to choose, on an individual basis, whether to pass on any, some or all of the issuer's costs in participating in Apple Pay. Whether each issuer decides to pass-through any amount and, if so, the amount they will pass through and the form of any charges, is likely to depend on many factors including the fees charged by other issuers for similar products and the value that the issuers derive from Apple Pay.

This ability is important to ensuring that there is some constraint or downward pricing pressure on the amount fees Apple can unilaterally charge for Apple Pay (especially in light of the potential for unconstrained increases being applied once Apple Pay is offered and increasingly used by customers).

The banks recognise the costs Apple has incurred in developing Apple Pay and assume that these costs are recovered by Apple through the fees it charges for Apple Pay and its sales of iPhone hardware – just as the cost of provisioning the Wi-Fi and Bluetooth interfaces are built into the cost of the handset. There is no inconsistency between recognising the cost of producing an input and building the price of acquiring that input into the ultimate price charged for goods or services that use that input. For example, there are costs in developing the infrastructure and providing the services that lead to merchant fees, and it is recognised as efficient for merchants to pass through those fees.

Issuing banks do not charge customers a transaction fee for the use of their mobile banking applications, including their mobile payment applications where available, but that does not mean they do not recover the costs of developing and providing these applications. Deposit customers typically pay regular account fees, which contribute to the cost of developing mobile applications. In some cases these fees may be avoided by making regular deposits above a certain value, which gives the banks the benefit of those funds – and which also contributes to the cost of mobile applications.

Credit card customers pay annual fees and interest charges, which make a similar contribution to the cost of developing mobile applications.

Banking apps also provide benefits to the issuing banks that offset the costs of their development. An effective mobile banking application reduces costs associated with more expensive interactions such as branch visits and telephone support. Issuing banks benefit from interchange fees when a customer makes a payment using either a plastic card or a mobile wallet. Banking apps also provide genuine opportunities for digital engagement and can strengthen customer relationships.

The additional benefits of participating in Apple Pay are less clear. Apple argues that Apple Pay reduces fraud, but fraudulent transactions only accounted for 0.0668% of transaction value in 2015.<sup>3</sup> It is difficult to see how Apple Pay could reduce this level of fraud to an extent that would make an Apple Pay transaction fee of up to 0.15% worthwhile. The additional digital engagement provided by Apple Pay is also of questionable value to card issuers. However, to the extent that net benefits are conferred, issuers will not wish to discourage customers from using Apple Pay by charging high fees.

Dr Pleatsikas argues that issuers do not typically charge transaction fees for using the credit and debit card schemes. However, issuers do pass on transaction fees where they are incurred, for example foreign currency conversion fees. As mentioned above, they also charge fees for more expensive forms of transaction such as teller transactions and cheques, either by charging a fee per transaction or charging for a bundle of services each month, for example a certain number of teller transactions or withdrawals each month. Issuers might choose to charge for Apple Pay on a similar basis if permitted to do so.

The applicants have noted that other issuers such as ANZ and American Express – and presumably the 31 new banks and credit unions who have recently signed up to Apple Pay – will not be permitted to charge their customers for Apple Pay and that this will put competitive pressure on the applicants not to charge either. However, the level of fees, if any, to be charged will remain a matter for individual issuers, and will remain responsive to competitive conditions and also to the fees charged by Apple in the future. This is very different from a situation in which issuers are prevented from passing through any proportion of their costs of participating in Apple Pay.

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## **7 There is a real chance of these public benefits being achieved**

The applicants acknowledge that Apple has not agreed to provide access to the NFC function, but it has made significant concessions when faced with a negotiating partner with more equal bargaining power. While Apple has direct knowledge of its negotiating history and the applicants can only rely on what has been reported, there is no disputing that Apple has made these concessions in the past.

The applicants do not see any inconsistency in saying that Apple adopts a “take it or leave it” approach to individual banks of the size or scale of the applicants but has made concessions when negotiating with groups or much larger entities. Indeed, the fact that Apple’s submission makes the point that JR East is “the largest transit operator in the world” suggests that the size and bargaining power of the counterparty may be the determining factor in Apple’s approach to negotiations.

On this issue, the applicants have not claimed that Apple’s addition of adding transit functionality represents a change in Apple’s approach to providing access to the NFC function. They only argue that in dealing with JR East and its Suica NFC card, Apple has both accommodated a different NFC standard and has altered its approach to security in permitting contactless payments without requiring Touch ID fingerprint authentication for Suica stored value.

Suica is not limited to transit payments but is widely accepted at convenience stores, cafes, vending machines, retail shops, kiosks, taxis and for online shopping throughout Japan. (In an innovative application of NFC technology, Suica cards can also be tapped against a customer’s Nintendo Wii U

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<sup>3</sup> APCA, “Australian Payments Fraud: Details and Data, 2016”, available at [http://www.apca.com.au/docs/default-source/fraud-statistics/australian\\_payments\\_fraud\\_details\\_and\\_data\\_2016.pdf](http://www.apca.com.au/docs/default-source/fraud-statistics/australian_payments_fraud_details_and_data_2016.pdf) (accessed 14 November 2016).

games console to purchase games or in-game items.) A Suica card can be loaded with up to ¥20,000 (around \$A250) in value, and may be automatically recharged if it is linked to a credit card that can provide this function, such as JR East's View card.

The average value of a fraudulent transaction has been estimated at \$US136 for credit cards and \$US104 for debit cards in the United States,<sup>4</sup> and at \$A210 for cards in Australia.<sup>5</sup> In these circumstances it is not clear why Apple does not consider unauthorised payments up to ¥20,000 to be a significant security risk but would need to refuse access to the NFC function due to far more speculative and unsubstantiated security risks.

Apple has not demonstrated that access to the NFC would compromise security or customer preference and the applicants are confident that it would provide access to the NFC function in a secure and convenient way. It has a history of providing access to hardware and software features of the iPhone, including features that are closely related to security and to payments, such as Bluetooth and Touch ID. It is under increased pressure around the world to provide access to the iPhone's NFC function to issuers and other financial technology companies.

It also has an opportunity to make a great success of Apple Pay in Australia, which has widespread NFC payment infrastructure and is a key market for the iPhone. In these circumstances, and faced with a collective negotiation group that represents over half of credit and debit cards issued in Australia, the applicants consider there is a real chance that Apple will negotiate with them and that they can achieve real improvements in competition, innovation, transparency and equity.

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<sup>4</sup> Federal Reserve System, *The 2013 Federal Reserve Payment Study*, July 2014, available at [https://www.frbservices.org/files/communications/pdf/general/2013\\_fed\\_res\\_paymt\\_study\\_summary\\_rpt.pdf](https://www.frbservices.org/files/communications/pdf/general/2013_fed_res_paymt_study_summary_rpt.pdf) (accessed 14 November 2016).

<sup>5</sup> APCA, "Australian Payments Fraud: Details and Data, 2016", available at [http://www.apca.com.au/docs/default-source/fraud-statistics/australian\\_payments\\_fraud\\_details\\_and\\_data\\_2016.pdf](http://www.apca.com.au/docs/default-source/fraud-statistics/australian_payments_fraud_details_and_data_2016.pdf) (accessed 14 November 2016).