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Australian Competition and Consumer Commission
Adjudication Branch
Lyn Camilleri
Director

Dear Lyn

Comment on Bendigo and Adelaide Bank & ors – applications for authorisation A91546 & A91547 – interested party consultation

Tyro Payments welcomes the opportunity to provide this submission on the Draft Determination by the Australian Competition and Consumer Commission (ACCC) for the above-named matter. I note that we provided a draft submission to the ACCC on 4 August 2016 (enclosed) that we continue to refer to.

Tyro is Australia's only independent EFTPOS banking institution and is the first new entrant in the banking business in more than 18 years. Tyro holds an authority under the Banking Act to carry on a banking business as an Australian Deposit-taking Institution (ADI) and operates under the supervision of the Australian Prudential Regulation Authority (APRA).

Tyro provides credit, debit, EFTPOS card acquiring, Medicare and private health fund claiming and rebating services, as well as a transaction and deposit account integrated with Xero cloud accounting. Tyro takes money on deposit and offers unsecured cash flow-based lending to Australian EFTPOS merchants.

Tyro supports the application, put forward by the Group Participants, to collectively bargain with Apple on the following:

1. Access to the Near-field Communication (NFC) controller embedded in Apple's iPhone
2. Authorisation to pass through Apple Pay fees to cardholders.

Tyro stands behind the notion that increased competition between financial providers in terms of mobile payments will benefit the marketplace, with such competition increasing product innovation, such as digital wallets, which are in their infancy in Australia. By Apple not offering third party access to the NFC controller in their iPhones and only allowing the digital wallets provided by banks on iPhones to be operated through Apple Pay, this not only limits competition, it also limits consumer choice for issuers of digital wallets in Australia.

While Apple allows third parties to connect free of charge via Wi-Fi, 3G, Bluetooth and other network protocols to its phone product range, it does not do so for NFC. Eliminating third party access to the Apple NFC function is particularly effective in stifling innovation and competition, because it is the only available and highly secure connectivity option that is ubiquitously available across the entire card payment infrastructure and terminal fleet.

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In its Draft Determination, the ACCC notes that Apple is 'not a monopoly supplier of mobile devices on which mobile payments can be made' yet Apple does maintain a stronger position in the mobile payments stakes against other financial providers by using technologies that are unique to the Apple brand that other digital wallet issuers cannot replicate.

The ACCC also put forward that 'the option for the Applicants to sign up to Apple Pay to provide an issuer digital wallet that uses Apple Pay already allows the Applicants to compete with Apple Wallet and other digital wallets.' This does not resolve the issue at hand, as other issuers will still need to rely on the Apple apparatus to secure mobile payments.

In its Draft Determination, the ACCC notes the model implemented by American bank, Capitol One, where its digital wallet uses Apple Pay for customers to make mobile payments. Capitol One has an arrangement with Apple where customer's credit cards are loaded to the Apple Wallet, as well as the Capitol One Digital Wallet. Although this provides Capitol One customers with choice in how to make their mobile payments, essentially, all that this arrangement achieves is customers being redirected to Apple Pay for such purposes.

There is no degree of separation between Capitol One and Apple Pay and the Capitol One banking app is merely just a link to the Apple Pay platform. This reinforces the dominant position of Apple in the mobile payments space and how competitors, such as Capitol One, have limited options when it comes to providing their customers with banking apps that can rival the technology or user experience provided by Apple.

The example of Capitol One is not dissimilar to the position of Tyro and the Group Participants in this matter. As the Draft Determination details 'Australia has…high levels of smartphone ownership, and widespread use of contactless payments, but low use of mobile payments.' The use of digital wallets is in its early stages in Australia, yet it will not be able to develop and advance to its potential if the model in Australia is a 'one provider fits all' framework.

The ACCC states that issuers of digital wallets can use NFC tags or external hardware to create a similar user interface as that featured on the iPhone, but does note that user experience and system functionality would not be of the same quality. As the ACCC concedes, '…issuers would still be unable to provide payment processing features on Apple devices that compete directly with Apple Pay. Apple Pay would remain the only mobile payment service for Apple devices (aside from the option of using an NFC tag).' How will alternative mobile payments be able to proliferate when Apple's position as a global, dominant player in the market is almost unbridled against the smaller banking players?

In its submission, Apple argued that providing third party access to its iPhone NFC controller would pose risks to users' security and privacy and would undermine its smartphone payment platform. The reality is however, that Apple has a well-established and robust review and certification process that ascertains compliance with its security, privacy and useability standards before any wallet app would go into the Apple app store.

So what is the detriment in providing competition between issuers of mobile payment platforms? For digital wallets and mobile payments to grow in popularity and become more embedded within the Australian marketplace, consumers need options.

The position that the Draft Determination adopts demonstrates that the development of mobile payments in Australia will be slow, with banks and other smaller financial providers having little room to compete with Apple's iPhone offerings. The restriction will stagnate the development of their mobile product-base.

Apple restricting the usage of NFC by third parties has secondary effects in markets beyond the card payment space alone. Third party wallet providers of services with regards to transport, passports, driver licences, loyalty solutions and many other innovations not yet imagined that require the wallet and NFC connectivity to the phone will face this access barrier and cost disadvantage.

Further, the ACCC highlighted that there would be public benefit in the Group Participants being able to create their own digital wallets for mobile payments on iPhones without the need to utilise Apple Pay, as it would 'increase innovation and investment in digital wallets' and increase consumer confidence which would in turn propel more consumers to adopt mobile payments in Australia. This would only lead to greater investment in the mobile payments space which would allow for competitive tension to drive innovation.

With respect to the argument concerning the pass through of Apple Pay fees to cardholders, Apple put forward that pass through fees are not 'standard industry practice for the use of digital wallets.' Yet the ACCC acknowledged that "Allowing pass through lets the market determine the appropriate rate that is charged explicitly and avoids the inefficiencies that may be created when specific charges are recovered in some way from consumers who are not using the Apple Pay service."

Similar to the card interchange fees the Apple fee is not negotiable, paid by the banks, then merchants and ultimately consumers. In that it shares and exacerbates the characteristics of an interchange fee. The Apple fee has thus the potential to frustrate the efforts of regulatory interventions that have been seeking over years to lower the interchange costs of electronic payments for consumers, since market forces have failed.

Transaction fees are common in the payments industry, and we do not believe that allowing pass through fees would greatly disadvantage Apple Pay's position amongst consumers. Similar to surcharges in credit and debit card payments, it would rather send appropriate price signals to the user. The objective of the Group Participants to pass through Apple Pay fees to consumers is not to undermine the status of Apple Pay, but to open up the playing field so that digital wallets from other financial providers can compete on an equal footing.

To increase competition between digital wallets and the fees that are charged would also allow for greater transparency within the market itself. The Group Participants, from our perspective, are wanting to open up pass through fees to incentivise their consumers to use their digital wallets – which is no different to the position of Apple wanting to restrict pass through fees to ensure that customers stay with their payment platform instead.

Tyro supports the position of the Group Participants in this instance. There should be equal bargaining powers between mobile payment providers in Australia because, as we have seen in recent years, disruptive technologies create pathways for better innovation and potential collaboration.

Tyro reiterates as in the first submission that to give the local bank oligopoly (whose position has been created over years and is still reinforced by a special regulatory status) an exemption from competition rules to strengthen its position versus a strong global player (who has achieved its position by the pure operation of the market) seems prima vista counterintuitive, but a collective bargaining/boycotting capability over a meaningful time horizon is the only way to bolster the currently faible negotiation position of the Australian banks.

Open standards are in the public interest. That is why the major Australian retail banks should themselves embrace a culture of allowing innovation and competition and commit to Open Banking standards.

Kind regards,

Jost Stollmann
Executive Director
Tyro Payments Limited