

The response to the draft decision of the ACCC by the applicants is puzzling.

Rather than provide further points of substance in support of their request for collective negotiation, the applicants have again changed the details in respect of what they wish to negotiate, while not providing any reason to justify it. The submission seems to contain nothing significant over points previously made. Points already refuted. The rest of the document is full of vague statements about advantages and benefits that might accrue from a successful outcome of the collective negotiation sought.

So why did they bother?

When the draft decision was announced the ACCC specifically said that if the application for authorisation was sought on the basis of access fees to Apple Pay, the request for is likely to fail. It took 5 days for a retail bank representative of the applicants to provide a public statement that the application is not about the fees. Why did this become an important point after the determination, not at the start?

The revised request, which formally dropped any discussion of fees in negotiations, and that the period sought be halved, simply adds to the lack of integrity the applicants present. Its hard to trust anything they say.

Apple has said, repeatedly, that third party access to the NFC radio is not and will not be made available. As recently as February 10th, in an interview with the global head of Apple Pay in the Australian Financial Review newspaper, Apple clearly stated that

“it will never be able to grant the applicant banks' request for their own, proprietary digital wallets to access the "near field communications" chip in the phone”.

The head of Apple Pay said

“For technology reasons as well as customer experience reasons, all those [digital cards] need to sit together in Apple's wallet, because when you present the credential you are interacting with, the wallet has to have the knowledge to present the right card,”

Though inappropriate to second guess the outcome of any negotiation between the applicants and Apple, whether collectively or individually, it is difficult to see how anything at all can be gained - let alone any beneficial outcomes for consumers - if the negotiation is about access to the NFC radio.

It cannot be seen to be a benefit to consumers that the most likely outcome of collective negotiation is at least an 18 month delay to Apple Pay as a product for the Australian consumers that use one of the applicant banks.

It is obviously possible that the applicant banks may never provide Apple Pay for their customers. A simple commercial decision they are entirely able to make. In such a scenario consumers wishing to use the Apple Pay product simply join a financial

institution that offers it. Introducing an artificial 18 month delay just means uncertainty for consumers who may wish to make that choice.

The Applicant's argument is a tricky one to make. As they are competitors each would like their own banking application on an iPhone to be where the customer operates exclusively. Yet the argument is that each bank needs access to the technology so that their particular app can provide the feature set they desire. Nothing in any submission by the applicant addresses the technical and usability challenges of switching between the various bank "wallets". To acknowledge these challenges would mean admitting the problem for consumers inherent in the operational gymnastics of switching between the apps.

As was shown so perfectly by the provided Apple video, the act of accessing the set of cards, selecting the preferred one and using it, could not be simpler.

Apple have stated in some detail that their Wallet app is far from being only about bank contactless payments. Loyalty cards and public transport, amongst other opportunities are being made available via the same mechanism as part of the development of a true "electronic wallet".

The applicants, somewhat strangely, also made claim to extending the functions of their own apps - were NFC access granted - to include the same kinds of features. Within one of their apps a consumer could also store loyalty or transit cards and use them as part of the app's feature set.

This is bizarre. Why would a consumer, upon boarding public transport logically start their bank app to present a ticket? Or to use a loyalty card in a coffee shop? It is difficult to imagine a consumer who would find this easy or logical. Moreover why the need to launch any app at all? Apple's interface presents the choices outside the context of any app, for immediate and seamless access. It is not possible to improve that usability.

As has been stated innumerable times, the metaphor is that we all carry one wallet (or purse or reticule) and contain in it all the various cards and information we need. This is what the Apple Wallet does. It is entirely counter-intuitive to adopt the bank's approach. Even if the authorisation was granted so they could build such a solution.

Throughout the applicant's submission are a number of general, vague, rather woolly statements about the potential for innovation for consumers. The word "may" occurs repeatedly. None of the statements present any detail or depth - they are simply arbitrary ideas waved about it seems, in order to provide weight to their case.

The areas in which some detail is presented, such as denying adverse affects on smaller institutions, or the lack of suitability of the Capital One solution are largely nitpicking and don't address the overall problem of benefit to consumers.

In the Executive Summary the submission presents the slogan "...real choice and real competition..." This sort of start is reminiscent of the things Canberra politicians might say more than a serious attempt to begin a convincing argument.

Consumers today do have a choice simply because the Apple iPhone is not the only personal smart device capable of contactless payments. Consumers can use several brands of smartphone with the Android operating system, most of which offer the NFC radio and integration with individual apps.

If the applicants are so sure of the innovation that would occur to the benefit of consumers then perhaps they can demonstrate that via their banking apps for the Android platform. They have access to the NFC radio on that platform. Develop these innovative apps and solutions and surely consumers will adopt them. Consumer demand will show that yes, the banks can provide superior and truly innovative solutions given the chance. That outcome would provide the most powerful argument against Apple's restrictions on its platform.

The rate of change and innovation in commerce is increasing. The applicants in this request for authorisation are not contributing to it, they are holding it back. One example is that Apple has recently released a range of laptop computers with a fingerprint sensor and has integrated that to the Apple Pay infrastructure. Now its possible to use that payment method extremely simply and conveniently in online commerce. This is innovation. Except that consumers without Apple Pay support from their bank are unable to benefit from it.

Overall the latest submission brings nothing of worth to change the draft determination. It almost seems to have been written by different authors, not possessed of any in-depth knowledge of the technology or issues, just engaged to rebuke an arbitrary set of points. Like a last stand effort, a tacit admission their argument has not succeeded.

Finally 48 submissions have been so far made to this authorisation request. This seems quite noteworthy. In particular is the number of private citizens that have taken the time and effort to provide an input. The evidence of that effort indicates the depth (if not the extent) of feeling about the issue. Putting aside the businesses and companies that are stakeholders in the case, the ACCC might note the level of consumer input to the case, all of whom seek to deny the authorisation. Or in other words, ask the banks to either support Apple Pay as a benefit to consumers, or decline to do so, and we'll make up our own minds about it.

Thank you.

J. Montagu.