

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and Consumer Act 2010* (Cth)

by Visa AP (Australia) Pty Limited ABN 20 134 885 564 and Visa Worldwide Pte Limited

Person giving the Undertaking

1. This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Visa AP (Australia) Pty Limited ABN 20 134 885 564 and Visa Worldwide Pte Limited (together **Visa**), for the purposes of section 87B of the *Competition and Consumer Act 2010* (**CCA**).

Background

2. Visa Worldwide Pte Limited provides payment card services to Australian issuers and acquirers.
3. Issuers of Visa branded payment cards may issue Visa branded credit cards and/or Visa branded dual network debit cards (**DNDCs**).
4. When accepted by a merchant for a payment transaction, Visa branded card transactions are routed through relevant payment networks by the merchant's acquirer.
5. In accordance with Visa scheme rules, Visa branded credit card transactions will be routed through the Visa network. Visa branded DNDC transactions may be routed through the Visa network, or the Eftpos Payments Australia Limited (**EPAL**) network.
6. In respect of card present Visa branded DNDC transactions where a consumer inserts their card into the relevant payment terminal, the cardholder may choose to route the transaction via the Visa or EPAL network. This is referred to as 'consumer choice routing'.
7. In respect of card present, contactless (i.e. 'tap and go') Visa branded DNDC transactions, acquirers have commenced the introduction of technology that allows merchants to determine whether transactions are routed through the Visa network, or the EPAL network. This is referred to as 'merchant choice routing' or 'least cost routing'.
8. While acquiring services are provided by acquirers to merchants, Visa has direct relationships with certain merchants, which may affect merchant routing decisions.
9. Visa has entered into agreements with certain merchants (merchant support agreements or **MSAs**). The MSAs provide merchants with strategic merchant debit and/or credit interchange rates (strategic merchant rates or **SMRs**). An SMR will provide a merchant with a lower interchange rate. The provision of an SMR is conditional on a merchant routing transactions through the Visa network.
10. In approximately April 2018, Visa implemented a change to its MSA terms. As a result of this change, to the extent an MSA included both credit and debit SMRs, the terms for each SMR would appear in separate schedules. Merchants were entitled to terminate either schedule without any effect on the other schedule (the **Credit and Debit Separation**). The Credit and Debit Separation allowed a merchant to terminate its debit SMR schedule, without losing the benefit of its credit SMR schedule.

ACCC concerns

11. The ACCC has conducted an investigation into allegations of anti-competitive tying conduct in the Australian markets for credit card acceptance services and debit card acceptance services.
12. The ACCC considers that there are separate markets for the supply of credit card acceptance services and the supply of debit card acceptance services in Australia.
13. The ACCC considers that Visa has a substantial degree of market power in the market for the supply of credit card acceptance services in Australia. The ACCC also considers that Visa credit cards are a 'must have' form of payment for a large number of merchants, and merchants do not have a choice of network when processing Visa credit card transactions other than the Visa network.
14. Notwithstanding the Credit and Debit Separation, the ACCC is concerned that Visa remains in a

position to leverage its substantial market power in the credit card acceptance market and limit competition in the debit card acceptance market by tying, or seeking to tie, its offer of credit SMRs to a merchant's commitment to also route Visa branded DNDC transactions via the Visa network during its engagement with merchants (**Tying Conduct**).

15. The ACCC considers that the Tying Conduct may substantially lessen competition in the market for debit card acceptance services and raises concerns under sections 46 and 47 of the CCA.

Acknowledgments and Resolution

16. For the purposes of this Undertaking, Visa acknowledges, but makes no admissions in respect of, the ACCC's concerns noted in paragraphs 11 to 15 above.
17. To address the ACCC's concerns, Visa has offered this Undertaking to the ACCC.

Commencement and terms of the Undertaking

18. This Undertaking comes into effect when:
- a. this Undertaking is executed by Visa; and
 - b. this Undertaking so executed is accepted by the ACCC (**the Commencement Date**).
19. This Undertaking has effect for three years after the Commencement Date (**the Term**).
20. Upon the Commencement Date, Visa undertakes to assume the obligations set out in paragraphs 27 to 39 below for the Term of the Undertaking.
21. The obligations in this Undertaking apply to Visa's conduct from the Commencement Date.
22. This Undertaking only applies in respect of Visa's arrangements with Australian merchants. It does not affect, nor is it intended to affect, Visa's arrangements with global merchants, including global merchants with Australian operations where that global merchant is subject to an agreement which applies to multiple jurisdictions, including Australia.
23. Other than as set out in paragraphs 27 to 33 below, nothing in this Undertaking will otherwise limit Visa's freedom to contract.
24. Notwithstanding the Term of this Undertaking, this Undertaking will terminate if the ACCC consents in writing to the withdrawal of this Undertaking in accordance with section 87B of the CCA and the ACCC will consider in good faith any requests and submissions by Visa for the early termination of this Undertaking.
25. If Visa considers it is necessary to seek to vary the terms of this Undertaking due to changed circumstances or because the Undertaking is affecting Visa's ability to compete with its competitors (including due to any material change in the markets in which it operates, or where Visa's commitments under this Undertaking are materially different and more restrictive than any obligations imposed on its competitors) then Visa and the ACCC will, in good faith, consider a variation or withdrawal of all or any of the terms of this Undertaking. Visa shall provide a written submission outlining its concerns and the ACCC has 30 business days from receipt of that submission to evaluate the submission, engage in any negotiation or discussions with Visa and provide a response.
26. If Visa and the ACCC cannot reach agreement about the nature and extent of any proposed variation to the terms of this Undertaking following the process outlined in paragraph 25, Visa can provide the ACCC with 30 days written notice of its intention to withdraw from this Undertaking (in whole or in part) and the ACCC will not unreasonably withhold consent to such withdrawal.

Visa branded DNDC transactions and Visa credit transactions

27. Visa will not, by reason of a merchant's decision to route Visa branded DNDC transactions to an alternative network:
- a. terminate or withdraw the merchant's credit SMR under an existing MSA;
 - b. implement a change to the credit segment interchange rates applicable to that merchant; or
 - c. otherwise increase the costs specifically covered by the MSA, or under that merchant's other agreements with Visa associated with the acceptance of Visa credit payments for that merchant.

28. Visa will not offer a credit SMR to any merchant on condition that the merchant routes Visa branded DNDC transactions through the Visa network
29. Visa will provide written reasons to a merchant for any withdrawal/change to that merchant's credit SMR where that merchant has indicated an intent to route or has commenced routing Visa branded DNDC transactions to a network other than Visa.
30. Within 30 days of the Commencement Date, Visa will notify all Australian merchants with which it currently has an existing MSA for both credit and debit SMRs or a credit SMR, or is currently negotiating an MSA which may result in the merchant having both a credit and debit SMR or a credit SMR, that a merchant's Visa branded DNDC transaction volumes, or a merchant's decision to route Visa branded DNDC transactions to an alternative network, will not influence eligibility for a credit SMR.

Negotiations with merchants in respect of SMRs

31. Prior to commencing negotiations with a merchant in respect of a possible MSA, Visa will:
 - a. advise the merchant whether Visa considers it is eligible to receive a credit SMR, a debit SMR, or an MSA that includes both a credit and a debit SMR; and
 - b. provide the merchant with Visa's position as to the eligibility criteria applicable to that merchant for the credit and/or debit SMR including a clear statement that in respect of credit SMRs, the volume or value of Visa branded DNDC transactions will not form part of the eligibility criteria.
32. Where Visa advises a merchant that it is eligible for an MSA that includes both a credit and a debit SMR, the order of negotiation of credit and debit SMRs (including simultaneous negotiation) will be at the option of the merchant.
33. The Visa branded DNDC volume or routing decisions of a merchant will not be considered by Visa in assessing a merchant's eligibility for a credit SMR.

Non derogation

34. For avoidance of doubt, subject to the obligations set out in paragraphs 27-33 above, this Undertaking does not prevent:
 - a. Visa from offering other benefits/incentives to a merchant (whether in a debit or credit schedule, or in the MSA);
 - b. the termination or non-renewal of an MSA containing a debit SMR by Visa if a merchant routes or notifies Visa of its intention to route Visa branded DNDC transactions via a network other than the Visa network;
 - c. termination of an MSA if a merchant is in breach of its obligations under that MSA;
 - d. non-renewal of an MSA containing a credit SMR for reasons not related to a merchant's decision to route Visa branded DNDC transactions to an alternative network; or
 - e. Visa from changing its market offering including in relation to debit and credit SMR eligibility, tiering and segment rates.

Compliance and Dispute Resolution

35. MSAs entered into from the Commencement Date will contain an appropriate dispute resolution framework including:
 - a. the process and procedure to be followed in circumstances where the parties are unable to resolve any dispute arising out of or relating to the MSA; and
 - b. details of a dedicated email address to which a merchant may direct any concerns that merchant may have in respect of Tying Conduct.
36. Visa will provide annual training to Visa staff that engage with merchants in Australia (including members of the Merchant Sales & Acquiring team) in respect of the obligations contained in this Undertaking and compliance obligations under the CCA.

Appointment of an independent auditor

37. Visa will appoint and fund an independent auditor (approved by the ACCC) to conduct an annual audit of Visa's compliance with this Undertaking and provide a copy of its annual audit report to the ACCC for the term of the Undertaking.


38. The independent auditor will be provided with the opportunity to speak with the following persons (and/or their delegate):
- a. the regional head of the Merchant Sales & Acquiring team;
 - b. the Vice President, Head of Pricing and Interchange (Asia Pacific);
 - c. Group Country Manager (Australia, New Zealand and South Pacific);
 - d. other persons occupying similar roles to those specified in a. to c. during the Term of the Undertaking; and
 - e. other persons with Visa's consent identified by Visa following a written request by the independent auditor to Visa outlining the relevant issues and questions to be addressed by the annual audit report.
39. The independent auditor will be provided with access to the following information and documents (excluding any legally privileged documents or information), for the purposes of conducting the annual audit:
- a. all current MSAs, including the terms of any dispute resolution processes established under those MSAs;
 - b. any disputes raised by merchants pursuant to an MSA and the status of the dispute;
 - c. correspondence between Visa and any merchants in the preceding year regarding merchants' preferences as to the order of negotiations of credit and debit SMRs;
 - d. current segment rates and a copy of the Visa Business News announcement implementing changes to segment rates in the six months preceding the audit and any documents implementing changes for the following year;
 - e. correspondence between Visa and any merchant in the preceding year regarding termination of an MSA, prior to the expiry date of that MSA;
 - f. any correspondence sent to or from the email address provided to merchants for the purpose of directing any concerns regarding Tying Conduct;
 - g. training materials provided to Visa staff in accordance with paragraph 36 above;
 - h. any other information and documents with Visa's consent related to the items listed in (a)-(g) above, which the independent auditor reasonably considers are required to conduct the annual audit; and
 - i. additional documents with the consent of Visa.

Acknowledgments


40. Visa acknowledges that:
- a. the ACCC will make this Undertaking publicly available, including by publishing it on the ACCC's public register of section 87B undertakings on its website;
 - b. the ACCC will, from time to time, make public reference to this Undertaking, including in news media statements and in ACCC publications; and
 - c. this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

Executed as an Undertaking

Executed by Visa AP (Australia) Pty Limited ABN 20 134 885 564 by its authorised signatory:


Signature
JULIAN POTTER
Name of authorised signatory (print)
4 MARCH 2021
Date

Executed by Visa Worldwide Pte Limited by its authorised signatory:


Signature
PRATEEK SANGHI
Name of authorised signatory (print)
Date 5 MARCH 2021

Accepted by the Australian Competition and Consumer Commission pursuant
to section 87B of the *Competition and Consumer Act 2010* (Cth) on:

9 March 2021

Date

and signed on behalf of the Commission:



Chair

Rodney Graham Sims

Date

9 March 2021