

An Inquiry into Mobile Payment and Digital Wallet Financial Services

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This memorandum is to inform the Parliament Joint Committee on Corporations and Financial Services in their enquiry into mobile payment and digital wallet financial services. Our team includes academics from Curtin University in the School of Accounting, Economics and Finance (Dr Lien Duong, Professor Grantley Taylor and Dr Baban Eulaiwi), and School of Electrical Engineering, Computing, and Mathematical Sciences (Dr Duc-Son Pham). Specifically, we address the four issues that are of interest to the committee.

- 1. The nature of commercial relationships and business models, including any imbalance in bargaining power, operating between providers of mobile payment digital wallet services and:**
 - a. providers of financial services in Australia;**
 - b. merchants and vendors; and**
 - c. consumers;**

Driven by greater convenience and confidence in digital security, Australia has become one of the largest users of contactless payments in the world. The Consumer Payment Survey² by the Reserve Bank of Australia (RBA) in 2019 reported that 83% of point-of-sale card transactions were contactless, representing an increase of approximately 20% in three years. The use of digital wallets and cards for low-value transactions in Australia has been greatly expedited to encourage contactless payments during the COVID-19 pandemic.

A digital wallet is a software-based system that allows consumers to store money (credit and/or debit cards) or non-money information (loyalty cards) digitally on their smartphones or smartwatches. Mobile payment and digital wallets are increasingly popular to merchants and consumers, especially among younger generations³ due to their convenience and greater fraud protection. Consumers are able to make payments for their low-value purchases (typical under \$200) by simply tapping their mobiles or smartwatches at a point of sale (POS) terminal. Many

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² <https://www.rba.gov.au/snapshots/how-australians-pay-snapshot/>

³ <https://www.mobiletransaction.org/au/tap-and-go-trending-in-australia/>

experts⁴ agree that mobile payment methods are more secure than physical cards due to encryption and tokenisation to mask payment card account numbers. Additional security features for mobile payments include biometric authentication (e.g. fingerprint or facial recognition) or a passcode where a transaction is made. Accepting mobile payments incurs no additional costs for merchants if they are already using contactless payments.⁵

The 2020 Roy Morgan Digital Payments Report⁶ shows that there is a sharp increase in the use of mobile contactless payment services in Australia. Approximately 10.8% of Australians in 2020 use non-bank contactless mobile payment services, an increase from 7.1% in 2019. The current mobile wallet options that are available to Australian consumers include Apple Pay, Google Pay, Samsung Pay, Fitbit Pay and Garmin Pay. There are also bank-specific digital wallets such as Tap & Pay (from CBA) or NAB Pay, but they usually work with cards from that bank only. Apple Pay and Google Pay are the most popular digital wallets with their market share being 6.5% and 4.1%, respectively, as at March 2020.

There are some differences in the way Apple Pay and Google Pay operate. While Google may collect information on transactions made using Google Pay and uses this for marketing other Google services to users,⁷ Apple claims that it does not collect information that can be linked back to individual consumers.⁸ However, Google, in contrast to Apple, does not charge a fee to card issuers when transactions are made with Google Pay. Apple, unlike other main mobile phone manufacturers, places restricted access to its iPhone's contactless payment chip, the near-field communication (NFC) interface. Other payment service providers cannot integrate their own digital wallets into the iPhone's NFC system without using the Apple Pay app. As a result, a card issuer needs to enter into an agreement with Apple on a "take it or leave it" basis⁹ so that its cards can be loaded into the Apple Pay e-wallet. Integration to Apple Pay is, nevertheless, an expensive task with an onboarding fee and fee for each transaction. Apple requires issuing banks to share part of their (regulated) interchange fees but it does not allow them to recoup the costs from their customers. That explains why Apple's

⁴ Williams, D., F. Hu and M. Hoppa. 2020. "Follow the Money through Apple Pay", Journal of the Colloquium for Information Systems Security Education, Vol. 8(1).

⁵ <https://support.apple.com/en-au/HT204274>

⁶ <http://www.roymorgan.com/findings/8408-digital-payment-solutions-march-2020-202005120625>

⁷ https://payments.google.com/payments/apis-secure/u/0/get_legal_document?ldo=0&ldt=googlepaytos&ldl=und

⁸ <https://support.apple.com/en-au/HT203027>

⁹ <https://www.twobirds.com/en/news/articles/2020/global/apple-pay-under-competition-law-scrutiny>

product management and pricing strategy initially faced considerable resistance from Australian banks, except for ANZ. However, their request of forming a “cartel” to collectively bargain with Apple to provide the access to the iPhone NFC controller was rejected by the Australian Competition and Consumer Commission (ACCC)¹⁰ in 2017.

2. Differences between commercial relationships in Australia and other jurisdictions

As previously mentioned, Apple collects a fee from the issuing bank every time a consumer uses Apple Pay to make a purchase. Apple’s cut comes from the banks’ interchange fees since Apple does not allow banks to recoup the costs from customers. The average interchange fees levied by banks on retailers for handling card transactions in Australia is lower compared to international standards, especially in the debit card payments, but they are still higher than the credit card interchange fees in Europe.¹¹ In the US, card issuers must pay 0.15% of the amount paid for credit card transactions, and a flat-rate fee of 0.5 cents for debit card transactions.¹² Apple’s cut in Australia is believed to be between 0.04% and 0.06% for debit card transactions, which is approximately three times higher for an average purchase of \$20 than that paid by their US counterparts.¹³ It is believed that Apple receives “significantly less” from European banks as the interchange fees for card transactions are typically lower in Europe than in Australia and the US.¹⁴

The higher rate of Apple’s cut in Australia probably reflects the market power of Apple and the high demand of Australian consumers for the Apple Pay service. Australian mobile and digital wallets landscape mostly concentrate around the device-centric wallet types (such as Apple Pay, Google Pay) and only a very small market share is for the bank-centric wallet types (such as Tap&Pay, NAB Pay). In the US, the competition in mobile payment and digital wallet services is more intense with many other digital wallet types for merchant-specific and bank-specific mobile payment systems (e.g. Starbucks, Wendy’s, Walmart Pay, Citi Pay, Chase Pay).¹⁵

¹⁰ <https://www.accc.gov.au/media-release/accc-denies-authorisation-for-banks-to-collectively-bargain-with-apple-and-boycott-apple-pay>

¹¹ <https://www.rba.gov.au/speeches/2020/sp-gov-2020-12-07.html>

¹² <https://www.itnews.com.au/news/banks-surrender-on-apple-pay-fee-fight-450874>

¹³ <https://www.savings.com.au/credit-cards/how-much-do-australian-banks-pay-for-apple-pay>

¹⁴ <https://www.ft.com/content/02287f44-2a3d-11e5-8613-e7aedbb7bdb7>

¹⁵ <https://www.uspaymentsforum.org/wp-content/uploads/2018/01/Mobile-Digital-Wallets-WP-FINAL-January-2018.pdf>

3. The implications for competition and consumer protection

Innovations in mobile and digital wallets bring many benefits to consumers such as greater convenience and extra layers of security, especially in fast-moving environments. The main implication for competition and consumer protection is on the issue of Apple denying other payment service providers to have access to their iPhone NFC interface. In 2016, four of Australia's major banks (CBA, NAB, Westpac, the Bendigo and Adelaide Bank) requested permission from the ACCC to negotiate collectively with Apple regarding the access to its iPhone's NFC chip. Although the banks are among the biggest financial institutions in Australia, their individual bargaining power is relatively marginal compared to Apple.¹⁶ The ACCC accepted that this likely leads to a higher level of competition in mobile payment services and would bring significant public benefits to consumers. However, the banks' collective bargaining falls foul of the *Competition and Consumer Act*, and the ACCC subsequently refused the banks permission to act as a cartel¹⁷ in 2017. Due to Apple's dominant market position and customer pressure, all the four banks in the 2016 "cartel" proposal have consequently supported Apple Pay with Westpac being the last one entering an agreement with Apple in April 2020.¹⁸

4. The adequacy, performance and international comparison of Australian legislation, regulations, self-regulation, industry codes, standards and dispute resolution arrangements.

It is indisputable that Apple has enormous market power. When any company has such power and misuses it, consumers typically suffer. Many regulators around the world have been increasingly concerned about Apple's commercial dominance on its Apple Pay mobile wallet. In Germany, a recent regulatory change with effect from 1 January 2020 has granted the right for any payment service providers to access Apple's NFC interfaces. Although Section 58a of the *German Payment Services Supervisory Act* is commonly referred as "Lex Apple Pay", its scope is not limited to Apple's devices. This German legislation has potentially overtaken competition enforcement by the Bundeskartellamt, the German competition authority.¹⁹ Its regulatory objective is to increase innovation, and to protect consumers' interests in having a wider choice of payment services. Since the enactment of the German legislation, Apple has

¹⁶ <https://legalvision.com.au/do-australias-banks-pose-a-threat-to-iphone-security/>

¹⁷ <https://www.accc.gov.au/media-release/accc-denies-authorisation-for-banks-to-collectively-bargain-with-apple-and-boycott-apple-pay>

¹⁸ <https://www.westpac.com.au/about-westpac/media/media-releases/2020/28-april/>

¹⁹ Frank, J. and D. Linardotos. 2020. "Germany's "Lex Apple Pay": Payment Services Regulation Overtakes Competition Enforcement". *Journal of European Competition Law & Practice*, Vol 12(2), p.68-81.

been facing mounting antitrust scrutiny by various regulators around the world. The European Commission (EU)²⁰ launched antitrust investigations into Apple's App Store and Apple Pay mobile wallet in June 2020, and it is considering a new antitrust legislation on the third-party access to the iPhone's NFC interface in September 2020. The Netherlands Authority for Consumers and Markets²¹ has opened its own antitrust investigation into the issue of Apple limiting the access to its iPhone's NFC chip in December 2020. The UK Competition and Market Authority²² has been investigating Apple over its App Store rules since March 2021.

In Australia, the ACCC rejected the request by four banks to collectively bargain with Apple in 2017 since the *Competition and Consumer Act* prohibits cartel conducts. However, the ACCC accepted that the right to access the iPhone's NFC interface could promote technological innovation, which is in turn regarded as the driver of competition and economic prosperity.²³ It is clear that there is an imbalance in bargaining power between Australian payment service providers and Apple. The Australian Government enacted the legislation of *News Media and Digital Platforms Mandatory Bargaining Code*²⁴ on 25th February 2021 to address the bargaining power imbalance between Australian news media businesses and digital platforms, specifically Facebook and Google. The news media bargaining code requires tech giants to pay publishers for displaying and linking their news content.²⁵ A similarly mandatory code to amend the *Competition and Consumer Act* for addressing the issue with Apple Pay would be highly desirable as it would increase consumer welfare through enhanced competition, and be a significant public benefit.

²⁰ <https://www.cnn.com/2020/06/16/apple-eu-antitrust.html>

²¹ <https://fortune.com/2020/12/04/apple-pay-iphone-dutch-antitrust/>

²² <https://www.cnn.com/2021/03/04/apple-faces-antitrust-probe-in-the-uk-over-app-store-policies.html>

²³ <https://www.accc.gov.au/media-release/accc-denies-authorisation-for-banks-to-collectively-bargain-with-apple-and-boycott-apple-pay>

²⁴ <https://www.accc.gov.au/focus-areas/digital-platforms/news-media-bargaining-code>

²⁵ The proposed news media bargaining code was initially resisted by Facebook with the aggressive action of wiping the pages of media outlets and government organisations on its platform on 18th February 2021. Their action was highly criticised as it is during the Covid-19 pandemic and at the height of Australian summer bushfire season. After negotiation with the government, Facebook agreed to restore Australian news on their platform from 23rd February 2021 and the proposed legislation passed both House of Representatives on 25th February 2021.