

4th August 2021

Mr Andrew Wallace MP
Chair of Parliament Joint Committee on Corporations and Financial Services

Dear Mr Wallace,

Re: An Inquiry into Mobile Payment and Digital Wallet Financial Services

Thank you for the opportunity to be served as expert witnesses at the Public Hearing on 27th July 2021. We would like to provide our response on two questions taken on notice which were asked by Mr Julian Hill MP.

2. Other regulation models

Mr Hill's question 2: *I'm interested in the broader issue of regulation of the non-stored-value facilities or the others in the payment ecosystem. Do you have any further information? We've been pointed by a number of submitters towards Singapore as being a particularly good model, with a tiered licensing system that's scalable and fit for purpose. Are there any others that you'd point us towards that are worth having a look at in terms of what other jurisdictions do?*

Our response:

In our original submission, we referred to the **German jurisdiction** with the “Lex Apple Pay” legislation being effective from 1 January 2020. Under this law, Apple has to open its NFC interface to other payment service providers (PSPs) in exchange for an “appropriate fee”. To date, no German banks has used this newly-created option. The term “appropriate fee” is quite vague and can create a lot of uncertainty with PSPs, causing them to prefer signing up for Apple Pay rather than developing their own wallet. However, this does not mean the law has no effect at all since it is observed that there is flexibility in Apple’s pricing policy because of this law.⁷ Ms Diana Layfield (Vice President – Product Management and Partnerships of Google, appeared at the Public Hearing on 26th July 2021) observed that this law has fostered competition in Germany. However, to provide better incentives for PSPs to create competing services to Apple Pay, the German lawmakers proposed a legislative change, known as “Lex Apple Pay 2”. From March 2022, Apple will be not allowed to charge an “appropriate fee” to PSPs for providing access to their infrastructure, it instead can only charge a fee which is not exceeding the actual costs.

The anti-trust investigation by the **Netherlands** Authority for Consumers and Markets (**ACM**) into the issue of Apple limiting the access to its NFC chip was closed in July 2021. The ACM confirmed the anti-competitive problems and concluded that access to NFC technology is essential or PSPs to invest in the development of their own payment apps.

in favour of amending the European rules for payments services (PSD2) and of introducing the Digital Markets Act.⁸

The **European Commission** has launched anti-trust investigations into Apple App Store and Apple Pay mobile wallet since June 2020, and is considering a new antitrust legislation on the third party access to the NFC interface in September 2020. It recently issued two legislative proposals (Digital Markets Act and Digital Services Act) to European Parliament in December 2020 for ensuring competition and fostering innovation by preventing large companies from abusing their market power.⁹

In **Japan**, the Act on Improvement of Transparency and Fairness in Trading on Specified Digital Platforms has been in effect since 1 February 2021.¹⁰ The purpose of the Act is to promote fair and free competition for all specified digital platforms.

In other jurisdictions such as the **UK** and **Singapore**, they implemented licensing systems with threshold values. The Payment Services Act in Singapore, effective from 28 January 2020, prescribes three types of licences: standard payment institution, major payment institution, and money changing. Any entity that provides payment services in Singapore is required to apply for a license to the Monetary Authority of Singapore.¹¹ Similarly, the UK Payment Services Regulations 2017 divided supervisory licences into payment institution and electronic money institution with further classification into small or authorized category in each of them.¹²

In our opinion, the Joint Parliamentary Committee could consider a combined model of those in Germany, European Commission, UK and Singapore. The German model would address the issue of Apple's market monopoly and ensure competition and innovation in the PSP market. The tiered licensing system adopted in the UK and Singapore would allow new fintechs to start with a relatively lower level of licensing and allow smaller PSPs to develop competing services and encourage innovation.

Yours sincerely

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⁷ <https://www.lexology.com/library/detail.aspx?g=fbef61bf-6cd3-4f04-a4f6-c4a886858a1a>

⁸ <https://www.acm.nl/en/publications/closure-investigation-payment-apps-confirms-need-new-rules>

⁹ <https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package#ecl-inpage-klc95giz>

¹⁰ <https://www.lexology.com/library/detail.aspx?g=29fdf784-8655-4554-a239-f8de72653c6d>

¹¹ <https://www.loc.gov/item/global-legal-monitor/2020-04-17/singapore-new-payment-services-act-takes-effect/>

¹² <https://www.elibrary.imf.org/view/journals/001/2020/075/article-A001-en.xml>