

Senate Standing Committee on Economics
ANSWERS TO QUESTIONS ON NOTICE
Treasury Portfolio
Additional Estimates 2012
15 – 17 February 2012

Question: AET 1245
Topic: Financial Blockade - MasterCard
Hansard Page: 15 Feb 2012, pg 128

Senator LUDLAM asked:

1. Do I have any recourse to these companies, or MasterCard in particular, to lift that blockade? I would understand, for example, if this were a criminal entity. If they had been accused of organised crime offences or whatever, I would understand that. In this instance the organisation has not. It is a publishing organisation. It was given a Walkley Award last December. None of its staff have been accused or convicted of particular crimes.
2. What are my avenues as a consumer?
3. What can I do to MasterCard?
4. What can you as the regulator do to them?

Answer:

1. **Do I have any recourse to these companies, or MasterCard in particular, to lift that blockade? What are my avenues as a consumer?**
2. **What can I do to MasterCard?**
3. **What can you as the regulator do to them?**

Consumers who hold financial services products from financial services providers (FSPs) such as MasterCard Asia/Pacific (Australia) Pty Ltd (MasterCard) do not have an implied right to transact with whomever they choose. FSPs are free to set the terms and conditions for their products and services. The provision of services to facilitate transactions between consumers and third parties is subject to the discretion of the FSP.

Whilst MasterCard has a relationship with the financial institution which issued the card, this does not apply to the individual cardholder or holder of payment card accounts.

Consumers are able to lodge a complaint against MasterCard. The Australian Securities and Investment Commission (ASIC) is the appropriate body for this. As the financial services regulator, ASIC investigates suspected breaches of the *Corporations Act 2001* and other legislation relevant to FSPs and the products they provide.

Consumers may also lodge a complaint with MasterCard itself, or choose to stop using MasterCard's financial services products. There are FSPs which offer alternatives to the services provided by MasterCard, including through direct bank-to-bank transfers and cash payments and transfers.

As the administrator of the *Competition and Consumer Act 2010* (the Act), the ACCC seeks to prevent and stop anti-competitive conduct. The ACCC also aims to deliver increased consumer welfare through the Australian Consumer Law (ACL).

Part IV of the Act prohibits restrictive trade practices...

Part 2-1 of the ACL prohibits a person, in trade or commerce, from engaging in misleading or deceptive conduct. Part 2-2 of the ACL prohibits unconscionable conduct. Whilst courts may consider any relevant matters, the ACL specifies a guiding list of factors.

The ACCC is not aware of any evidence which suggests MasterCard has breached the Act, including in relation to the ACL provisions of the Act.

To ensure that resources are allocated efficiently and the ACCC's strategic priorities are met, the ACCC assesses matters to determine whether they:

- (i) relate to an area of focus and;
- (ii) involve substantial levels of detriment and/or;
- (iii) constitute conduct that has a substantially anti-competitive effect or results in significant levels of public or other concern.

For these reasons, and given that the ACCC does not typically regulate FSPs, the ACCC does not believe it is appropriate to investigate the denial of service to WikiLeaks instituted by MasterCard.

Complaint to Directorate-General for Competition of the European Commission

July 2011 – Wikileaks and Datacell filed a complaint to the DG for Competition accusing Visa and Mastercard of breaching antitrust provisions set out by the EU Treaty. Wikileaks wanted a full investigation.

Decision about whether investigation would go ahead expected November 2011

Extra:

The ACCC is not aware of evidence that MasterCard's withdrawal of service was coordinated with other financial services providers.

The Financial Ombudsman Service (FOS) and the Credit Ombudsman Service Limited (COSL) are the peak dispute resolution bodies within Australia which deal with complaints between consumers and their member financial services providers. However, MasterCard is not a member of either of these bodies.