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JOINT SELECT COMMITTEE ON GAMBLING REFORM

Interactive and online gambling and gambling advertising

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CANBERRA

BY AUTHORITY OF THE PARLIAMENT

MUNCHENBERG, Mr Steven, Chief Executive Officer, Australian Bankers Association

[11:35]

CHAIR: I now welcome Mr Steven Munchenberg, Chief Executive Officer of the Australian Bankers Association. The committee understands that your submission and evidence relate only to Senator Xenophon's bill. I invite you to make a brief opening statement before the committee proceeds to questions.

Mr Munchenberg: Thank you, Chair. As you have indicated, our comments will be restricted to the Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, and indeed to schedule 1 of that bill, if I can narrow it even further. Schedule 1 deals with the financial transactions aspect. Having said that, we are very conscious of the genuine concerns that lie behind the committee's work and we do understand the concern that, whatever measures are put in place here in Australia, there is still the question of the ability of Australians to get into difficulty through gambling online, particularly through sites that are offshore and outside the control of the Australian government.

Having said that, we have looked at the bill and we as an industry have considered this question very carefully. Unfortunately, we do not think there are any straightforward answers to trying to solve this problem. Clearly the interactive gambling bill is a very serious attempt to do that but, notwithstanding that, we have identified a number of practical concerns that we have with the bill; I would be more than happy to elaborate upon them. There are three areas in particular of concern to us. I think the bill makes a number of assumptions about how the payment system works which are not always the case and in some cases would mean that the bill would not have any effect. To give effect to the bill, we also feel that there would need to be a fairly major change to the technology that the banks use for payment systems and quite a few changes to our systems around that. Obviously that would be costly for the banks and, notwithstanding the seriousness of the issue, the banks are not exactly enthusiastic about additional costs being imposed upon them, particularly where we are not, I suppose, confident that the outcomes sought by the bill would necessarily be achieved because of some of the practical issues.

There are a number of questions left unanswered by the bill. I understand that with Senator Xenophon's limited resources he probably was not able to cover all of them, but there are some questions around things like what happens if a customer does request that the bank cancel a transaction but, for whatever reason, the bank does not act in time to stop that transaction once the process has already started—is the bank liable there? Notwithstanding the bill declaring that the bank will not be liable for blocking any of these transactions, we still believe there is a risk of litigation overseas against Australian banks. Courts overseas, particularly in the US, are not averse to passing judgment on Australian banks and then seeking to have those judgments enacted. This is probably straying beyond my area of expertise, but in looking at this we were concerned that, if Australians felt that they were able to cancel a transaction having entered into it and having actually gambled on a site, potentially it actually makes it less risky for you: if you win then you take the money and if you lose then you seek to have the transaction voided. But, as I say, that is probably straying beyond our area of expertise.

So I suppose I feel a sense of frustration in that we do understand that this is a very important issue and that this has been a very legitimate attempt to deal with an aspect of the problem gambling question but it has left a lot of difficulties and unanswered questions for us. They are set out in more detail in our submission and I am happy to discuss them.

Senator XENOPHON: Thank you for your submission and the way that the ABA has looked at this. I know that it is a difficult and vexed issue. One of the issues is primarily in relation to online casinos that are unauthorised under the Interactive Gambling Act. On the face of it, those transactions are at least voidable. They are not authorised transactions. I know when I was a state MP a number of years ago I assisted someone to get a bank to reverse a transaction with an online casino somewhere in Central America or the Caribbean because there was an issue there under the voidability of the transaction.

You have said in your submission that if a card issuer declined authorisation based on a flag to identify a transaction as associated with a certain merchant category code, the issuer would be at risk of legal action from the merchant. That would not necessarily be the case, would it not, if you had protection under Commonwealth law that said if certain designated companies were flagged by regulation and you declined those you would be protected from action?

Mr Munchenberg: We would be protected here, but it is a legal question though as to the extent that we would be protected, for example, in the US. Major banks, in particular, have interests in the US against which judgments could potentially be executed.

Senator XENOPHON: How do you mean? You do not think there would be protection?

Mr Munchenberg: I suppose what we were assuming was, to give you an example, where an Australian transacted with a US-based—and I do not know whether such things exist—online gambling entity and the customer had authorised it. We are talking about situations here where customers have authorised the transactions. This is a completely different situation to where customers have not authorised the transactions, which I can talk about in a minute. That is effectively in the fraud area, and we regularly void or, indeed, indemnify customers for fraudulent transactions. But if a customer has authorised a transaction and the online gambling site has seen the authorisation of that transaction, and if the issuing bank—that is, the bank to whom the customer is connected—has approved that transaction and then attempts to reverse it we have actually created a legal situation where we are obliged to pay that.

We may have legislation here that voids that because of the transaction being an unapproved or illegal transaction or whatever, but it does not necessarily prevent us from being sued in the US under US law for that. If judgment is parked against us—

Senator XENOPHON: I understand that the main concern is about the US jurisdiction, is that right?

Mr Munchenberg: I am just using that as an illustration of a litigious society.

Senator XENOPHON: But in the US they have taken a different approach to online transactions. They are prohibited. I am not sure whether the committee will hear from the US authorities on the associated financial transactions. I am not sure; we do not know yet. But in relation to that, if the US is taking the approach of prohibiting these transactions from unauthorised online casinos would that not provide some protection to Australian banks?

Mr Munchenberg: I am not an expert on what the US law is in this area. Gaming laws are not our forte and you would know a lot more about it than I. But if the US has taken it on and it is illegal to run an online casino or whatever they call it from the US, then obviously litigation in US law is not an issue.

Senator XENOPHON: But in terms of the interests of Australian banks—in particular the big four, which have 80 per cent or so of the market share? Is the position because of their American interests or are there other countries where they may be vulnerable?

Mr Munchenberg: I was just using that as an illustration. There may well be other countries where they are vulnerable. This is an area of legal uncertainty. There are a whole pile of areas of definite difficulty for us. I raised that as a further area of legal uncertainty for us. We are not sure, based on the legislation before the committee, whether the attempt in there to indemnify us from legal action would necessarily provide us with perfect indemnification around the world.

Senator XENOPHON: But it is fair to say that your members, quite reasonably, would want a robust form of indemnification so that if you are carrying out obligations under legislation like this you are protected.

Mr Munchenberg: Yes.

Senator XENOPHON: There is not any dispute about that.

Mr Munchenberg: It is not a novel situation. We deal with other situations in which there are conflicts between Australian law and particularly US law. The US may not be relevant in this case, but, given the inherent extraterritoriality of US law, there seems to be—

Senator XENOPHON: I know that this is a complex area, but it would be quite interesting for the committee to hear how banks deal with those potential conflicts with other laws, whether they are US laws or the laws of other countries, in relation to the processing of payments. If you could provide that on notice, that might be useful.

Mr Munchenberg: I can give you a little bit of an illustration now. We perceive there to be a conflict between some Australian law and some recently passed US tax legislation, which requires us to do certain things with all of our customers, first of all, in the pursuit of identifying customers who may be US citizens and then do certain things in relation those US citizens. Those things are in conflict with Australian privacy laws. That is something that has to be sorted out at at government-to-government level. It is conceivable that because of this legislation there could be negotiations between governments to ensure that there were no inconsistencies or legal gaps. But it is no small thing to try and achieve.

Senator XENOPHON: One of the difficulties that we discussed privately before your gave your evidence was the fact that these online casinos have a trading name—a company by which the payments are taken—but then there is a company that takes your money. Those company names change or a different entity emerges under the terms and conditions that they sign up their customers to. If you had a blacklist of those companies, would that worked, given that some major operators seem to be in the Australian market? Casino.com is an example. It is a

web site that looks Australian and talks about Australian players, but in fact it is registered in and regulated out of Gibraltar. Would that at least be a starting point? Even if they do chop and change, you could at least try and track them and make their business model more difficult to operate. Can you flag certain transactions with certain companies so that credit card providers and those with debit cards can say, 'This is on a black list'? Is that technologically feasible from your point of view?

Mr Munchenberg: You can, with some limits. If I am operating a company, I will have a merchant identifier. Those numbers represent me as a merchant. If some of those numbers are proscribed, then we can block transactions to those numbers. It is a little different to what you asked. If casinos.com is the merchant, they may have multiple and ever-changing merchant identifications that somehow, ultimately, through the global payment system feed the money back to them. It would be very difficult for the banks to identify those linkages. That would again require government agencies and possibly international cooperation.

If the government were to provide us with a list of merchant identifiers and said in a regulation to your legislation—or however it would be done—that payments to these were prohibited my understanding is that that would be a relatively straightforward thing to deal with. But they are merchant identification numbers; they are not necessarily corporate or entity identifiers. An entity may have multiple or ever-changing ones. That would become an exercise, then, in trying to catch up. If there were a number of large global players that saw Australia as a relatively small market on a global scale and who therefore would not go to the trouble of trying to constantly change their merchant identifications just to get around the law then it may well have an impact. If an overseas provider of gambling services, for want of a better term, was determined to target the Australian market and therefore had an interest in constantly reinventing its identity in the payments system then they would be able to relatively easily get around that sort of scheme.

Senator XENOPHON: You could presumably catch up with them within a 24-hour period. They presumably would not change their merchant numbers every 24 hours. You would be able to establish—

Mr Munchenberg: My understanding is that we see the merchant numbers. We do not have to know or necessarily understand who is behind those numbers. The whole system works around number identification.

Senator XENOPHON: Sure. But, if there was a system of establishing that a merchant number has changed and you were advised, you could block it.

Mr Munchenberg: If we were advised, yes. I suppose what I am saying is that I am trying to avoid our industry having the responsibility to track down these people—

Senator XENOPHON: I am not suggesting that.

Mr Munchenberg: but, if we are regularly advised of proscribed numbers, my understanding is that we would just add those to our list of proscribed numbers.

Senator XENOPHON: From a technological point of view, that is not a difficult thing?

Mr Munchenberg: I understand that is reasonably straightforward, yes.

Senator XENOPHON: You can upload that information pretty quickly?

Mr Munchenberg: I would need to take the details of that on notice, which I will.

Senator XENOPHON: If you could, yes.

CHAIR: I cannot recall who it was, but a witness has said to us, though, that there are all sorts of ways to get around this—for example, using a third party. Does that ring true?

Mr Munchenberg: I am not quite sure what the witness meant, but I suppose in a sense we are talking about the same thing. If there was an entity that was constantly acquiring new merchant identifiers and using those to route payments ultimately back to itself, certainly that is something I understand is relatively easy for a merchant to do. I am sorry, I am not quite sure what additional suggestion was being made.

CHAIR: It is a little unclear to me too, so I am sorry I am not explaining myself very well. I suppose you could have an electronic shopfront somewhere in the world which looked quite harmless and was accepting payments on behalf of a company that we were trying to stop payments to.

Mr Munchenberg: Yes, that would be easy to do, but that, in a sense, is outside of the payment system.

Senator XENOPHON: Are you talking about the third party, Chair? You have a conduit, so it is not—

CHAIR: Yes. The payments go through an apparently safe, benign or harmless intermediary, I suppose.

Senator XENOPHON: There would still be a link between the intermediary and the online gambling company, wouldn't there?

CHAIR: Yes, although presumably that link would be out of Australia.

Mr Munchenberg: And outside of the payment system. If you want to create a false front, you can do that. If that false front induces people to buy some online service and provide payments, there is nothing in the payment system that we can do if that false front entity is then just handing the money over to an anonymous parent somewhere else.

CHAIR: Even in that case, it would sooner or later come to our attention that that shopfront, which must have a merchant number—

Mr Munchenberg: Yes, and there is a whole global infrastructure around money laundering and terrorism financing—all these sorts of things—which are for those purposes but are directed towards trying to identify those sorts of nefarious activities. At the moment I am not aware that they are directed towards gambling as an issue. It is more for, as I say, terrorism financing or money laundering. But what you are describing would be a fairly classic money laundering arrangement.

Senator XENOPHON: Page 5 of your submission states:

Tracking and monitoring in real time ... would not be possible with current legacy switching, batch and processing systems. Can you explain that? Is it a different issue from what we have just been discussing? The banks are not the policeman of the scheme, but, if you were given by the government or an authority a direction to block certain transactions, is that a separate issue to the matters that you raise on page 5 of your submission about switching, batch and processing systems?

Mr Munchenberg: I turned to my page 5 and for some reason it is completely blank.

Senator XENOPHON: It is part 1.3 of your submission under the heading 'Implications of a proposal to restrict financial transactions' and the subheading 'Technology and system considerations'.

Mr Munchenberg: I cannot find it, I am sorry; for some reason my printer has done strange things to my copy of the submission. I think what we are trying to get at there is that we do not have the technology in place to monitor the nature of a transaction going through the system.

Senator XENOPHON: Sure, but if you are told, 'These merchant IDs are on a blacklist,' they can automatically be blocked so that if someone is trying to put a transaction through, the customer would say, 'Sorry, this transaction didn't go through.' That can happen.

Mr Munchenberg: Yes. Even our own submission suggests that that would be potentially a workable model. The payment system very much relies on sets of numbers without a lot of other information. When the bank looks at your account, Senator, it is interested in the numbers rather than names.

Senator XENOPHON: I always get depressed when the bank looks at my account.

Mr Munchenberg: I can't say I have had a look. I am sure it is very healthy.

Senator XENOPHON: Don't be sure!

Mr Munchenberg: If the government were to say, 'You have to block all transactions to casinos.com,' that would be difficult for us to execute.

Senator XENOPHON: But if it is the merchant number?

Mr Munchenberg: Yes, if it says, 'You cannot transact with these merchant numbers,' then I understand that we would be able to do that. I think that is the same issue I was taking a notice.

Senator XENOPHON: Yes.

Mr Munchenberg: We will look into that. I will not attempt to give you a page number in our submission because they are obviously different, but in our summary in our submission we say that we can see scope to do that. If the government is able to give us a list of merchant numbers that we are prohibited to transact with, we will obviously be able to comply with that and we will be able to flag and identify those quickly.

That would be a case of blocking the actual transaction. That is a different thing to the transaction having been authorised, the customer having the ability to subsequently reverse that authorisation. That is more complicated.

Senator XENOPHON: Yes, and it is more problematic. And I think it raises the issue about a person where two of three banks here in Australia reversed transactions, quite appropriately because they were clearly unauthorised transactions, but one of the banks has taken a bit longer to sort that out.

I have a couple more questions on this because it is quite technical. In your submission—and I will say on page 6 but I can just put to you what the submission says—

Mr Munchenberg: I will use your version of my submission.

Senator XENOPHON: you say you would be concerned that, depending on how a financial control system were designed, it might result in many legitimate transactions being declined and bank-customer relations being adversely affected. But that would not necessarily be the case if you were advised of a blacklist of certain merchant ID numbers? That would get away from that problem?

Mr Munchenberg: Yes, that would be a separate issue. Again, we were responding to what we understood would be the proposal.

Senator XENOPHON: Yes, I appreciate that. The other issue is PayPal. It is an increasingly popular way to transfer money. I do not know if you want to answer this, but what is your understanding of the way that operates compared to credit cards? The other thing to consider is that in November 2002 PayPal stopped processing payments on behalf of online gambling companies after it reached an agreement with the State of New York to stop processing payments from New York citizens to online gambling companies. How does PayPal and other forms of payment systems relate to this, what role do banks have and how does that compare to credit card transactions?

Mr Munchenberg: As I understand it, in the simplest terms—and as with most things that is about as complicated as I can get—PayPal is effectively an intermediary between a vendor and purchaser. If you go onto eBay, where there are obviously a large number of vendors, rather than you giving your credit card details to an unknown vendor you can go through PayPal. PayPal is a trusted brand and you can be confident that PayPal will look after your credit card details and then process the payment through to the vendor, so the vendor does not get to see your personal banking details. With that situation, the bank will not be able to identify the vendor either, so it falls to PayPal, as I understand it, to block the black list.

Senator XENOPHON: So PayPal would have to get the black list of merchants as well?

Mr Munchenberg: I would believe so, yes.

Senator XENOPHON: Because you do not have anything to do with that, effectively?

Mr Munchenberg: No. That is my understanding; again, I will check that. You are testing the limits of my understanding of the complexities!

CHAIR: Does that mean then that we are talking about not just Australian financial institutions but also, for this sort of approach to work, a lot of other institutions, such as PayPal, Western Union or anyone else who transfers money?

Mr Munchenberg: Yes. A credit card is basically a direct interaction between purchaser and vendor, with the banks acting, if you like, as agents of those two entities. In that case, we can see directly the details of the vendor. When you look at things like money transfers through Western Union, PayPal and some of the growing areas which I am too old to understand, such as Google money and even some sorts of non-traditional currencies which are starting to develop, we have no way of seeing where those funds are going because these are, effectively, intermediaries that act as a screen between the issuing bank and the merchants. What we were discussing a moment ago, a black-listed group of merchants, would work with direct payments like credit cards, direct debits and those sorts of arrangements, but it would not necessarily work in the case of PayPal or international money transfers and various other things where you would have other intermediaries that would need to be involved.

CHAIR: Upon reflection, PayPal might be an example of that shopfront I referred to as an intermediary party.

Mr Munchenberg: I would not suggest that PayPal has nefarious purposes in doing that, but in a sense the effect is the same. PayPal is, to some extent, deliberately a black box kept as a black box to guard the security of the purchaser's banking details. Equally, that is sort of screening from us, as I understand it. These are things I will have to take back to the industry and get clarified, because you are testing the limits of my technical knowledge on some of these things.

CHAIR: What is to stop an overseas operator working on a deposit-in-advance 'you now have money in your account' system instead of working on a credit card basis?

Mr Munchenberg: If they are relying on electronic funds transfer—in other words, you have to transfer money directly into an offshore bank account as payment to enter the casino online—then, again, that would get around the merchant black list, but you could add account numbers to the black list as well. I suppose the unfortunate thing with this is that the payment system is multifaceted and complex, and something that works on one form of payment will not necessarily work on other forms of payment.

Senator XENOPHON: But, arguably, there would be a difference between making a conscious decision to deposit money into an account and the impulse for people to chase their losses with credit cards, for instance. I suppose that would be the difference in dealing with problem gambling behaviour.

CHAIR: I think that what is relevant is understanding that there is probably no perfect solution and it is a case of protecting most of the people most of the time, particularly from impulsive gambling episodes. All these barriers might well steer people towards safer domestic sites if there were safer domestic sites for that type of gambling.

Senator XENOPHON: I do not have any further questions at this stage.

CHAIR: We have plenty of time, Nick, if you want to go on.

Senator XENOPHON: I will let my colleagues proceed. I might have some questions later.

Senator BACK: I really only had the one question, Mr Munchenberg, about PayPal, but I think you have addressed that with Senator Xenophon. The only other thing, from my limited experience in this field, is about the maintenance of illegal sites as they are opened and then closed. You would have an onus of responsibility to somehow or other track these sites, declare their illegality and then close them down, wouldn't you?

Senator XENOPHON: No, no. That is not what has been suggested. It would have to go by the regulator.

Senator BACK: The regulator would have to do that? Okay. Thanks for that clarification. But where does the liability rest for the banks? In the event that, for example, there is a time gap between the regulator identifying a site as being illegal and someone undertaking a transaction on that site who afterwards claims that they were financially disadvantaged, where does the liability rest? Does it rest with the regulator who has failed to identify it as an illegal site? Does it rest with whoever has the responsibility for closing it down? Does it rest with the bank because the bank undertook the transaction? When I read through this, it seemed to me there could be a real minefield of contention over the liability question.

Senator XENOPHON: Not necessarily.

Senator BACK: I am sorry?

Senator XENOPHON: Sorry, Chair, I should not interrupt. I am just saying that it depends on how it is structured, and you would want to avoid that.

Senator BACK: I mean absolutely no disrespect at all. I did not mean it was glib on your part. But, because of the speed of electronic transactions and because they are happening offshore, I can just see a scenario in which people wanting to participate in fraud could actually go to this as the really weak link in the chain. That is the point I am making. I just see that as an area in which, from a bank or another provider's point of view, you would have real difficulty.

Mr Munchenberg: In a sense, I will give the same sort of answer as Senator Xenophon. It depends very much on how it is done. If we take the simplest approach, I suppose, the black-listing of merchant codes, there would need to be an Australian government entity which advised us of what they were. Having been advised of those, we would need the appropriate amount of time to act on them. I imagine it would be a very short period of time, a day or so—I would need to check that. Where a bank would be potentially liable is if they not act in time and they allow transactions to occur subsequent to that. But, again, that is not an unusual set of circumstances whatsoever. So, with that very simple approach, I think we would not have any concerns. Step away from that and I think we really do have some concerns of the type that you have flagged. Vagueness in the legislation or the direction from government would be of concern to us—if it comes out of our examination of the bill, for example. If a customer has the right to request that a bank reverse an authorisation, obviously the bank would need to be able to satisfy itself that the payment had been made to someone that it was appropriate for them to reverse it on, and there are some complexities there. There are potential issues if the bank does not operate quickly enough on the customer's request—and, if a customer comes into a branch and requests that, we will not necessarily be set up to deal with that quickly in the payment system and everything—as to whether we are then liable for whatever losses the customer experiences.

I think there is a distinction to be drawn between that and what is potentially a relatively straightforward model where the bank is dealing directly with an overseas merchant and we have a list of black-listed merchant numbers. On the surface, at least, that seems a relatively straightforward and manageable proposition. Move much beyond that and I think we run into all sorts of complexities around the adequacy of the systems to deliver in a timely way, because do not forget we are dealing with transactions that fly around the world, almost instantaneously in some cases, and a mismatch might arise between a customer's expectations and what the payment system's technology is able to deliver as well.

Senator BACK: You mentioned that time gap between the regulator alerting the bank and the bank taking action. In a 24 by seven world where it is night-time here and daytime where someone might be transacting it is that area where I would see there would be tremendous challenges.

Mr Munchenberg: It would need to be done properly but it is not conceptually necessarily different from an international anti-terror organisation becoming aware that a terrorist organisation is funding itself through a certain vehicle. It alerts regulators around the world who then alert financial institutions around the world and transactions through that particular vehicle are prohibited. It can take a little time for that to all flow through but conceptually it is certainly doable in that sphere.

Senator BACK: Thank you. That was my only question. The rest of my questions were covered.

CHAIR: Are there any examples of Australian financial institutions enforcing a general prohibition on financial transfers to a category of payees?

Mr Munchenberg: There are, for example, more under US jurisdiction than Australian although I am not sure what the Australian law situation is. Transactions with Iran, for example, are currently restricted due to sanctions that have been imposed on Iran. An Australian bank that is facilitating financial transactions into Iran can be prosecuted under US law and there have been some instances of that happening where Australian institutions have inadvertently and unknowingly done that but nonetheless have been prosecuted at US law and fined by US agencies. It is possible to do that. The mere fact that some Australian entities have inadvertently fallen foul of that does highlight some of the challenges of doing that notwithstanding the fact that Australian banks actually put quite a bit of time, effort and money into trying to avoid getting into those sorts of circumstances. It is doable and again with criminal and terrorist organisations there are agencies in Australia who work with their counterparts overseas to identify and to try to shut down payments that are being used for criminal or terrorist activities. Again, there is experience in this sort of area but it is not uncomplex.

CHAIR: What is the experience? Is it generally done effectively?

Mr Munchenberg: Insofar as there have only been a small number of inadvertent breaches, yes, I suppose that is the case. While I would not be encouraging this sort of approach in relation to this bill, it is under the threat of quite serious tens of millions of dollars of fines from US entities in the case of the Iran sanctions, for example. I was going to say it is under duress but it is not really under duress, we are willing participants in trying to achieve these results but nonetheless there are serious consequences for failing to fulfil that.

CHAIR: What is the legal basis for an Australian firm being prosecuted under US law for being involved in a financial transaction with a third country?

Mr Munchenberg: It would be through our US entity. The major banks in particular would all have presences. One major bank actually owns banks in the US. All major banks need to have a presence in the US for transacting for expatriates who are in New York, Washington and other places in the US. We are vulnerable to US law by virtue of our interests on the ground in the US.

CHAIR: Okay. What is your relationship with credit card providers. I suppose this conversation has been largely as though you own the credit card like Visa, MasterCard et cetera. What right do you have to interfere in their business?

Mr Munchenberg: No right at all to interfere in their business. They are independent global companies who basically sell financial institutions a service which is management of those interactions between their cards, the card owners and the transaction acquirers. We have no control to influence how Visa and MasterCard operate but both of them are represented here in Australia and I am sure they would be happy to discuss these issues with you.

CHAIR: If there were to be a law that prohibited you from assisting them with the financial transaction, is that what we are talking about?

Senator XENOPHON: No, not really. I think it is about whether you have certain black-listed transactions that are rejected so that you do not even get to that stage and so that the onus is not on the banks to work out who is what. There will be a list of merchant ID numbers which relate to online casinos and unauthorised transactions, and that transaction would not go through in the first place. I think that is a fair summary.

Mr Munchenberg: Yes. As I understand it, the process is that a customer gets a credit card from a bank; that bank is referred to as the issuing bank. The customer goes online and they provide their credit card details. The merchant—the provider of the online service—then puts that into the payment system. It goes back to the issuing bank, and then at that point the issuing bank has the opportunity to decline the transaction, which you can do for all sorts of reasons—if I have a \$5,000 limit on my card and I am trying to make a \$20,000 purchase, it is going to get knocked back at that point. At that point, as I understand it, the bank will be able to say, 'No, we're not allowed to transact with that merchant, because the numbers raise a red flag.' So the bank will then decline that transaction. The merchant then goes back to the customer and says, 'Your transaction was declined.' That can all happen in a matter of seconds. So in that situation the Australian customer is blocked from accessing that site or

making payments to that site so long as that site uses a black-listed merchant number to try to get that authorisation through.

CHAIR: But why wouldn't such legislation be better directed at the credit card provider rather than the financial institution?

Mr Munchenberg: When you say 'the credit card provider', do you mean the schemes—Visa and MasterCard?

CHAIR: Yes.

Mr Munchenberg: Again, my understanding is that really the role of Visa and MasterCard is reconciling all of these transactions between financial institutions, so it is not up to Visa or MasterCard to approve or not approve a transaction; it is up to the issuing bank. In my wallet I have a Visa credit card supplied to me by a bank which will remain nameless.

Senator XENOPHON: Is it one of the big four?

Mr Munchenberg: It is a bank which will remain nameless, but it is a bank, not a credit union.

CHAIR: The colour of your tie is giving it away!

Mr Munchenberg: No, guess again! So it is down to the bank which issues the card, because ultimately the debt resides between the bank that issues the card and the customer. So, when I go out and spend some money on my Visa card, my MasterCard or whatever, I end up owing that money to my bank. The money moves through the system. I go to Amazon or something and make a purchase. They get my credit card. They get it approved by the issuing bank—whichever bank it is that gives me my credit cards. Amazon then go to their bank to say, 'We've got this authorised transaction,' and Visa then reconciles all that amongst the banks so that ultimately the money—and that can be some days later in some cases; you do not see it that way from your account—goes from your account and ends up in the merchant's account. How long that takes depends very much on how quickly the merchant themselves reconciles all their payments with their own bank and gets that part of the process going.

CHAIR: Okay. Could I just ask a simple question to cut through all of this. I know we have been talking about this issue now for a while but, in essence, is it feasible to require Australian banks to give you a list of 3,000 merchant numbers or whatever with an organisation trawling the net, looking for this information and providing this information to you electronically every 24 hours or something? Quite simply, is it technically possible to stop Australians transacting with overseas gaming sites?

Mr Munchenberg: I will take this on notice, but given my knowledge of other restrictions on the payment system—the terrorism ones, the organised crime ones et cetera—my understanding would be that if we the industry were to be provided with blacklisted merchant identifiers then we could block payments to those merchant identifier numbers. So, if someone sets up a gambling website in wherever, has a merchant number which, for argument's sake, is 1234 and the Australian government decide that they do not want Australians transacting with that merchant and proscribe 1234, we can block payments to 1234. If that online gambling site then became aware that those payments were being blocked and got a new merchant number, 1235, then we would not be able to block payments to that until such time as the Australian government identified that that had happened and sent it back to us. As I understand it, that would only relate to direct payments: credit card payments and possibly direct debit and EFT payments.

CHAIR: So it could be done if you were provided with the information; it is possible.

Mr Munchenberg: I need to go back to the industry and check this, but in that narrow sense my understanding is that we could do that. I think we probably already do that in other areas such as terrorism, organised crime and anti-money-laundering areas. It would potentially provide an improvement but it would fall well short of preventing Australians from gambling online through overseas based entities.

CHAIR: But it may well protect most of the people most of the time and it would be left to the more innovative, determined, person to try and develop a workaround.

Mr Munchenberg: I am not in a position to answer that because it would depend. If there were absolutely thousands of these entities that were constantly reinventing themselves then I think the impact would be very small. If there were a smaller number of these entities that are unlikely to have the incentive to keep reinventing themselves then it would work much better.

CHAIR: Do you know if the information is publicly available? How would an Australian official find out the merchant number of an overseas operator?

Mr Munchenberg: I think the global payments system, which is an amorphous organism made up of financial institutions all around the world and the card schemes and others, would have to be able to identify who owns particular merchant numbers. Beyond that, I am not be able to give you an answer.

CHAIR: You do not know if the Australian government has access to that information already?

Mr Munchenberg: I believe it must have. I keep drawing parallels with organised crime and with terrorism. I suppose one caveat on that is that obviously there is a higher level of global cooperation to target and to try and break the financing of terrorist organisations and of organised crime. I am not sure whether that level of cooperation is necessarily there for other purposes but, putting that aside, if the question is whether the Australian government can identify merchant numbers that are blacklisted, I would imagine that the answer is yes.

Senator XENOPHON: Looking at the relationship between banks, who are the credit card issuers, and Visa and MasterCard, for instance, as the—what would you call them? They are not the providers.

Mr Munchenberg: They are referred to rather vaguely as 'the schemes'.

Senator XENOPHON: The schemes, yes, okay. In terms of the contract between your members, the banks, and the schemes, the Visas and MasterCards of this world, can the banks not have some protection for if certain things which are contrary to Australian law need to be cancelled? You may want to take this on notice. In other words, is the contractual relationship between members of your association, the various banks, and the schemes, a standard global agreement or does it take into account particular regulatory requirements?

Mr Munchenberg: I honestly do not know the answer and I would need to speculate. I am not sure to the extent or whether it is relevant to the matters that we are talking about here.

Senator XENOPHON: Would it be relevant in reversing a transaction, in other words the issue of blocking a transaction? We have heard evidence that, in circumstances, it is technologically feasible to do so. With the casino dotcoms of this world and their associated entities that had the merchant IDs, what deal is it between the schemes—Visa, MasterCard and AMEX—with those entities? It could be that the credit card schemes may say that you cannot go ahead with this transaction. There can be some sanctions so that the credit card scheme has an ability to deal with this issue, vis a vis an authorised online casino. You may want to take it on notice.

Mr Munchenberg: I will. I suppose one concern we do have is, while wanting to protect people from some of these sites is something that we are very sympathetic to, we are nervous about what implications there might be for the Australian payment systems more broadly. I cannot think of examples but, obviously, we are not going to be able to have Australian banks that are contracted to do certain things with Visa or MasterCard in conflict with Australian legislation. That cannot be the situation. If your question, Senator, is whether once we have got to the point of where the card schemes are reconciling all these payments, is there still an option to block that, I would have to test that.

Senator XENOPHON: Or can there be sanctions? You have your members, the banks in Australia, the credit card schemes—Visa, MasterCard, AMEX or whatever—and then you have the online casino that wants their dough. We have been focusing on the relationship between the credit card issuers here and the schemes, but what about the relationship between the credit schemes and the online casinos seeking to get their money?

Mr Munchenberg: In other words can we prevent the payment, ultimately, to the scheme.

Senator XENOPHON: To the merchant, is that a matter for the credit card schemes rather than the banks?

Mr Munchenberg: From what I know of how banks handle situations when they become aware that a card is compromised—this is where someone who should not have has got your credit card and is using it for fraudulent purposes—the banks in that case—I am not aware of how they deal with the schemes—just put a hold on that account and stop all transactions. They then re-issue you with a new card which would suggest to me that there possibly is not the scope here. I will take that away and have a look at it.

CHAIR: In relation to the cost of these things we are kicking around, are there systems largely in place? Is it a case of just needing information?

Mr Munchenberg: Again, I draw a distinction between the simple model we have been talking about with the blacklisted merchant numbers. I would need to take that on notice, but I would anticipate that the banks are geared towards that sort of thing already. None of these things can be done without costs, but I would not have thought that was a major cost impost.

Senator XENOPHON: It is relatively minimal—

Mr Munchenberg: Exactly. To be honest having to change bank IT systems is notoriously expensive.

Senator XENOPHON: Could you charge?

Mr Munchenberg: Could we charge customers for the privilege?

Senator XENOPHON: No, no, no! I have not given you the question yet! If you have a customer who goes onto an online site, and it is blacklisted and it has wasted the banks time, if you like, is that something that you can levy a small administrative fee for? I emphasise 'small' administrative fee, proportionate to the nature of the service being provided.

Mr Munchenberg: Again, I would have to take that on notice because I need to talk to people who understand these things and who deliver them on a day-to-day basis. I would be surprised if cost recovery itself is worth the cost of doing it. I imagine that we are talking about small marginal costs here. I would not trumpet a quantum on them but I would be surprised if a bank felt it necessary—

Senator XENOPHON: It is like ATM fees—small marginal costs.

Mr Munchenberg: No, the ATM network has—

Senator XENOPHON: You took my bait!

Mr Munchenberg: I know!

Senator XENOPHON: Chair, I found Mr Munchenberg's evidence very helpful, and I am looking forward the answers to those questions on notice.

CHAIR: Mr Munchenberg, you have been very generous with your time, and I found that very helpful. I am sure I can speak for the whole committee. Thank you very much.

Proceedings suspended from 12:30 to 13:34