



Aldi and EPAL make final submissions

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The state of play in the Eftpos market early in August was that Westpac and its subsidiary brand, St George, had written to merchant customers informing them that they had opted into the new Eftpos Payments Australia interchange model. This would involve Westpac and St George incurring fees, as merchant acquirers, and they would be passing those fees on to merchants.

Four banks and two retailers dominate the acquiring side of the Eftpos system. Two of those banks, Westpac and Commonwealth Bank, had decided to opt into the new Eftpos payment model, which EPAL had announced in March and would take effect in October.

Under the established model, interchange fees - the wholesale payments made between the consumer's bank (the issuing bank) and the merchant's bank (the acquiring bank) for handling Eftpos transactions - are paid by the consumer's bank to the merchant's bank. Under the new model the direction of payments will be reversed.

Participants in the Eftpos system were given the choice of opting into the new interchange model.

Unlike Westpac, Commonwealth had informed EPAL that it would not be passing the new acquiring fee onto merchants.

Of the other big acquirers - ANZ, National Australia Bank, Coles and Woolworths - two had no plans to opt in and two has yet to make their decision.

On August 12 EPAL issued a press release saying consumers "should not face" new charges as a result of the changes.

EPAL managing director, Bruce Mansfield, agreed yesterday that by the time that press release was issued he was aware that Westpac and St George had notified merchants that they would pass on some or all of their interchange fee increase from October.

Mansfield made this admission in his evidence in the Federal Court, where EPAL is defending a claim of misleading and deceptive conduct brought by retailer, Aldi Stores.

Aldi says EPAL must have been aware of plans by banks to increase merchant fees and would also have known that these increases would be passed onto customers.

It claims EPAL was misleading or deceptive when it issued its August 12 press release. Aldi also argues that a clarification issued by EPAL on September 8, saying that "it remains to be seen... what retailers may do in relation to their customers", was also misleading.

It is seeking an order from the Federal Court that EPAL publish corrective advertising.

Aldi's counsel told the court yesterday that Mansfield's acknowledgment that he was aware of "at least a probability" that Westpac and St George had a policy of passing on interchange fees was fundamental to Aldi's case that the press releases were misleading or deceptive.

Aldi's case is based on the view that standard practice in the payments market is for

acquirers to pass on wholesale fees to merchants and for merchants to pass those fees onto consumers in the form of higher costs or surcharges.

Counsel argued that EPAL was aware that at least one large acquirer was taking that approach when it issued press releases saying consumer "should not face" new charges and that "it remains to be seen what retailers may do".

EPAL's defence was based on the argument that its August 12 press release referred to "direct" charges to retailers or consumers and not, by implication, fees being passed on.

EPAL's counsel said Aldi's assertion that industry practice was for charges to be passed on from acquirer to merchant and then to consumer, was not supported by the evidence.

By early August only one large acquirer had decided to pass on interchange charges. Acquirers that accounted for 79 per cent of transaction volume had either decided not to pass on fees or had not opted in.

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