

**Consumer Credit Legal Service (WA) Inc**

**Applications for Authorisation Nos A30224 and  
A30225 in relation to EFTPOS Interchange Fees**

**Submission to the Australian Competition and  
Consumer Commission**

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## **1. Introduction**

Thank you for the opportunity to make a submission in relation to the applications for authorisation in relation to EFTPOS interchange fees.

Consumer Credit Legal Service (WA) Inc. is a non-profit community legal service specialising in credit, banking, superannuation, insurance, and financial services in general. CCLS (WA) provides legal advice, assistance, and representation to low income, vulnerable, and disadvantaged consumers of financial services. CCLS (WA) also represents consumers of financial services who do not fall into this category where to do so would be in the public interest. As part of our public interest role, the service is active in the areas of community legal education, and policy and law reform.

As an interested party, we are pleased to put forward our views on the likely public benefits and effects on competition of the arrangements for which authorisation is sought.

## **2. Summary**

CCLS (WA) believes that it is potentially dangerous to allow financial institutions to engage in collective fee setting, and we agree that the multilateral agreement should be subject to ACCC authorisation to ensure that the public benefits outweigh any risks of reduction in competition.

The goal of reform of EFTPOS interchange fees, as part of the overall reform of Australian payment systems, is to produce increased competition and improved efficiency in the financial system. The reform goals can only be achieved through transparent fee setting, and fair pricing.

Financial institutions have difficulty identifying the true cost of EFTPOS services.<sup>1</sup> This makes it difficult to assess the fairness and competitiveness of EFTPOS transaction fees.

We believe that in this case, transparency and fairness would have to be achieved through additional measures providing for the monitoring, review, and publication of data relating to the agreed fee.

CCLS (WA) supports the authorisation of applications, subject to some additional protections.

### **Price Oversight**

A body should be established to have oversight of EFTPOS pricing for the initial authorisation period. This body would monitor both merchant pricing and direct

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<sup>1</sup> Debit and Credit Card Schemes in Australia: A Study of Interchange Fees and Access, Reserve Bank of Australia & Australian Competition and Consumer Commission ("RBA/ACCC Joint Study"), October 2000, Joint Study, pp. 64-66.

consumer charges, and would report annually to the ACCC and the public on the impact of the Agreement on EFTPOS fees.

### **Price Undertaking**

The applicants should provide an undertaking that the net savings from these reforms for issuers will be passed on to EFTPOS customers.

### **Review**

At the end of the authorisation period, any review should include consideration of whether direct charges for EFTPOS use have fallen, and whether there is evidence of payment instrument substitution to or from EFTPOS debit cards. Any review should also consider whether there is any impact on disadvantaged consumers.

## **3. Preferred Reform Measures**

In July 2002, the RBA published the EFTPOS Industry Working Group (EIWG) *Discussion Paper: Options for EFTPOS Interchange Fee Reform*.<sup>2</sup> The Discussion Paper outlined three general options for reform.

The Financial Services Consumer Policy Centre (FSCPC) and the Australian Consumers' Association (ACA) made submissions in response to the Discussion Paper.

CCLS (WA) supports the views put forward in those submissions. CCLS (WA) supports reforms that would promote transparent fee setting and fair pricing.

In their submissions to the Discussion Paper, FSCPC and ACA, set out their preferred options for reform.

The preferred option for reform was the abolition of EFTPOS interchange fees.

The second preferred option for reform was based on a reversal of the direction of interchange fee charging, and the adoption of a cost-based methodology for calculating the fee. The second reform measures would have applied to all participants and it was envisaged that subsequent monitoring and review would result in EFTPOS interchange fees eventually being reduced to zero.

This position on reform is based on the following assumptions:

1. The EFTPOS system is now established. There is no justification for an interchange fee in the debit card network.
2. The future costs of investing in EFTPOS infrastructure or technologies can be passed onto consumers directly through competitive EFTPOS transaction fees. A more competitive EFTPOS system should provide an adequate incentive for investment.

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<sup>2</sup> EFTPOS Industry Working Group, July 2002.

### **Abolition of EFTPOS Interchange Fees**

The RBA/ACCC Joint Study supported the eventual abolition of EFTPOS interchange fees.<sup>3</sup> Abolition of EFTPOS interchange fees has the following public benefit effects:

1. Reduced issuer costs, which could be directly passed on to consumers in the form of competitive EFTPOS fees.
2. Removal of administration costs associated with the charging of an EFTPOS interchange fee, simplifying the debit network system, and reducing costs for participants and consumers overall.
3. The removal of the need for new entrants to negotiate an interchange fee, removing barriers to access to the network.

It has been suggested that the abolition of EFTPOS interchange fees could be detrimental to the public by:

1. Reducing incentives for investment in EFTPOS technology and network infrastructure.
2. Increasing costs to consumers as acquirers and/or issuers with lost profits and/or unrecovered costs pass costs to merchants and/or consumers.

We consider that in a post-payment systems reform environment, these effects would be minimal. Firstly, payment systems reform should produce a competitive EFTPOS system, which should provide adequate incentives for participants to invest in EFTPOS. Secondly, payment systems reform should produce a more efficient and competitive financial system and a fairer market, which should benefit all participants, including consumers.

### **Multilateral agreement (issuer costs)**

The FSCPC and the ACA previously indicated that in the absence of reforms abolishing EFTPOS interchange fees, they might support a standard multilateral agreement between all participants with the following elements:

1. Interchange fee based on issuer costs.
2. Collective interchange fee based on only those costs which provide a real benefit to merchants and acquirers, and calculated by an independent outsider based on data provided by participants.
3. Fee to be reviewed every 3 years to prevent it becoming static.
4. Fee to be subject to outside expert scrutiny.
5. Publication of level of fees, any change in level of fees, aggregate data on fees, and how fees calculated by participants and regulators. The Payments Systems Board to report on all of these matters and statistical data to be included in Reserve Bank Bulletin statistical table.

It was envisaged that the fee would reduce over time to reflect reductions in the cost of EFTPOS technology and more efficient use of EFTPOS by consumers.

The difficulties with this model are:

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<sup>3</sup> RBA/ACCC Joint Study, p71 and p74.

- the cost of establishing a fee calculation structure based on issuer EFTPOS costs when those costs are difficult for issuers to identify; and
- inefficiencies produced by the costs of calculating and imposing a fee when it is agreed that the network is sufficiently robust for the fees to be reduced to zero.

The benefit of a multilateral flat fee agreement is that it removes the hidden costs (and therefore the potential for distorted price signals) associated with continued bilateral interchange fee agreements.

## **4. The Interchange Fee Agreement**

Although the Agreement sets interchange fees at zero, we have some concerns about:

- its lack of coverage; and
- amendment, monitoring and review.

### **I. No Abolition of Bilateral Interchange Fee Agreements**

Not all participants in the EFTPOS network are parties to the Agreement. Although it is open for any acquirer or issuer to join as a party, it is likely that specialist acquirers will not join while the fees are zero because this would result in a reduction of revenue. Any reversal of the direction of the fees would also act as a disincentive for specialist acquirers considering joining as a party to the Agreement.

As a result of the continued existence of some bilateral interchange fee agreements, interchange fees continue to operate as hidden fees.

### **II. Amendment, Monitoring and Review**

We are concerned that the ability to amend the Agreement at any time during the authorisation period if there is a material change in circumstances may lead to an unjustifiable increase in, rather than eventual abolition of, EFTPOS interchange fees.

The RBA/ACCC Joint Study found that the EFTPOS debit card network has developed to the point where there is no further need for interchange fees.<sup>4</sup>

The applicants suggest in their submission that the imposition of a non-zero interchange fee may be justified if there is “some disruptive occurrence, such as the development of a new product, such as a smart card”.<sup>5</sup>

Although we note that any amendment following review under clause 3 due to a material change in circumstances would be subject to ACCC authorisation, we are concerned that financial institutions may in the future use EFTPOS interchange fees to fund investments in technologies that are unrelated to the EFTPOS system.

The difficulty of identifying the cost of EFTPOS services (as separate from the costs of transaction accounts overall) makes it difficult to assess the competitiveness and fairness of EFTPOS transaction fees.

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<sup>4</sup> RBA/ACCC Joint Study, p71 and p74.

<sup>5</sup> Submission to the ACCC in support of Applications for Authorisation of EFTPOS Reforms, p15.

The Agreement does not provide or incorporate any mechanism for ensuring transparency in fee setting or fairness in pricing.

We therefore submit that a body should be established to have oversight of EFTPOS pricing, and to monitor merchant pricing to ensure that the Agreement promotes the aims of reform. This body would report annually to the ACCC and the public on the impact of the Agreement. At the end of the authorisation period, any review should include consideration of whether EFTPOS transaction fees have fallen, and whether there is any evidence of payment instrument substitution.

## **5. Disadvantaged Consumers**

We are concerned that in the absence of price monitoring protections, the proposed Agreement may not produce a more efficient EFTPOS system, and may not result in a competitive market for retail banking and other goods and services.

Even in circumstances where interchange fees might be set at optimal levels, the benefits of competition may not be felt by disadvantaged consumers, particularly those in isolated communities.

Disadvantaged consumers may not have access to competitive banking and other retail services and as a result may suffer through the introduction of higher prices by financial institutions or merchants.

We therefore submit that any review should also consider the impact of the Agreement on disadvantaged consumers.

## **6. Conclusion**

CCLS (WA) has appreciated the opportunity to put forward our views on the public benefits of the Agreement and we look forward to further consultation and participation in this process.

### **Contact Details**

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