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Visa, Mastercard Reduce Card Payment Fees In Bid To Settle Long-Running US Merchant Lawsuit

Visa, Mastercard and their associated bank issuers have settled a 20-year antitrust class action lawsuit with US merchants to reduce credit card processing fees and constraints on charging consumers different fees for various payment cards.

Under the proposed settlement to the lawsuit "In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation", merchants could save at least $29.79bn over the next five years in processing charges, or "swipe fees".

Visa and Mastercard together control around 83 percent of the credit card market. They each set the interchange fees that merchants pay to banks that issue cards under their brands, as well as the fees that merchants pay to them directly for the use of their networks.

Under the proposed settlement, Visa and Mastercard would reduce merchants' credit card fees, which currently average around 2.26 percent, by at least four basis points for at least three years.

They would also need to reduce their average swipe fees by at least seven basis points below the current average rate and would not be permitted to raise the fees above the rates that were in place as of December 31, 2023 for five years.

In addition, the card networks would remove so-called anti-steering restrictions that have prevented merchants from charging customers different fees to encourage the use of specific cards, enabling competitive pricing.

Merchants can charge for using a Visa or Mastercard credit card, regardless of whether they can charge for using American Express.

As part of the settlement, merchants would be able to offer discounts on goods and services at the issuer level to steer consumers to use their preferred cards, and charge higher transaction fees to consumers with rewards cards, such as those that pay air miles or cashback on purchases, as these can carry higher swipe fees. This aims to promote increased competition among the card networks and credit card issuers.

Merchants would also be able to adjust their card payment acceptance fees based on the costs associated with each card.

They would be permitted to explain to customers why they are applying a charge for credit card use.

The settlement terms would increase the amount of transactions that are eligible to be competitively priced from less than 20 percent to 96 percent.

Buying groups representing small merchants would be able to negotiate lower swipe fees, and the agreement provides a streamlined process for resolving fee disputes.

The settlement also allocates $15m to fund a free, independent merchant education programme for merchants of all sizes and categories to advise and inform them about the settlement and how to effectively implement the changes it allows.

The settlement concludes a 2005 lawsuit which alleged that merchants paid excessive fees to accept Visa and Mastercard credit card payments, and that the card networks, as well as their member banks, violated antitrust laws.

This follows a $5.54bn financial settlement for all US merchants in the class action, which was finalised and approved by the Second Circuit Court of Appeals in March 2023.

The agreement, among the largest in US antitrust history, is subject to approval by the US District Court for the Eastern District of New York.

The class action includes all merchants who accepted Visa or Mastercard debit or credit cards in the US at any time between December 18, 2020 and the date of entry of final judgment by the court.

The class is represented by Steve Shadowen of Hilliard Shadowen LLP; Robert Eisler of Grant & Eisenhofer PA; Michael Freed of Freed Kanner London & Millen LLC; and Linda Nussbaum of Nussbaum Law Group, P.C.

“The settlement eliminates anti-competitive restraints that will deliver U.S. merchants billions of near- and long-term savings,” according to a statement from the law firms.

“The settlement represents a major improvement upon the original agreement that was overturned by the Second Circuit in 2016. Importantly, the settlement prohibits Visa and Mastercard from circumventing the injunctive relief, providing strong anti-circumvention provisions and independent verification and calculations on swipe fees.”

Visa acknowledged that the agreement will provide US merchants — more than 90 percent of which are small businesses — with cost certainty and new ways to manage costs given the greater flexibility at the point of sale to steer to customers to preferred payment methods.

“By negotiating directly with merchants, we have reached a settlement with meaningful concessions that address true pain points small businesses have identified,” said Kim Lawrence, president, North America, Visa.

“Importantly, we are making these concessions while also maintaining the safety, security, innovation, protections, rewards and access to credit that are so important to millions of Americans and to our economy.”

Mastercard stated that the proposed settlement maintains consumer protections and encourages strong competition and innovation.

“This agreement brings closure to a long-standing dispute by delivering substantial certainty and value to business owners, including flexibility in how they manage acceptance of card programs,” said Rob Beard, chief legal officer, general counsel and head of global policy at Mastercard.

“As the court reviews the settlement, we will focus our energy on continuing to provide consumers, small businesses and all business owners what they expect from Mastercard — a better payments experience, strong value and peace of mind.”

Merchants call for further action

However, industry groups representing merchants argued that the proposed agreement does not go far enough to limit anti-competitive practices in the credit card market.

"This settlement is an acknowledgement that the credit card payment market has been broken, and for decades, Visa and Mastercard have used their duopoly to fleece retailers of all sizes by their abusive interchange fees and card network rules,” the Retail Industry Leaders Association (RILA) stated. The RILA represents more than 200 retailers, product manufacturers and service suppliers.

"This settlement is a mere drop in the bucket. It proves that merchants deserve injunctive relief, but whether the settlement terms proposed are sufficient to remedy the harm caused by the current interchange system needs to be carefully reviewed.

"Leading retailers intend to study the terms of the settlement closely and reserve the right to object to the settlement deal if it comes up short on what merchants deserve."

The RILA called on Congress to pass the Credit Card Competition Act “to bring true competition to a broken market".

US Senate Majority Whip Dick Durbin (D-IL), chair of the Senate Judiciary Committee and the lead sponsor of the Credit Card Competition Act, stated: “I fear that this deal only provides temporary concessions negotiated by a few lawyers behind closed doors.

"Today’s news solidifies that it is time to pass my bipartisan, bicameral legislation — the Credit Card Competition Act — to enhance competition between credit card networks and ultimately lower costs for small businesses and consumers. We need to bring real competition to the credit card industry.

"My bill ensures that the Visa-Mastercard duopoly ends their price gouging tactics that disproportionately hurt American families and small businesses.”

Durbin introduced the Credit Card Competition Act of 2023 with US Senator Roger Marshall (R-KS). The legislation aims to increase competition and choice in the credit card network market, which is currently dominated by Visa and Mastercard.

Building on debit card competition reforms enacted by Congress in 2010, the bill would direct the Federal Reserve to require that the largest credit card issuing banks, with at least $100bn in assets, to offer a choice of at least two unaffiliated networks to process electronic credit transactions.

This could be Visa or Mastercard plus a competitor such as Discover, NYCE, Shazam or Star. Merchants would then be able to decide which network to use, creating competition over fees, security and service.

The Merchants Payments Coalition (MPC) said that the proposed settlement would provide “very small relief” and does not negate the need for Congress to pass legislation.

“This settlement is a bad deal for merchants,” said Christopher Jones, MPC Executive Committee member and National Grocers Association senior vice president of government relations and counsel.

“A few years of very small relief followed by business as usual is not a good outcome from 20 years of litigation. The settlement does nothing to actually bring competitive market forces to swipe fees or change the behavior of a cartel that centrally fixes rates and bars competition.

"Instead, it tries to provide token, temporary relief and then allows the card companies to raise rates yet again. Congress needs to act so that we will have real reform that will benefit merchants and their customers.”

The reductions in processing fees are within the range that Visa and Mastercard have raised them over the last few years and “fall far short of the relief that is needed”, Jones added.

The average swipe fees Visa and Mastercard charge rose to 2.26 percent in 2023 from 2.02 percent in 2010.

Credit and debit card fees have more than doubled over the past decade, reaching a record $172.05bn in 2023, up from $160.7bn in 2022, according to the Nilson Report.

Visa and Mastercard alone charged $100.77bn in 2023, surpassing $100bn for the first time and up from $93.2bn in 2022.

Card processing fees are most merchants’ highest operating cost after labour, driving up the prices they charge consumers.

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