



Written by [Bob Adelman](#) on May 24, 2013

## Major Retailers Sue Visa and MasterCard Over Swipe Fees

Seventeen major retailers, including Macy's, Target, and Kohl's, filed an anti-trust suit yesterday in New York City to protest Visa and MasterCard's lack of transparency when they set credit card swipe fees.

*Bloomberg Businessweek* reported on the collusion that the credit card companies are said to be engaged in:

The biggest U.S. payment card firms illegally restrained competition for interchange fees by setting default rates and imposing almost identical rules for accepting cards, the retailers said yesterday in a federal court complaint in New York.



The retailers in the suit decided to “opt out” of a \$7.5 billion court ruling from last November that would settle, finally and forever, an eight-year legal battle brought by retailers against the credit card giants. The settlement, the largest in anti-trust history, would still allow Visa and MasterCard to adjust fees in the future without disclosure or transparency, according to the new lawsuit. In addition the settlement would require the retailers to sign off on ever filing lawsuits over those fees, thus protecting the card companies from other anti-trust lawsuits in the future. It would, in effect, guarantee the existence of a cartel without interference.

By opting out, the retailers are hopeful that the new lawsuit will be able to force the card companies to be more transparent and to allow banks and other financial institutions to compete by offering other cards with lower fees. Although the world's largest retailer, Walmart, didn't join in the suit, observers are predicting it will file its own separate suit against the card companies.

The biggest complaint is that [swipe fees have more than tripled since 2004](#) and now pour more than \$50 billion annually into the pockets of Visa and MasterCard and the issuing banks, which use increasingly inexpensive technology to process the transactions. While fees elsewhere have declined — in Europe swipe fees are just one-eighth of those in the United States — fees in the United States have continued to accelerate, bringing such fees to be the second largest expense retailers pay next to salaries, and costing the average American family more than \$400 a year.

The National Retail Federation [opposes the November settlement](#)

because it does little to address high fees charged in the past and nothing to prevent them from rising higher in the future. The \$7.25 billion figure represents less than three months' worth of swipe fee collections ... and the settlement fails to reform the cartel-like system where Visa and MasterCard set a rigid schedule of swipe fees all banks agree to follow while refusing to negotiate with merchants.

The proposal does nothing to disclose the hidden fees or otherwise create transparency that would encourage competition. And retailers would face a long-term ban on future lawsuits over swipe



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fees, effectively allowing card industry practices to continue unchallenged.

The swipe fees, which average two percent (or \$2 out of every \$100 transaction), in many cases wipe out any profit a merchant might make on a sale. This forces him to either forgo taking credit cards, or pass on the costs to his customer through higher prices. Either way such fees act as a restraint of trade simply because consumers buy less when prices go up.

As expected, the [Electronics Payments Coalition](#) (EPC), which represents Visa, MasterCard, and the banks and credit unions that issue bank cards, says that despite the new lawsuit, the November settlement is likely to be finalized and binding on all in September. Trish Wexler, spokeswoman for the EPC, expected the lawsuit to fail:

They were saying they were going to do this for nearly a year now. I find it hard to understand why they think they could do any better with a new lawsuit using the same old arguments that they've already exhausted over the course of this litigation.

Whether the new lawsuit will perform a miracle and eliminate the backroom machinations that are enabling big banks and card companies to continue to fleece the consumer with ever higher fees remains to be seen. What is certain is they will continue to defend this massive and increasing flow of cash for as long as it takes. Marketplace competition is to be avoided at any cost.

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