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JUSTICE NEWS

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Justice Department Sues American Express, Mastercard and Visa to Eliminate Rules Restricting Price Competition; Reaches Settlement with Visa and Mastercard

Department to Litigate Against American Express to Promote Competition Among Credit Card Networks Enabling Merchants to Benefit Consumers

WASHINGTON — The Department of Justice announced today that it filed a civil antitrust lawsuit in U.S. District Court for the Eastern District of New York challenging rules that American Express, MasterCard and Visa have in place that prevent merchants from offering consumers discounts, rewards and information about card costs, ultimately resulting in consumers paying more for their purchases. The department also said that the rules increase merchants' costs of doing business. Joining the department in its lawsuit are the states of Connecticut, Iowa, Maryland, Michigan, Missouri, Ohio and Texas.

At the same time, the department announced that it has reached a proposed settlement with Visa and MasterCard, that, if approved by the court, would require the two companies to allow merchants to offer discounts, incentives, and information to consumers to encourage the use of payment methods that are less costly.

According to the complaint, American Express, MasterCard and Visa maintain rules that prohibit merchants from encouraging consumers to use lower-cost payment methods when making purchases. For example, the rules prohibit merchants from offering discounts or other incentives to consumers in order to encourage them to pay with credit cards that cost the merchant less to accept.

"With today's lawsuit we are sending a clear message: We will not tolerate anticompetitive practices," said Attorney General Eric Holder. "We want to put more money in consumers' pockets, and by eliminating credit card companies' anticompetitive rules, we will accomplish that."

"These restrictive rules restrain competition among credit card networks for merchant acceptance and distort the competitive process," said Christine Varney, Assistant Attorney General in charge of the Department of Justice's Antitrust Division. "The proposed settlement with MasterCard and Visa is an important step in bringing more credit card competition to the point of sale. The department's lawsuit against American Express will continue that effort and, if successful, allow merchants more freedom to benefit their customers."

Credit card acceptance costs U.S. merchants approximately \$35 billion each year. Those costs are collected from merchants in the form of a "swipe fee" they pay every time a credit card is used. American Express has the highest merchant fees of any credit card network. Merchants pass on these billions of dollars in fees to all their consumers in the form of higher retail prices. By preventing merchants from rewarding consumers when they use less expensive credit cards to make a purchase, American Express, MasterCard and Visa have inhibited merchants' ability to reduce card acceptance costs, and therefore their retail prices to consumers.

The proposed settlement requires MasterCard and Visa to allow their merchants to:

- Offer consumers an immediate discount or rebate or a free or discounted product or service for using a particular credit card network, low-cost card within that network or other form of payment;
- Express a preference for the use of a particular credit card network, low-cost card within that network or other form of payment;
- Promote a particular credit card network, low-cost card within that network or other form of payment through posted information or other communications to consumers; and

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- Communicate to consumers the cost incurred by the merchant when a consumer uses a particular credit card network, type of card within that network, or other form of payment.

The proposed settlement allows any merchant that only accepts Visa and MasterCard to take advantage of the relief immediately.

The ongoing litigation against American Express seeks to allow merchants that accept American Express to engage in the same kind of discounting and encouragement that the proposed settlement with MasterCard and Visa allows. Until American Express's restraints on merchants are lifted, the many merchants that accept American Express, as well as Visa and MasterCard, will not be able to take full advantage of their new options under the proposed settlement, the department said.

American Express Company, the parent of American Express Travel Related Services Company Inc., is a New York corporation, with its principal place of business in New York City. Cardholders used American Express credit and charge cards for \$419.8 billion in purchases in 2009. MasterCard is a Delaware corporation with its principal place of business in Purchase, New York. Cardholders used MasterCard credit and charge cards for \$476.9 billion in purchases in 2009. Visa is a Delaware corporation with its principal place of business in San Francisco. Cardholders used Visa credit and charge cards for \$764.2 billion in purchases in 2009.

The proposed settlement, along with the department's competitive impact statement, will be published in The Federal Register, as required by the Antitrust Procedures and Penalties Act. Any person may submit written comments concerning the proposed settlement within 60 days of its publication to John R. Read, Chief, Litigation III Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street N.W., Suite 4000, Washington D.C. 20530. At the conclusion of the 60-day comment period, the court may enter the final judgment as to MasterCard and Visa only upon a finding that it serves the public interest.

The court will determine a pretrial schedule for the case against American Express once American Express files its response to the government's lawsuit.

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