



Department of Justice

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U.S. DISTRICT COURT RULES THAT AMERICAN EXPRESS VIOLATED ANTITRUST LAWS

WASHINGTON – Attorney General Eric Holder today praised the decision by a judge in the United States District Court in the Eastern District of New York who found in favor of the Justice Department’s lawsuit claiming that American Express’ rules for merchants violate antitrust laws.

“Today’s decision is a triumph for fair competition and for American consumers,” said Attorney General Holder. “By recognizing that American Express’s rules harm competition, the court vindicates the promise of robust marketplaces that is enshrined in our antitrust laws. I salute the hardworking men and women who led the lengthy investigation and trial with uncommon skill and unwavering dedication. With this achievement, we are sending an unambiguous message that the Department of Justice is prepared to litigate any case, no matter how complex, in its pursuit of justice and protection for the American people.”

The United States Department of Justice and 17 state attorneys general sued American Express, Visa Inc. and MasterCard International Inc., in 2010 to eliminate restrictions that the three credit card networks imposed on merchants. Over the course of a seven week trial during the summer of 2014, the department argued that these restrictions obstruct merchants from using competition to try to keep credit card fees from increasing. The civil case, brought under Section 1 of the Sherman Antitrust Act, sought to end the violation and to restore competition.

The trial focused on credit card “swipe fees” which generate over \$50 billion annually for credit card networks. Millions of merchants of all sizes and in scores of industries pay those fees. Despite these large fee revenues, the Justice Department argued that price competition over merchant swipe fees has been almost non-existent and for decades the credit card networks have not competed on price. Today’s decision was rendered by Judge Nicholas G. Garaufis.

“Merchants pay over \$50 billion in credit card swipe fees each year. The department and the attorneys general of 17 states brought this case because competition over those fees was being suppressed,” said Deputy Assistant Attorney General for the Antitrust Division Leslie C. Overton. “The Court’s ruling establishes that the American Express anti-steering rules block merchants from using competition to keep credit card swipe fees down, which means higher costs to those merchants’ customers. I am proud of the outstanding work done by the investigative and trial teams. As today’s decision reaffirms, the Antitrust Division remains committed to ensuring that competition is not restricted in this important sector of the economy.”

Settlements with Visa and MasterCard were filed at the same time the case against American Express was begun; the settlements prohibit the two networks from continuing their rules and practices that had obstructed competition. The court approved the settlements on July 20, 2011, and they applied immediately to Visa and MasterCard. American Express was not a party to the settlements, and the litigation against American Express continued.

The department argued that the principal reason for an absence of price competition among credit card companies has been rules imposed by each of the networks that limit merchants' ability to take advantage of a basic tool to keep prices competitive. That tool – commonly used elsewhere in the economy – is merchants' freedom to “steer” transactions to a network willing to lower its price. Each network has long prohibited such steering to lower-cost cards. Now that Visa and MasterCard have reformed their anti-steering rules, American Express rules stood as the last barrier to competition.

At trial, an array of merchants came forward to explain both the substantial costs they incur when their customers pay with credit cards and their inability to ignite competition among the networks to reduce those costs. In fact, the rules not only prevent merchants from offering their customers lower prices or other incentives for choosing a less costly card, they even block merchants from providing consumers with truthful price information about the cost of swipe fees of different credit cards.

Examples, used as trial exhibits, of what the Amex rule prohibits can be found at <http://www.justice.gov/atr/cases/amex/amex-te.html>.

Closing arguments in the trial took place on Oct. 9, 2014. Craig Conrath was the lead trial attorney for the United States. The 17 plaintiff states were Arizona, Connecticut, Idaho, Illinois, Iowa, Maryland, Michigan, Missouri, Montana, Nebraska, New Hampshire, Ohio, Rhode Island, Tennessee, Texas, Utah and Vermont. The court also entered a scheduling order instructing the parties to submit, within 30 days, a joint proposed remedial order.

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