

As a voice for small businesses and their customers, The National Black Chamber of Commerce is pleased to see that after so many years, the very public battle over who should pay for the cost of payments acceptance is finally over. On July 13<sup>th</sup>, the U.S. District Court for the Eastern District of New York announced that a settlement was reached in the long-running legal dispute between retailers, payment networks and nine major credit card issuers over interchange fees and rules.

The parties came together and agreed on a settlement, using a reasoned, measured judicial approach to resolving a complex dispute. Congress designed the antitrust resolution system in the courts to resolve complex principles of law and questions of fact. It is designed to insulate the process from raw political power and to reach conclusions that ultimately benefit consumers.

Giant retailers now have more control than ever before in what they pay to accept electronic payments – including the ability to impose a retailer surcharge, or “checkout fee,” on their customers, which they required as part of the settlement. This is an anti-consumer practice and people should watch for large retailers overcharging them – and just say no. It’s outrageous that customers should have to pay the retailer extra for the “privilege” of paying them. In fact, this practice is currently illegal in ten states and will continue to be due to state law. These states include: California, Colorado, Connecticut, Florida, Kansas, Maine, Massachusetts, New York, Oklahoma and Texas.

The thoughtful approach of the settlement process is in stark contrast to that of the Durbin amendment. I’ve said this before and I’ll say it again, Congress never should have meddled in this fight between two giant industries – picking winners and losers with no forethought as to the fallout. Unlike the deliberate approach of the courts, Congress rushed through a draconian price control regime that gave giant retailers an \$8 billion windfall, with no benefit to consumers. The Durbin amendment was poorly designed and shoehorned into Dodd-Frank without any thoughtful discussion. Ever since this unwarranted and misguided intervention into the debit interchange, the negative effects, intended and unintended, are being felt by millions of Americans.

Consumers have not received the savings giant retailers promised in exchange for the \$8 billion big business payday from Senator Durbin and Congress. Contrary to visions of slashing prices and “discounts for debit” at the register, giant retailers are hoarding their winnings, and consumers are seeing prices continue to rise - and in many cases are paying more for traditional banking products and losing services that were free since many banks have been put

in the position of making up lost revenue because of the Durbin amendment.

Moreover, big retailers have seen their profits soar while small businesses are suffering higher and higher costs. Prior to government intervention, all retailers paid an average of around 1 percent per debit transaction. But today, "mom and pop" shops selling everyday items, like a cup of coffee or a turkey sandwich, are paying the much higher price-controlled amount – virtually the same amount as a mega-retailer is paying for a flat screen TV.

And just recently, a couple of giant retailers have now publically objected to the settlement, including Wal-Mart, and feel differently than the millions of merchants who were intimately involved in the extensive negotiations as part of this litigation. I suppose it's possible that Wal-Mart doesn't think the settlement is in their best interest and perhaps they want to try to hold out for more money. But we all know that what Wal-Mart wants isn't always what is in the best interest of the millions of other U.S. merchants, and especially smaller retailers.

The class representative plaintiffs, their counsel and the court appointed co-lead class counsel had every opportunity to shape this deal over seven years of litigation and mediation. It appears to me that they ultimately signed on because they felt this was in the best interests of all retailers, large and small alike.

As I see it, this settlement resolves all interchange disputes – both those in the past and on a go-forward basis. As with any settlement of class action litigation, it's a process and several additional steps must occur before the agreement is actually implemented. This settlement is a final and binding agreement between all parties. Those who signed the final agreement are now compelled, through their signatures, to ask for the judge to approve it. And there is nothing to suggest that the judge would reject this agreement, which has been in development for many years. In fact, recent analyst reports by [Keefe, Bruyette & Woods](#) and [Citi Research](#) find that even if some of the class participants formally opt-out of the agreement, this is extremely unlikely to derail the interchange settlement.

Now that both industries have willingly endorsed this agreement, it shows that no further government intervention is necessary – the case is in fact closed.

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