Judge Rules Against FED in Debit Card Fee Dispute

August 2, 2013 - For more than two years now, we've been writing about swipe fees. These are the fees that banks charge merchants for processing debit and credit card transactions. Retailers have been pushing to have the fees lowered for several years now. The banking industry wanted the fees left alone.

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s.type = 'text/javascript';
s.src = 'http://widgets.digg.com/buttons.js';
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})();
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In 2011, the FED issued a new rule that capped the amount of money that banks could charge for swipe fees. These fees had averaged around 44 cents per transaction and it had been widely speculated that the under the new rule, those charges would be cut to around 12 cents per transaction.

But when the FED issued its final rule, it set the fee cap at 21 cents per transaction. While this represented more than a 50% drop in the fee for the banks, it was widely viewed as a compromise that would help merchants with a cut in their prices, and assist the banks by not completely decimating one of their largest sources of revenue.

For the record, the position that we took on this issue was much different from either the FED or most other consumer advocacy groups. While the idea of significantly reducing these fees is attractive at first glance, it was always our feeling that banks would simply replace the fees being charged to merchants with new fees that would be paid for by consumers. It is fairly clear at this point that we were correct.

At the same time, we did recommend a solution that would have allowed merchants to pass fees directly to consumers as a separate line item on any receipt they received. Had that happened, the market would have taken care of the issue on its own. Consumers would have been able to determine if the charges were worth the convenience and banks, we believe, would have been forced to voluntarily reduce them. At the time the rule was being crafted, this was something that merchants couldn't do because their agreements with Visa and MasterCard at the time specifically forbid them from passing fees on to consumers.

Regardless of any of this, the fee cap eventually issued by the FED was - as previously noted - significantly higher than it could have been. And that's when several coalitions of merchants got together and sued the FED.

This week, Federal District Judge Richard Leon issued a ruling agreeing with the merchants saying that the FED â€œruns completely afoul of the text, design and purposeâ€• of the Durbin Amendment (this was an amendment to the Dodd Frank financial reform law that directed the FED to limit swipe fees to the actual cost for each transaction). Judge Leon was also highly critical of the way in which the FED set the 21 cent fee noting that this number was only settled on after an intensive lobbying campaign by the banking industry.

The current fee structure won't go away immediately. The judge is allowing the FED to come up with a new structure before killing the current one. But in what can only be taken as a warning to the FED, he said that the new structure should only take months, not years, to implement.

Unfortunately, the order is probably going to result in banks reducing services and implementing new fees for things that were previously free. In 2009, when fees of 44 cents were still being charges, banks collected nearly $17 Billion in swipe fees. Under the expected new structure, those revenues are likely to drop to below $5 Billion. Since most banks are publically traded companies, there is little doubt that their stock holders will look for other sources of revenue as a replacement.

byJim Malmberg

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