

Title: The Persistence of Antitrust Controversy and Litigation in Credit Card Networks

Authors: K. Craig Wildfang and Ryan Marth

#### Abstract

Since the early days of Visa and MasterCard, the credit card networks have been the subject of frequent antitrust litigation, challenging their membership rules and the methods by which they and their banks charge merchants to accept their cards. Until recently, however, they had been relatively successful at fending off challenges to their market dominance and their competitive practices. This changed, however, when the Department of Justice secured a victory in its challenge to the networks' rules that forbade member banks from issuing American Express and Discover cards and a class of merchants obtained a multi-billion dollar settlement for the networks' allegedly illegal tying of their offline debit cards to their credit cards. At that same time as the networks suffered these high-profile setbacks in the United States, they have been subjected to increased scrutiny by foreign competition and banking authorities, over the fees and rules they impose on merchants. Against this legal and regulatory backdrop, a class of U.S. merchants has challenged the collective setting of interchange fees by the networks' member banks and the rules the networks impose on merchants. This article describes the legal and economic bases for the merchants' challenge to the networks' practices and sets forth the networks' likely defenses of those practices. It then analyzes relevant antitrust precedent and concludes that the networks' defenses do not justify their member banks' collective setting of ever-escalating fees on merchants.