

Vantiv: Company Settles \$52 Million Lawsuit Alleging Vantiv and Global Payments Mark Up Interchange Fees

Legal Update

Vantiv and Global Payments have agreed to settle a lawsuit filed in January 2016 alleging that the companies fraudulently marked up interchange fees when billing merchants. If the settlement agreement is approved by the court, the companies will pay \$52 million to merchants who were victimized by the practice between October 2009 and March 2017. Both companies deny any wrongdoing.

As we noted in prior reports on Vantiv, industry sources and comments from Vantiv's spokesperson indicate that Vantiv continues to engage in the kinds of practices alleged in this lawsuit. Industry sources and billing statements also indicate that Worldpay, which is in the process of being acquired by Vantiv, has similarly marked up interchange fees for some time. The success of this lawsuit suggests that Vantiv and Worldpay remain vulnerable to class action lawsuits because of their billing practices.

The Lawsuit

The initial complaint in the recently settled lawsuit alleged that Mercury Payments, now known as Vantiv Integrated Payments, "is and has for the duration of the Class Period been artificially inflating card association access fees, such as the Mastercard NABU fees and the VISA APF fees. Mercury marks those fees up and retains the difference between the actual published fees (owed to the card associations) and the inflated fees."

The complaint continues: "Mercury's monthly statements reflect inflated interchange rates as well. For example, although the applicable interchange rate for a 'VISA Rewards 1' credit card was, and is, 1.65% of the transaction amount plus 10 cents per individual transaction, Plaintiff Sam Malouf's March 2015 statement indicates that Mercury charged a rate of 2.5% (plus \$0.10 per transaction), inflating the applicable rate by, in this case, 85 basis points, or 0.85%. In other words, rather than multiplying the total dollar amount of transactions using that card type by 1.65%, as the published interchange rate requires, Mercury multiplied it by 2.5%, pocketing the difference. In this single instance, the 0.85% inflation of the VISA Rewards 1 interchange rate netted Mercury a sum of \$238.65 over and above the actual interchange charge Mercury should have made."

For both the card association fees and interchange fees, the complaint alleged that Mercury, by separately identifying and charging those fees on merchants' bills, "intentionally deceives merchants into believing that those rates are *actual* assessments that do not include an arbitrary mark-up from Mercury" (emphasis in original).

The Settlement

The settlement requires Vantiv and Global Payments to set aside \$52 million to pay restitution to merchants who paid these markups. According to the lawsuit's settlement [website](#), current customers of the companies will receive an automatic cash payment via electronic funds transfer, unless they opt into one of five billing credit options provided in the settlement. Former customers will receive a postcard or email notifying them of the settlement. Those customers will then have until October 13, 2017 to claim the money that they are owed.

The settlement only releases the companies from legal liability for markups charged during the period of time covered by the suit. It does not affect the rights of merchants to similarly contest markups charged going forward, and it does not order Vantiv and Global Payments to stop these kinds of practices.

Lingering Litigation Risk

This lawsuit only covers interchange markups charged by Vantiv between October 2009 and March 2017. It does not cover any markups charged after March 2017 and does not include the markups Worldpay has also charged. Insofar as Vantiv continues to opaquely mark up the interchange line items on its bills and Worldpay has not been sued yet (as far as we know) for engaging in similar billing practices, both entities continue to carry significant risk of class action litigation.