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Changing the rules of the card game

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DANA FLAVELLE

Restaurant owner and chef Jean-Jacques Texier says his cost of accepting credit cards has jumped nearly 50 per cent in the past two years.

The statements he receives from his credit card processor are "impossible" to figure out. For example, he's now paying an extra \$10 a month, on average, for "non-qualifying cards." He believes that may include RBC Visa Avion Platinum cards, but he's not sure.

"I'm a very tiny business but I'm paying \$500 to \$1,200 a month in credit card fees," says Texier, who owns le Batifole, a moderately priced French bistro in east Toronto's Chinatown.

"My credit card fee is higher than my gas bill, a lot higher. It's higher than my water bill, and I use a lot of water. And it's higher than my electricity bill."

Texier is not alone. Some merchants are finding that Visa and MasterCard's new debit card networks are being automatically added to their terminals, a move they fear will boost those fees as well.

Small business groups have been urging Ottawa for months to curb practices they say have made credit card processing fees more expensive, less predictable and generally non-negotiable. Ottawa is listening.

Federal Finance Minister Jim Flaherty is circulating a proposed voluntary code of conduct that would, among other things, give merchants more clout in dealing with credit card processors.

Within days, the federal Competition Bureau is expected to issue two landmark rulings that could dramatically alter the payments industry landscape.

But just as the rules of the game are about to change, merchants say payment processors have ramped up their efforts to lock them into contracts that could be difficult to rip up.

In its latest "Merchant Agreement Updates," obtained by the *Star*, Chase Paymentech advises merchants they will be deemed to have accepted any new products or services if they process a transaction within 30 days of receiving notice of the new product or service.

Merchants have likened this approach to "negative optioning," noting that once Visa debit cards are in the market and their terminals are equipped to process them, they may unwittingly accept a Visa debit payment.

Visa Canada has said its debit cards will operate on its own debit network, and the existing Interac network and consumers will have the choice of which to use.

The Canadian Federation of Independent Business, which supports the voluntary code, reissued its calls this week for a moratorium on any new debit business during the consultation period.

"Once these changes start to come into effect on Jan. 1, it's going to be very hard to undo them," said federation CEO Catherine Swift.

A lot is at stake.



Canadians now carry 68.2 million credit cards.

ANDREW WALLACE/TORONTO STAR

Merchants pay an estimated \$4.5 billion a year in credit card fees, according to the Retail Council of Canada. And they're not the only ones footing the bill. Assuming those costs are passed on to consumers, that works out to roughly \$400 per household.

"Canadian business pays some of the highest merchant fees in the world," says Diane Brisebois, president and chief executive officer of the retail council. "If I'm being overcharged, then guess who's paying for it? My customer."

Canada's two biggest credit card companies, Visa and MasterCard, along with the banks, have warned the government that excessive regulation could hurt consumers in unintended ways.

Low-income Canadians could get reduced access to credit, while card rewards programs could suffer, hurting more affluent shoppers.

The credit card companies and banks say Canada's payments industry is competitive and consumers and merchants benefit from product innovation and choice.

"The value and contribution of the payment system is not well understood," Tim Wilson, head of Visa Canada, acknowledged at Senate hearings. The system is "highly competitive," offering a "host of payment alternatives to merchants and consumers."

The fact consumers are using cards more often proves how popular they are, the companies say. And no one is forcing merchants to accept them. But with Visa and MasterCard controlling 94 per cent of Canada's credit card market, critics ask how it can be considered competitive.

The problem isn't unique to Canada. American retail and consumer groups have launched multimillion-dollar lawsuits against credit card companies, claiming they're being gouged.

And countries in Europe, Australia, the United Kingdom and New Zealand are reviewing policies governing the booming new electronic payments business.

A lot has changed in the three years since first MasterCard and later Visa evolved from non-profit associations owned by their members, mainly the banks that issued the cards. Now they're profit-driven, publicly traded enterprises with networks across the globe.

Plastic has become the payment form of choice. Canadians now carry 68.2 million credit cards, at least two per family on average. And spending on those cards has nearly doubled since 2000. But many of the rules governing Canada's payment systems were written when banks were still processing paper cheques by hand.

The market is moving fast and regulators are running to catch up.

In the past two years, Visa and MasterCard have changed the interchange fee structure, introduced higher interchange fees for premium cards and also laid the groundwork for entering the debit market. They're also rolling out new "chip-enabled" cards that promise to increase security while adding new features, such as contactless credit cards.

Now these two multinational giants want a share of Canada's \$168-billion-a-year debit payment system, a move critics fear will mean the end of the low-cost, non-profit debit system dominated by Interac.

Growing complaints from merchants and other small businesses about the credit card companies' behaviour have sparked two sets of public hearings in Ottawa, two separate reviews by the federal Competition Bureau and two new public policy statements from Flaherty.

The bureau is to rule within weeks on a request by domestic debit provider Interac to evolve from a non-profit association owned by debit card issuers to a for-profit business able to compete with Visa and MasterCard in debit.

The federal watchdog is also investigating allegations that the two foreign card companies have abused their dominant position in Canada's credit card market to limit competition, and will announce shortly what direction it will take.

Meanwhile, restaurant owner Texier is taking matters into his own hands, asking his customers to please pay with cash or debit, instead of a credit card.

So far, it's working. His credit card processing fees are holding steady, despite the fact they now represent nearly 4 per cent of the value of the average transaction.

But he's not sure how much longer he can continue since he fears that speaking out against credit cards may violate the terms of his payment processing contract.

"If they pulled the plug it would be pretty dramatic for me," he said.