

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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IN RE: AMERICAN EXPRESS ANTI-STEERING
RULES ANTITRUST LITIGATION

This Document Relates To:
CONSOLIDATED CLASS ACTION

11-MD-02221 (NGG) (RER)

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THE MARCUS CORPORATION,
on behalf of itself and all similarly situated persons,

13-CV-07355 (NGG) (RER)

Plaintiff,

- against -

AMERICAN EXPRESS COMPANY, et al.,

Defendants.

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DECLARATION OF JUDE OLINGER

I, JUDE A. OLINGER, hereby declare as follows:

1. I am the CEO of The Olinger Group, Inc. and I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.

2. The Olinger Group, Inc. was retained by the Friedman Law Group LLP to conduct a market research study of 800 merchants in order to determine merchants' willingness to surcharge credit card transactions after watching an instructional video about surcharging and to determine the willingness to accept credit cards among non-accepting merchants as a result of the ability to surcharge credit card transactions.

3. Our research survey, the results of which are set forth in detail in the attached Exhibit A, found that:

i. 68% of merchants indicate that they would surcharge after viewing the video.

- ii. Of the merchants that initially said "no" or "don't know" to surcharging, 65% stated that they would be willing to surcharge if some or most of their competitors were surcharging.
- iii. Only 9% of all merchants said that they would not surcharge, regardless of the surcharging behavior of their competitors.
- iv. 51% of merchants who do not currently take credit cards indicated that they would now be willing to accept credit cards because they could surcharge credit cards.

Background on The Olinger Group, Inc.

4. The Olinger Group, Inc. is a national, industry-leading, full-service market research firm with a Fortune 1000 client base. Now in its 20th year of business, The Olinger Group has conducted research studies for some of the most recognizable brands in the United States including Nestle, CVS Caremark, Equifax, Marriott, Family Dollar, and Foot Locker.

5. Jude A. Olinger, CEO serves on the Board of Directors of the Counsel of American Survey Research Organizations ("CASRO") and is the incoming Chairman for 2015.

6. The Olinger Group strictly adheres to the CASRO Code of Standards and Ethics for all research studies including this one.

Research Methodology

7. The Olinger Group collaborated with Friedman Law Group to create a custom online survey.

8. The survey featured a 1:40 minute instructional video explaining new rules governing surcharging. Respondents were asked their willingness to surcharge after viewing the video. Access video here: <http://vimeo.com/user24733973/friedman>

9. The survey ran online from February 26, 2014 to March 14, 2014. A total of 800 merchants completed the survey, which took approximately 5 minutes to complete.

10. Respondents were recruited to participate in the online survey via a research panel provider that uses market research, industry-standard online routing and sophisticated panel selection technology.

11. The technology used by the panel provider to recruit survey participants employs a mixed sample to provide a comprehensive and representative view of the online population and general population. We believe that this technology results in a more comprehensive and representative panel than the panels created by more conventional panel providers.

12. Respondents were screened to only include those that met the following criteria:

- i. Businesses that had been operating more than one year.
- ii. Respondents who were solely or partially responsible for decisions involving the acceptance of credit cards for their business.
- iii. Businesses that were from one of the following 8 industries: auto-related services, home improvement, livery/taxi, furniture/antique stores, beauty, law firms, accounting firms, and dry cleaners.
- iv. Businesses that were not located in the following states: California, Colorado, Connecticut, Florida, Kansas, Maine, Massachusetts, Oklahoma, Texas, and Utah.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Dated: April 11, 2014.

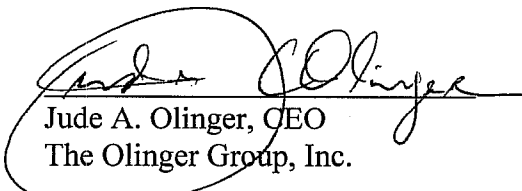

Jude A. Olinger, CEO
The Olinger Group, Inc.

Exhibit A

Credit Card Merchant Surcharge Study

March 2014

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Objectives and Methodology

Objectives

- Determine willingness to surcharge credit card transactions among merchants after watching an instructional video about surcharging.
- Determine willingness to accept credit cards among non-accepting merchants as a result of the ability to surcharge credit card transactions.

Methodology

- The Olinger Group collaborated with Friedman Law Group to create a custom online survey.
- The survey featured a 1:47 minute instructional video explaining new rules governing surcharging. Respondents were asked their willingness to surcharge after viewing the video. Access video here:
<http://vimeo.com/user24733973/friedman>
- The survey fielded from February 26, 2014 to March 14, 2014.
 - The online survey took approximately 5 minutes to complete and gathered 800 completions. All charts, graphs, and tables are representative of the total number of respondents (n=800) unless otherwise stated.



- Respondents were recruited to the online survey via a market research, industry-standard online routing and panel technology provider.
- This technology employs a mixed sample to provide a more comprehensive and representative view of the online population and general population than that of conventional panel providers.
- Samples come from the following sources:
 - Mobile Sample – Respondents are recruited to panels receive invites to surveys via an app or text.
 - Traditional Sample – Respondents are recruited from multiple sources originally and invited to surveys via e-mail.
 - Social Media – Panel that is recruited from social sites all over the web.
 - High Engagement Panel – Panel that is recruited for specialty projects via an intercept or specialty group.
 - River Sample – Respondents are invited to do surveys while surfing the web. They are usually not part of an existing panel.
 - Routing Sample – Respondents that have just completed a survey and are willing to take more are then sent to a routing platform to go on to another survey.



- Respondents were screened to only include those with the following criteria:
 - Businesses that had been operating more than one year.
 - Respondents who were solely or partially responsible for decisions involving acceptance of credit cards for their business.
 - Only respondents who were from one of the following 8 industries were included in this study: auto-related services, home improvement, livery/taxi, furniture/antique stores, beauty, law firms, accounting firms, and dry cleaners.
- Respondents from the following states were excluded: California, Colorado, Connecticut, Florida, Kansas, Maine, Massachusetts, Oklahoma, Texas, and Utah.



Executive Summary

- 68% of respondents (excluding those who already charge customers extra when paying by credit card) indicated that they would surcharge after viewing a video explaining changes in the rules governing surcharges.
- Of those that initially said "no" or "don't know" to surcharging, 65% stated that they would be willing to surcharge if some or most of their competitors were surcharging .
- Only 9% of all respondents said that they would not use a surcharge, regardless of the surcharging behavior of their competitors.
- 51% of respondents who do not currently take credit cards indicated that they would now be willing to accept credit cards and surcharge credit cards.

Key Insights

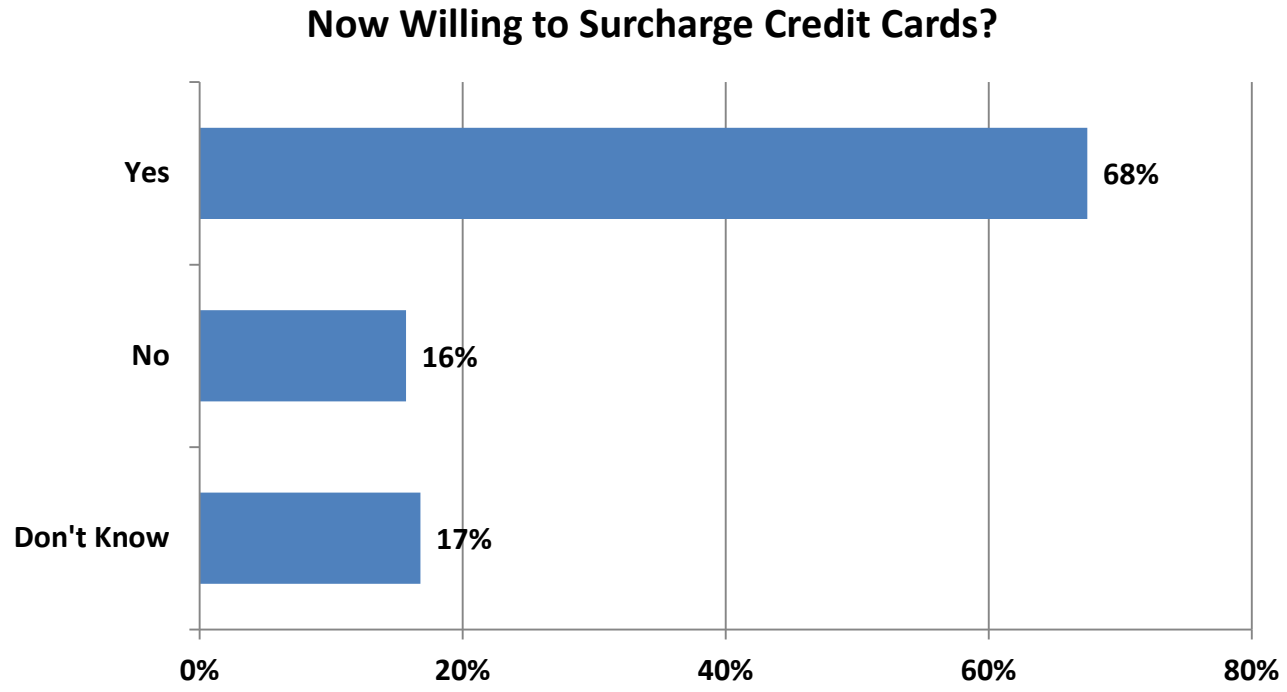
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Willingness to Surcharge

- Two-thirds (68%) of respondents (excluding those who currently charge customers extra for paying by credit card) indicate willingness to surcharge after viewing the instructional video.

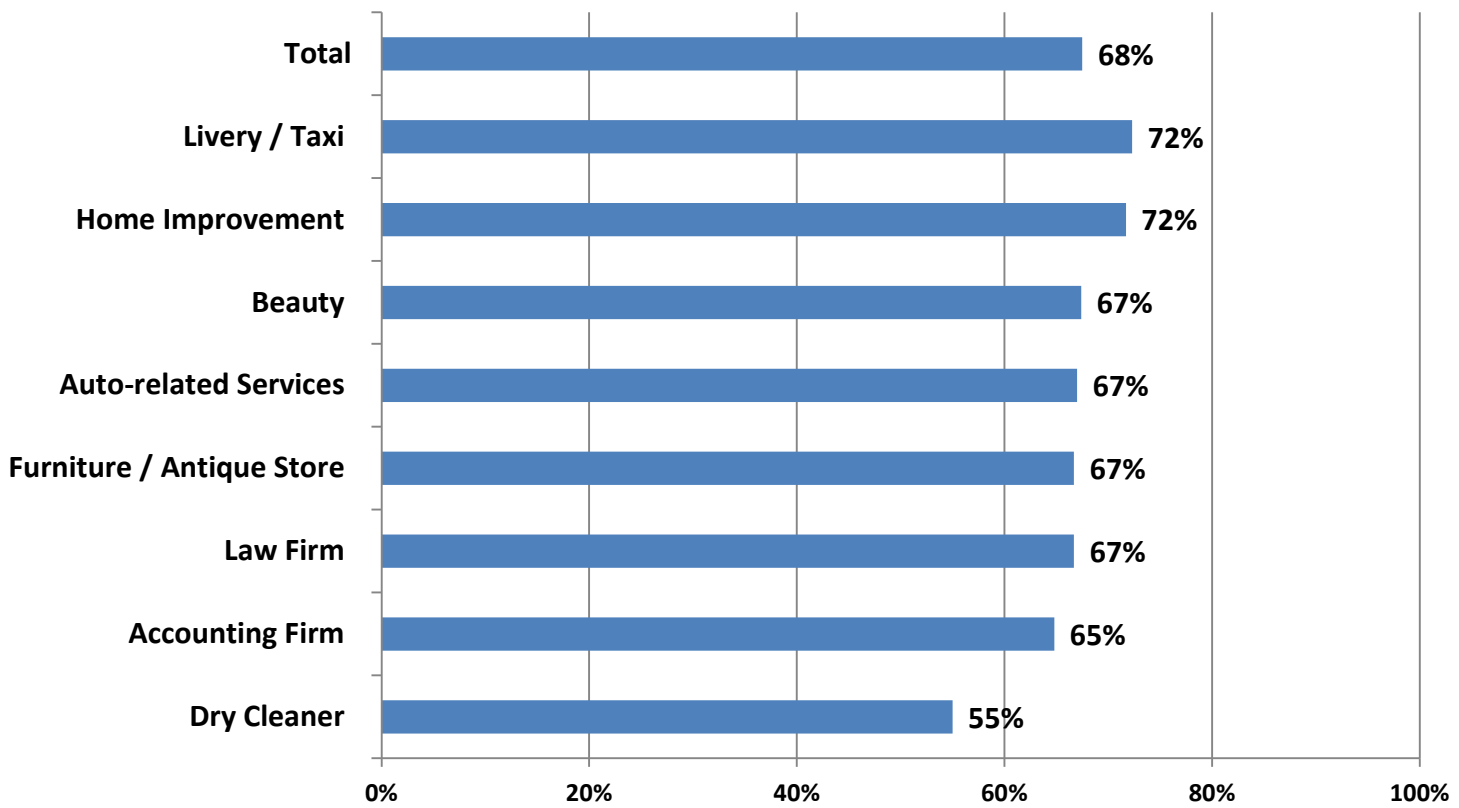


n = 613 respondents who do not currently take credit cards or charge customers extra when paying by credit card. Respondents who still would not take credit cards are excluded from the rest of the analysis.



- Willingness to use a surcharge is fairly stable across types of businesses.

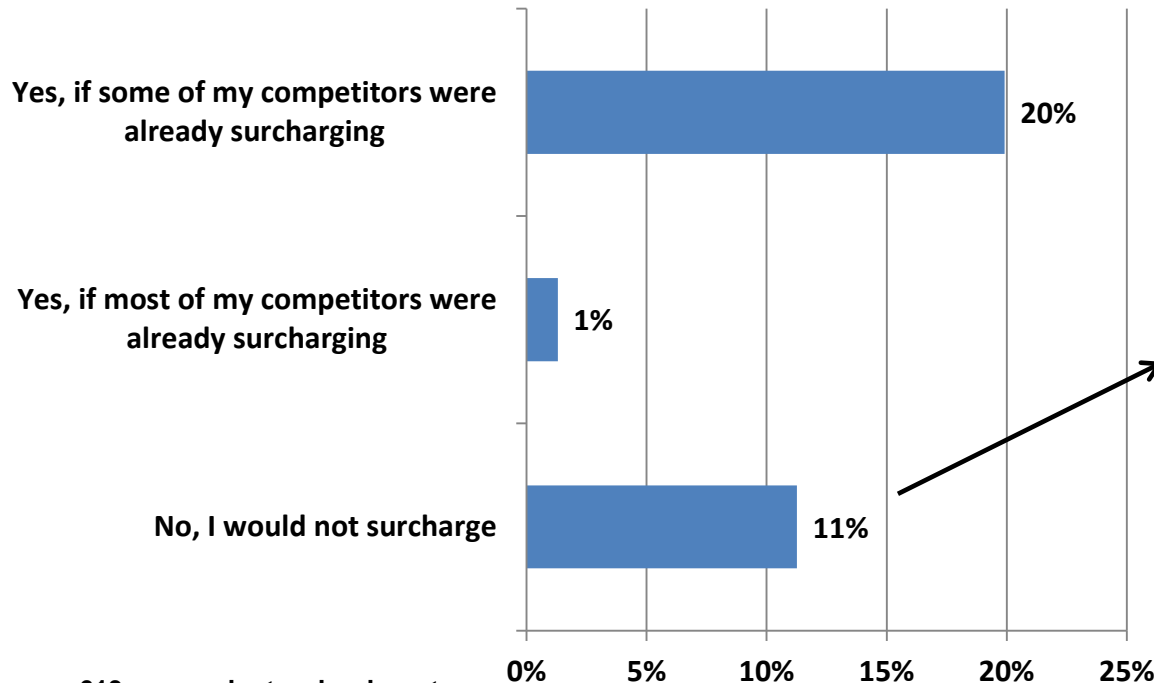
Now Willing to Surcharge Credit Cards?



n = 613 respondents who do not currently take credit cards or do not charge customers extra when paying by credit card. Respondents who still would not take credit cards are excluded from the rest of the analysis.

- An additional 21% of respondents indicate that they would surcharge if some or most of their competitors were surcharging.

Now Willing to Surcharge Credit Cards?



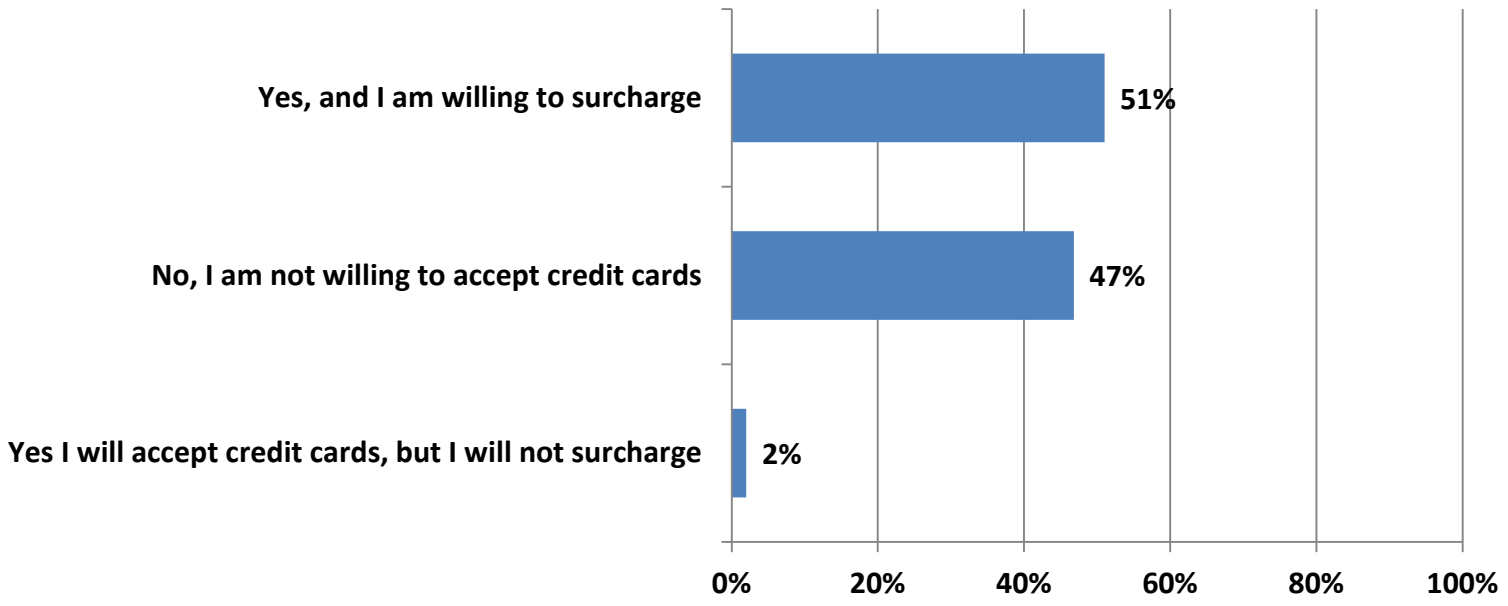
Only 9% of the total sample (11% of those who do not currently charge customers extra when paying by credit card) would not use a surcharge under any condition.

n = 613 respondents who do not currently charge customers extra when paying by credit card



- 51% of respondents who do not currently take credit cards indicated that they would now be willing to accept credit cards and surcharge credit cards.

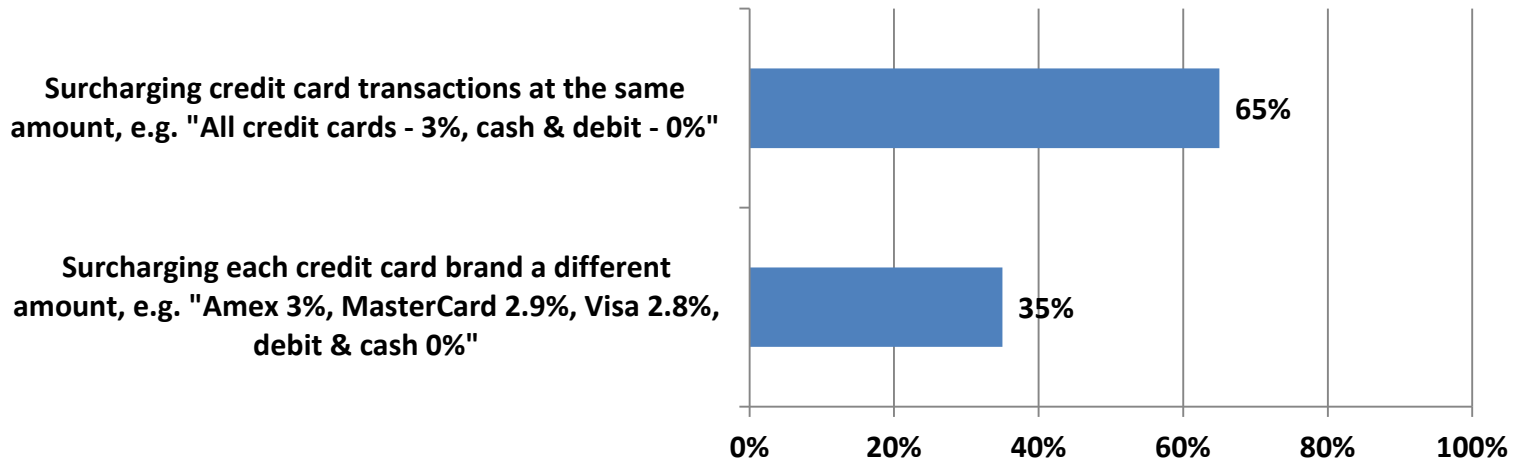
Now Willing to Accept Credit Cards?



n = 171 respondents who do not currently take credit cards. Respondents who still would not take credit cards are excluded from the rest of the analysis.

- About two-thirds (65%) who say they would surcharge prefer to surcharge all credit card transactions the same amount.
 - The balance (35%) prefer to surcharge each credit card brand a different amount.

Which of the following surcharge programs are you most likely to implement?

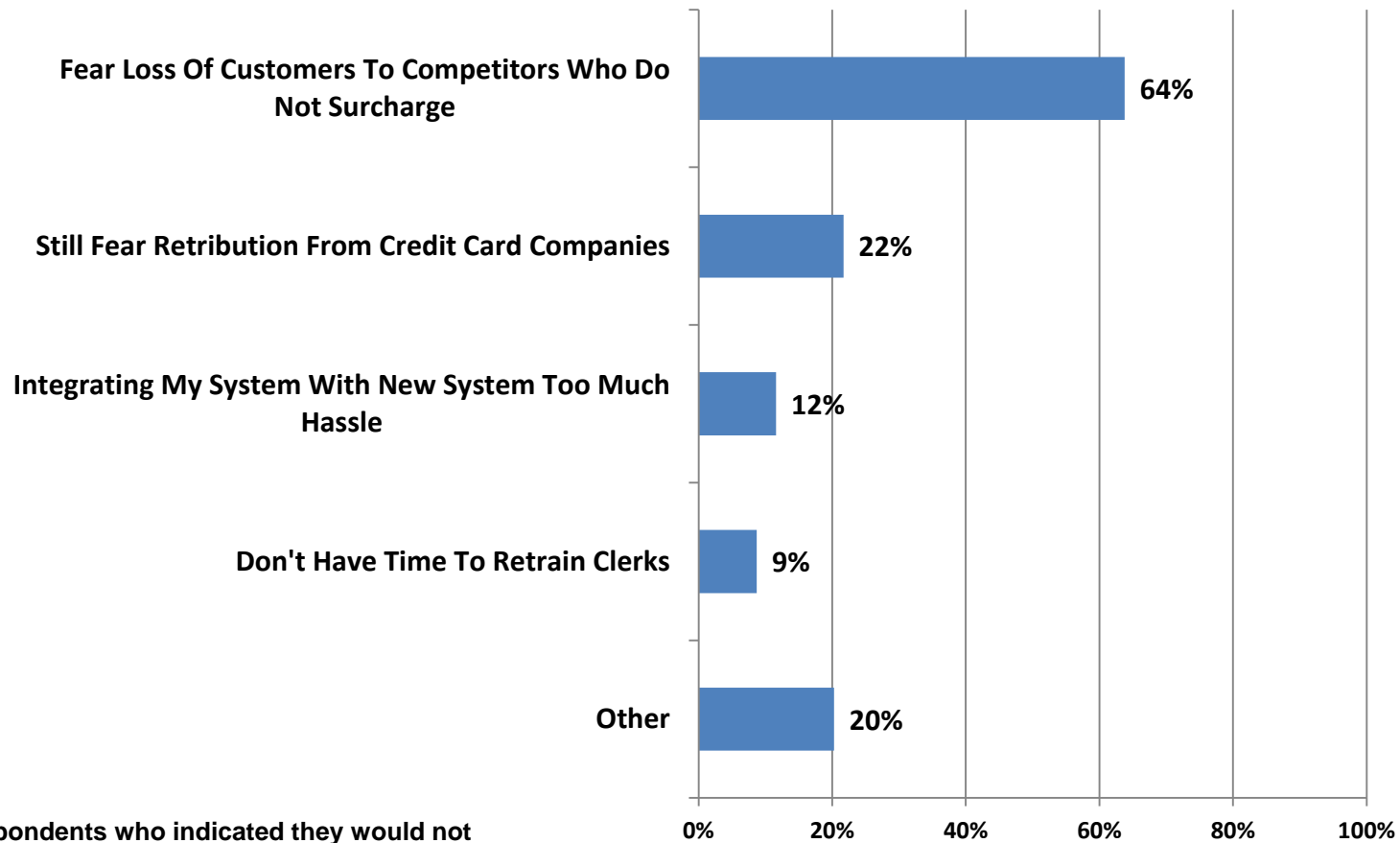


n = 731 respondents who accept credit cards and indicate a willingness to use a surcharge.



Reasons For Not Surcharging

- Of the 9% respondents not willing to surcharge, fear of losing customers to non-surcharging competitors is the major reason given to not surcharge.



n = 69 respondents who indicated they would not use a surcharge under any circumstances.

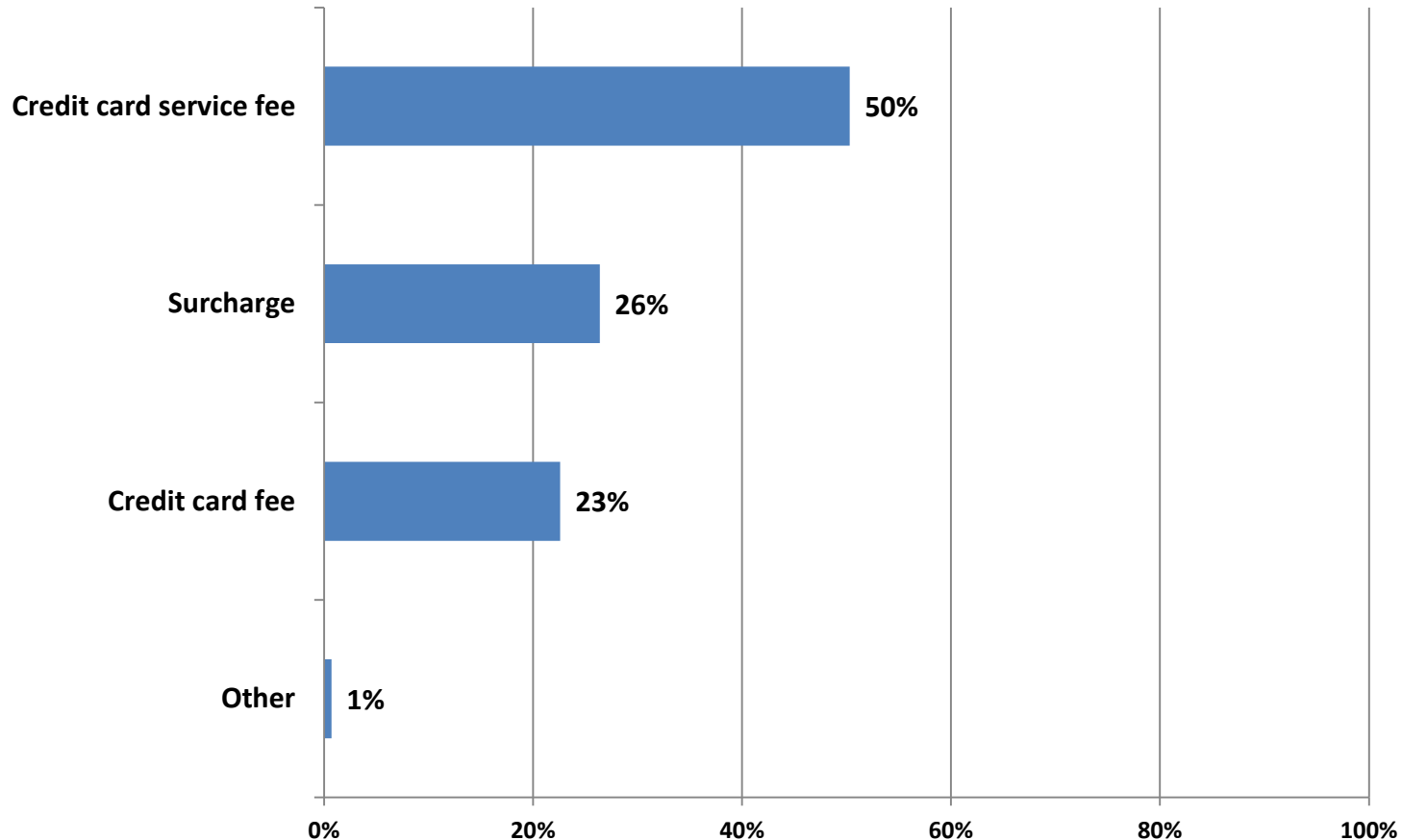


Appendix

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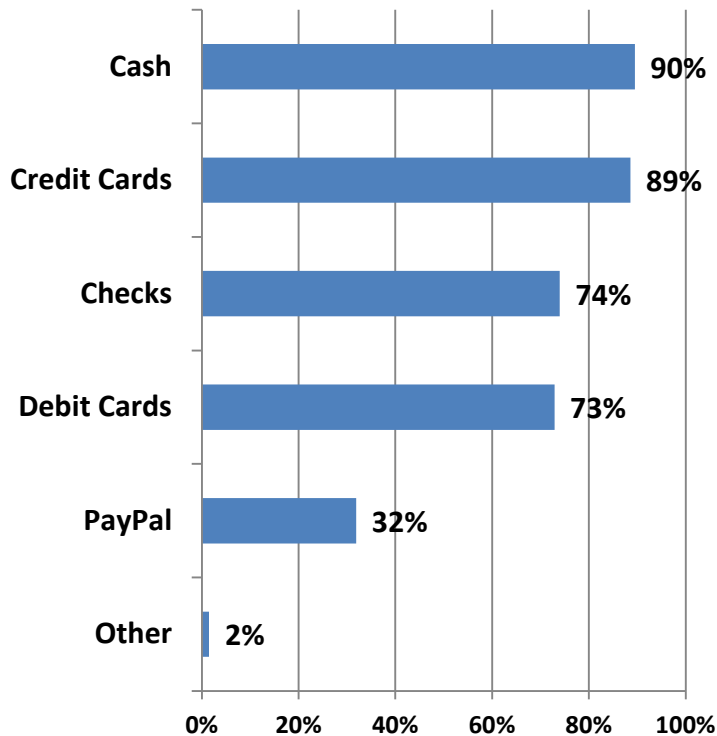
- The term “credit card service fee” is most preferred, having been chosen by just over half of respondents who are willing to surcharge.



n = 731 respondents who accept credit cards and indicate a willingness to use a surcharge.

- Nearly 90% of businesses accept credit cards.
 - Visa and MasterCard are most frequently accepted.

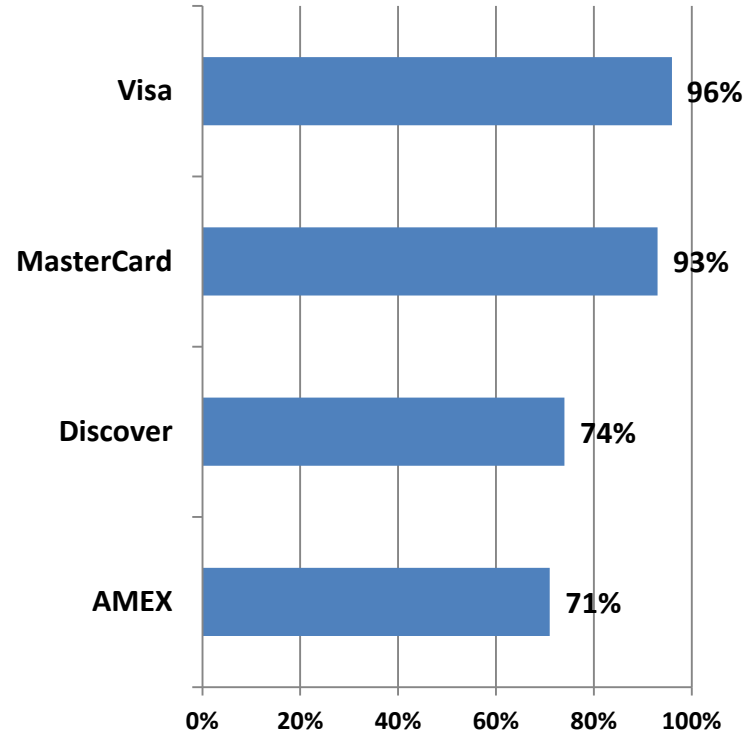
Forms of Payment Accepted



n = 800

Multiple responses accepted

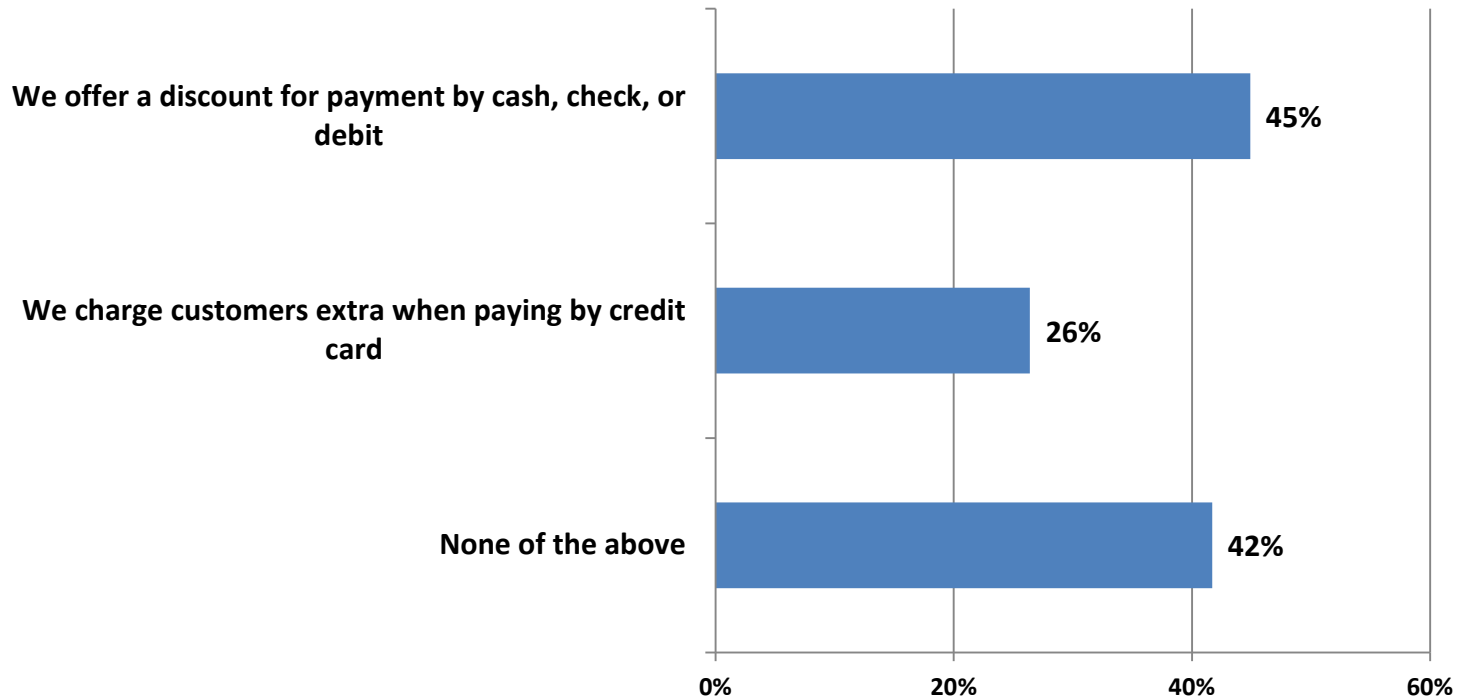
Types of Credit Cards Accepted



n = 709

Multiple responses accepted

Does Your Business Currently Do Any of the Following?



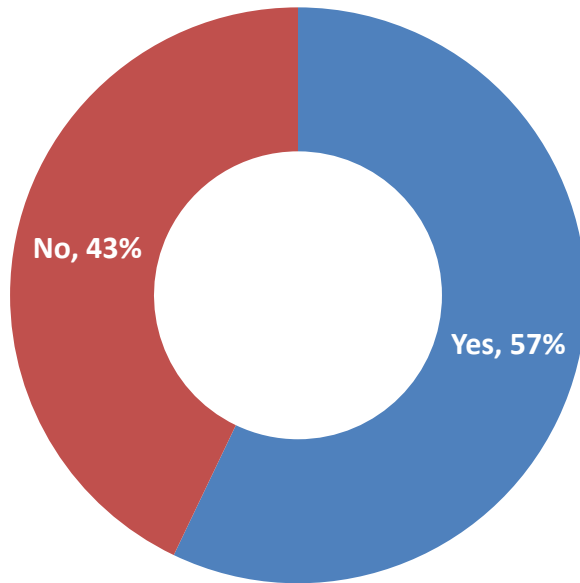
n = 709 respondents who accept credit cards

Multiple responses accepted



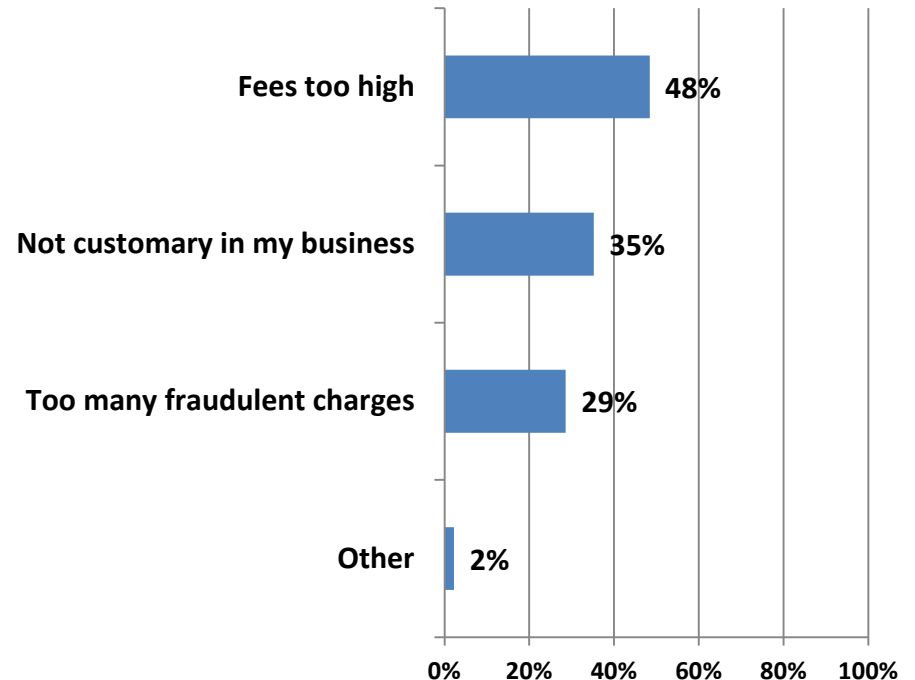
- Over half of respondents who presently do not take credit cards did take them in the past.
 - The expense of credit card fees is the most frequent reason for non-acceptance.

Have You Ever Accepted Credit Cards?



n = 91 respondents who do not currently take credit cards.

Main Reasons Credit Cards Not Accepted



n = 91 respondents who do not currently take credit cards.

	Mean	Median
Number of full time employees	91.1	20
Number of part time employees	96.8	6
Annual revenue	\$2,705,704	\$450,000



the olinger group

This research has been completed in compliance with the CASRO Code of Ethics. Questions regarding this research can be directed to Jude Olinger, jolinger@olingergroup.com, CEO of The Olinger Group.

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