

THE CREDIT CARD FAIR FEE ACT: FIXING THE BROKEN CREDIT CARD FEES MARKET

The market for credit card interchange fees is broken. Courts have found that Visa and MasterCard both have market power. Unfortunately, they are abusing that market power. Visa and its member banks set interchange fees – and those banks charge the same fees even though they are supposed to be competitors. MasterCard works in a similar way. This is price-fixing and it needs to stop. Merchants are left with no choice but to accept these exorbitant fees for accepting credit card transactions. In the end, consumers and merchants pay more than they should.

There are three basic approaches to fixing the type of antitrust problem presented by Visa and MasterCard: 1) Break them up like Congress did with AT&T; 2) Have a regulator set prices similar to the regulation of a public utility; or 3) Provide a mechanism to balance the market power and allow competition in the market.

Merchants urge Congress to take the third approach and adopt the Credit Card Fair Fee Act sponsored by Representatives John Conyers (D-MI) and Chris Cannon (R-UT). This solution would do the following:

Allow Market Negotiations

- Currently, interchange is one of the only costs many merchants pay that are not subject to market negotiations. Visa and MasterCard should negotiate with merchants but they won't. This needs to change.
- Merchants would be allowed to negotiate as a group with Visa and its members. They would do the same with MasterCard and its members.
- The combination of merchants on one side of the negotiating table would be sufficient to balance against the market power that Visa and MasterCard already have.
- Visa and MasterCard would also be free to separately negotiate with individual companies or groups of companies – and any agreements reached would be public so that everyone could point to them as evidence in their own negotiations.

Have a Fair Way to Decide Disputes

- Not every negotiation ends in an agreement. There needs to be a way to decide disputed issues if an agreement cannot be reached. Having a group boycott of Visa or MasterCard by merchants if negotiations are unsuccessful would be too large a penalty for the card industry and merchants are not seeking the ability to do that.

- The Federal Trade Commission and the Department of Justice would appoint three decision-makers to hear from each side if negotiations are not successful.
- These decision-makers would hear evidence from both sides regarding their positions on interchange and would be charged with deciding the rates and terms that would prevail in a functioning, competitive market.
- If disputes are decided this way, then retailers will face the risk of a decision they do not like just like the credit card companies. The system is set up to be fair and if the card companies truly believe their fees are justified on a competitive basis then they should not have concerns about this system.

Target the Solution to the Problem

- The problem with the interchange market is that Visa and MasterCard are abusing their market power in violation of the antitrust laws. This legislation would target itself to this problem by only applying to credit card companies with market power (defined as 20% or more of the market).
- That means this legislation would apply to Visa and MasterCard but not to card systems that don't have market power such as American Express and Discover.
- That also means that if the market corrects itself and a number of competitors without market power flourish, then it is possible that even Visa or MasterCard will not be covered in the future.

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Providing a way for merchants to negotiate and balance the market power of Visa and MasterCard is essential to creating a functioning market where none exists today. The bottom line is that this system will lead to negotiated market rates that are competitively set.