EXHIBIT 3
Part 2

Exhibit M

PUBLIC

CT-2010-010

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF an application by the Commissioner of Competition pursuant to section 76 of the *Competition Act*;

AND IN THE MATTER OF certain agreements or arrangements implemented or enforced by Visa Canada Corporation and MasterCard International Incorporated.

BETWEEN:

COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE

RECEIVED / REÇU
April 27, 2012

REGISTRAR / REGISTRAIRE

OTTAWA, ONT. | by / par Document #234 Jos LaRose

THE COMMISSIONER OF COMPETITION

Applicant

- and -

VISA CANADA CORPORATION and
MASTERCARD INTERNATIONAL INCORPORATED

Respondents

- and –

CANADIAN BANKERS ASSOCIATIONS and
THE TORONTO-DOMINION BANK

Intervenors

WITNESS STATEMENT OF MARIO DE ARMAS

---

1. I am the Senior Director, International Payments with Wal-Mart Stores, Inc. ("Walmart"), a position I have held since January 31, 2011.

2. Walmart is engaged in the operation of retail stores of various formats, either directly or through subsidiaries, in a number of jurisdictions around the world, including the United States, Canada, Argentina, Puerto Rico, Brazil, Japan, the United Kingdom, Chile, Mexico, five countries in Central America and fourteen countries in southern Africa. In addition, Walmart is a participant in joint ventures that operate retail stores in India and China. Further information regarding Walmart's operations is found in the 2011 Annual Report of Walmart attached to this witness statement as Exhibit "A".

3. In Canada, Walmart operates through its wholly-owned subsidiary, Wal-Mart Canada Corp. ("Walmart Canada"), headquartered in Mississauga, Ontario. Walmart Canada's operations are described in further detail below.

Background

4. As Senior Director, International Payments, I support Walmart's operations relating to the acceptance of credit cards and other payment cards at retail locations in each of the 29 countries outside the United States in which Walmart currently operates, including Canada.

5. I have over 10 years of experience in the retail sector, the majority of which is specifically focused on credit card and other payment card operations.

6. Prior to joining Walmart, I was employed as the Director of International and Interchange Financial Services by The Home Depot, Inc. ("Home Depot"). In this capacity, I was responsible for the credit card operations of Home Depot, including private label credit card programs and entering into agreements with Acquirers with respect to the supply of credit card network services to Home Depot in Canada, Mexico and China.

7. Prior to joining Home Depot, I spent over 10 years working in various roles in the credit card side of the banking sector, including positions at First USA (now JP Morgan Chase), Metris Companies (now HSBC) and Juniper Banks (now Barclay Card).

8. Since joining Walmart in January 2011, I have personally supported Walmart Canada's operations relating to the acceptance of credit cards, including negotiating agreements between Walmart Canada and Acquirers governing the supply of credit card network services to Walmart Canada.

Operations of Walmart Canada

9. Walmart Canada was established in 1994 through the acquisition of 122 "Woolco" stores of Woolworth Canada. Walmart Canada now operates 333 stores in Canada, located in each of the ten provinces and in two territories, employing over 85,000 Canadians.

10. Walmart Canada operates in Canada through three principal retail formats: (a) 169 discount stores operating under the "Walmart" or "Wal-Mart" banners that carry close to 80,000 different products, ranging from apparel and home decor to electronics; (b) 164 Walmart Supercentres that carry the broadest range of products and services, including mass merchandise, grocery items and pharmaceutical products, as well as speciality services, such as garden centres, tire and lube express auto centres and vision centres; and, (c) online sales through the "www.walmart.ca" website.

11. The retail markets in which Walmart Canada participates are intensely competitive. Walmart Canada faces strong competition from other discount, department, drug, variety and specialty stores, warehouse clubs and supermarkets, many of which are regional, national or international chains, as well as internet-based retailers and catalogue businesses.

12. Walmart Canada competes by offering a broad assortment of quality merchandise and services at every day low prices ("EDLP"). Walmart Canada's pricing

philosophy requires that products be priced at an everyday low price, so its customers trust that prices will not change under frequent promotional activity.

13. As a result of the significant competition and consistent with the EDLP strategy described above, Walmart's global profit margins on sales of products are very low, averaging between 3% to 4%.

14. Walmart Canada forms strategic partnerships with suppliers to ensure that suppliers provide Walmart Canada with the highest quality products at the lowest possible prices. Walmart Canada is constantly searching for ways to reduce its own operating costs, so as to continue to provide lower prices for Canadian consumers. By reducing the cost at which Walmart Canada purchases goods and services and maintaining low operating costs, Walmart Canada is able to provide products to Canadian customers at lower prices. This model, known as the "productivity loop", has been key to Walmart's success and can be summarized as follows: whenever Walmart is able to lower costs, it lowers prices for consumers, which in turn leads to increases in sales.

15. Conversely, as outlined below, Walmart Canada's inability to constrain the increasing costs of credit card acceptance in Canada results in higher prices for all customers of Walmart Canada, including those that purchase products using lower-cost methods of payment, such as Interac debit or cash.

16. Walmart Canada has a bank affiliate, Walmart Canada Bank.

Payment Methods Accepted by Walmart Canada

17. Walmart Canada accepts cash, cheques, Interac debit and general purpose credit cards (Visa, MasterCard, American Express, Discover, China Union Pay, Diners Club and JCB) for payments at retail stores across Canada. For online sales at "www.walmart.ca", Walmart Canada accepts Visa, MasterCard and American Express credit cards.

18. Credit card acceptance, particularly acceptance of Visa and MasterCard credit cards, is critical for Walmart Canada's business, given that Walmart Canada's customers have become accustomed to paying by credit card and because credit cards represent a significant proportion of Walmart Canada's sales.

19. [redacted]

20. [redacted]

21. [redacted]

22. The cost to Walmart Canada of credit cards is significantly higher than the costs of other forms of payment used by customers, such as Interac debit and cash. In fact, credit cards are the most expensive method of payment that Walmart Canada accepts.

23. Specifically, the fees paid by Walmart Canada on each Visa and MasterCard credit card transaction ("Card Acceptance Fees") range from [redacted] to [redacted] depending upon the type of credit card used by a customer, and total [redacted] annually. [redacted]

[redacted] When you divide the cost of cash and Interac debit by the volume of sales made using these payment methods, this shows that accepting cash costs Walmart Canada about [redacted] of each transaction and Interac debit costs Walmart Canada approximately [redacted] of each transaction. [redacted]

24. Despite the fact that Walmart Canada has [redacted] as much sales volume on Interac debit as it does on credit cards [redacted] vs. [redacted] it pays [redacted] more to Visa and MasterCard to accept credit cards than it does to Interac to accept debit cards. Stated somewhat differently, when comparing sales and cost of acceptance between credit cards and Interac debit cards, credit cards represent [redacted] in sales but [redacted] more in acceptance costs. Although credit cards only make up [redacted] of Walmart Canada's sales, they account for [redacted] of its total acceptance costs for all payment types.

25. Card Acceptance Fees for credit cards are a significant expense for Walmart Canada. As noted above, Walmart Canada pays approximately [redacted] each year in Card Acceptance Fees for Visa and MasterCard credit card transactions.

26. The Card Acceptance Fees for Walmart Canada also vary depending upon the type of credit card presented by the customer for payment. Specifically, each time that a customer pays with a "premium" Visa credit card, such as a Visa Infinite, Walmart Canada can pay a Card Acceptance Fee as high as [redacted] or even [redacted] for commercial cards, as compared with a Card Acceptance Fee of [redacted] applicable to standard or "classic" Visa credit cards. Similarly, for MasterCard's "super premium" World Elite credit card, Walmart Canada can pay a Card Acceptance Fee as high as [redacted] the Card Acceptance Fee of [redacted] applicable to a standard MasterCard credit card.

27. Credit card acceptance costs differ significantly from other business costs incurred by Walmart Canada. Unlike with other supplier relationships, despite increases in volume, Walmart Canada has been unable to constrain increases in Card Acceptance Fees or effectively negotiate reductions in such fees. [redacted]

28. [redacted]

29. Card Acceptance Fees are also substantially less transparent than most other costs. For example, Walmart Canada cannot determine what percentage of its transaction volume will be paid for using premium credit cards, which incur higher Card Acceptance Fees than standard credit cards.

30. Further, Card Acceptance Fees are difficult to forecast or mitigate given the ability of Visa and MasterCard to unilaterally increase such fees or introduce new types of credit cards, such as premium cards, that carry higher Card Acceptance Fees. Furthermore, banks and credit card networks regularly promote the use of premium cards that carry higher Card Acceptance Fees through the use of rewards, promotions or contests.

31. [redacted]

[redacted]

32. [redacted]

Relationship with the Networks and our Acquirers

33. Walmart Canada has entered into agreements with two Acquirers in Canada, The Toronto-Dominion Bank ("TD Bank") and First Data Corporation ("First Data"). As Acquirers, TD Bank and First Data supply credit card network services to Walmart Canada. Specifically, these Acquirers supply the services required to allow Walmart Canada to accept credit cards as a form of payment from customers, including access to the Visa and MasterCard credit card networks, facilitation of authorization requests for credit card transactions and settlement of payment.

34. In its stores, Walmart Canada uses TD Bank as an Acquirer for Visa transactions and First Data as an Acquirer for MasterCard transactions. This structure is a carryover from previous Canadian regulations that would not permit Acquirers to process both Visa and MasterCard transactions. [redacted]

35. There is significant competition between Acquirers for the supply of credit card network services to merchants, particularly for large merchants, such as Walmart Canada. The result of this competition is that the costs attributable to Acquirers are driven down. This may be contrasted with the absence or lack of competition between Visa and MasterCard for the supply of credit card network services. As Visa and MasterCard compete for business from Issuers by promising higher Interchange Fees, costs for merchants are driven up as the higher Interchange Fees are passed on to merchants in the form of higher Card Acceptance Fees. Because neither cardholders nor Issuers bear the costs of their payment choices, they have no incentive to use or promote lower cost payment methods.

36. Walmart Canada would readily switch to a rival Acquirer in the event that the pricing offered by an Acquirer was not competitive. However, as outlined below, the portion of the fee retained by an Acquirer accounts for only a very small proportion of the overall Card Acceptance Fee paid by Walmart Canada for credit card acceptance. Irrespective of the Acquirer that Walmart Canada uses, all Acquirers face the same Interchange Fees and Network Fees as other Acquirers and are subject to the same restrictions that are imposed by Visa and MasterCard.

37. The most significant component of the Card Acceptance Fees paid by Walmart Canada is the Interchange Fee that is retained by the financial institution that issues the credit card to the cardholder. In addition to the Interchange Fee, Card Acceptance Fees also include Network Fees (that are retained by the relevant credit card network, such as Visa or MasterCard) and a small fee that is retained by the Acquirer, often referred to as the "Acquirer Service Fee".

38. [redacted]

[redacted]

39. [redacted]

40. [redacted]

Increasing Cost of Credit Card Acceptance

41. Card Acceptance Fees for Walmart Canada have increased in recent years due to a number of factors, including increases in the level of Interchange Fees associated with credit cards and the introduction and increasing penetration of "premium" credit cards that have higher Interchange Fees than standard credit cards.

42. Comparing the fiscal year that ended on January 31, 2012, to the previous fiscal year, Walmart Canada's cost of accepting Visa and MasterCard [redacted]

43. [redacted]

The Merchant Rules

44. Visa and MasterCard have argued that they are merely intermediaries situated between the banks and merchants and that they act impartially to process the transactions. In reality, this is not the case. Both Visa and MasterCard were created by banks, owned and operated by an association of banks and now, as public companies, earn a profit based largely upon the number of banks that issue their products. Visa and MasterCard compete for banks by offering the banks additional revenue. This revenue comes from merchants through the payment of interchange fees, which are set by Visa and MasterCard. So as Visa and MasterCard compete for more issuing banks and more products by offering increased

interchange fees to Issuers, the burden on merchants from higher Card Acceptance Fees continues to increase.

45. [redacted]

46. Visa and MasterCard have also used their market power to create and enforce network rules, like the "Honour All Cards" and "No Surcharge" rules, that further disadvantage merchants and favour Issuers. While Visa and MasterCard prohibit merchants from surcharging customers, they do not prohibit Issuers from charging annual fees or impose limits on the interest rates that Issuers can charge. Visa and MasterCard require that merchants accept all types of their credit cards, but there is no similar requirement for banks to issue all types of

credit cards. Banks are permitted, and even encouraged, to issue premium cards, which cost merchants more in Card Acceptance Fees. MasterCard prohibits Canadian merchants from discriminating against its credit cards, yet MasterCard itself discriminates against Canadian merchants by treating supermarkets, gas stations, large merchants and smaller merchants differently. The result of these one-sided rules is to limit competitive forces that would otherwise exist.

47. The agreements between Walmart Canada and its Acquirers require that Walmart Canada abide by certain rules implemented by Visa and MasterCard, including the following:

(a) the "No Surcharge Rule", which prevents Walmart Canada from applying an additional charge for customers that elect to use Visa or MasterCard credit cards, even though (as explained above) such credit cards impose higher costs on Walmart Canada;

(b) the "Honour All Cards Rule", which provides that if Walmart Canada accepts one type of Visa or MasterCard credit card, it must accept all types of Visa or MasterCard credit cards, including credit cards that have higher Card Acceptance Fees; and

(c) the "No Discrimination Rule", which prevents Walmart Canada from engaging in other practices that are intended to discourage the use of MasterCard credit cards in favour of lower-cost forms of payment.

48. [redacted]

[redacted]

49. [redacted]

50. As a result of the Merchant Rules described above, Walmart Canada is unable to effectively encourage customers to use lower-cost methods of payment, such as cash, Interac debit cards and lower-cost credit cards, [redacted]

51. As a result of the Merchant Rules described above, Walmart Canada cannot create competition to constrain increases in or encourage reductions of Card Acceptance Fees. The Merchant Rules prevent Walmart Canada from effectively differentiating between Visa and MasterCard credit cards, and require Walmart Canada to treat all Visa and MasterCard credit cards alike, even those with higher Card Acceptance Fees.

52. As the Merchant Rules prevent Walmart Canada from surcharging or refusing to accept certain types of credit cards whose costs exceed the basic cost of credit card acceptance, they reduce or eliminate a significant source of leverage that Walmart Canada would otherwise have in negotiating with Visa and MasterCard.

53. [redacted]

54. [redacted]

55. The Merchant Rules also prevent Walmart Canada from sending the correct pricing signal to customers that elect to use credit cards to make a purchase. Customers of Walmart Canada are generally unaware that credit cards impose a higher cost on merchants than other forms of payment.

56. Consistent with the Walmart business model, including the EDLP strategy, cost savings resulting from reductions in Card Acceptance Fees would benefit consumers in the form of lower prices.

57. [redacted]

58. [redacted]

59. [redacted]

Ability to Use Discounts to Encourage Use of Lower-Cost Payment Methods

60. [redacted]

61. [redacted]

62. [redacted]

[redacted]

63. [redacted]

64. Consumers are accustomed to paying surcharges for additional services and a discount runs counter to consumers' normal perspective of how markets work. As a consequence, discounts are not as effective as surcharges in encouraging consumers to engage in certain conduct. For example, imagine a restaurant that charges everyone $15 for a cheeseburger that includes four hamburger patties, then offering discounts to customers that only want one hamburger patty. Similarly, the $15 cheeseburger comes with four pieces of cheese, four pieces of lettuce and four tomatoes, but customers can receive additional discounts by taking only one piece of cheese, one piece of lettuce and one tomato. As this example illustrates, normal retail markets do not function in this manner. Rather, consumers are used to paying a base price for a good or service (*e.g.*, a one patty cheeseburger) and paying extra for additional goods or services they choose (*e.g.*, extra cheese or extra tomatoes).

65. Finally, offering discounts is contrary to Walmart's EDLP strategy. Walmart does not use discounts, promotions or coupons as part of its general merchandising strategy, but instead provides the lowest prices every day.

Electronic and Visual Identification of Credit Cards

66. Walmart Canada is unable to identify all premium credit cards at the point of sale, either through visual or electronic means. In general, Walmart Canada is unable to determine whether a credit card transaction is charged a higher Card Acceptance Fee until after it has received the statement of Card Acceptance Fees from its Acquirers.

67. To take advantage of the remedies sought by the Commissioner of Competition, Walmart Canada requires a means of visually and electronically identifying at the point of sale, without additional costs to Walmart Canada, those credit cards that carry higher Card Acceptance Fees.

68. Electronic differentiation would permit Walmart Canada's point of sale terminals to properly assess acceptance of the tendered credit card, present this information to the consumer [redacted] Visual identification, preferably industry-wide standard visual identifiers for premium and standard cards, would provide clarity and transparency to consumers and enable Walmart Canada to effectively communicate changes to Walmart Canada's credit card acceptance policy, including visually identifying for customers precisely which cards are or are not accepted or are subject to a surcharge prior to the customer arriving at the point of sale.

Signed: March 6, 2012

Mario de Armas

MARIO DE ARMAS

PUBLIC

CT-2010-010

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF an application by the Commissioner of Competition pursuant to section 76 of the *Competition Act*;

AND IN THE MATTER OF certain agreements or arrangements implemented or enforced by Visa Canada Corporation and MasterCard International Incorporated.

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

- and -

VISA CANADA CORPORATION and MASTERCARD INTERNATIONAL INCORPORATED

Respondents

- and -

THE TORONTO-DOMINION BANK
THE CANADIAN BANKERS ASSOCIATION

Intervenors

WITNESS STATEMENT OF MARIO DE ARMAS
(March 6, 2012)

Davies Ward Phillips & Vineberg LLP
Suite 4400
1 First Canadian Place
Toronto, Ontario M5X 1B1

Kent E. Thomson (LSUC #24264J)
Adam Fanaki (LSUC #38208L)
Davit D. Akman (LSUC #44274R)
Tel: 416.863.0900
Fax: 416.863.0871

Department of Justice Canada
Competition Bureau Legal Services
Place du Portage, Phase I
50 Victoria Street, 22nd Floor
Gatineau QC K1A 0C9

William Miller (LSUC #14443V)
Tel: 819.953.3903
Fax: 819.953.9267

Counsel to the Commissioner of Competition

Exhibit N

PUBLIC

CT-2010-010

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF an application by the Commissioner of Competition pursuant to section 76 of the *Competition Act*;

AND IN THE MATTER OF certain agreements or arrangements implemented or enforced by Visa Canada Corporation and MasterCard International Incorporated.

BETWEEN:

COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE

RECEIVED / REÇU
April 27, 2012

REGISTRAR / REGISTRAIRE

OTTAWA, ONT. by / par C. Fortin doc. no 229

THE COMMISSIONER OF COMPETITION

Applicant

- and -

VISA CANADA CORPORATION and MASTERCARD INTERNATIONAL INCORPORATED

Respondents

- and –

CANADIAN BANKERS ASSOCIATIONS and THE TORONTO-DOMINION BANK

Intervenors

WITNESS STATEMENT OF CHARLES SYMONS

---

1. I am Tax & Treasury Manager of IKEA Canada Limited Partnership ("IKEA Canada"), a position I have held since 2008.

2. Prior to joining IKEA Canada, I worked for Electrolux Canada Corp. as the head of their tax function in Canada.

3. I have been a Certified General Accountant since 2002 and I am a graduate of the University of Windsor, where I obtained a Bachelor of Commerce degree (Honours Business Administration).

4. In my capacity as Tax & Treasury Manager, I oversee IKEA Canada's tax and treasury functions, including managing IKEA Canada's relationships with Acquirers relating to the acceptance of credit cards and other payment methods.

Operations of IKEA

5. The IKEA Group of Companies (the "IKEA Group") was founded in 1943 by Ingvar Kamprad in Sweden. Today, the IKEA Group is the world's largest home furnishing company, with over 300 retail locations in more than 38 countries around the world. Further information regarding the operations of the IKEA Group can be found in the 2011 Yearly Summary of the IKEA Group, a copy of which is attached as Exhibit "A" to this witness statement.

6. IKEA Canada currently operates 11 retail locations in Quebec, Ontario, Alberta and British Columbia. In FY2011, IKEA Canada had sales of approximately $1.3 billion.

7. IKEA Canada's business philosophy is to offer a wide range of well-designed, functional home furnishing products at prices so low that as many people as possible can afford to purchase them.

8. Consistent with this strategy, IKEA Canada is constantly striving to reduce its costs and lower prices for its products. For example, IKEA Canada adapts the sizes and

construction of its products so that they can be produced, packaged and transported in a cost-effective and efficient manner. In addition, IKEA Canada selects materials for its products that lower the cost of production, including using recycled materials.

9. IKEA Canada operates in a highly competitive retail market in Canada, which includes furniture and appliance stores, such as The Brick, Leons and Brault & Martineau; department stores, such as Sears; mass merchandisers, such as Walmart, Canadian Tire and Bed Bath & Beyond; and specialty retailers, such as Sleep Country Canada. To remain competitive, IKEA Canada is required to control its supply and operating costs, so as to offer consumers highly competitive prices.

10. One method used by IKEA Canada to reduce its costs is to encourage customers to collect, deliver and assemble products themselves. In addition, customers can design their own kitchens or projects using computerised planning tools. By encouraging customers to perform these functions themselves, IKEA Canada reduces its costs and can provide lower prices to customers.

11. Certain customers prefer to have their products assembled or delivered, instead of performing these functions themselves. Those customers that want IKEA Canada to assemble or deliver their products through third party service providers must pay an additional fee to cover the extra cost of such services. Even though the extra charges are relatively small, amounting to approximately $70 for an average delivery, the vast majority of IKEA Canada's customers opt to deliver products themselves so as to avoid any extra fees.

12. With the vast majority of suppliers, IKEA Canada has been able to reduce its costs over time, which has enabled it to offer consumers lower prices. In fact, IKEA Canada has reduced prices by approximately [redacted] over the last ten years, while the Consumer Price Index has increased 22% worldwide. However, as outlined below, IKEA Canada has not been able to effectively constrain increases in or reduce the cost of credit card acceptance.

Payment Methods Accepted by IKEA Canada

13. IKEA Canada accepts cash, Interac debit, and Visa and MasterCard credit cards at all of its stores. IKEA Canada also offers a private label credit card issued by CitiFinancial Canada, Inc. IKEA Canada stopped accepting American Express credit cards as of November 1, 2010, due to the high cost of credit card acceptance. Cheques are also accepted by IKEA Canada, but account for an insignificant share of its payment volume.

14. IKEA Canada also offers IKEA Home Shopping, which allows customers to browse the IKEA Canada catalogue and shop online, by phone or by fax. IKEA Home Shopping accounted for approximately [redacted] or [redacted] of IKEA Canada's sales in FY2011. IKEA Canada accepts Visa or MasterCard credit cards for online sales, as well as IKEA Gift Cards and certified cheques by phone.

15. [redacted]

16. For the fiscal year ending August 31, 2011, credit card payments accounted for approximately [redacted] of IKEA Canada's annual sales volume, while Interac debit accounted for approximately [redacted] and cash accounted for [redacted]

17. Approximately [redacted] of IKEA Canada's FY2011 sales were made using Visa credit cards and approximately [redacted] were made using MasterCard credit cards. Less than [redacted] of credit sales were made using IKEA Canada's private label credit card.

18. The average ticket size of a purchase made at IKEA Canada in FY2011 was approximately [redacted] using cash, [redacted] using Interac debit and [redacted] using a credit card (Visa [redacted] and MasterCard [redacted].

19. The cost to IKEA Canada of credit cards is significantly higher than the costs of other forms of payment used by customers, such as Interac debit and cash. In fact, credit cards are the most expensive method of payment that IKEA Canada accepts, followed by cash and Interac debit.

20. The fees paid by IKEA Canada on each credit card transaction ("Card Acceptance Fees") range from [redacted] to [redacted] depending upon the type of credit card used by a customer. In comparison, cash costs IKEA Canada approximately [redacted] per transaction to process and Interac debit costs IKEA Canada approximately [redacted] per transaction to process.

21. Card Acceptance Fees for credit cards are a significant expense for IKEA Canada. IKEA Canada pays approximately [redacted] each year in Card Acceptance Fees for Visa and MasterCard credit cards. This is significantly higher than other costs incurred by IKEA Canada each year, such as [redacted] in cash costs, [redacted] in insurance costs, [redacted] in building maintenance, cleaning and snow removal costs, and [redacted] for in utility (gas, electricity and water) costs.

22. As noted above, the Card Acceptance Fees for IKEA Canada also vary depending upon the type of credit card presented by the customer for payment. Specifically, each time that a customer pays with a "premium" Visa credit card, such as a Visa Infinite, IKEA Canada pays a Card Acceptance Fee of [redacted] as compared with a Card Acceptance Fee of [redacted] applicable to a standard or "classic" Visa credit card.

23. Similarly, for MasterCard's "super premium" World Elite credit card, IKEA Canada pays a Card Acceptance Fee of [redacted] as compared with a Card Acceptance Fee of [redacted] applicable to a standard MasterCard credit card.

24. Credit card acceptance costs differ significantly from other business costs incurred by IKEA Canada. As discussed below, unlike with other supplier relationships, IKEA

Canada has been unable to constrain increases in Card Acceptance Fees or effectively negotiate reductions in such fees – not even in conjunction with increased credit card sales volume.

25. Card Acceptance Fees are also substantially less transparent than other costs. For example, IKEA Canada cannot determine in advance what percentage of its transaction volume will be paid for using premium credit cards, which incur higher Card Acceptance Fees than standard credit cards.

26. Further, Card Acceptance Fees are difficult to forecast or mitigate given the ability of the credit card networks to unilaterally increase such fees or introduce new types of credit cards, such as "premium" and "super premium" cards, which carry higher Card Acceptance Fees.

27. [redacted]

28. Further, IKEA Canada has been accepting credit cards as a form of payment for over 30 years. It is not feasible for IKEA Canada to decline to accept credit cards as customers of IKEA Canada have become accustomed to paying with credit cards.

Relationship with the Networks and our Acquirers

29. IKEA Canada has entered into an agreement (the "Merchant Agreement") with Moneris Solutions Corporation ("Moneris"), a joint venture formed by two financial institutions (Bank of Montreal and Royal Bank of Canada). Moneris is a payment processor that acts as an

Acquirer for the credit card transactions made at IKEA Canada. An Acquirer provides the infrastructure and services necessary for IKEA Canada to accept credit cards as a form of payment from customers, including access to the Visa and MasterCard credit card networks, facilitation of authorization requests for credit card transactions and settlement of payment. A copy of the Merchant Agreement is attached to this witness statement as Exhibit "B".

30. There is significant competition between Acquirers for the supply of credit card network services to merchants, particularly for large merchants, such as IKEA Canada. In August 2008, IKEA Canada invited five competing Acquirers and payment processors to submit bids for the supply of credit card network services to IKEA Canada through a competitive request for proposals process. Five competing bids were received by IKEA Canada from various Acquirers.

31. Although IKEA Canada received a number of competing bids, none of these Acquirers was able to submit a bid for the supply of credit card network services that was lower than the combined Interchange Fees and Network Fees established by Visa and MasterCard. The default rates for Interchange Fees established by Visa and MasterCard act as a floor for the Card Acceptance Fees paid by merchants.

32. More recently, IKEA Canada issued a similar request for proposals for banking services, including credit card network services, to seven financial institutions and received five competing bids in February 2012. Responses to the request for credit card network services were returned by the financial institutions without any reduction in the default Interchange Fees established by Visa and MasterCard.

33. Through the request for proposals process, IKEA Canada has been able to secure competitive pricing from Acquirers with respect to the portion of the Card Acceptance Fee that is retained by Acquirers, commonly referred to as an "Acquirer Service Fee". However,

as outlined below, the Acquirer Service Fee accounts for only a very small proportion of the overall Card Acceptance Fee paid by IKEA Canada for credit card acceptance.

34. The most significant component of the Card Acceptance Fees paid by IKEA Canada is, by far, the "Interchange Fee" that is retained by the financial institution that issues the credit card ("Issuers"). In addition to the Interchange Fee, Card Acceptance Fees also include Network Fees (that are retained by the relevant credit card network, such as Visa or MasterCard) and the Acquirer Service Fee.

35. For IKEA Canada, the Acquirer Service Fee is approximately [redacted] and represents less than [redacted] of its total Card Acceptance Fee. The Interchange Fees retained by Issuers and the Network Fees retained by the credit card network account for the remaining [redacted] of the Card Acceptance Fee paid by IKEA Canada.

36. In FY2011, IKEA Canada incurred Card Acceptance Fees of [redacted] million, [redacted] of which was Acquirer Service Fees payable to Moneris, [redacted] of which was Network Fees payable to Visa and MasterCard, and [redacted] million of which was Interchange Fees payable to the banks that issue credits cards.

37. [redacted]

38. [redacted]

[redacted]

39. For example, IKEA Canada received notices from Moneris of fee increases imposed by MasterCard on its domestic consumer products on September 16, 2009 and of fee increases imposed by Visa on its domestic consumer products on July 16, 2010 and December 17, 2010. Copies of the notices received from Moneris are attached as Exhibit "C" to this witness statement.

Increasing Cost of Credit Card Acceptance

40. Card Acceptance Fees for IKEA Canada have increased in recent years due to a number of factors, including increases in the level of Interchange Fees associated with credit cards and the introduction and increasing penetration of "premium" credit cards that have higher Interchange Fees.

41. Premium credit cards represent an increasingly large proportion of transaction volume at IKEA Canada. Currently, approximately [redacted] of the sales at IKEA Canada made using a MasterCard are made using a premium credit card that carry higher interchange fees, such as a MasterCard World credit card. Similarly, approximately [redacted] of sales made using a Visa credit card are made using a premium credit card, such as a Visa Infinite. This is significantly higher than the estimates provided by MasterCard and Visa when their premium credit card programs were launched in 2008, namely 9% and 10-17%, respectively.

42. The higher Interchange Fees associated with the so-called "premium" credit cards do not bring additional benefits to merchants, such as IKEA Canada, in the form of increased sales or otherwise. I am not aware of any jurisdiction where increasing the rewards or other benefits to cardholders has caused cardholders to purchase more home furnishings from the IKEA Group.

43. Card Acceptance Fees in Canada are higher than in many of the other jurisdictions in which the IKEA Group operates. For example, IKEA Canada's Card Acceptance Fees are, on average, approximately [redacted] of the transaction value. That is slightly lower than the United States, where the IKEA Group pays [redacted] per transaction for credit cards, but significantly higher than other jurisdictions, such as the IKEA Group's Card Acceptance Fee of [redacted] in Spain. Globally, the IKEA Group pays an average Card Acceptance Fee of [redacted] per transaction.

44. IKEA Canada's credit card acceptance costs account for [redacted] of the IKEA Group's total credit card acceptance costs globally, even though IKEA Canada's sales account for only [redacted] of the IKEA Group's global sales.

45. Rising Interchange Fees and the introduction and increased use of premium credit cards have resulted in a "reverse Robin Hood effect", where higher income earners have credit cards with more rewards and benefits. Meanwhile, people who do not have sufficient income to receive approval for those credit cards pay with standard credit cards, cash or Interac debit. As a consequence, it is only those individuals with higher incomes that receive the benefits associated with premium credit cards and such benefits are subsidized by the higher prices paid by all customers, including those who pay with cash and Interac debit.

The Merchant Rules

46. The Merchant Agreement requires IKEA Canada to abide by certain rules implemented by Visa and MasterCard (the "Merchant Rules"), including the following:

(a) the "honour all cards" rule, [redacted] and

(b) the “non-discrimination" rule, [redacted]

(c) The “no surcharge” rule, [redacted]

47. As a result of the Merchant Rules described above, IKEA Canada is unable to send appropriate price signals to its customers or effectively encourage them to use lower-cost methods of payment, such as cash, Interac debit and lower-cost credit cards by, for example, surcharging credit cards with higher Card Acceptance Fees or declining to accept credit cards with higher Card Acceptance Fees, such as “premium” or “super premium” credit cards.

48. Further, IKEA Canada cannot constrain increases or reduce Card Acceptance Fees. IKEA Canada has not been able to effectively negotiate reductions or limit increases in Card Acceptance Fees for Visa and MasterCard credit cards.

49. The Merchant Rules prevent IKEA Canada from effectively differentiating between Visa and MasterCard credit cards, and require IKEA Canada to treat all Visa and MasterCard credit cards alike, even those with higher Card Acceptance Fees.

50. As the Merchant Rules prevent IKEA Canada from surcharging or refusing to accept certain types of credit cards whose costs exceed the basic cost of credit card acceptance, they reduce or eliminate a significant source of leverage that IKEA Canada would otherwise have when negotiating with Visa and MasterCard.

51. In the absence of the Merchant Rules, IKEA Canada, at [redacted] unless these credit card networks reduced Card Acceptance Fees through reductions in the level of default Interchange Fees.

52. [redacted] In deciding whether or not to surcharge on certain brands or types of credit cards, IKEA Canada would consider a number of factors including: whether IKEA Canada's competitors are surcharging on credit cards, the reaction of customers and, as discussed further below, whether IKEA Canada has received the real-time information required to allow its point-of-sale system to efficiently differentiate higher-cost credit cards at the point-of-sale and apply a surcharge. Any surcharge would be reasonably related to the level of Card Acceptance Fees and clearly disclosed at IKEA Canada's retail locations and in its promotional materials.

53. As noted above, customers of IKEA Canada are used to paying additional fees when they select services (such as delivery or assembly) that result in higher costs for IKEA Canada, as opposed to having those costs subsidized by customers that do not select such services. Similarly, customers that choose to use credit cards that impose higher costs on IKEA Canada should bear those additional costs, as opposed to having those costs subsidized by customers that elect to pay using lower-cost methods of payment.

54. The IKEA Group has prior experience with surcharging on credit card transactions, as such surcharging is allowed in certain jurisdictions in which the IKEA Group operates. For example, the IKEA Group surcharged credit cards transactions in the United Kingdom during the period 2004 to 2010. As outlined below, and described in a presentation given by Martin Weiderstrand, Manager, EU Affairs of the IKEA Group, titled "Competition in Card Payments" (June 22, 2010) attached as Exhibit "D" to this witness statement, through the application of such surcharges, the IKEA Group was successful in reducing its Card Acceptance Fees for both Visa and MasterCard credit card transactions.

55. I understand that in the period 2004 to 2010, the IKEA Group applied a surcharge to all credit card transactions at its retail operations in the United Kingdom that was fixed at 70 pence (approximately CDN $1.10). The amount of the surcharge was roughly equal to the cost of an average credit card transaction at the time the surcharging policy was initiated. The surcharge ultimately covered approximately [redacted] of the IKEA Group's credit card costs in the United Kingdom.

56. The IKEA Group passed the savings resulting from surcharges on to customers directly. Indeed, in implementing this surcharging policy, the IKEA Group publicized that, as a result of the surcharge, customers would receive lower prices on specified products, such as energy efficient light bulbs. Using the savings generated from surcharging, the IKEA Group reduced the prices of these products by [redacted] making it easier for customers to see the direct benefits from the surcharge.

57. The surcharges instituted by the IKEA Group created an effective pricing signal that encouraged consumers to use lower-cost methods of payments, such as debit cards, instead of higher-cost credit cards. In particular, as indicated in the presentation attached as Exhibit "D", the volume of credit card transactions at the IKEA Group's retail stores in the United Kingdom in 2005 was reduced by 37% through surcharges. Customers previously paying with credit cards switched to lower-cost debit cards. The number of debit transactions in 2005 increased by 16%. Cash sales were not affected and stayed at approximately 19% following the implementation of the surcharge.

58. When surcharges on credit cards were removed in 2010, the number of transactions using credit cards increased by [redacted] During this same period, the number of debit transactions decreased by [redacted]

59. The IKEA Group did not experience any reduction in sales, allegations of "bait and switch" or similar complaints from customers in response to the implementation of the surcharge policy.

60. Ultimately, the IKEA Group discontinued the surcharge policy in 2010 due to difficulties in continuing to implement a surcharge using existing point-of-sale systems. In particular, the IKEA Group had not been provided with the information to enable it to efficiently differentiate high-cost credit cards at the point-of-sale.

61. I believe that Visa and MasterCard will have a significant incentive to reduce or not increase Card Acceptance Fees in order to avoid surcharging by merchants or having their credit cards declined by merchants. Similarly, selectively surcharging one credit card networks' products, such as imposing a surcharge on Visa credit cards but not on MasterCard credit cards, will create a significant incentive for that network to compete through reduced Card Acceptance Fees and improved service.

62. The Merchant Rules also prevent IKEA Canada from sending the correct pricing signals to customers that elect to use higher-cost credit cards to make a purchase. IKEA Canada's customers are generally unaware that credit cards impose a higher cost on merchants than other forms of payment.

63. Consistent with IKEA Canada's business model and experience in the United Kingdom, cost savings resulting from reductions in Card Acceptance Fees would be passed on to consumers in the form of lower prices.

64. In addition, in the absence of the Merchant Rules, IKEA Canada would consider declining to accept higher-cost premium credit cards, while continuing to accept standard credit cards.

Use of Discounts

65. In the past, the IKEA Group has used discounts in an attempt to encourage customers to pay with cash or other payment methods that impose lower costs than credit cards. However, such discounts are not effective, or as effective as surcharging, in encouraging customers to use lower-cost payment methods and are not as clear to customers.

66. To pursue a discounting policy, IKEA Canada would have to inflate its base prices for all customers in an effort to encourage customers paying with a credit card to use a different payment method. For example, to offer a $5 discount to a customer who is purchasing a $195 product with cash or Interac debit, IKEA Canada would have to increase the price from $195 to $200, and then offer a $5 discount to only those customers paying with cash or Interac debit. As IKEA Canada operates in a highly competitive retail environment, it must be able to advertise the lowest prices available.

67. This may be contrasted with the circumstance where the Merchant Rules have been modified to allow a merchant to apply a surcharge on a credit card transaction. In that case, the merchant could advertise the product at $98, along with a statement that customers that elect to pay using a credit card will be subject to a surcharge of $2.

68. In addition, a discount would be more costly to implement. For example, it would not be practical for IKEA Canada to offer a discount to 100% of its customers (including the [redacted] of annual sales volume that is currently represented by cash and Interac debit payments) in an attempt to encourage the [redacted] of annual sales volume currently on credit cards to use a lower-cost payment method. The costs associated with offering a discount to all customers would greatly exceed the costs associated with a more targeted surcharge that applies only to the [redacted] of annual sales volume currently on credit cards.

69. Finally, a discount is not as effective as a surcharge in encouraging customers to change behaviour. A surcharge is viewed by consumers as a real and tangible cost, whereas a discount is dismissed by many customers and viewed by other customers simply as an opportunity cost.

70. A "fee for service" approach to pricing is simple for consumers to understand and appreciate. IKEA Canada's customers recognize that requesting delivery or assembly of a product will result in an additional, reasonable fee for the added service. It is far more complex to advertise an "all in" price, including delivery and assembly, and then discount for the vast majority of IKEA Canada's customers that do not want those optional services.

Co-branded Credit Cards

71. In an attempt to reduce Card Acceptance Fees, certain companies within the IKEA Group have issued co-branded credit cards, such as the IKEA Group's operations in Spain and Poland.

72. A co-branded credit card is a card that is issued by a merchant or that carries the merchant's brand, along with the brand of a credit card network, such as Visa or MasterCard, and potentially the brand of the partner Issuer. Through such co-branding arrangements, merchants can receive a portion of the revenue stream normally payable to Issuers, and thereby offset a portion of the significant Card Acceptance Fees payable on credit cards.

73. However, co-branded credit cards are generally ineffective in reducing credit card costs for merchants. Unlike the grocery sector, for example, where purchases are frequent, the average IKEA Canada customer shops at IKEA less than four times per year and the co-branded credit cards issued by the IKEA Group are not often used at locations other than IKEA retail stores. As a consequence, co-branded credit cards generate very little revenue or cost savings for the IKEA Group.

Electronic and Visual Identification of Credit Cards

74. To take advantage of the remedies sought by the Commissioner of Competition, IKEA Canada requires a real-time means of electronically identifying and assessing a surcharge on those credit cards that carry higher Card Acceptance Fees at the point of sale, without additional costs to IKEA Canada.

75. Today, IKEA Canada is generally unable to determine whether a credit card transaction has attracted a higher Card Acceptance Fee until after it has received the statement of Card Acceptance Fees for the past month from its Acquirer.

76. I believe that the information required to electronically identify higher-cost credit cards at the point of sale is already available to Visa, MasterCard and Acquirers. For example, Acquirers could provide to merchants a table showing the Bank Identification Numbers (a portion of the account numbers shown on a credit card) for those credit cards that have higher Interchange Fees. Without the means to electronically identify and assess a surcharge on higher-cost credit cards at the point of sale, it would be too costly, and leave too much room for error, for IKEA Canada to surcharge or refuse to accept higher-cost credit cards.

Signed: March 13, 2012

CHARLES SYMONS

PUBLIC

CT-2010-010

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF an application by the Commissioner of Competition pursuant to section 76 of the *Competition Act*;

AND IN THE MATTER OF certain agreements or arrangements implemented or enforced by Visa Canada Corporation and MasterCard International Incorporated.

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

- and -

VISA CANADA CORPORATION and MASTERCARD INTERNATIONAL INCORPORATED

Respondents

- and -

THE TORONTO-DOMINION BANK
THE CANADIAN BANKERS ASSOCIATION

Intervenors

WITNESS STATEMENT OF CHARLES SYMONS
(March 13, 2012)

Davies Ward Phillips & Vineberg LLP
Suite 4400
1 First Canadian Place
Toronto, Ontario M5X 1B1

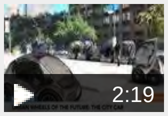
Kent E. Thomson (LSUC #24264J)
Adam Fanaki (LSUC #38208L)
Davit D. Akman (LSUC #44274R)
Tel: 416.863.0900
Fax: 416.863.0871

Department of Justice Canada
Competition Bureau Legal Services
Place du Portage, Phase I
50 Victoria Street, 22nd Floor
Gatineau QC K1A 0C9

William Miller (LSUC #14443V)
Tel: 819.953.3903
Fax: 819.953.9267

Counsel to the Commissioner of Competition

Exhibit O



Romney Vowing Dodd-Frank Repeal Hits JPMorgan Risky Trades

By Julie Hirschfeld Davis & Lisa Lerer - May 14, 2012 11:06 AM CT

Mitt Romney says he wants to talk about the economy in this presidential campaign, including his call to repeal the Dodd-Frank financial regulation law. JPMorgan Chase & Co. (JPM)'s $2 billion trading loss in risky transactions isn't the sort of conversation he had in mind.

So far, presumptive Republican nominee Romney has said little about the transaction that is roiling Wall Street and Washington, prompting an inquiry by the Federal Reserve, a call for a congressional investigation and a demand by Elizabeth Warren, a Democratic Senate candidate in Massachusetts, that JPMorgan Chief Executive Officer Jamie Dimon resign from the board of the New York Federal Reserve.

Enlarge image

Mitt Romney delivers the commencement

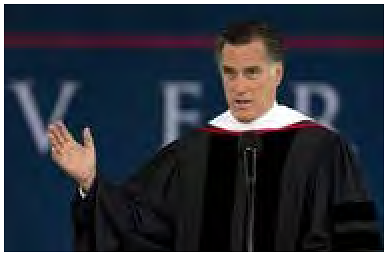
"Any time you have a development that suggests businesses take unnecessary and unwise risks, you give ammunition to Democrats and cause problems for the Republican narrative," said Stu Rothenberg, editor of the nonpartisan Rothenberg Political Report. "Romney will have to deal with it."

address at Liberty University in Lynchburg, Va, on May 12, 2012. Photographer: Jae C. Hong/AP Photo

Enlarge image

A pedestrian passes JP Morgan Chase & Co. headquarters in New York. Photo: Peter Foley/Bloomberg

Enlarge image



Republican Presidential hopeful Mitt Romney delivers the keynote address at Liberty University's 39th Annual Commencement in Lynchburg, Virginia, on May 12, 2012. Photographer: Jim Watson/AFP/GettyImages

Romney, co-founder of private-equity firm Bain Capital LLC, has spotlighted his vow to repeal the Dodd-Frank law that aims to strengthen financial regulations, calling it one of several overly burdensome laws backed by President Barack Obama that costs jobs. Romney hasn't directly commented on the JP Morgan losses since Dimon disclosed them on May 10; he ignored a reporter's shouted question about the matter at a May 11 rally in Charlotte, North Carolina.

'Common-Sense Regulation'

Campaign spokeswoman Andrea Saul had said in a statement the losses showed "the importance of oversight and transparency in the derivatives market," and that Romney as president would "push for common-sense regulation that gives regulators tools to do their jobs, and that gives investors more clarity." she said.

Asked for specifics, the campaign later replied with remarks he made last year while campaigning in New Hampshire, when he said he would favor regulating derivatives and imposing different capital requirements on different forms of securities. The campaign also pointed to Romney's 59-point economic plan, in which he writes that "some of the concepts in Dodd-Frank have a place."

For Obama, the JPMorgan difficulties offer an opportunity to contrast the positions of the two candidates.

"It is amazing that there are still those who are out there arguing we should repeal Wall Street reform, that we should let Wall Street write their own rules again," White House Press Secretary Jay Carney said today.

Making Connections

Obama is in New York today for events including a fundraiser with Wall Street executives.

Obama has sought greater regulation. He signed the Dodd- Frank law and asking for more funding for the Commodities Futures Trading Commission to implement the new rules.

“I would think the president would seek to connect the JPMorgan story with his message of a need for regulators to watch big business,” Rothenberg said.

Saul, the Romney spokeswoman, responded yesterday to the Obama campaign with a statement saying the Republican “believes in a system of sensible financial regulation,” while the president “supported legislation that makes another crisis more likely, thus putting taxpayers at risk for future bad decisions made by Wall Street banks.”

Romney’s economic plan, released in September, argues for the repeal of the Dodd-Frank law while saying some aspects of it should be retained.

‘Necessary Elements’

“Greater transparency for inter-bank relationships, enhanced capital requirements, and provisions to address new forms of complex financial transactions are all necessary elements of effective financial reform,” the plan says. “But these concepts must be translated into law in a way that creates a simple, predictable, and efficient regulatory system appropriate for our dynamic economy.”

As the presidential race has heated up, Romney has focused on his repeal proposal without elaborating on what parts of the law he backs.

Romney as a candidate also toughened his position on the Sarbanes-Oxley financial accounting overhaul enacted in the wake of the Enron Corp. scandal. After initially saying he would favor amending that law, he sharpened his stance.

Asked by a voter March 3 in Beavercreek, Ohio, if he planned to “basically repeal” the Sarbanes-Oxley measure, along with the health-care overhaul Obama pushed through Congress and the Dodd-Frank measure, Romney responded, “Yes.”

“By the way, when I get rid of Obamacare and I get rid of Dodd-Frank and I get rid of Sarbanes-Oxley, it doesn’t mean I don’t want to have any law or any regulation,” Romney said. “It means I want to make sure it’s modern, it’s updated, it goes after the bad guys, but it also encourages the good guys.”

Repeal Difficulty

Repealing financial reforms will be difficult following JPMorgan's $2 billion loss, which Dimon said could cost an additional $1 billion this quarter or next. Proponents of oversight will be bolstered, said Senator Carl Levin, a Michigan Democrat and chairman of the Permanent Subcommittee on Investigations, on NBC News' "Meet the Press" yesterday.

"The real problem is, the battle is not just between Washington and Wall Street," Levin said. "The battle is inside of Washington."

Dimon, also on "Meet the Press," said JPMorgan was "sloppy" and "stupid." He said he didn't know if his firm broke any laws or U.S. Securities and Exchange Commission rules. "You always make mistakes," he said.

Volcker Rule

Dimon has been a critic of Dodd-Frank provisions including the so-called Volcker rule, which is meant to bar proprietary trading by banks with federally insured deposits.

When he announced the losses, almost four weeks after characterizing articles about the transactions as "a complete tempest in a teapot," Dimon said the trading "may not violate the Volcker rule, but it violates the Dimon principle."

Warren, who formerly worked in the Office of the President and served as chairwoman of the Congressional Oversight Panel for the Troubled Asset Relief Program, distributed an e-mail over the weekend calling on Dimon to step down from his New York Fed position.

"He advises the Federal Reserve on the oversight of the financial industry," Warren said in an e-mailed statement. "Dimon should resign from his post at the New York Fed to send a signal to the American people that Wall Street bankers get it, and to show that they understand the need for responsibility and accountability."

To contact the reporters on this story: Julie Hirschfeld Davis in Washington at Jdavis159@bloomberg.net Lisa Lerer in Washington at llerer@bloomberg.net

To contact the editor responsible for this story: Jeanne Cummings at jcummings21@bloomberg.net

Videos You May Like

by Taboola


Introducing Elon Musk's Hyperloop


Man Loves Porsche So Much He Builds House Around It


Ellison: Apple Going Down Without Steve Jobs

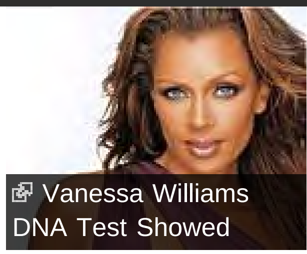

The Future of Travel at 4,000 Miles Per Hour

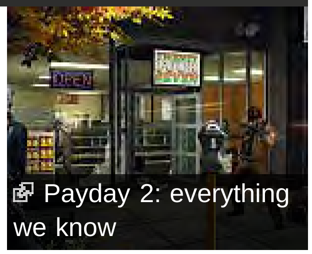
From Around the Web

by Taboola


Billionaires Dump Stocks, Prepare for


5 Things That Trigger Prostate Cancer


Vanessa Williams DNA Test Showed


Payday 2: everything we know

Bloomberg moderates all comments. Comments that are abusive or off-topic will not be posted to the site. Excessively long comments may be moderated as well. Bloomberg cannot facilitate requests to remove comments or explain individual moderation decisions.

Like DISQUS

Add New Comment

Login

Type your comment here.

Showing 3 of 108 comments on Romney Vowing Dodd-Frank Repeal Hits JPMorgan Risky Trades

sndman1964 1 year ago

Dimon's attitude is too cavalier. "You can't touch me" is his motto.

1 Like Like Reply

AlexDeng 1 year ago

Does Mitt Romney's profile remind you of a maybe smarter version of George W. Bush?

Both of them were born into rich families and got nothing to worry.
Both of them have the world cut out for them.
Both of them have Harvard MBAs where they were taught how to maximize profit at all costs.
Both of them are religious.
Both of them are aloof from the average working people.
Both of them are running on the platform of less regulations and lower taxes for the rich (i.e. their base).

While Bush pushed for more oil drillings in the US because he was an oil man, Romney advocates for less banking regulations because he was a financier/corp raider of a private equity.
While Bush has failed in almost all businesses including as President of the US, Romney has found success because he is smarter than Bush (but it does not take too much to be smarter than Bush).

But do we really want any version of George W. Bush in the White House again?
Not that I am a wholehearted Obama supporter, but if I have to make a choice btw the lesser of two evils, I have no choice but pick Obama.

2 Likes Like Reply

Mark Neal 1 year ago

This needs an update to include more facts about Romney's cut-throat past as an investment firm manager... you know, all the jobs that were lost because of him.. all the lives that were ruined...

2 Likes Like Reply

Load more comments

Recommended Stories

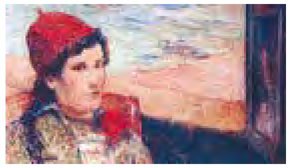

Florida Pharmacists Win $597 Million Blowing Whistle on Scheme


Best-Paid Women in S&P 500 Settle for Less Remuneration


London Whale Resurfaces in Potential U.S. JPMorgan Case


Former Goldman Sachs Managing Directors Plan Asia Hedge Fund


Apple Said to Prepare Holiday Refresh of IPhones to IPads


Romanian Art Thief Offers Works in Return for Dutch Trial

ブ ルームバーグ(日本語)

会社概要(日本語)

Bloomberg Books

Bloomberg Link

Bloomberg Blog

Bloomberg Law

Bloomberg BNA

Bloomberg TV+

Bloomberg Businessweek+

Bloomberg Markets+

Bloomberg Anywhere

Jobs by Indeed | [+] Rate this Page | Made in NYC |Ad Choices

.

Exhibit P

SHEET 1 PAGE 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
-- x
IN RE
PAYMENT CARD INTERCHANGE FEE AND MERCHANT DISCOUNT ANTITRUST LITIGATION
MDL No.05-md-1720(JG)(JO)
THIS DOCUMENT APPLIES TO:
ALL ACTIONS
-- x

HIGHLY CONFIDENTIAL DEPOSITION of BRIAN EMMERT, taken pursuant to Notice, held at the offices of Labaton Sucharow, 140 Broadway, New York, New York, on January 17, 2008, at 9:26 a.m. before a Notary Public.

****
BARRISTER REPORTING SERVICE, INC.
120 Broadway
New York, N.Y. 10271
212-732-8066

PAGE 2

A P P E A R A N C E S:

BERGER & MONTAGUE, P.C.
Attorneys for Class Plaintiffs and Witness
1622 Locust Street
Philadelphia, Pennsylvania 19103
BY: MICHAEL J. KANE, ESQ.

ROBINS, KAPLAN, MILLER & CIRESI
Attorneys for Plaintiffs
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, Minnesota 55402-2015
Phone: 612.349.0114
Fax: 612.339.4181
BY: RYAN W. MARTH, ESQ.

SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP
Attorneys for Defendants
CHASE BANK U.S.A., N.A.
CHASE MANHATTAN BANK USA, N.A.
JP MORGAN CHASE & CO.
Four Times Square
New York, New York 10036
BY: PETER E. GREENE, ESQ.
-and-
DOUG SMITH, ESQ.

NOT PRESENT:

ARNOLD & PORTER, LLP.
Attorneys for Defendant
VISA U.S.A. INC.
555 Twelfth Street
Washington, D.C. 20004-1206

PAGE 3

A P P E A R A N C E S C O N T I N U E D:

ALSO PRESENT:
OSMANY CABRERA, Videographer
Digital Media

NOT PRESENT:

SIDLEY AUSTIN LLP
Attorneys for Defendants
BANK OF AMERICA
787 Seventh Avenue
New York, New York 10019
Phone: 212.839.5514
Fax: 212.839.5599

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
Attorneys for Defendant
MASTERCARD
1285 Avenue of the Americas
New York, New York 10019

MORRISON & FOERSTER
Attorneys for Defendants
BANK OF AMERICA, N.A.,
BA MERCHANT SERVICES, LLC
(f/k/a DEFENDANT NATIONAL PROCESSING, INC.), and
BANK OF AMERICA CORPORATION
1290 Avenue of the Americas
New York, New York 10104-0050

PAGE 4

B. Emmert - Highly Confidential

THE VIDEOGRAPHER: Stand by. This begins tape number one in the videotaped deposition of Mr. Brian Emmert In Re Payment Card Interchange Fee litigation in the United States District Court, Eastern District of New York 05-MD-1720 (JG)) JO).

This deposition is being held at the offices of Labaton Sucharow located at 140 Broadway, New York, New York on Thursday, January 17th at approximately 9:26 a.m.

My name is Osmany Cabrera. I am the legal video specialist on behalf of Digital Media. The certified court reporter is Debbie Saline, Barrister Court Reporting, 120 Broadway, New York, New York.

Will counsel please introduce themselves for the record?

MR. GREENE: My name is

B. Emmert - Highly Confidential
suited to answer the question.
Q. Do you know whether the proposal reflected in Exhibit 11,020 was ever analyzed by Jetro to determine whether you should or shouldn't accept it?
A. I didn't. I wasn't involved in it. You would have to ask Richard.
Q. Have I exhausted your knowledge about the proposal set forth in Exhibit 11,020 such that you have no further information regarding this proposal to impart?
A. Yes, that's correct.
Q. I think I asked you this, but I can't remember.
Has Visa ever offered Jetro any type of proposal similar in substance to Exhibit 11,020?
A. They may have, but I am not aware of it.
Q. What about Discover; have they ever made any proposal to Jetro similar in substance to Exhibit 11,020?
A. Yes.

B. Emmert - Highly Confidential
Q. You see. You did remember.
What was the Discover proposal?
A. Discover was going exclusive with them as well.
Q. Did you participate in that?
A. Yes, I did.
Q. What was your role in that?
A. We just discussed the opportunities and we actually asked one of our regional managers out on the West Coast possibly to, when we opened up our next location, to open up that location exclusively to Discover and he didn't think it would be something that we should do.
Q. Why?
A. That is a lesser accepted card and it's a very small portion of our -- the amount of credit cards that are presented. So, we decided we didn't want to take the chance especially in a -- opening up in a new location. We didn't want to limit the sales because we didn't accept a certain kind of credit card.
Q. When you say "lesser accepted

B. Emmert - Highly Confidential
card," I'm trying to understand what that means. Does that mean fewer merchants accept Discover Card?
A. Fewer people carry that card.
Q. I'm sorry if this seems highly technical. Fewer people carry the card or fewer people use the card; which are you referring to?
A. I apologize. You are correct. Fewer people use that card at Jetro and Restaurant Depot. I don't know what the distribution of the cards are.
Q. Who was the West Coast person that was of that view that you were referring to?
A. Ruben Vogel.
Q. How long ago was that?
A. I don't remember. It was probably right around the same time Richard spoke to MasterCard, but I don't remember specifically when. As the interchange fees continued to rise, we were looking for any possible alternative.
MR. GREENE: Let me show you

B. Emmert - Highly Confidential
a document that I will ask the reporter to mark as Exhibit 11,021.
(Whereupon E-mail re Discover acceptance proposal bearing Bates numbers JET002361 was marked Exhibit 11,021 for identification as of this date.)
Q. Can you identify what we marked as Exhibit 11,021?
A. It's an e-mail correspondence between Laura Clark, who was our Discover account executive, and myself.
Q. Is this the Discover Card exclusive acceptance proposal that you were just testifying about a few moments ago?
A. Yes, that's correct.
Q. This proposal does not seem to be limited to one store; am I correct that this proposal was for a Jetro-wide proposal?
A. Yes, that's correct.
Q. When I say Jetro-wide here, as you understand, this applied to Jetro Cash & Carry and Restaurant Depot or just one of

the business operations?
A. It was proposed for all of the locations and we initially spoke about we wanted to see what the reaction was and the only way we would do it -- we didn't have -- excuse the language -- we didn't have the balls to see if we could do it all at every location. We didn't want to take the risk.
Q. The risk being loss of sales?
A. Correct. We said why don't we see about doing it at one location and we would have told Discover that's what we are going to do. We are going to do it as a trial to see if we could do it at one location initially to see what the reaction would be and then slowly convert other locations over, give them an opportunity to market the business, to offer cards to our customers so that we could convert the business over, slowly transition.
Q. Mr. Vogel didn't want to do that at his location?

A. Correct.
Q. That's what is you testified to before.
The rate they are talking about here is .06 percent. Am I correct, sir, that that was significantly lower than the rate of interchange then being charged to Jetro by its merchant processor for Visa or MasterCard card acceptance?
A. It was lower. I don't remember what the interchange was at the time. It's lower. I don't know how significantly lower it was.
Q. I think you testified that you don't have private label cards.
A. That's correct.
Q. Have you considered private label cards?
A. Yes, we have.
Q. How recently?
A. I'm going to say private label and co-brand, I am going to lump that all together. I don't differentiate between either, but we were looking for a cheaper

alternative.
We looked at that probably as recent as right around this time as well when we met with, at a minimum, Household Finance. I was involved in meeting with Household Finance.
Q. Let's back up a little bit because I don't want to lump them together unless there is no other way to do this.
Do you think private label cards are the same as co-brands?
A. I know there is a difference between a Jetro card that is only exclusively used at Jetro and a card with the Jetro name on it that could be used elsewhere at other merchants.
Q. The card with the Jetro name on it that could be used elsewhere is what is referred to as a co-branded card, right?
A. If you say so.
Q. If you opened your wallet, you would probably find some co-brand card in there that you personally have?
A. Yes.

Q. You know what a co-branded card is?
A. I didn't know the difference between the terminology.
Q. Do you have any private label cards if you opened your wallet?
A. No.
Q. Have you ever had a private label card?
A. My wife has every type of credit card. In my name there probably is, but I wouldn't know.
Q. So, let's talk about private label cards.
Has Jetro ever given consideration to a private label card?
A. Yes.
Q. Is that what you were testifying before when you said it was about the same time period, which was sometime around 2004?
A. We met with Household Finance and I'm not sure if they were offering a private label card or co-branded card.
Q. How was that meeting arranged? By

Exhibit Q

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
-- x
IN RE
PAYMENT CARD INTERCHANGE FEE AND
MERCHANT DISCOUNT ANTITRUST LITIGATION

MDL No.05-md-1720(JG)(JO)

THIS DOCUMENT APPLIES TO:
ALL ACTIONS

-- x

DEPOSITION of GARY MORTON, taken pursuant to notice, held at the Grove Hotel, 245 South Capitol Boulevard, Boise, Idaho, on October 15, 2008 at 9:11 a.m., before a Notary Public.

****

BARRISTER REPORTING SERVICE, INC.
120 Broadway
New York, N.Y. 10271
212-732-8066

G. Morton

the Extreme stores?
A No, I do not recall.
Q As part of this proposal, would Albertsons continue to accept debit cards at the Extreme store locations?
A I do not know. My recollection is I'm not certain as to what other considerations were with payments.
Q Do you recall who within Albertsons was responsible for initiating this proposal?
A John Boyd would have been involved in the discussions.
Q Okay. Other than John Boyd, is there anyone else that you can recall who was involved in discussing this proposal for Discover exclusivity at Extreme stores?
A I do not recall specifically others that would have been involved in the discussions.
Q Were you specifically involved in these discussions to, perhaps, begin a program of Discover exclusivity at Extreme store locations?
A I would have been involved in

G. Morton

discussions related to the concept or the strategy related to exclusivity.
Q So would you have participated in discussions between Albertsons and Discover relating to the potential for Discover exclusivity at these store locations?
A No.
Q Did you have any discussions within Albertsons about how Albertsons was going to shift its customers from using Visa or MasterCard or American Express to other payment forms that were going to be accepted at the Extreme store locations?
A My recollection is that we never even got to that point.
Q So you don't recall -- do you have any recollection as to whether or not this program was ever implemented at any of the Extreme store locations?
A My recollection is that it never was implemented as a result of pressure that was provided by the card associations for nonacceptance.
Q Can you explain further what you mean

G. Morton

by that?
A Pressure related to the all outlets rule.
Q And who was -- when you say "pressure related to the all outlets rule," again, what do you mean? And who did you believe was putting pressure on Albertsons?
A Visa. Penalties related to not meeting the all outlets rule, which would have been -- we would have been penalized to tiered pricing.
Q And what -- when you say -- well, first of all when you say "the all outlets rule," do you mean that Visa -- at some point Visa became aware that Albertsons was considering not accepting Visa credit cards at some of its locations, specifically the Extreme store locations?
A That's correct.
Q And that as a result of that, Visa was going to cease Albertsons' tiered pricing? That was a horrible question. Let me rephrase that. And as a result of Visa becoming aware of

G. Morton

Albertsons' discussions to stop accepting Visa credit cards at these Extreme locations, how did -- what is your recollection of how Visa reacted?
A Visa responded with -- and reinforced the all outlets rule, that it was a requirement to continue, you know, receiving certain tiered pricing would require us to accept Visa in all locations -- at all locations.
Q So when you say "tiered pricing," is that the pricing you were discussing earlier whereby Albertsons received certain reduced interchange rates because of the amount of volume of Visa transactions at its store?
A Correct.
Q And Visa was saying because Albertsons was not willing to accept Visa credit cards at certain of its stores, it would no longer be eligible to receive that preferred tiered pricing?
A That is correct.
Q So Albertsons would simply then be paying the published supermarket rate, the

Exhibit R

HIGHLY CONFIDENTIAL - PAUL GALLO

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

In Re PAYMENT CARD INTERCHANGE FEE AND MERCHANT DISCOUNT ANTITRUST LITIGATION)	MDL Document No. 1720 (JG)(JO)
This Document Relates to: ALL ACTIONS.)	

Videotaped deposition of PAUL GALLO taken before TRACY L. BLASZAK, CSR, CRR, and Notary Public, pursuant to the Federal Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, at Suite 3800, One South Dearborn Street, in the City of Chicago, Cook County, Illinois at 9:08 a.m. on the 24th day of April, A.D., 2008.

HIGHLY CONFIDENTIAL - PAUL GALLO

what he meant by that line.

BY MR. MURRAY:

Q You say Mr. Jorgensen is no longer with Visa?

A That's correct.

Q Who else who is still at Visa performs this role in doing these analyses?

A Within the interchange group, it's within the interchange group, I make requests to Pete Zuercher for data.

(Exhibit 23284 marked as requested.)

BY MR. MURRAY:

Q Mr. Gallo, you've been handed a document that bears Bates Nos. 23284 -- or that's the exhibit number. The Bates No. are VUSAMDL1-06020347 through 51. I think there is two copies of the same letter attached to the cover e-mail that was sent from Mr. Hambry to you on January 14th, 2005.

Do you recognize this document? By this, I mean the cover e-mails and the attached letter.

A I do recognize the documents.

Q Was this letter sent to Mr. Boyd at Albertsons?

A I don't know if it was ever sent.

Q Do you recall ever having discussions with Mr. Boyd about the fact that a letter would be sent to

HIGHLY CONFIDENTIAL - PAUL GALLO

him regarding the acceptance of Visa credit cards at the Extreme stores?

MR. STOEVER: Object to form.

THE WITNESS: Would you repeat or reread.

(From the record above, the reporter read the following:

"Q Do you recall ever having discussions with Mr. Boyd about the fact that a letter would be sent to him regarding the acceptance of Visa credit cards at the Extreme stores?")

THE WITNESS: I don't remember having a specific discussion regarding the sending of a letter.

MR. MURRAY: Why don't we go ahead and mark this, then.

(Exhibit 23285 marked as requested.)

BY MR. MURRAY:

Q Mr. Gallo, the court reporter has handed you a document marked Exhibit No. 23285. It bears Bates No. VUSAMDL1-06019501 dated January 14th, 2005, from you to John Boyd.

And you write to Mr. Boyd, "John, per our discussion, you should be receiving a hard copy via overnight mail on Monday."

HIGHLY CONFIDENTIAL - PAUL GALLO

Do you see that?

A I do see that.

Q Does this refresh your recollection as to whether you had a discussion with Mr. Boyd about receiving a letter regarding the Extreme stores?

A Yes, it does.

Q Do you recall what you and Mr. Boyd discussed during that conversation?

A I don't recall the specifics.

Q In the letter to Mr. Boyd, there is a reference to IRF performance thresholds beginning in the first -- or the second paragraph. Do you see that?

A Yes, I do.

Q What are IRF performance thresholds?

A Interchange reimbursement fee performance thresholds.

Q What are the performance thresholds?

A I'm not sure what you mean by what are the thresholds.

Q Is that a term that's used within Visa, performance thresholds?

A Yes.

Q What is the meaning of that term within Visa?

A It's the interchange rates that merchants can

HIGHLY CONFIDENTIAL - PAUL GALLO

qualify for, sometimes referred to as tier rates, based on their performance, based on performance criteria.

Q Okay. Can you read the last sentence of the next paragraph, the one that begins with "We estimate." Just read that into the record, please.

A "We estimate an annualized benefit through lower IRF to Albertsons of approximately $2 million on Visa credit and debit as a result of Albertsons current qualification of performance thresholds."

Q Was that $2 million benefit to Albertsons in jeopardy?

MR. STOEVER: Object to form.

BY MR. MURRAY:

Q Is that the purpose of the letter to Mr. Boyd?

MR. STOEVER: Object to form.

THE WITNESS: I think Mr. Hambry just spells out the letter, tries to spell out the letter of our policy regarding the performance thresholds.

BY MR. MURRAY:

Q The sum and substance would be that if the Extreme stores did not accept Visa credit cards, Albertsons would lose that $2 million benefit, is that correct?

MR. STOEVER: Object to form.

Exhibit S

Print Close

Rift Widens Over Visa, Mastercard Settlement

Published July 20, 2012 | Dow Jones Newswires

The lead lawyers who negotiated a $7.25 billion settlement with Visa Inc. (V) and MasterCard Inc. (MA) want to drop as a client a key trade group that opposes the pending deal.

The National Association of Convenience Stores says it doesn't like the settlement, which would put to bed more than 50 lawsuits filed since 2005 against the payment networks and numerous large banks over the fees merchants pay to accept credit cards.

The trade group has until Tuesday to respond to the lawyers' motion seeking to withdraw as counsel for the trade group.

Visa and MasterCard set the fees, known as interchange or "swipe" fees, that merchants pay on each card transaction, but they are collected by card-issuing banks as revenue.

NACS, which represents more than 3,700 convenience stores and other companies, has said the pending deal doesn't adequately address problems it sees in how Visa, MasterCard and those banks set the fees. The trade group is one of 19 plaintiffs that brought class-action lawsuits against the companies.

The attorneys representing those plaintiffs say they can't protect the interests of the other clients, which include the National Community Pharmacists Association and National Grocers Association, while also representing the "divergent objectives" of NACS, according to a motion filed Thursday in U.S. District Court in Brooklyn by the attorneys.

The law firms serving as co-lead counsel for the proposed class are Robins, Kaplan, Miller & Ciresi LLP; Berger & Montague PC; and Robbins Geller Rudman & Dowd LLP.

Craig Wildfang of Robins Kaplan and Merrill Davidoff of Berger & Montague declined to comment Friday.

Shortly before the settlement was announced July 13, NACS hired a separate law firm, Constantine Cannon LLP, to also represent it in the case. Constantine Cannon has a long history pursuing cases against Visa and MasterCard, and in 2003 helped win a $3 billion settlement from the payment networks over separate issues merchants had complained about.

Jeffrey Shinder, a managing partner with Constantine Cannon who is representing the trade group, declined to comment Friday.

Doug Kantor, a partner with Steptoe & Johnson LLP, which serves as general counsel to NACS, also declined to comment.

Under the settlement, Visa, MasterCard and their client banks agreed to pay $6.05 billion to a proposed class of merchants that could encompass millions of retailers.

The deal, which requires court approval, would also result in Visa and MasterCard refunding about $1.2 billion in interchange fees and changing their rules to allow merchants to surcharge customers who pay with credit cards.

At least two large merchants--Hyatt Hotels Corp. (H) and Target Corp. (TGT)--have said they have no plans to surcharge their customers.

Merchants who accept Visa and MasterCard cards between January 2004 and the date it receives preliminary approval would have the ability to opt in or out of the settlement. The settlement includes a provision that could cancel the deal if too many retailers opt out.

Target on Friday criticized the settlement, calling it a bad deal for retailers and consumers.

"The proposed settlement would perpetuate a broken system, restrict retailers from any future legal action and offer no long-term relief for retailers or consumers," the Minneapolis-based retailer said in a statement.

Others have supported the deal, though.

Javier Palomarez, president and chief executive officer of the U.S. Hispanic Chamber of Commerce, called the "end result beneficial to businesses and consumers alike" in a letter to Sen. Harry Reid (D-Nev.).

--Robin Sidel contributed to this story.

-Write to Andrew R. Johnson at andrew.r.johnson@dowjones.com

Subscribe to WSJ: http://online.wsj.com?mod=djnwires

Print Close

URL

http://www.foxbusiness.comhttp://www.foxbusiness.com/news/2012/07/20/rift-widens-over-visa-mastercard-settlement/

Exhibit T

Computer Services & IT Consulting

J.P.Morgan

	1Q06	2Q06	3Q06	4Q06	1Q07	2Q07	3Q07	4Q07	1Q08	2Q08	3Q08	4Q08	1Q09	2Q09	3Q09	4Q09
US Purchase Volume																
Visa Debit Volume	151	162	161	169	166	183	182	195	193	210	208	206	202	220	223	238
% change (y/y)	*23.6%*	*20.2%*	*13.7%*	*8.5%*	*10.0%*	*12.7%*	*13.3%*	*15.6%*	*16.3%*	*15.1%*	*14.4%*	*5.5%*	*4.7%*	*4.6%*	*6.8%*	*15.4%*
Visa Credit Volume	167	187	190	199	180	202	206	218	195	213	213	203	176	192	195	201
% change (y/y)	*12.7%*	*12.1%*	*9.0%*	*7.7%*	*7.9%*	*8.1%*	*8.4%*	*9.7%*	*8.1%*	*5.0%*	*3.5%*	*-6.9%*	*-9.7%*	*-9.6%*	*-8.6%*	*-1.1%*
Visa Total US Volume	318	349	350	367	346	385	388	413	388	423	421	409	379	412	417	438
% change (y/y)	*17.6%*	*15.7%*	*11.1%*	*8.1%*	*8.9%*	*10.3%*	*10.7%*	*12.4%*	*12.0%*	*9.8%*	*8.6%*	*-1.1%*	*-2.5%*	*-2.6%*	*-1.0%*	*7.3%*
MasterCard Debit Volume					63	67	66	73	75	79	78	77	79	82	83	85
% change (y/y)					*46.5%*	*24.1%*	*13.8%*	*19.7%*	*19.0%*	*18.6%*	*17.5%*	*5.5%*	*4.9%*	*3.4%*	*6.9%*	*9.9%*
MasterCard Credit Volume					124	138	139	147	131	142	141	133	113	120	121	123
% change (y/y)					*7.8%*	*7.0%*	*7.8%*	*8.9%*	*5.6%*	*2.8%*	*1.5%*	*-9.6%*	*-13.9%*	*-15.6%*	*-13.9%*	*-7.8%*
MasterCard Total US Volume					187	205	205	218	206	221	218	210	192	202	204	207
% change (y/y)					*18.0%*	*12.4%*	*9.4%*	*11.1%*	*10.3%*	*8.0%*	*6.6%*	*-4.6%*	*-7.1%*	*-8.8%*	*-6.5%*	*-1.3%*
Total V/MA US Debit Volume	NA	NA	NA	NA	229	250	248	268	268	289	286	283	281	302	306	323
% change (y/y)					*20.0%*	*15.7%*	*13.4%*	*16.7%*	*17.1%*	*16.1%*	*15.2%*	*5.5%*	*4.8%*	*4.3%*	*6.8%*	*14.0%*
Total V/MA US Credit Volume	NA	NA	NA	NA	304	340	345	365	326	355	354	336	289	312	316	324
% change (y/y)					*7.9%*	*7.6%*	*8.1%*	*9.4%*	*7.1%*	*4.1%*	*2.7%*	*-8.0%*	*-11.3%*	*-11.9%*	*-10.6%*	*-3.6%*
Total V/MA US Volume	NA	NA	NA	NA	533	590	593	631	594	644	639	619	571	614	621	645
% change (y/y)					*12.1%*	*11.0%*	*10.3%*	*12.0%*	*11.4%*	*9.2%*	*7.9%*	*-2.3%*	*-4.0%*	*-4.6%*	*-2.8%*	*4.5%*
US Economic Metrics																
US GDP, % change (y/y)	*3.0%*	*3.0%*	*2.2%*	*2.4%*	*1.2%*	*1.7%*	*2.5%*	*2.2%*	*1.6%*	*1.0%*	*-0.6%*	*-3.3%*	*-4.2%*	*-4.6%*	*-3.3%*	*-0.1%*
US Retail Sales, % change (y/y)	*3.7%*	*2.6%*	*2.7%*	*4.3%*	*3.2%*	*3.3%*	*3.2%*	*2.1%*	*0.0%*	*-0.3%*	*-3.0%*	*-6.5%*	*-5.1%*	*-5.7%*	*-2.0%*	*1.2%*
V/MA Growth Premium																
V/MA Debit Premium to US GDP Growth					*18.8%*	*14.0%*	*11.0%*	*14.5%*	*15.5%*	*15.0%*	*15.9%*	*8.8%*	*8.9%*	*8.9%*	*10.2%*	*14.0%*
y/y change (bps)									-335bps	101bps	491bps	-568bps	-651bps	-616bps	-570bps	521bps
V/MA Credit Premium to US GDP Growth					*6.6%*	*5.9%*	*5.7%*	*7.2%*	*5.5%*	*3.1%*	*3.3%*	*-4.6%*	*-7.2%*	*-7.3%*	*-7.3%*	*-3.6%*
y/y change (bps)									-113bps	-283bps	-234bps	-1182bps	-1265bps	-1041bps	-1062bps	109bps
V/MA Premium to US GDP Growth					*10.9%*	*9.3%*	*7.8%*	*9.7%*	*9.8%*	*8.1%*	*8.5%*	*1.0%*	*0.1%*	*-0.1%*	*0.5%*	*4.6%*
y/y change (bps)									-106bps	-115bps	76bps	-871bps	-965bps	-820bps	-801bps	359bps
V/MA Debit Premium to US Retail Sales Growth					*16.8%*	*12.4%*	*10.2%*	*14.6%*	*17.0%*	*16.4%*	*18.3%*	*12.0%*	*9.9%*	*10.0%*	*8.9%*	*12.7%*
y/y change (bps)									19bps	396bps	806bps	-258bps	-717bps	-639bps	-940bps	74bps
V/MA Credit Premium to US Retail Sales Growth					*4.7%*	*4.3%*	*4.9%*	*7.2%*	*7.1%*	*4.4%*	*5.7%*	*-1.5%*	*-6.2%*	*-6.2%*	*-8.6%*	*-4.9%*
y/y change (bps)									241bps	13bps	81bps	-871bps	-1331bps	-1064bps	-1432bps	-339bps
V/MA Premium to US Retail Sales Growth					*8.9%*	*7.7%*	*7.0%*	*9.8%*	*11.4%*	*9.5%*	*10.9%*	*4.2%*	*1.1%*	*1.1%*	*-0.8%*	*3.3%*
y/y change (bps)									248bps	180bps	392bps	-560bps	-1032bps	-843bps	-1171bps	-88bps

	1Q10	2Q10	3Q10	4Q10	1Q11	2Q11	3Q11	4Q11	1Q12	2Q12	3Q12	4Q12	1Q13	2Q13E	3Q13E	4Q13E
US Purchase Volume																
Visa Debit Volume	245	265	266	277	278	295	288	292	284	266	271	282	285	277	287	302
% change (y/y)	*20.9%*	*20.5%*	*19.6%*	*16.5%*	*13.4%*	*10.9%*	*8.7%*	*5.4%*	*2.2%*	*-9.8%*	*-5.9%*	*-3.4%*	*0.4%*	*4.0%*	*6.0%*	*7.0%*
Visa Credit Volume	182	204	207	216	199	224	228	237	223	246	250	262	244	273	275	286
% change (y/y)	*3.4%*	*5.9%*	*6.4%*	*7.6%*	*9.1%*	*9.8%*	*10.3%*	*9.6%*	*11.9%*	*9.8%*	*9.6%*	*10.5%*	*9.4%*	*11.0%*	*10.0%*	*9.0%*
Visa Total US Volume	427	469	473	493	477	518	516	529	507	512	521	544	529	550	562	587
% change (y/y)	*12.8%*	*13.8%*	*13.4%*	*12.5%*	*11.6%*	*10.5%*	*9.0%*	*7.3%*	*6.2%*	*-1.1%*	*0.8%*	*2.8%*	*4.1%*	*7.4%*	*7.9%*	*8.0%*
MasterCard Debit Volume	84	82	79	88	93	98	97	104	111	111	110	116	119	119	119	125
% change (y/y)	*6.9%*	*0.0%*	*-3.0%*	*3.6%*	*10.7%*	*19.1%*	*23.4%*	*19.0%*	*19.4%*	*13.3%*	*13.4%*	*11.5%*	*7.2%*	*7.0%*	*8.0%*	*8.0%*
MasterCard Credit Volume	110	121	122	126	115	129	130	134	124	135	134	140	127	138	138	144
% change (y/y)	*-3.1%*	*1.1%*	*0.8%*	*3.2%*	*4.9%*	*6.1%*	*6.8%*	*6.3%*	*8.2%*	*4.7%*	*3.1%*	*4.5%*	*2.4%*	*2.0%*	*3.0%*	*3.0%*
MasterCard Total US Volume	194	204	201	214	208	227	227	239	236	246	244	256	246	256	257	269
% change (y/y)	*1.0%*	*0.7%*	*-0.7%*	*3.3%*	*7.4%*	*11.3%*	*13.3%*	*11.5%*	*13.2%*	*8.7%*	*7.4%*	*7.1%*	*4.6%*	*4.3%*	*5.3%*	*5.3%*
Total V/MA US Debit Volume	329	347	345	365	371	393	385	396	395	377	381	398	404	395	406	427
% change (y/y)	*17.3%*	*15.7%*	*14.4%*	*13.4%*	*12.7%*	*12.9%*	*12.4%*	*9.0%*	*7.0%*	*-3.0%*	*-0.3%*	*0.9%*	*2.4%*	*4.9%*	*6.6%*	*7.3%*
Total V/MA US Credit Volume	292	325	329	342	314	353	358	371	347	381	384	402	371	411	413	430
% change (y/y)	*1.0%*	*4.1%*	*4.3%*	*6.0%*	*7.6%*	*8.4%*	*9.0%*	*8.4%*	*10.6%*	*8.0%*	*7.4%*	*8.4%*	*7.0%*	*8.0%*	*7.7%*	*7.0%*
Total V/MA US Volume	621	673	674	707	685	745	743	768	743	758	765	800	775	806	819	857
% change (y/y)	*9.1%*	*9.8%*	*9.2%*	*9.7%*	*10.3%*	*10.7%*	*10.3%*	*8.6%*	*8.4%*	*2.1%*	*2.9%*	*4.2%*	*4.3%*	*6.4%*	*7.1%*	*7.1%*
US Economic Metrics																
US GDP, % change (y/y)	*1.9%*	*2.5%*	*2.8%*	*2.4%*	*1.8%*	*1.9%*	*1.6%*	*2.0%*	*2.4%*	*2.1%*	*2.6%*	*1.7%*	*1.8%*	*1.9%*	*1.6%*	*2.1%*
US Retail Sales, % change (y/y)	*2.5%*	*3.9%*	*3.0%*	*5.0%*	*5.1%*	*4.0%*	*3.4%*	*2.8%*	*2.6%*	*2.9%*	*3.5%*	*3.2%*	*2.9%*			
V/MA Growth Premium																
V/MA Debit Premium to US GDP Growth	*15.5%*	*13.1%*	*11.6%*	*11.0%*	*10.9%*	*11.1%*	*10.9%*	*7.0%*	*4.6%*	*-5.2%*	*-2.9%*	*-0.7%*	*0.6%*	*3.0%*	*5.0%*	*5.2%*
y/y change (bps)	652bps	429bps	146bps	-304bps	-457bps	-208bps	-77bps	-400bps	-631bps	-1623bps	-1378bps	-773bps	-402bps	820bps	792bps	590bps
V/MA Credit Premium to US GDP Growth	*-0.9%*	*1.6%*	*1.5%*	*3.6%*	*5.7%*	*6.6%*	*7.5%*	*6.4%*	*8.1%*	*5.8%*	*4.8%*	*6.8%*	*5.2%*	*6.1%*	*6.1%*	*4.9%*
y/y change (bps)	624bps	893bps	882bps	715bps	665bps	496bps	595bps	285bps	239bps	-72bps	-272bps	33bps	-291bps	27bps	131bps	-190bps
V/MA Premium to US GDP Growth	*7.3%*	*7.3%*	*6.4%*	*7.3%*	*8.5%*	*8.9%*	*8.8%*	*6.6%*	*6.0%*	*-0.1%*	*0.3%*	*2.5%*	*2.5%*	*4.5%*	*5.5%*	*5.0%*
y/y change (bps)	711bps	738bps	586bps	270bps	125bps	154bps	237bps	-69bps	-252bps	-892bps	-845bps	-413bps	-352bps	457bps	518bps	248bps
V/MA Debit Premium to US Retail Sales Growth	*14.8%*	*11.8%*	*11.5%*	*8.4%*	*7.6%*	*9.0%*	*9.0%*	*6.2%*	*4.4%*	*-6.0%*	*-3.8%*	*-2.3%*	*-0.5%*			
y/y change (bps)	499bps	181bps	260bps	-438bps	-721bps	-283bps	-243bps	-217bps	-320bps	-1493bps	-1286bps	-846bps	-493bps			
V/MA Credit Premium to US Retail Sales Growth	*-1.5%*	*0.3%*	*1.4%*	*0.9%*	*2.5%*	*4.5%*	*5.7%*	*5.6%*	*8.0%*	*5.1%*	*3.9%*	*5.2%*	*4.2%*			
y/y change (bps)	471bps	645bps	995bps	581bps	400bps	421bps	430bps	468bps	551bps	59bps	-180bps	-40bps	-382bps			
V/MA Premium to US Retail Sales Growth	*6.6%*	*6.0%*	*6.2%*	*4.7%*	*5.2%*	*6.8%*	*6.9%*	*5.8%*	*5.8%*	*-0.9%*	*-0.6%*	*1.0%*	*1.4%*			
y/y change (bps)	558bps	490bps	700bps	136bps	-140bps	79bps	71bps	114bps	59bps	-762bps	-753bps	-486bps	-443bps			

	Annual Summary									
	2007	2008	2009	2010	2011	2012	2013E	Avg.	3 yr CAGR	5 yr CAGR
US Purchase Volume										
Visa Debit Volume	726	817	883	1,053	1,153	1,103	1,151			
% change (y/y)	*13.0%*	*12.8%*	*8.1%*	*19.3%*	*9.6%*	*-4.1%*	*4.4%*	*10.5%*	*3.0%*	*7.1%*
Visa Credit Volume	806	824	764	809	888	981	1,078			
% change (y/y)	*8.6%*	*2.4%*	*-7.1%*	*5.9%*	*9.7%*	*10.4%*	*9.9%*	*8.7%*	*10.0%*	*5.5%*
Visa Total US Volume	1,532	1,641	1,646	1,862	2,040	2,084	2,228			
% change (y/y)	*10.7%*	*7.3%*	*0.5%*	*13.1%*	*9.5%*	*2.2%*	*6.9%*	*8.8%*	*6.2%*	*6.3%*
MasterCard Debit Volume	269	309	329	333	392	448	482			
% change (y/y)	*25.6%*	*15.2%*	*6.3%*	*2.0%*	*18.1%*	*14.4%*	*7.6%*	*11.1%*	*13.1%*	*9.3%*
MasterCard Credit Volume	548	547	477	479	508	533	547			
% change (y/y)	*7.9%*	*0.1%*	*-12.8%*	*0.6%*	*6.1%*	*5.0%*	*2.6%*	*3.0%*	*4.5%*	*0.0%*
MasterCard Total US Volume	815	855	805	813	901	982	1,029			
% change (y/y)	*12.6%*	*5.1%*	*-5.9%*	*1.1%*	*11.0%*	*9.0%*	*4.9%*	*6.9%*	*8.2%*	*3.8%*
Total V/MA US Debit Volume	995	1,126	1,212	1,386	1,545	1,551	1,632			
% change (y/y)	*16.4%*	*13.4%*	*7.6%*	*15.1%*	*11.7%*	*1.2%*	*5.3%*	*12.6%*	*5.6%*	*7.7%*
Total V/MA US Credit Volume	1,354	1,371	1,241	1,288	1,396	1,514	1,625			
% change (y/y)	*8.3%*	*1.5%*	*-9.3%*	*3.9%*	*8.4%*	*8.5%*	*7.4%*	*7.2%*	*8.0%*	*3.5%*
Total V/MA US Volume	2,347	2,496	2,451	2,675	2,941	3,066	3,257			
% change (y/y)	*11.3%*	*6.5%*	*-1.6%*	*9.5%*	*10.0%*	*4.4%*	*6.2%*	*8.5%*	*6.8%*	*5.5%*
US Economic Metrics										
US GDP, % change (y/y)	*1.9%*	*-0.3%*	*-3.0%*	*2.4%*	*1.8%*	*2.2%*	*1.8%*	*1.9%*		
US Retail Sales, % change (y/y)	*3.0%*	*-2.4%*	*-2.9%*	*3.6%*	*3.8%*	*3.1%*	*2.9%*	*2.9%*		
V/MA Growth Premium										
V/MA Debit Premium to US GDP Growth		*13.8%*	*10.7%*	*12.8%*	*9.9%*	*-1.0%*	*3.5%*	*10.9%*		
y/y change (bps)			-310bps	210bps	-283bps	-1093bps	447bps			
V/MA Credit Premium to US GDP Growth		*1.8%*	*-6.2%*	*1.6%*	*6.6%*	*6.3%*	*5.6%*	*5.4%*		
y/y change (bps)			-807bps	780bps	502bps	-25bps	-76bps			
V/MA Premium to US GDP Growth		*6.9%*	*1.4%*	*7.1%*	*8.2%*	*2.2%*	*4.4%*	*6.5%*		
y/y change (bps)			-544bps	566bps	109bps	-602bps	224bps			
V/MA Debit Premium to US Retail Sales Growth		*15.9%*	*10.5%*	*11.6%*	*7.9%*	*-1.8%*	*2%*	*10.0%*		
y/y change (bps)			-537bps	105bps	-363bps	-978bps	430bps			
V/MA Credit Premium to US Retail Sales Growth		*3.9%*	*-6.4%*	*0.4%*	*4.6%*	*5.5%*	*5%*	*4.3%*		
y/y change (bps)			-1034bps	675bps	422bps	90bps	-93bps			
V/MA Premium to US Retail Sales Growth		*9.0%*	*1.3%*	*5.9%*	*6.2%*	*1.3%*	*3.4%*	*5.8%*		
y/y change (bps)			-771bps	460bps	28bps	-486bps	207bps			

Source: Company reports, US Bureau of Economic Analysis, US Census, J.P.Morgan Economic & Policy Research and J.P.Morgan estimates.

Note: GDP and Retail Sales data from J.P. Morgan Economic & Policy Research as of 5/10/13.

Exhibit U

NACS v. Bd. of Governors of the Fed. Reserve Sys.

United States District Court for the District of Columbia
July 31, 2013, Decided
Civil Case No. 11-02075 (RJL)

Reporter: 2013 U.S. Dist. LEXIS 107581; 2013 WL 3943489

NACS; NATIONAL RETAIL FEDERATION; FOOD MARKETING INSTITUTE; MILLER OIL CO.; BOSCOV'S DEPARTMENT STORE, LLC; and NATIONAL RESTAURANT ASSOCIATION, Plaintiffs, v. BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, Defendant.

Core Terms

network, issuer, interchange, debit, debit card, merchant, electronic, card, pin, route, signature, non-exclusivity, unaffiliated, incremental, final rule, consumer, fraud-prevention, settlement, authenticate, clearance, vacatur, legislative history, variable, retail, proportional, ambiguous, fraud-related, self-evident, silent, rulemaking

Counsel: **[*1]** For NACS, formerly known as NATIONAL ASSOCIATION OF CONVENIENCE STORES, NATIONAL RETAIL FEDERATION, FOOD MARKETING INSTITUTE, MILLER OIL CO., INC., BOSCOV'S DEPARTMENT STORE, LLC, NATIONAL RESTAURANT ASSOCIATION, Plaintiffs: Linda C. Bailey, Shannen W. Coffin, LEAD ATTORNEYS, STEPTOE & JOHNSON, LLP, Washington, DC.

For BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, Defendant: Joshua P. Chadwick, LEAD ATTORNEY, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, Washington, DC; Katherine H. Wheatley, LEAD ATTORNEY, FEDERAL RESERVE SYSTEM, BOARD OF GOVERNORS, Washington, DC; Yvonne F. Mizusawa, LEAD ATTORNEY, FEDERAL RESERVE BOARD, Washington, DC.

For CLEARING HOUSE ASSOCIATION L.L.C., AMERICAN BANKERS ASSOCIATION, CONSUMER BANKERS ASSOCIATION, CREDIT UNION NATIONAL ASSOCIATION, FINANCIAL SERVICES ROUNDTABLE, INDEPENDENT COMMUNITY BANKERS OF AMERICA, MID-SIZE BANK COALITION OF AMERICA, NATIONAL ASSOCIATION OF FEDERAL CREDIT UNIONS, NATIONAL BANKERS ASSOCIATION, Amici: Seth P. Waxman, LEAD ATTORNEY, WILMER CUTLER PICKERING HALE & DORR LLP, Washington, DC.

For RICHARD J. DURBIN, United States Senator, Amicus: David Alan Balto, LEAD ATTORNEY, DAVID A BALTO, Washington, DC.

For 7-ELEVEN, INC., **[*2]** AUNTIE ANNE'S, INC., BURGER KING CORPORATION, CKE RESTAURANTS, INC., INTERNATIONAL DAIRY QUEEN, INC., JACK IN THE BOX, INC., STARBUCKS CORPORATION, WENDY'S COMPANY, Amici: David D. Golden, LEAD ATTORNEY, CONSTANTINE CANNON, LLP, Washington, DC.

Judges: RICHARD J. LEON, United States District Judge.

Opinion by: RICHARD J. LEON

Opinion

MEMORANDUM OPINION

Plaintiffs NACS (formerly, the National Association of Convenience Stores), National Retail Federation ("NRF"), Food Marketing Institute ("FMI"), Miller Oil Co., Inc. ("Miller"), Boscov's Department Store, LLC ("Boscov's) and National Restaurant Association ("NRA") (collectively, "plaintiffs") bring this action against the Board of Governors of the Federal Reserve System ("defendant" or "the Board") to overturn the Board's Final Rule setting standards for debit card interchange transaction fees ("interchange fees") and network exclusivity prohibitions. Before the Court are the parties' cross-motions for summary judgment [Dkts. ##20, 23]. Upon consideration of the pleadings, oral argument, and the entire record therein, the Court concludes that the Board has clearly disregarded Congress's statutory intent by inappropriately inflating all debit card transaction fees **[*3]** by billions of dollars and failing to provide merchants with multiple unaffiliated networks for each debit card transaction. Accordingly, the plaintiffs' motion is **GRANTED** and defendant's motion is **DENIED.**

FACTUAL BACKGROUND

Four of the six plaintiffs in this case are major trade associations in the retail industry. NACS is an international trade association comprised of more than 2,100 retail members and 1,600 supplier members in the convenience store industry, most located in the United States. Am. Compl. ¶ 15 [Dkt. #18]. NRF is "the world's largest retail trade association," representing department, specialty, discount, catalog, Internet, and independent stores, as well as chain restaurants, drug stores, and grocery stores in over 45 countries. *Id.* ¶ 17. FMI advocates for 1,500 food retailers and wholesalers, including large multi-store chains, regional firms, and independent supermarkets. *Id.* ¶ 19. NRA is the "leading national association representing th[e] [restaurant and food-service] industry, and its members account for over one-third of the industry's retail locations." *Id.* ¶ 23. According to plaintiffs, these trade associations and their members accept debit card payments and **[*4]** therefore are directly affected by the Board's interchange fee and network non-exclusivity regulations. *Id.* ¶¶ 16, 18, 20, 23-25.

The remaining plaintiffs are individual retail operations. Miller is a convenience store and gasoline retailer that also sells heating oil, heating and air-conditioning service, and commercial and wholesale fuels in the United States. *Id.* ¶ 21. Boscov's is an in-store and online retailer with a chain of forty full-service department stores located in five states in the mid-Atlantic region. *Id.* ¶ 22. Both accept debit cards. *See id.* ¶¶ 21-22.

The Board is a federal government agency responsible for the operation of the Federal Reserve System and promulgation of our nation's banking regulations. *Id.* ¶ 26.

I. Debit Cards and Networks

Although now ubiquitous, debit cards were first introduced as a form of payment in the United States in only the late-1960s and early-1970s. *See* Final Rule, *Debit Card and Interchange Fees and Routing*, 76 Fed. Reg. 43,394, 43,395 (July 20, 2011) (codified at *12 C.F.R. §§ 235.1-235.10*) ("Final Rule"). Unlike other payment options, debit cards allow consumers to pay for goods and services at the point of sale using cash drawn directly **[*5]** from their bank accounts, and to withdraw and receive cash back as part of the transaction. *Id.* Prior to debit cards, consumers had to use paper checks or make in-person withdrawals from human bank tellers in order to access their accounts. *Id.*

After decades of slow growth, the volume of debit card transactions increased rapidly in the mid-1990s, as did transactions involving other forms of electronic payment such as credit cards. *Id.* at 43,395 & n.5. This upsurge in debit card usage continued into the 2000s, reaching approximately 37.9 billion transactions in 2009. *Id.* at 43,395. By 2011, debit cards were "used in 35 percent of noncash payment transactions, and have eclipsed checks as the most frequently used noncash payment method.″ *Id.*

Most debit card transactions involve four parties, in addition to the network that processes the transaction. *Id.* at 43,395 & n.14. These parties are: (1) the cardholder (or consumer), who provides the debit card as a method of payment to a merchant; (2) the issuer (or issuing bank), which holds the consumer's account and issues the debit card to the consumer; (3) the merchant, who accepts the consumer's debit card as a method of payment; and (4) the **[*6]** acquirer (or acquiring bank), which receives the debit card transaction information from the merchant and facilitates the authorization, clearance, and settlement of the transaction on behalf of the merchant. *Id.* at 43,395-96. The network provides the software and infrastructure needed to route debit transactions; it transmits consumer account information and electronic authorization requests from the acquirer to the issuer; and it returns a message to the acquirer either authorizing or declining the transaction. *See* *15 U.S.C. § 1693o-2(c)(11)* (defining ″payment card network″); *76 Fed. Reg. at 43,396*. In addition, ″[b]ased on all clearing messages received in one day, the network calculates and communicates to each issuer and acquirer its net debit . . . position for settlement.″ *76 Fed. Reg. at 43,396*.

There are two types of debit card transactions—PIN (or ″personal identification number″) and signature—each of which requires its own infrastructure. In a PIN transaction, the consumer enters a number to authorize the transaction, and the data is carried in a single message over a system evolved from automated teller machine (″ATM″) networks. *Id.* at 43,395. In a signature transaction, **[*7]** the consumer authenticates the transaction by signing something (like a receipt), and the data is routed over a dual-message system utilizing credit card networks. *Id.* [1] ″Increasingly, however, cardholders authorize 'signature' debit transactions without a signature and, sometimes, may authorize a 'PIN' debit transaction without a PIN.″ *76 Fed. Reg. at 43,395 & n.10*.

The vast majority of debit cards (excluding prepaid cards) support authentication by *both* PIN and signature, but which one is used in a given transaction depends in large part on the nature of the transaction and the merchant's acceptance policy. *Id.* at 43,395. For instance, hotel stays and car rentals are not easily processed on PIN-based systems because the transaction amount is unknown at the time of authorization. *Id.* Internet, telephone, and mail-based merchants also generally do not accept PIN transactions. *Id.* Of the eight million merchants in the United States that accept debit cards, the Board estimates that *only* one-quarter have the ability to accept **[*8]** PIN transactions. *Id.*

II. Debit Card Fees

There are several fees associated with debit card transactions. The largest is the interchange fee, which is set by the network and paid by the acquirer to the issuer to compensate the latter for its role in the transaction. *Id.* at 43,396; *see also* *§ 1693o-2(c)(8)* (defining ″interchange transaction fee″). The network also charges acquirers and issuers a switch fee to cover its own transaction-processing costs. *76 Fed. Reg. at 43,396*; *see also* *§ 1693o-2(c)(10)* (defining ″network fee″). Once these fees are assessed, the acquirer credits the merchant's account for the value of its transactions, less a ″merchant discount,″ which includes the interchange fee, network switch fees charged to the acquirer, other acquirer costs, and a markup. *76 Fed. Reg. at 43,396*.

When PIN debit cards were first introduced, most regional networks set their interchange rates at ″par,″ offering no cost subsidization to either merchants or issuers. [2] Some networks, however, implemented ″reverse″ interchange fees, which issuers paid to acquirers to

[1] *See also* Steven C. Salop et al., *Economic Analysis of Debit Card Regulation Under Section 920* ¶ 20 (Oct. 27, 2010) [Dkt. #33] (Joint Appendix 0332-0460) (″Salop″).

[2] Stephen Craig Mott, *Industry Facts Concerning Debit Card Regulation Under Section 920* ¶ 7 (Oct. 27, 2010) [Dkt. #33]

offset the cost to merchants of installing terminals and other infrastructure needed to accept PIN at the point of sale. 76 Fed. Reg. at 43,396; **[*9]** Salop, *supra* note 1, ¶ 21; Mott, *supra* note 2, ¶ 7. Because this model eliminated the costs associated with paper checks and human bank tellers, issuers could provide debit services at a profit, even without collecting interchange fees. [3] Furthermore, issuers touted the convenience of PIN-debit to their customers, and customers in turn maintained higher account balances, which issuers could loan out at a profit. Mott, *supra* note 2, ¶ 3.

As debit cards became more popular, interchange fee rates and the direction in which the fees flowed began to shift. *See* 76 Fed. Reg. at 43,396. By the early-2000s, acquirers were paying issuers ever-increasing interchange fees for PIN transactions. *See id.* Interchange fees for signature transactions, meanwhile, were modeled on credit card **[*10]** fees and were even higher than for PIN. *Id.*; Salop, *supra* note 1, ¶ 23.

In recent years, interchange fees have climbed sharply with PIN outpacing signature debit fees. From 1998 to 2006, merchants faced a 234 percent increase in interchange fees for PIN transactions, Mott, *supra* note 2, ¶ 24, and by 2009, interchange fee revenue for debit cards totaled $16.2 billion, 76 Fed. Reg. at 43,396. For most retailers, debit card fees represent the single largest operating expense behind payroll. [4]

Because debit card transaction fees, including interchange fees, are set by the relevant network and paid by the acquirer (on behalf of merchants) to the issuer, perhaps the best way to understand why such fees have skyrocketed over the past two decades is to recognize the market dynamics among the networks, issuers, and merchants. Although there are many debit card networks in the United States, networks under Visa's and MasterCard's ownership account for roughly 83 percent of all debit transactions and nearly 100 percent **[*11]** of signature transactions. [5] Visa also owns Interlink, the largest PIN network. [6] Due to their hefty market share, Visa and MasterCard exercise considerable market power over merchants with respect to debit card acceptance. *See* Salop, *supra* note 1, ¶ 35. Hundreds of millions of consumers use cards that operate on Visa's and MasterCard's debit networks. *Id.* ¶ 36. Merchants know that if they do not accept those cards and networks, they risk losing sales, and ″losing the sale would be costlier to the merchant than accepting debit and paying the high interchange fee.″ *Id.*

At the same time, Visa, MasterCard, and other debit networks vie for issuers to issue cards that run on their respective networks. *Id.* ¶¶ 33, 43. They can entice issuers **[*12]** by emphasizing their relative market power and ability to set interchange and other fees. *Id.; see also* 76 Fed. Reg. at 43,396. Networks thus have an incentive to continuously raise merchants' interchange fees—which, again, flow from merchants to issuers—as a way to attract issuers to the network. [7] Visa, for instance, more than tripled the Interlink interchange fee since the early-1990s, forcing small competitor PIN net-

(Joint Appendix 0292-0331) (″Mott″); Salop, *supra* note 1, ¶ 21.

3 Merchants Payments Coalition (″MPC″), *Comments in Response to Notice of Proposed Rulemaking on Debit Card Interchange Fees and Routing* at 1 (Feb. 22, 2011) [Dkt. #33] (Joint Appendix 0149-0238) (″MPC Comments″); Salop, *supra* note 1, ¶ 21.

4 NACS, *Comments in Response to Notice of Proposed Rulemaking on Debit Card Interchange Fees and Routing* at 1 (Feb. 22, 2011) [Dkt. #33] (Joint Appendix 0239-0248) (″NACS Comments″).

5 Salop, *supra* note 1, ¶ 26; Senator Richard J. Durbin, *Comments in Response to Notice of Proposed Rulemaking on Debit Card Interchange Fees and Routing* at 1 (Feb. 22, 2011) [Dkt. #33] (Joint Appendix 0125-0140) (″Durbin Comments″).

6 Salop, *supra* note 1, ¶ 26. Today, there are approximately 15 PIN debit networks, the largest of which are Interlink (owned by Visa), Star (owned by First Data Corp.), PULSE (owned by Discover), and NYCE (owned by FIS). *Id.* ¶ 22.

7 Salop, *supra* note 1, ¶¶ 34, 44; *see also id.* ¶ 49 (″When debit networks raise their interchange fee, they gain issuance and cardholders, but they do not lose merchant acceptance.″); Durbin Comments, *supra* note 5, at 5 (″[C]ompetition between networks does not lead to downward pressure on interchange rates because networks compete to attract issuers and do so by raising inter-

works to increase their fees as well. Mott, *supra* note 2, ¶¶ 23-24; Salop, *supra* note 1, ¶¶ 40, 46. Within each network, issuers all receive the same interchange fee, regardless of their efficiency in processing transactions or their efforts to prevent fraud. *See* Durbin Comments, *supra* note 5, at 5, 9.

In addition, Visa's and MasterCard's ″Honor All Cards″ rules force merchants that accept their networks' ubiquitous credit cards also to accept their signature debit cards with their corresponding high signature transactions fees. [8] As a practical matter, then, merchants cannot put downward pressure on interchange fees by rejecting network-affiliated debit cards. Durbin Comments, *supra* note 5, at 2, 5. And issuers have implemented reward programs, special promotions, and penalty fees to encourage debit (especially signature-debit) usage. Mott, *supra* note 2, ¶¶ 16-18; Salop, *supra* note 1, ¶ 47. Merchants have responded by raising the price of goods and services to offset the fees. *See* Durbin Comments, *supra* note 5, at 5, 9; NRF Comments, *supra* note 8, at 5.

The major card networks, not surprisingly, have also increased their own network fees, facilitated in part by exclusivity deals between the leading networks and debit issuers. Mott, *supra* note 2, ¶¶ 26-27; Salop, *supra* note 1, ¶¶ 30 -31. Although there has been some network competition for PIN transactions, Visa and MasterCard have longstanding operating rules that disallow any other network from handling signature transactions on their cards. *76 Fed. Reg. at 43,396*; Mott, *supra* note 2, ¶¶ 26-27; Salop, *supra* note 1, ¶¶ 30-31. Within the PIN market, too, Visa has agreements with particular issuers that create exclusivity via ″volume commitments that are pegged to incentives such as reduced fees″ or require that Interlink be their sole PIN debit network. Salop, *supra* note 1, ¶ 30. Thus, the dominant networks have been able to raise their network fees on merchants without concern for lost transaction volume because merchants have no other alternatives for routing transactions. *Id.* ¶ 31. According to information collected by the Board, total network fees exceeded $4.1 billion in 2009, with networks charging issuers and acquirers more than $2.3 billion and $1.8 **[*15]** billion, respectively. *76 Fed. Reg. at 43,397*.

III. The Durbin Amendment

On July 21, 2010, Congress passed legislation to address the rise of debit card fees. Coined the ″Durbin Amendment″ after its sponsor, Illinois Senator Richard J. Durbin, the legislation seeks to implement Section 920 of the Electronic Fund Transfer Act (″EFTA″), *15 U.S.C. § 1693o-2*, as enacted by Section 1075 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (″Dodd-Frank Act″), Pub. L. No. 111-203, 124 Stat. 1376, 2068-2074 (2010). The Durbin Amendment imposes various standards and rules governing debit fees and transactions. *See id.; 76 Fed. Reg. at 43,394*. The regulations apply only to issuers with assets exceeding $10 billion. *§ 1693o-2(a)(6)(A)*.

A. Interchange Fees

The Durbin Amendment first addresses interchange transaction fees, which are defined as ″any fee established, charged or received by a payment card network for the purpose of compensating an issuer for its involvement in an electronic debit transaction.″ *§ 1693o-2(c)(8)*. It provides that the fee charged by the issuer ″with respect to an electronic debit transaction *shall be reasonable and proportional* to the cost incurred by the issuer **[*16]** with respect to the transaction.″ *Id. § 1693o-2(a)(2)* (emphasis added). It then directs the Board to establish standards to determine whether the amount of a debit card interchange fee is ″reasonable and proportional to the cost incurred by the is-

---

change fees.″); MPC Comments, *supra* note 3, at 1 (″As banks became accustomed to receiving high **[*13]** interchange rates . . . which bore no relationship to costs . . . a dynamic of merchants being forced to pay ever-increasing interchange rates to underwrite network competition for issuers became the norm for the industry.″).

[8] Mott, *supra* note 2, ¶ 13; MPC Comments, *supra* note 3, at 1; NRF, *Comments in Response to Notice of Proposed Rulemaking on Debit Card Interchange Fees and Routing* at 4 (Feb. 22, 2011) [Dkt. #33] (Joint Appendix **[*14]** 0249-0256) (″NRF Comments″).

suer" with respect to the transaction. *Id.* *§ 1693o-2(a)(3)(A)*. To promulgate these standards, Congress instructs the Board that it:

> shall—
>
> (A) consider the functional similarity between—
>
> (i) electronic debit transactions; and
>
> (ii) checking transactions that are required within the Federal Reserve bank system to clear at par; [and]
>
> (B) distinguish between—
>
> (i) the incremental cost incurred by an issuer for the role of the issuer in the authorization, clearance, or settlement of a particular electronic debit transaction, which cost shall be considered under *[§ 1693o-2(a)(2)]*; and
>
> (ii) other costs incurred by an issuer which are not specific to a particular electronic debit transaction, which costs shall not be considered under *[§ 1693o-2(a)(2)]*

Id. *§ 1693o-2(a)(4)(A)—(B)*.

Once the Board establishes this interchange transaction fee standard, Congress authorizes the Board to adjust the fee to allow for fraud-prevention costs, provided the issuer complies **[*17]** with standards established by the Board relating to fraud prevention:

> (5) Adjustment to interchange transaction fees for fraud prevention costs
>
> (A) Adjustments. The Board may allow for an adjustment to the fee amount received or charged by an issuer under *[§ 1693o-2(a)(2)]*, if—
>
> (i) such adjustment is reasonably necessary to make allowance for costs incurred by the issuer in preventing fraud in relation to electronic debit transactions involving that issuer; and
>
> (ii) the issuer complies with the fraud-related standards established by the Board under [§ 1693o-2(a)(5)(B)], which standards shall—
>
> (I) be designed to ensure that any fraud-related adjustment of the issuer is limited to the amount described in clause (i) and takes into account any fraud-related reimbursements (including amounts from chargebacks) received from consumers, merchants, or payment card networks in relation to electronic debit transactions involving the issuer; and
>
> (II) require issuers to take effective steps to reduce the occurrence of, and costs from,

> fraud in relation to electronic debit transactions, including through the development and implementation of cost-effective fraud prevention technology.

Id. *§ 1693o-2(a)(5)(A)*. **[*18]** [9]

B. Network Regulation

The Durbin Amendment also instructs the Board to regulate network fees by prescribing rules related to network non-exclusivity for routing debit transactions. *76 Fed. Reg. at 43,394*. Preferring a market-oriented approach to network fees, [10] the Durbin Amendment provides that the Board may regulate such fees only as necessary to ensure that they are not used to "directly or indirectly compensate an issuer with respect to an electronic debit transaction" or "circumvent or evade the restrictions . . . and regulations" prescribed by the Board under this subsection. *§ 1693o-2(a)(8)(B)(i)—(ii)*. At the same time, the Amendment requires the Board to adopt rules that prohibit issuers and networks from entering into exclusivity arrangements or imposing restrictions on the networks through which merchants may route a transaction. Specifically, Congress directs the Board to promulgate regulations providing that issuers and networks "shall not directly **[*19]** or through any agent . . . restrict the number of payment card networks [11] on which an electronic debit transaction may be processed" to one such network or two or more affiliated networks or "inhibit the ability of any person who accepts debit cards for payments to direct the routing of electronic debit transactions for processing over any payment card network that may process such transactions." *§ 1693o-2(b)(1)(A)-(B)*.

IV. The Board's Rule

After the enactment of the Dodd-Frank Act, the Board sought information from various industry participants to assist the agency in its initial rulemaking. **[*20]** The Board met with debit card issuers, payment card networks, merchant acquirers, consumer groups, and industry trade associations on a number of occasions to discuss a host of issues including debit transaction processing flows, transaction fee structures and levels, fraud-prevention activities, fraud losses, routing restrictions, card-issuing arrangements, and incentive programs. [12] In September 2010, the Board circulated surveys to financial organizations with assets totaling $10 billion or more, networks that process debit card transactions, and the largest nine merchant acquirers in order to collect data on PIN, signature, and prepaid debit card operations and, for each card type, the costs associated with interchange and other network fees, fraud losses, fraud-prevention and data-security activities, network exclusivity arrangements, and debit-card routing restrictions. *75 Fed. Reg. at 81,724-25*. In both the proposed and final rulemaking, the Board provided a detailed summary of the survey responses, ***see*** *id.* at 81,724 -26; *76 Fed. Reg. at 43,397-98*, and upon issuing the Final Rule, it released a full report in-

---

[9] This fraud-prevention cost adjustment was the subject of a separate rulemaking by the Board. *See* Final Rule, *Debit Card and Interchange Fees and Routing*, 77 Fed. Reg. 46,258 (adopted Aug. 3, 2012) (codified at 12 C.F.R. § 235.4).

[10] "The term 'network fee' means any fee charged and received by a payment card network with respect to an electronic debit transaction, other than an interchange transaction fee." § 1693o-2(c)(10).

[11] "Payment card network" is defined as "an entity that directly, or through licensed members, processors, or agents, provides the proprietary services, infrastructure, and software that route information and data to conduct debit card or credit card transaction authorization, clearance, and settlement, and that a person uses in order to accept as a form of payment a brand of debit card." § 1693o-2(c)(11).

[12] Notice of Proposed Rulemaking, *Debit Card Interchange Fees and Routing*, 75 Fed. Reg. 81,722, 81,724 **[*21]** (proposed Dec. 28, 2010) (to be codified at 12 C.F.R. §§ 235.1-235.10) ("NPRM"); *see also* Durbin Comments, *supra* note 5, at 2 (describing Board's "information-gathering process" as "notable for its transparency and thoroughness").

cluding survey statistics. [13]

A. Proposed Rule

On December 28, 2010, the Board issued a NPRM implementing the Durbin Amendment and requesting public comments. *75 Fed. Reg. at 81,722*. Stemming from its determination to include ″only those costs that are specifically mentioned for consideration in the statute,″ the Board proposed that the interchange transaction fee standard be limited to the costs associated with the authorization, clearing, and settlement (″ACS″) of an electronic debit transaction that vary with the number of transactions sent to the issuer within the reporting period. *Id.* at 81,734-35, 81,739. The Board noted that, by focusing on the issuer's variable, per-transaction **[*22]** ACS costs, it was carrying out Congress's mandate to establish standards to assess whether an interchange fee is reasonable and proportional to the cost incurred by the issuer with respect to the transaction. *Id.* Consequently, in the NPRM, the Board suggested that network processing fees, [14] as well as fixed [15] and overhead [16] costs common to all debit transactions and not attributable to the ACS of any one transaction, be excluded from recovery under the interchange transaction fee standard. Fraud losses and the costs of fraud-prevention and reward programs were also deemed unallowable because they are not attributable to the variable ACS costs incurred by an issuer. *75 Fed. Reg. at 81,755, 81,760*.

While merchants overwhelmingly supported the Board's plan to limit allowable costs within the interchange transaction fee standard to only incremental ACS costs, networks and issuers advocated expanding the proposed set of allowable costs. *76 Fed. Reg. at 43,424-25*. Indicating that its proposal was still subject to change, the Board ″request[ed] comment on whether it should allow recovery through interchange fees of the other costs of a particular transaction beyond authorization, clearing, and settlement″ and, if so, ″on what other costs of a particular transaction, including network fees paid by issuers for the processing of transactions, should be considered allowable costs.″ *75 Fed. Reg. at 81,735*.

Drawing on its comprehensive survey data relating to debit transaction fees, the Board proposed two alternative standards to govern interchange fees. The first, which the Board called ″Alternative 1,″ allowed each issuer to recover its actual incremental ACS costs up to a safe harbor of seven cents ($.07) per transaction if the issuer chose not to determine **[*25]** its individual allowable costs, and up to a cap of twelve cents ($.12) if it did. *75 Fed. Reg. at 81,736-38*. The second, ″Alternative 2,″ set a cap at a flat twelve cents ($.12) per transaction. *Id.* at 81,738.

---

[13] *See generally* Bd. of Governors of the Federal Reserve Sys., *2009 Interchange Revenue, Covered Issuer Cost, and Covered Issuer and Merchant Fraud Loss Related to Debit Card Transactions* [Dkt. #33] (Joint Appendix 0261-0291), *available at* http://www.federalreserve.gov/paymentsystems/files/debit fees_costs.pdf.

[14] 75 Fed. Reg. at 81,735-36, 81,739; 76 Fed. Reg. at 43,424. The Board proposed in the NPRM that network fees be excluded from the interchange fee standard. 75 Fed. Reg. at 81,735. Including them in allowable costs would risk putting merchants ″in the position of effectively paying all network fees associated with debit card transactions″ because ″an acquirer would pay its own network processing fees directly to the network and would indirectly pay the issuer's network processing fees through **[*23]** the allowable costs included in the interchange fee standard.″ *Id.*

[15] The Board proposed that fixed costs—even if incurred for activities related to the ACS of debit card transactions—*not* be factored into allowable costs within the interchange fee calculus. 75 Fed. Reg. at 81,736 (″This [proposed] measure would *not* consider costs that are common to all debit card transactions and could never be attributed to any *particular* transaction [*i.e.*, fixed costs], even if those costs are specific to debit transactions as a whole.″). Indeed, the Board specifically contemplated that costs that do not vary with the number of transactions sent to the issuer over the calendar year, such as network connectivity fees and fixed costs of production, would be excluded as ″unallowable, fixed costs,″ or ″those costs that do not vary, up to existing capacity limits, with the number of transactions sent to the issuer over the calendar year,″ under the interchange transaction fee standard. *Id.* at 81,736, 81,739, 81,760.

[16] In the NPRM, the Board recommended that the cost of an issuer's facilities, human resources, and legal staff, as well as its costs in operating a branch office, be categorized as common overhead **[*24]** costs that cannot be allocated for the purpose of calculating its permissible interchange transaction fee. 75 Fed. Reg. at 81,735, 81,760.

With respect to network non-exclusivity for routing debit transactions, the Board requested comment on two alternative methods for implementation. The first, called "Alternative A," required at least two unaffiliated payment card networks active on each debit card, even if one network processed only signature transactions and one handled only PIN transactions. *See* *75 Fed. Reg. at 81,749*. The second, "Alternative B" required at least two active unaffiliated payment card networks for each type of authorization method—*i.e.*, at least two to process PIN transactions and two to process signature. *75 Fed. Reg. at 81,749*. In either case, issuers and networks could not inhibit a merchant's ability to direct the routing of an electronic debit transaction over any available network. *Id.* at 81,751.

More than 11,500 commenters—including several of the named plaintiffs, as well as various issuers, payment card networks, consumers, consumer advocates, trade associations and members of Congress—replied **[*26]** to the Board's request for comment. *76 Fed. Reg. at 43,394*. [17] In drafting the Final Rule, the Board relied on the voluminous comments, the statutory provisions, the available cost data, its understanding of the debit payment system, and other relevant information. *76 Fed. Reg. at 43,394*.

B. Final Rule

The Board's Final Rule was published on July 20, 2011 and became effective on October 1, 2011. *See id.* As its standard for assessing whether the interchange fee for a debit transaction is reasonable and proportional to the issuer's costs, the Board adopted "a modified version of proposed Alternative 2." *Id.* at 43,404. It permits each issuer to receive a fee as high as twenty-one cents ($.21) per transaction plus an *ad valorem* amount of five basis points of the transaction's value (0.05%). *12 C.F.R. § 235.3(b)*.

The Board increased the allowable interchange fee (from twelve cents in Alternative 2 to twenty-one **[*27]** cents in the Final Rule) after concluding that the language and purpose of the Durbin Amendment allow the Board to consider additional costs not explicitly excluded from consideration by the statute. *Id.* at 43,426-27. According to the Board, *§ 1693o-2(a)(4)(B)* on the one hand ***requires*** the Board to consider incremental ACS costs incurred by issuers, and on the other hand ***prohibits*** consideration of any issuer costs that are not specific to a particular transaction; but it is ***silent*** with respect to costs that fall into neither category (***e.g.***, costs specific to a particular transaction but are not incremental ACS costs). *Id.* at 43,426. The Board concluded that it had discretion to consider costs on which the statute is silent. *Id.*

In setting the final interchange transaction fee standard, the Board considered all costs for which it had data, other than those prohibited under *subsection (a)(4)(B)*. *Id.* Based on survey data and public comments, the Board found that issuers incur transaction costs other than the variable ACS costs that the Board originally proposed as the only allowable costs in the interchange fee, and that "no electronic debit transaction can occur without incurring these **[*28]** [non-variable ACS] costs, making them . . . specific to each and every electronic debit transaction" under the statute. *Id.* at 43,427; *see also* *id.* at 43,404. Consequently, the Board amended its final interchange transaction fee standard to include, in addition to variable ACS costs: (1) fixed costs related to processing a particular transaction, such as network connectivity and software, hardware, equipment, and labor; (2) transaction monitoring costs; (3) an allowance for fraud losses (the *ad valorem* component); and (4) network processing fees. *Id.* at 43,404, 43,429-31. [18]

As to the network non-exclusivity rule, the Board concluded that "[t]he plain language of

[17] 76 Fed. Reg. at 43,394; *see generally* Durbin Comments, *supra* note 5; FMI, *Comments in Response to Notice of Proposed Rulemaking on Debit Card Interchange Fees and Routing* (Feb. 22, 2011) [Dkt. #33] (Joint Appendix 0141-0148); NACS Comments, *supra* note 4; NRF Comments, *supra* note 8.

[18] The Board still excluded from the final interchange transaction fee standard other costs not incurred as a consequence of ef-

the statute does not require that there be two unaffiliated payment card networks available to the merchant **[*29]** for each method of authentication." *Id.* at 43,447; *see also id.* ("[T]he statute does not expressly require issuers to offer multiple unaffiliated signature *and* multiple unaffiliated PIN debit card network choices on each card." (emphasis added)). Hence, the Board adopted Alternative A, which requires only that two unaffiliated networks be available for each debit card, not for each authorization method. *12 C.F.R. § 235.7(a)(2)* & Official Cmt. 1; *76 Fed. Reg. at 43,404*.

On the same day that the Board adopted its Final Rule on debit card interchange fees and network non-exclusivity, it also published a separate Interim Final Rule on a proposed adjustment to the interchange fee for fraud-prevention costs under *15 U.S.C. § 1693o-2(a)(5)*. *See 76 Fed. Reg. at 43,478*. The Board has since finished that rulemaking, and on August 2, 2012 it adopted a final rule governing the fraud-prevention cost adjustment. *See 77 Fed. Reg. 46,258*; *12 C.F.R. § 235.4*. [19]

V. This Litigation

On November 22, 2011, plaintiffs sued the Board, seeking a declaratory judgment that the Final Rule's interchange fee and network non-exclusivity provisions (12 C.F.R. §§ 253.3(b) and *235.7(a)(2)*) are arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with the law. *See generally* Compl. [Dkt. #1]. Moreover, plaintiffs seek costs and reasonable attorneys' fees pursuant to *28 U.S.C. § 2412*, and such other relief as the Court deems reasonable and proper. *See generally* Am. Compl. Plaintiffs amended their complaint on March 2, 2012. *Id.*

As individual retailers that accept debit cards and trade associations comprised of merchants, *see supra* p. 2, plaintiffs contend that the Final Rule is an unreasonable interpretation of the Durbin Amendment because it ignores Congress's directives regarding interchange fees and network exclusivity. *See* Am. Compl. ¶¶ 5, 11. As to the former, plaintiffs **[*31]** assert that the Durbin Amendment limits the Board's consideration of allowable costs to the "incremental cost" of "authorization, clearance and settlement of a particular electronic debit transaction," and that, by including other costs in the fee standard, the Board "acted unreasonably and in excess of its statutory authority." *Id.* ¶¶ 6, 70-73, 82-83. Regarding the latter, plaintiffs argue that the Board disregarded the plain meaning of the Durbin Amendment and misconstrued the statute by adopting a network non-exclusivity rule requiring all debit *cards* be interoperable with at least two unaffiliated payment networks, rather than requiring that all debit *transactions* be able to run over at least two unaffiliated networks. *Id.* ¶¶ 9-10, 91 -93.

Plaintiffs moved for summary judgment on March 2, 2012, arguing that the Final Rule's interchange transaction fee and network non-exclusivity regulations should be declared invalid under the Administrative Procedure Act ("APA"), *5 U.S.C. § 706(2)*, because the Board impermissibly implemented the Durbin Amendment's statutory command and thus exceeded its authority. Pls.' Mot. for Summ. J. ("Pls.'s Mot.") at 1 [Dkt. #20]; Pls.' Mem. in Supp. of Pls.' **[*32]** Mot. for Summ. J. ("Pls.' Mem.") at 2 [Dkt. #20]. The Court permitted amicus curiae briefs to be filed by three different parties: (1) a consortium of major nationwide bank and credit union trade associations in

fecting a transaction, including costs related to customer inquiries, reward programs, corporate overhead (*e.g.*, executive compensation), establishing the account relationship, card production and delivery, marketing, research and development, and network membership fees. *Id.* at 43,404, 43,427-29.

[19] The Board allows issuers to "receive or charge an amount of no more than 1 cent per transaction in addition to any interchange transaction fee it receives or charges" if the issuer "develop[s] and implement[s] policies and procedures reasonably **[*30]** designed to take effective steps to reduce the occurrence of, and costs to all parties from, fraudulent electronic debit transactions, including through the development and implementation of cost-effective fraud-prevention technology." 12 C.F.R. § 235.4(a), (b)(1).

the United States; [20] (2) Senator Richard J. Durbin, a member of Congress and the primary author of the Durbin Amendment; [21] and (3) a group of convenience stores, quick-service restaurants and specialty coffee shops that operate small business franchises and licensed stores. [22] The latter two groups of amici filed briefs in support of plaintiffs' motion for summary judgment; the bank and credit union amici supported neither party.

On April 13, 2012, the Board filed a cross-motion for summary judgment. contending that plaintiffs' claims lack merit and that the Board is entitled to judgment as a matter of law. Def.'s Cross-Mot. for Summ. J. ("Def.'s Cross-Mot.") at 1 [Dkt. #23]; Def.'s Mem. in Supp. of Def.'s Mot. for Summ. J. and in Opp'n to Pls.' Mot. for Summ. J. ("Def.'s Mem.") at 1-2 [Dkt. #23]. On October 2, 2012, I heard oral argument from the parties as well as the bank and credit union amici. *See* Civ. Case No. 11-2075, Minute Entry, Oct. 2, 2012. For the reasons set forth below, I agree with the plaintiffs and GRANT summary judgment in their favor.

STANDARD OF REVIEW

I. Summary Judgment

Summary judgment is appropriate when the record evidence demonstrates that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Fed. R. Civ. P. 56(a)*; *see also* *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). **[*34]** The burden is on the moving party to demonstrate an "absence of a genuine issue of material fact" in dispute. *Celotex*, 477 U.S. at 323. In a case involving judicial review of final agency action under the APA, however, "the Court's role is limited to reviewing the administrative record." *Air Transp. Ass'n of Am. v. Nat'l Mediation Bd.*, 719 F. Supp. 2d 26, 32 (D.D.C. 2010) (citations omitted). "[T]he function of the district court is to determine whether or not as a matter of law the evidence in the administrative record permitted the agency to made the decision it did." *Select Specialty Hosp.—Bloomington, Inc. v. Sebelius*, 893 F. Supp. 2d 1, 2012 WL 4165570, at *2 (D.D.C. 2012) (citations and internal quotation marks omitted).

II. Administrative Procedure Act

Under the APA, the Court must set aside agency action that exceeds the agency's "statutory jurisdiction, authority, or limitations." *5 U.S.C. § 706(2)(C)*. To determine whether an agency has acted outside its authority, I must apply the two-step framework under *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984). *See Ass'n of Private Sector Colls. & Univs. v. Duncan*, 681 F.3d 427, 441, 401 U.S. App. D.C. 96 (D.C. Cir. 2012).

A **[*35]** *Chevron* analysis first requires the reviewing court to determine "whether Congress has directly spoken to the precise question at issue." *Chevron*, 467 U.S. at 842. To resolve whether "the intent of Congress is clear" under this first step, *id.*, the court must exhaust the "traditional tools of statutory construction," including textual analysis, structural analysis, and (when appropriate) legislative history, *id.* at 843 n.9; *Bell Atl. Tel. Cos. v. FCC*, 131 F.3d 1044, 1047, 327 U.S. App. D.C. 390 (D.C. Cir. 1997). "If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect

---

[20] *See generally* Amici Curiae Brief of The Clearing House Ass'n L.L.C. et al. ("Clearing House Amicus Br.") [Dkt. #22]. Amici are The Clearing House Association L.L.C., American Bankers Association, Consumer Bankers Association, Credit Union National Association, The Financial Services Roundtable, Independent Community Bankers of America, Mid-Size Bank Coalition of America, National Association of Federal Credit Unions, and National Bankers Association. *Id.*

[21] *See generally* Amicus Curiae Brief of Senator Richard J. Durbin ("Durbin Amicus Br.") [Dkt. **[*33]** #27].

[22] *See generally* Amici Curiae Brief of 7-Eleven, Inc. et al. ("7-Eleven Amicus Br.") [Dkt. #30]. Amici are 7-Eleven, Inc., Auntie Anne's, Inc., Burger King Corporation, CKE Restaurants, Inc., International Dairy Queen, Inc., Jack in the Box Inc., Starbucks Corporation, and The Wendy's Company. *Id.*

to the unambiguously expressed intent of Congress." *Chevron*, 467 U.S. at 842-43.

If after employing these tools, however, the Court concludes that the statute is silent or ambiguous on the specific issue, the Court moves on to step two and defers to any agency interpretation that is based on a permissible construction of the statute. *Id.* at 843. An agency's construction is permissible "unless it is arbitrary or capricious in substance, or manifestly contrary to the statute." *Mayo Found. for Med. Educ. & Research v. United States*, 131 S. Ct. 704, 711, 178 L. Ed. 2d 588 (2011) (citations and internal **[*36]** quotation marks omitted). "[T]he whole point of *Chevron* is to leave the discretion provided by the ambiguities of a statute with the implementing agency." *Ass'n of Private Sector Colls.*, 681 F.3d at 441 (citations and internal quotation marks omitted).

ANALYSIS

I. Plaintiffs Have Met Their Burden of Production for Article III Standing.

Curiously, the Board contends in a footnote that plaintiffs have failed to establish Article III standing because they failed in their opening brief to provide affidavits or other evidence that set forth specific facts demonstrating standing. *See* Def.'s Mem. at 13 n.7 (citing *Sierra Club v. EPA*, 292 F.3d 895, 899, 352 U.S. App. D.C. 191 (D.C. Cir. 2002)). But reading on, the *Sierra Club* court explicitly recognized that:

> In many if not most cases the petitioner's standing to seek review of administrative action is self-evident; no evidence outside the administrative record is necessary for the court to be sure of it. In particular, if the complainant is an object of the action (or forgone action) at issue—as is the case usually in review of a rulemaking . . . —there should be little question that the action or inaction has caused him injury, and that a judgment preventing or requiring **[*37]** the action will redress it.

292 F.3d at 899-900 (citation and internal quotation marks omitted).

Indeed, our Court of Appeals has expressly rejected the use of the *Sierra Club* rule as a procedural "gotcha" in cases where standing was reasonably thought to be self-evident. *See* *Am. Library Ass'n v. FCC*, 401 F.3d 489, 493-95, 365 U.S. App. D.C. 207 (D.C. Cir. 2005); *see also* *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 733, 355 U.S. App. D.C. 268 (D.C. Cir. 2003) ("*Sierra Club*, however, does not require parties to file evidentiary submissions in support of standing in every case. To the contrary, our decision made clear that '[i]n many if not most cases the petitioner's standing to seek review of administrative action is self-evident.'"). For instance, in *American Library Association*, our Circuit Court explained that interpreting *Sierra Club* as requiring long jurisdictional statements in opening briefs was inconsistent with precedent, a waste of judicial resources, and an unnecessary burden on litigants. *401 F.3d at 494*. Indeed, the court went on to clarify that *Sierra Club* need only "remind[] petitioners challenging administrative actions that, *when they have good reason to know that their standing is not self-evident*, they should **[*38]** explain the basis for their standing at the earliest appropriate stage in the litigation." *Id.* at 493.

Here, plaintiffs had every reason to believe that their standing was self-evident and no cause to suspect that standing would be challenged in this court at all, much less in a footnote on summary judgment! [23] Moreover, the administrative record contains countless examples of how plaintiffs are injured by the Board's interchange transaction fee and network non-

[23] The Board chose not to file a motion to dismiss for lack of standing and gave plaintiffs no indication that it would challenge their claims on justiciability grounds. *See* Pls.' Reply Mem. in Supp. of Pls.' Mot. for Summ. J. and in Opp'n to Def.'s Mot. for Summ. J. ("Pls.' Reply") [Dkt. #26] at 7 n.3.

exclusivity regulations. [24] *Cf. Am. Chemistry Council v. Dep't of Transp.*, 468 F.3d 810, 822, 824, 373 U.S. App. D.C. 330 (D.C. Cir. 2006) (standing can be "self-evident" from the administrative record). The Board's own rulemaking recognizes that it is merchants that pay interchange and network fees and are thus directly affected by the Board's Final Rule regulating both. [25] *See Fund for Animals*, 322 F.3d at 734 ("[F]or the purpose of determining whether standing is self-evident, we see no meaningful distinction between a regulation that directly regulates a party and one that directly regulates the disposition of a party's property."). Accordingly, it was reasonable for each plaintiff to assume that it (or in the case of the trade associations, one **[*39]** of its members) would suffer an Article III injury when the Board's Final Rule was implemented. And in their reply brief, plaintiffs submitted declarations demonstrating what was already self-evident: that they will suffer cognizable harms as a result of the Board's regulations. *See* Pls.' Reply at 7-9; *cf. Cmtys. Against Runway Expansion, Inc. v. FAA*, 355 F.3d 678, 684-85, 359 U.S. App. D.C. 383 (D.C. Cir. 2004) (affidavits submitted with reply brief are sufficient under *Sierra Club* because they made associational standing "patently obvious" and respondent was not prejudiced). In short, plaintiffs have easily met their burden of production with regard to Article III standing here, and this Court will thus proceed to the merits.

II. The Interchange Transaction Fee Regulation Is Invalid Under the APA.

Plaintiffs contend that the Final Rule's interchange transaction fee standard, *12 C.F.R. § 235.3(b)*, is plainly foreclosed by the text, structure, and purpose of the Durbin Amendment and is arbitrary, capricious, and contrary to law. According to plaintiffs, the plain language and legislative history of the statute make clear which issuer costs may be included in the interchange transaction fee standard, and the Board's inclusion of other costs cannot survive **[*41]** scrutiny under *Chevron's* first step. The Board, meanwhile, takes the position that the Durbin Amendment is silent, and therefore ambiguous, with respect to issuer costs not explicitly addressed in the statute. And because the final interchange fee provision is a reasonable construction of the statute, says the Board, it is entitled to *Chevron* deference. For the following reasons, I agree with the plaintiffs.

A. The Durbin Amendment Plainly Limits the Costs Allowable Within the Interchange Transaction Fee Standard to Those Identified in 15 U.S.C. § 1693o-2(a)(4)(B)(i).

Determining whether Congress has spoken to the precise question at issue through "the [statutory] language itself, the specific context in which that language is used, and the broader context of the statute as a whole" is, of course, this Court's first task. *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341, 117 S. Ct. 843, 136 L. Ed. 2d 808 (1997). Our Court of Appeals has directed this Court to use "all traditional tools of statutory interpretation, including text, structure, purpose, and legislative history, to ascertain Congress's intent at *Chevron* step one." *Nat'l Cable & Telecomms. Ass'n v. FCC*, 567 F.3d 659, 663, 386 U.S. App. D.C. 131 (D.C. Cir. 2009) (citation and internal **[*42]** quotation marks omitted). If this examination yields a clear result, "then Congress has expressed its intention as to the question, and deference is not appropriate." *Natural Res. Def. Council, Inc. v. Daley*, 209 F.3d 747, 752, 341 U.S. App. D.C. 119 (D.C. Cir. 2000).

To discern the text's plain meaning, the Court is to look to "the language of the statute it-

---

[24] *See, e.g.*, 76 Fed. Reg. at 43,462 ("[I]it is possible that merchants with a large proportion of small-ticket transactions may experience an increase in total interchange fees . . . ."); **[*40]** *id.* at 43,448 ("Alternative A provides merchants fewer routing options with respect to certain electronic debit transaction compared to Alternative B.").

[25] *See, e.g.*, 76 Fed. Reg. at 43,396 ("The interchange fee is set by the relevant network and paid by the [merchant] acquirer to the issuer . . . . [T]he [merchant] acquirer charges the merchant a merchant discount . . . that includes the interchange fee"); 75 Fed. Reg. at 81,727 ("[I]n point-of-sale transactions, these [network-exclusivity prohibition and routing] provisions improve the ability of a merchant to select the network that *minimizes* its cost . . . and otherwise provides the most advantageous terms.").

self." *Caraco Pharm. Labs., Ltd. v. Novo Nordisk A/S*, 132 S. Ct. 1670, 1680, 182 L. Ed. 2d 678 (2012) (citation omitted). "[W]hen the statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms." *Hartford Underwriters Ins. Co. v. Union Planters Bank*, 530 U.S. 1, 6, 120 S. Ct. 1942, 147 L. Ed. 2d 1 (2000) (citation and internal quotation marks omitted). "Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning." *BP Am. Prod. Co. v. Burton*, 549 U.S. 84, 91, 127 S. Ct. 638, 166 L. Ed. 2d 494 (2006); *see also* *FCC v. AT & T Inc.*, 131 S. Ct. 1177, 1182, 179 L. Ed. 2d 132(2011).

An analysis of the statutory text, however "does not end here, but must continue to 'the language and design of the statute as a whole.'" *Am. Scholastic TV Programming Found. v. FCC*, 46 F.3d 1173, 1178, 310 U.S. App. D.C. 256 (D.C. Cir. 1995) (quoting *Fort Stewart Sch. v. FLRA*, 495 U.S. 641, 645, 110 S. Ct. 2043, 109 L. Ed. 2d 659 (1990)). **[*43]** [26] The Court must also "exhaust the traditional tools of statutory construction, including examining the statute's legislative history to shed new light on congressional intent, notwithstanding statutory language that appears superficially clear." *Sierra Club v. EPA*, 551 F.3d 1019, 1027, 384 U.S. App. D.C. 96 (D.C. Cir. 2008) (citations omitted); *see also* *AFL-CIO v. FEC*, 333 F.3d 168, 172, 357 U.S. App. D.C. 47 (D.C. Cir. 2003) ("We consider the provisions at issue in context, using traditional tools of statutory construction and legislative history.").

i. Subsection (a)(4)(B) Bifurcates the Universe of Electronic Debit Transaction Costs into the Allowable and the Impermissible.

The Durbin Amendment instructs the Board to ensure that **[*44]** any interchange fee charged by an issuer "is reasonable and proportional to the cost incurred by the issuer with respect to the transaction," *§ 1693o-2(a)(3)*, and in so doing it must "distinguish between" two categories of costs. *Id.* *§ 1693o-2(a)(4)(B)(i)—(ii)*. Plaintiffs contend that these categories bifurcate the entire universe of costs into two, and only two, groups: (1) costs that are "incremental" or variable, incurred by an issuer for its role in the "authorization, clearance, or settlement," and that relate to a "particular" or single electronic debit transaction, which "*shall* be considered," *§ 1693o-2(a)(4)(B)(i)* (emphasis added); and (2) "*other* costs" "incurred by an issuer which are not specific to a particular electronic debit transaction," which "*shall not* be considered," *§ 1693o-2(a)(4)(B)(ii)* (emphasis added). The Board disagrees, arguing that *subsection (a)(4)(B)* is silent when it comes to costs that are specific to a particular electronic debit transaction but that are not incremental ACS costs, as those costs do not fit into either *subsection (a)(4)(B)(i)* or *(a)(4)(B)(ii)*. According to the Board, this creates ambiguity that the Board has the discretion to resolve. **[*45]** How convenient.

Starting with subsection (a)(4)(B)'s text, I have *no* difficulty concluding that the statutory language evidences an intent by Congress to bifurcate the entire universe of costs associated with interchange fees. Indeed, Congress directed the Board to "distinguish between"—or, according to its plain and ordinary meaning, "separate into different categories" or "make a distinction" [27] —between: (1) incremental ACS costs relating to a particular transaction, which "*shall* be considered" in establishing the interchange transaction fee standard, and (2) "other costs" which are not specific to a particu-

[26] *See also* *Roberts v. Sea-Land Servs., Inc.*, 132 S. Ct. 1350, 1357, 182 L. Ed. 2d 341 (2012) ("It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." (citation omitted)); *Bell Atl. Tel. Cos.*, 131 F.3d at 1047 ("The literal language of a provision taken out of context cannot provide conclusive proof of congressional intent, any more than a word can have meaning without context to illuminate its use.'").

[27] *Webster's New College Dictionary* 337 (3d ed. 2008) (defining "distinguish" as "to recognize as being different or distinct; separate into different categories; perceive or indicate differences; discriminate"); *Black's Law Dictionary* 542 (9th ed. 2009) (defining "distinguish" as "to make a distinction").

lar transaction, which the Board *"shall not"* consider. *§ 1693o-2(a)(4)(B)(i)—(ii)* (emphases added). By using strategically placed "shall" and "shall not" terms—which plainly indicate the inclusion of the first category of costs and exclusion of the second—Congress expressed its clear intent to separate costs that must be included in the interchange transaction fee standard and "other costs" that must be excluded. *See Ass'n of Civilian Technicians, Mont. Air Chapter No. 29 v. Fed. Labor Relations Auth.*, 22 F.3d 1150, 1153, 306 U.S. App. D.C. 68 (D.C. Cir. 1994) ("The word 'shall' generally indicates **[*46]** a command that admits of no discretion on the part of the person instructed to carry out the directive.").

Furthermore, Congress used the inclusive phrase "other costs," as opposed to just "costs," to refer to those costs *not* to be considered in the interchange transaction fee standard. The plain import of Congress's word choice, according to the ordinary definition of "other" and relevant case law, is that this second, prohibited category of "other costs" was intended to subsume *all* costs not explicitly addressed in the first, permissible category of costs. *See Merriam-Webster's Collegiate Dictionary* 878-79 (11th ed. 2009) (defining "other" as "being the one (as of two or more) remaining or not included; being the one or ones distinct from that or those first mentioned or implied"). [28] In other words, the plain text makes clear that the incremental ACS cost of a particular electronic **[*47]** debit transaction is the *only* cost the Board was expressly authorized to consider in its interchange transaction fee standard.

The Board's counterargument—that Congress directed it not to consider "other costs incurred by an issuer *which* are not specific to a particular electronic debit transaction," *§ 1693o-2(a)(4)(B)(ii)* (emphasis added), meaning that only costs "not specific to a particular . . . transaction" are barred from consideration—is wholly unpersuasive. *See* Def.'s Mem. at 20-21. The non-restrictive pronoun "which" is a descriptor, rather than a qualifier, and Congress has repeatedly utilized this term to further *describe* **[*48]** the preceding phrase—here, "other costs"—rather than to condition or limit it. *See United States v. Indoor Cultivation Equip. from High Tech Indoor Garden Supply*, 55 F.3d 1311,1315 (7th Cir. 1995) (concluding that Congress's use of the pronoun "which," as in "[a]ll conveyances, including aircraft, vehicles, or vessels, which are used to . . . facilitate [drug transactions]," did not limit the meaning of the word it amended, "conveyance," to a vehicle or vessel used or intended to be used to facilitate a drug transaction). [29] Not surprisingly, the Board fails to cite any persuasive definition or case law to the contrary, and its focus on commas is a red herring. *See, e.g., Barrett v. Van Pelt*, 268 U.S. 85, 91, 45 S. Ct. 437, 69 L. Ed. 857 (1925) ("Punctuation is a minor, and not a controlling, element in interpretation, and courts will disregard the punctuation of a statute, or re-punctuate it, if need be, to give effect to what otherwise appears to be its purpose and true meaning." (citation omitted)).

Finally, statements by Senator Richard J. Durbin, the Amendment's chief sponsor, confirm that Congress intended to bifurcate the universe of costs into incremental ACS costs includable in the interchange transaction fee standard and all other costs to be excluded. Specifically, in addressing the meaning of the Amendment on the floor of the Senate prior to its final passage, Senator Durbin stated:

---

[28] *See also Ass'n of Private Sector Colls.*, 681 F.3d at 443-44 (holding that Congress intended the phrase "other incentive payment" to broadly cover abuses not enumerated); *FC Inv. Grp. LC v. IFX Mkts., Ltd.*, 529 F.3d 1087, 1100, 381 U.S. App. D.C. 383 (D.C. Cir. 2008) ("This interpretation, one which gives meaning to the word 'other' by reading sequentially to understand 'other' as meaning 'different from that already stated in subsections (a)-(c),' gives coherent effect to all sections . . . ." (quoting *PT United Can Co. v. Crown Cork & Seal Co.*, 138 F.3d 65, 71-72 (2d Cir. 1998))).

[29] *See also* William Strunk Jr. & E.B. White, *The Elements of Style* 1, 3 (2d ed. 1972) (describing an "elementary rule[ ] of usage" that a "nonrestrictive clause is one that does not serve to identify or define the **[*49]** antecedent noun"); *cf. In re Connors*, 497 F.3d 314, 319 (3d Cir. 2007) ("The word 'that' is a relative pronoun that restricts and, therefore, modifies, the preceding noun[.]")

> Paragraph (a)(4) [of the Amendment] makes clear that the *cost* to be considered by the Board in conducting its reasonable and proportional analysis is the incremental cost incurred by the issuer for its role in the authorization, clearance, or settlement of a particular electronic debit transaction, *as opposed to other costs incurred by an issuer which are not specific to the authorization, clearance, or settlement of a particular electronic debit transaction.*

156 Cong. Rec. S5,925 (daily ed. July 15, 2010) (emphasis added). Although the Board admits that Senator Durbin's statement appears to divide the universe of costs **[*50]** into two categories, it argues nonetheless that the actual language of the statute overrides any floor statement by the bill's sponsor. *See* Def.'s Mem. at 20. *Chevron*, however, contemplates that legislative history—including history that does not match the text of the statute verbatim—will be read *along with* the statute to determine Congress's intent. *See* *Chevron*, 467 U.S. at 851-53, 862-64; *Aid Ass'n for Lutherans v. U.S. Postal Serv.*, 321 F.3d 1166, 1176-78, 355 U.S. App. D.C. 221 (D.C. Cir. 2003) (using legislative history, in tandem with plain language of statute, in *Chevron* step one). In this case, Senator Durbin's statement, read in conjunction with the statute's text, confirms that Congress intended to divide all costs into two categories: those that can and those that cannot be considered in setting the interchange fee standard.

ii. Congress Intended to Exclude All Costs Other than the Incremental ACS Costs Incurred by the Issuer for a Particular Debit Transaction from the Interchange Fee Standard.

Further parsing of the statute confirms that Congress intended to narrow the scope of costs considered in the interchange transaction fee standard. *Subsection (a)(4)(B)(i)* directs the Board to include in **[*51]** the standard those ACS costs that are "*incremental* [to the] cost incurred by an issuer for the *role of the issuer* in . . . a particular electronic debit transaction." *§ 1693o-2(a)(4)(B)(i)* (emphasis added). The term "incremental" limits the includable costs to "variable, as opposed to fixed," ACS costs. *Me. Pub. Serv. Co. v. FERC*, 964 F.2d 5, 9, 296 U.S. App. D.C. 5 (D.C. Cir. 1992). [30] And the subsection includes only those costs incurred for the issuer's role in processing the transaction. *§ 1693o-2(a)(4)(B)(i)*.

In addition, *subsection (a)(4)(B)(ii)* instructs the Board to exclude from the standard any "other costs incurred by an issuer which are not *specific* to a *particular* . . . transaction." *§1693o-2(a)(4)(B)(ii)* (emphases added). Congress thus directed the Board to omit "other costs incurred by an issuer which are not [unique] to a [distinct or individual] transaction." [31] The plain text of the **[*52]** Durbin Amendment thus precludes the Board from considering in the interchange fee standard any costs, other than variable ACS costs incurred by the issuer in processing each debit transaction.

The Board contends that the statute's failure to define the terms "incremental cost" or "authorization, clearance, or settlement," or to delineate which types of costs are "not specific to a particular electronic debit transaction," renders those terms ambiguous, thereby giving the Board the authority to fill those statutory gaps. *See* Def.'s Mem. at 26-27. Not quite! If I were to accept the Board's argument, then ev-

---

[30] *See also* 75 Fed. Reg. at 81,735 (in NPRM, proposing that "incremental cost" be defined as an average, variable and per-transaction cost that varies with the number of transactions); *Webster's New College Dictionary* 575 (3d ed. 2008) (defining "increment" as "a small positive or negative change in a variable").

[31] *Webster's New College Dictionary* 1085 (3d ed. 2008) (defining "specific" as "distinctive or unique; intended for, applying to, or acting on a given thing; definite"); *Merriam-Webster's Collegiate Dictionary* 903 (11th ed. 2009) (defining "particular" as "a separate part of a whole; an individual fact, point, circumstance or detail; an individual or a specific subclass . . . falling under some general concept or term.").

ery term in the statute would have to be specifically defined or otherwise be deemed ambiguous. This result makes no sense, and more importantly, it is not the law. **[*53]** When a term is not defined in a statute, a court must assume that "the legislative purpose is expressed by the ordinary meaning of the words used." *AT&T*, 131 S. Ct. at 1182; *United States v. Locke*, 471 U.S. 84, 95, 105 S. Ct. 1785, 85 L. Ed. 2d 64 (1985) (distinguishing "filling a gap left by Congress' silence" from "rewriting rules that Congress has affirmatively and specifically enacted") (citation omitted).

"[T]he meaning of statutory language, plain or not, depends on context," *King v. St. Vincent's Hosp.*, 502 U.S. 215, 221, 112 S. Ct. 570, 116 L. Ed. 2d 578 (1991), and the relevant provisions, statutory design, and legislative history here clearly support my reading of the statute. First, the statute's information collection provision explicitly requires public disclosure only of information "concerning the costs incurred, and interchange transaction fees charged or received . . . *in connection with the authorization, clearance or settlement of electronic debit transactions." § 1693o-2(a)(3)(B)* (emphasis added). That disclosure is limited to the same costs specified in *subsection (a)(4)(B)(i)* reinforces that those ACS costs are the only ones Congress intended to include in the interchange transaction fee standard. [32]

Subsection (a)(4)(A) of the statute also directs the Board to consider the "functional similarity" between "electronic debit transactions" and "checking transactions that are required within the Federal Reserve bank system to clear *at par*" when prescribing standards used to assess whether an interchange transaction fee is reasonable and proportional to the issuer's transactions. *§ 1693o-2(a)(4)(A)* (emphasis added). The Board is thus *required* to consider how debit and checking transactions are "like" or "[r]esembling though not completely identical" in terms of their "capab[ility] of performing" or "ab[ility] to perform a regular function." [33] Congress understood that debit card transactions are "akin to writing a check" because "[a]ll that happens . . . is you deduct money from your bank account." *See* 156 Cong. Rec. S3,696 (daily ed. May 13, 2010) (statement of **[*55]** Sen. Richard J. Durbin) ("That is why debit cards are advertised as check cards."). However, as Senator Durbin explained, "there are zero transaction fees deducted when you use a check," unlike interchange fees, which "are deducted from every [debit] transaction left for the seller." *Id.* The Board even proposed in its NPRM to limit "allowable costs . . . to those that the statute specifically allows to be considered, and *not be expanded to include additional costs that a payor's bank in a check transaction would not recoup through fees from the payee's bank." 75 Fed. Reg. at 81,735* (emphasis added).

The Board argues that the plain language of *subsection (a)(4)(A)* merely requires the Board to *consider* the functional similarity between electronic debit transactions and checking transactions in determining **[*56]** its interchange fee standard (which it did) and does not preclude the Board's consideration of differences. "Were courts to *presume* a delegation of power absent an express *withholding* of such power," however, "agencies would enjoy virtually limitless hegemony, a result plainly out of keeping with *Chevron*[.]" *Ry. Labor Execs. Ass'n v. Nat'l Mediation Bd.*, 29 F.3d 655, 671, 308 U.S. App. D.C. 9 (D.C. Cir. 1994); *see also Am. Bar Ass'n v. FTC*, 430 F.3d 457, 468, 368 U.S. App. D.C. 368 (D.C. Cir. 2005) ("[I]f there is the sort of ambiguity that supports an implicit congressional delegation of authority to the

---

32 Conversely, if Congress had **[*54]** intended to provide the Board with discretion to consider additional, unspecified costs "that are specific to a particular electronic debit transaction but that are not incremental ACS costs," as the Board contends, Def.'s Mem. at 17, then Congress would have told the Board to report its findings concerning those costs, too.

33 *Webster's New College Dictionary* 1053 (3d ed. 2008) ("similar" defined as "like; resembling though not completely identical"); *id.* 462 (defining "functional" as "designed for or adapted for a specific function or use; capable of performing; operative"); *Merriam-Webster's Collegiate Dictionary* 507 (11th ed. 2009) ("functional" means "performing or able to perform a regular function").

agency to make a deference-worthy interpretation of the statute, we must look elsewhere than the [statute's] failure to negate[.]"). In fact, it defies common sense to read an explicit directive to consider "functional *similarity*" as authorization to consider *differences*, as well

Lastly, *subsection (a)(5)(A)(i)* directs the Board "to make allowance for costs incurred by the issuer in preventing fraud" via an "*adjustment* to the fee amount received or charged by an issuer" under the interchange fee standard. *§ 1693o-2(a)(5)(A)(i)* (emphasis added). At first glance, Congress's choice of words here appears to sanction a wholesale inclusion **[*57]** of fraud-prevention costs within the interchange transaction fee standard. However, *subsection (a)(5)(A)(i)* limits "any fraud-related adjustment" to the amount "reasonably necessary . . . to prevent[] fraud in relation to electronic debit transactions involving that issuer," and (a)(5)(A)(ii) conditions that adjustment on an issuer's compliance with fraud-related standards that "require issuers to take effective steps to reduce the occurrences and costs of, and costs from, fraud in relation to electronic debit transactions." *§ 1693o-2(a)(5)(A)(i)—(ii)*. Senator Durbin's discussion of *subsection (a)(5)* sheds further light on this provision:

> It should be noted that any fraud prevention adjustment to the fee amount would occur *after* the base calculation of the reasonable and proportional interchange fee amount takes place, and fraud prevention costs *would not be considered* as part of the incremental issuer costs upon which the reasonable and proportional fee amount is based. Further, *any* fraud prevention cost adjustment would be made on an *issuer-specific basis*, as each issuer must individually demonstrate that it complies with the standards established by the Board, and as the adjustment **[*58]** would be limited to what is reasonably necessary to make allowance for fraud prevention costs incurred by that particular issuer.

156 Cong Rec. S5,925 (daily ed. July 15, 2010) (statement of Sen. Richard J. Durbin) (emphases added); *see also* Durbin Comments, *supra* note 5, at 9.

Accordingly, I find that the text and structure of the Durbin Amendment, as reinforced by its legislative history, are clear with regard to what costs the Board may consider in setting the interchange fee standard: Incremental ACS costs of individual transactions incurred by issuers may be considered. That's it!

B. The Board's Interchange Fee Regulation Accounts for Costs That Are Unambiguously Foreclosed from Consideration by Congress.

The Durbin Amendment is explicit about what costs the Board could consider in setting the interchange transaction fee, and the Board was required "to give effect to the unambiguously expressed intent of Congress." *Chevron*, 467 U.S. at 842-43. As the "final authority on issues of statutory construction," federal courts are charged with "reject[ing] administrative constructions which are contrary to clear congressional intent." *Id.* at 843 n.9. For the following reasons, I reject the **[*59]** Board's construction of the Durbin Amendment as noncompliant with Congress's clear mandate.

First, the Board's understanding that a third category of costs can be recovered under the interchange transaction fee standard is irreconcilable with the statute. In its Final Rule, the Board concluded that it could, in its discretion, factor into the interchange fee any costs "that are specific to a particular electronic debit transaction but that are not incremental costs related to the issuer's role in authorization, clearance, and settlement." *76 Fed. Reg. at 43,426*. According to the Board, the statute is silent as to costs not addressed in *§ 1693o-2(a)(4)(B)(i)* or *(ii)*, and Congress did "not restrict the factors the Board may consider in establishing standards for assessing whether interchange transaction fees are reasonable and proportional to cost." *76 Fed. Reg. at 43,424*.

34

In exercising this purported discretion, the Board reads the statutory language prohibiting it from considering costs "not specific to a *particular* electronic debit transaction," § 1693o-2(a)(4)(B)(ii), as prohibiting it from considering only "those costs that are not incurred in the course of effecting *any* electronic debit transaction," *76 Fed. Reg. at 43,426* (emphasis added). The Board, to its credit, still *did not* consider costs associated with corporate overhead (*e.g.*, executive compensation), establishing and maintaining an account relationship, debit card production and delivery, marketing, research and development, insufficient funds handling, network membership fees, reward programs, **[*61]** and customer support, *id.* at 43,427-29. But the Board *did*, contrary to the expressed will of Congress, consider *"any cost that is not prohibited—i.e.*, any cost that is incurred in the course of effecting an electronic debit transaction," *id.* at 43,426, including fixed costs (*i.e.*, network connectivity and software, hardware, equipment, and associated labor), network processing fees, transaction monitoring, and fraud losses, *id.* at 43,429-31. As a result, the final regulation sets a maximum fee that an issuer could recover at twenty-one cents ($.21) per transaction, plus an *ad valorem* amount of .05% of each transaction's value, *12 C.F.R. § 235.3(b)*; *76 Fed. Reg. at 43,422*—well above the NPRM's seven- ($.07) and twelve-cent ($.12) proposals, *75 Fed. Reg. at 81,736-38*.

This interpretation runs completely afoul of the text, design and purpose of the Durbin Amendment. By improperly narrowing the scope of *excluded* costs in *subsection (a)(4)(B)(ii)* to only those costs "not incurred in the course of effecting *any* electronic debit transaction," the Board expanded the range of *allowable* costs in *subsection (a)(4)(B)(i)* to "*any* cost that is incurred in the course of effecting an electronic debit **[*62]** transaction." 76 Fed. Reg. at 43,326. In so doing, the Board not only ignored critical statutory terms such as "distinguish between," "other," "specific," "particular," "incremental," and "authorization, clearance, or settlement" [35] —which provide clear guidance, *see supra* pp. 28-30—but also shoehorned a whole array of excluded costs into the interchange fee standard.

Under the Final Rule, it is inconsequential whether costs are variable and result only from an individual transaction or are fixed and common to all transactions; so long as a cost is incurred to effect "debit card transactions as a whole," the Board concluded that it may be considered in its interchange fee standard. *76 Fed. Reg. at 43,426*; *see also* Def.'s Mem. at 27 ("The Board further determined that a cost is specific to a particular electronic debit transaction if no such transaction can occur without incurring that cost."). Please! This reading **[*63]** of the law contradicts Congress's clear mandate that the Board is precluded from considering all costs, other than an issuer's *variable ACS* costs related to an *individual* debit transaction, in setting the interchange standard. Costs that are "not specific *to a particular debit transaction*," *§ 1693o-2(a)(4)(B)(ii)* (emphasis added), simply are not the same as costs that are "not specific *to debit transactions as a whole*," *76 Fed. Reg. at 43,426* (emphasis added). And "the incremental cost incurred by an issuer for the role of the issuer in the authorization, clearance, or settlement of

---

[34] *See also* id. at 43,426-27 ("[T]he requirement that one set of costs be considered and another set of costs be excluded suggests that Congress left to the implementing agency discretion to consider costs that fall into neither category to the extent necessary and appropriate to fulfill the purposes of the statute. **[*60]** . . . By considering all costs for which it had data other than prohibited costs, the Board has complied with the statutory mandate not to consider costs identified in [(a)(4)(B)(ii)], has fulfilled the statutory mandate requiring consideration of the costs identified in [(a)(4)(B)(i)], and has chosen to consider other costs specific to particular electronic debit transactions to the extent consistent with the purpose of the statute, in establishing its [interchange transaction fee] standard.").

[35] The Board somehow found that it was "not . . . necessary to determine whether costs are 'incremental,' fixed or variable, or incurred in connection with authorization, clearance, and settlement," 76 Fed. Reg. at 43,427, even though those are operative words in the statute.

a particular electronic debit transaction," *§ 1693o-2(a)(4)(B)(i)*, is not the same as "any cost that is incurred in the course of effecting an electronic debit transaction," *76 Fed. Reg. at 43,426* (emphasis added).

In short, the Board's interpretation is utterly indefensible. As explained above, the statute is *not* silent or ambiguous. Rather, the plain text of *subsection (a)(4)(B)* and the statutory structure and legislative history of the Durbin Amendment clearly demonstrate that Congress intended for the Board to exclude *all* "other costs" not specified in the statute as requiring consideration in the interchange **[*64]** transaction fee standard. That Congress could have used other, more definitive language, as the Board argues, *see* Def.'s Mem. at 18-19, is irrelevant when its statutory import is nonetheless clear. [36] "[When] the agency has either violated Congress's precise instructions or exceeded the statute's clear boundaries then, as *Chevron* puts it, 'that is the end of the matter'—the agency's interpretation is unlawful." *Vill. of Barrington, Ill. v. Surface Transp. Bd.*, 636 F.3d 650, 660, 394 U.S. App. D.C. 353 (D.C. Cir. 2011) (quoting *467 U.S. at 842*). [37] And it is quite clear that the statute did not allow the Board to consider the additional costs factored into the interchange fee standard—*i.e.*, (1) fixed ACS costs, (2) transaction monitoring costs, (3) an allowance for an issuer's fraud losses, and (4) network processing fees. *76 Fed. Reg. at 43,429-31*. How so?

(1) Fixed ACS Costs. The final interchange fee standard includes *total* transaction processing costs, including costs reported as variable ***and*** *fixed* ACS costs, within allowable interchange fees. *Id.* at 43,429. Instead of citing statutory text to justify this interpretation of the law, the Board simply noted that it is administratively difficult to discern a transaction's incremental ACS costs. *See* *id.* at 43,426-27; Def.'s Mem. at 32— 33, 41. But Congress instructed the Board to consider only *variable* ACS costs incurred for the issuer's role in processing a particular transaction. *See supra* pp. 32 -33. The legislative mandate to consider incremental ACS costs in setting the interchange standard is not a "minimum," as the Board argues, *see* Def.'s Mem. at 29, but rather a ***ceiling.*** The fact that "there is simply no bright **[*67]** line test to identify exactly ACS versus non-ACS costs," *id.* at 33, or that the Board "provided a reasoned explanation for considering certain fixed costs and excluding others," *id.* at 30, does not empower the Board to flout the statute and then brandish its *Chevron* defense. *See* *Chevron*, 467 U.S. at 843-44; *Vill. of Barrington*, 636 F.3d at 659-60. The Board's inclusion of fixed ACS costs in the interchange transaction fee standard was impermissible.

(2) Transaction Monitoring Costs. The Board also included transaction monitoring costs—*i.e.*, the costs of fraud-prevention activities that authenticate the cardholder and confirm

---

[36] *See* *Locke*, 471 U.S. at 95 ("[T]he fact that Congress might have acted with greater clarity or foresight does not give courts a *carte blanche* to redraft statutes in an effort to achieve that which Congress is perceived to have failed to do."); *Brown v. Gardner*, 513 U.S. 115, 118, 115 S. Ct. 552, 130 L. Ed. 2d 462 (1994) ("Ambiguity is a creature not of definitional possibilities but of statutory **[*65]** context . . . ."); *S. Cal. Edison Co. v. FERC*, 195 F.3d 17, 24, 338 U.S. App. D.C. 402 (D.C. Cir. 1999) ("[T]he court has repeatedly rejected the notion that the absence of an express proscription allows an agency to ignore a proscription implied by the limiting language of a statute[.]"); *Engine Mfrs. Ass'n v. EPA*, 88 F.3d 1075, 1088, 319 U.S. App. D.C. 12 (D.C. Cir. 1996) ("[I]f [the text] clearly requires a particular outcome, then the mere fact that it does so implicitly rather than expressly does not mean that it is 'silent' in the *Chevron* sense.").

[37] Moreover, *Chevron* step two is not implicated whenever a statute does not expressly negate the existence of a claimed administrative power, as the Board would have me believe. Rather, "it is only legislative *intent to delegate* such authority that entitles an agency to advance its own statutory construction for review under the deferential second prong of *Chevron.*" *City of Kan. City, Mo. v. Dep't of Hous. & Urban Dev.*, 923 F.2d 188, 191-92, 287 U.S. App. D.C. 365 (D.C. Cir. 1991); *Ethyl Corp. v. EPA*, 51 F.3d 1053, 1060, 311 U.S. App. D.C. 163 (D.C. Cir. 1995) ("We refuse, once again, to presume a delegation of power merely because Congress has not expressly withheld such power."). Put simply by plaintiffs, "[t]here is no indication **[*66]** in the Durbin Amendment's text, purpose, or legislative history that Congress meant, by carefully delineating the cost factors that the Board must consider and not consider in setting an interchange fee standard, to delegate to the Board by what it *did not say* the unbounded discretion to consider any other cost factor relating to a debit card transaction." Pls.' Mem. at 37.

whether a debit card is valid [38] —in the final standard because such costs are related to the authorization of a particular transaction. *76 Fed. Reg. at 43,430-31*. But according to the statutory language and the final Conference Report, Congress allowed for fraud-prevention costs only as a *separate adjustment to*, rather than a component of, the interchange transaction fee standard, and only *if* the issuer complies with fraud-related standards established by the Board. *See* *§ 1693o-2(a)(5)(A)*; *supra* pp. 11-12, 36-37. In fact, subsection (a)(5)'s adjustment to the interchange **[*68]** fee for fraud-prevention costs was the subject of a distinct rulemaking. *See* *77 Fed. Reg. 46,258*; *12 C.F.R. § 235.4*; *supra* notes 9, 19 and accompanying text.

Although the Board recognizes that the plain language of *subsection (a)(5)(A)* provides a separate adjustment to the interchange transaction fee standard for fraud-prevention costs, it nonetheless takes the position that the statute does not prohibit the consideration of those costs when setting the interchange fee standard. *See* Def.'s Mem. at 43. No so. It would be nonsensical for Congress to make fraud-prevention costs the basis for a *conditional adjustment* to the interchange fee standard, and at the same time implicitly allow for fraud-prevention costs to factor into the standard itself without any conditions being met. To the contrary, by linking the fraud-prevention adjustment with **[*69]** a statutory requirement that the issuer comply with fraud-related standards, Congress sought to prevent what the Board has allowed: rewarding *every* issuer with an interchange fee increase to cover fraud-prevention costs, regardless of whether the issuer complies with the fraud-related standards established under *subsection (a)(5)(B)*. As Senator Durbin explained in a comment letter, "The current system of network-established interchange fees creates precisely the wrong incentives for issuers when it comes to fraud prevention" because "[u]nder the current system, all issuing banks in a network receive the same network-established interchange fee rates" regardless of whether they minimize actual fraud. Durbin Comments, *supra* note 5, at 9. "In contrast to the current inefficient system, [*15 U.S.C. §1693o-2(a)(5)*] will incentivize regulated issuing banks to reduce fraud by allowing banks that take successful fraud prevention steps to receive increased interchange fees." *Id.* [39]

(3) Allowance for Fraud Losses. The Board also included an allowance for fraud losses, or "losses incurred by the issuer, other than losses related to nonsufficient funds, that are not recovered through chargebacks to merchants or debits to or collections from customers," such as losses associated with lost, stolen, or counterfeit card fraud. *Id.* Not proposed for inclusion as an allowable cost in its NPRM, the Board concluded that fraud losses should be considered within the final interchange transaction fee standard because they "are generally the *result* of the authorization, clearance, and settlement of an apparently valid transaction that the cardholder later identifies as fraudulent." *Id.* (emphasis added). But the costs associated with the *consequence* of ACS—as opposed to ACS costs themselves—are not to be considered under the plain language of the statute. The Board's decision to "[p]ermit[] issuers to recover at least some fraud losses through interchange fees . . . given that the source of fraud could be any participant in an electronic debit transaction and that the exact **[*71]** source of fraud often is unknown," *76 Fed. Reg. at 43,431*, is a blatant act of policy-making that runs counter to Congress's will.

(4) Network Processing Fees. Finally, the Board included network processing fees in the interchange fee standard because they are incurred

[38] In both its NPRM and Final Rule, the Board classified transaction monitoring as fraud-prevention activity. *See* 75 Fed. Reg. at 81,741 ("[I]ssuers engage in a variety of fraud-prevention activities . . . . such as transaction monitoring[.]"); 76 Fed. Reg. at 43,397 ("The most commonly reported fraud-prevention activity was transaction monitoring.").

[39] The Board tries to distinguish transaction monitoring from the types of activities considered under the separate fraud-prevention rulemaking, thereby rationalizing the inclusion of transaction monitoring costs in **[*70]** the interchange fee. *See* 76 Fed. Reg. at 43,431. But the statute provides no basis for this distinction.

for the issuer's role in ACS and are specific to a particular transaction. 76 Fed. Reg. at 43,430. Again, this ignores the plain language of the statute, which demonstrates that Congress did not intend for network fees to be incorporated into the interchange transaction fee standard. Under the statute's definitional provisions, a "network fee" is "any fee charged and received by a payment card network with respect to an electronic debit transaction, *other than an interchange transaction fee.*" § 1693o-2(c)(10) (emphasis added). Furthermore, subsection (a)(4)(B)(i) of the statute limits the Board's authority to permit recovery of issuer costs to those incurred "for the role of the ***issuer***," not the ***network***, in processing a transaction. § 1693o-2(a)(4)(B)(i) (emphasis added); *see supra* p. 32-33. Last, subsection (a)(8)(B) states that the only authority Congress granted the Board to issue regulations regarding network fees **[*72]** is "to ensure that "(i) a network fee is not used to directly or indirectly compensate an issuer with respect to an electronic debit transaction; and (ii) a network fee is not used to circumvent or evade the restrictions of this subsection and regulations prescribed under such subsection." § 1693o-2(a)(8)(B). Thus, the interchange fee cannot be used to compensate an issuer for network fees.

Ultimately, the Board asserts that it was given broad discretion to fill statutory gaps in establishing the interchange transaction fee standard. *See* Def.'s Mem. at 23-26. But even if this were true, which it is not, such discretion does not give the Board the authority to ignore the expressed will of Congress. *See* Bd. of Governors of the Fed. Reserve Sys. v. Dimension Fin. Corp., 474 U.S. 361, 374, 106 S. Ct. 681, 88 L. Ed. 2d 691 (1986) ("The statute may be imperfect, but the Board has no power to correct flaws that it perceives in the statute it is empowered to administer. Its rulemaking power is limited to adopting regulations to carry into effect the will of Congress as expressed in the statute."); Ry. Labor Execs. Ass'n, 29 F.3d at 671 ("'Congress has directly spoken to the precise question at issue' in this case . . . so there **[*73]** is no gap for the agency to fill." (citation omitted)). By including in the interchange fee standard costs that are expressly prohibited by the statute, the final regulation represents a significant price ***increase*** over pre-Durbin Amendment rates for small-ticket debit transactions under the $12 threshold. *See* 7-Eleven Amicus Br. at 17-18; *see also* Durbin Amicus Br. at 23 ("[B]y setting a high fee cap that far exceeds the customary fees levied on small ticket transactions, the [Board] has given its regulatory blessing to the setting of interchange rates by Visa and MasterCard that are over three times larger than rates previously charged on small dollar transactions."). Congress did not empower the Board to make policy judgments that would result in significantly ***higher*** interchange rates. Accordingly, the Board's interpretation of the interchange fee standard is foreclosed by the law and must be invalidated under Chevron's first step.

III. The Network Non-Exclusivity Regulation Is Invalid Under the APA.

Subsection (b)(1)(A) of the Durbin Amendment directs the Board to issue regulations prohibiting issuers and networks from "restrict[ing] the number of payment card networks on which an **[*74]** electronic debit transaction may be processed" to one network or multiple affiliated networks. § 1693o-2(b)(1)(A). Subsection (b)(1)(B), meanwhile, instructs the Board to promulgate regulations that prohibit issuers and networks from "inhibit[ing] the ability of any person who accepts debit cards for payments to direct the routing of electronic debit transactions for processing over any payment card network that may process such transactions." § 1693o-2(b)(1)(B). The Board determined that subsection (b)(1)(A) requires issuers and networks to make available two unaffiliated networks for ***each debit card***, not for ***each method of authentication*** (signature and PIN). 12 C.F.R. § 235.7(a)(2) & Official Cmt. 1; *see also* 76 Fed. Reg. at 43,404, 43,447-48.

Plaintiffs argue that this interpretation disregards the statute's language and purpose, which require that merchants be given a choice between multiple unaffiliated networks not only for each card, but for each *transaction.* They say that the Board's non-exclusivity regulation cannot survive *Chevron* step one because it contravenes both the letter and spirit of the Durbin Amendment. The Board characterizes plaintiffs' arguments as being "unmoored **[*75]** from the statutory text," which the Board says is ambiguous on this issue. Moreover, the Board claims that its interpretation of the law is permissible and fully implements Congress's directive. I disagree. The plaintiffs' interpretation is, in my judgment, the one true to Congress's intent. How so?

A. The Statute Requires that Merchants Be Provided with a Choice Between Multiple Unaffiliated Networks for Each Transaction.

First, the Court must determine "whether Congress has directly spoken to the precise question at issue," *Chevron*, 467 U.S. at 842, by considering whether "the statute unambiguously forecloses the agency's interpretation, and therefore contains no gap for the agency to fill," *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 982-83, 125 S. Ct. 2688, 162 L. Ed. 2d 820 (2005). In determining whether Congress has spoken to the issue, the Court, of course, begins with the plain meaning of the statutory text. *S. Cal. Edison*, 195 F.3d at 23.

The language of the network non-exclusivity provision favors the plaintiffs' interpretation at *Chevron* step one. First, there is no question that *subsection (b)(1)(A)* mandates that "an issuer or payment card network shall not . . . restrict the number **[*76]** of payment card networks on which an electronic debit *transaction* may be processed" to fewer than two unaffiliated networks, and that the Board must promulgate regulations to enforce this restriction. *§ 1693o-2(b)(1)(A)* (emphasis added); *see Zivotofsky v. Sec'y of State*, 571 F.3d 1227, 1243, 387 U.S. App. D.C. 144 (D.C. Cir. 2009) ("'Shall' has long been understood as 'the language of command.'" (citation omitted)). Put differently, the statute instructs the Board to ensure that issuers and networks stop restricting merchants' ability to route *each transaction* over different networks. Congress's focus was on the number of networks over which each *transaction*—as opposed to each debit card—can be processed.

Although the Board admits that the statute calls for debit cards to be able to function over two or more unaffiliated networks, it insists that the law is silent as to whether merchants must have routing choices for each transaction. Def.'s Reply to Pls.' Reply Mem. in Supp. of Pls.' Mot. for Summ. J. and in Opp'n to Def.'s Mot. for Summ. J. ("Def.'s Reply") at 31 [Dkt. #32]. Congress resolved this uncertainty, however, by using the statutorily defined term "electronic debit transaction." *See § 1693o-2(c)(5)* **[*77]** (defining "electronic debit transaction" as "a transaction in which a person uses a debit card"); *id. § 1693o-2(c)(2)(A)* ("debit card" defined as "any card . . . issued or approved for use through a payment card network to debit an asset account . . . whether authorization is based on signature, PIN, or other means"). When the definitions are read into the statute, *subsection (b)(1)(A)* provides that networks and issuers "shall not . . . restrict the number of payment card networks [to process] '***a transaction*** in which a person uses [any card . . . issued or approved for use through a payment card network to debit an asset account . . . *whether authorization is based on signature, PIN, or other means*]'" to less than two unaffiliated networks. The plain text of the statute thus supports the conclusion that Congress intended for each transaction to be routed over at least two competing networks for each authorization method.

Indeed, the Durbin Amendment's legislative history confirms my reading of the statute. It is axiomatic when interpreting a Congressional statute that this Court must consider, among other things, the problem Congress sought to resolve when it adopted the law at issue. **[*78]** *PDK Labs. Inc. v. DEA*, 362 F.3d 786, 796, 360 U.S. App. D.C. 344 (D.C. Cir. 2004). Even when the statute's plain meaning is clear from its terms, legislative history can be "equally illuminating." *Planned Parenthood Fed'n of Am., Inc. v. Heckler*, 712 F.2d 650, 656-57, 229 U.S. App. D.C. 336 (D.C. Cir. 1983).

As Senator Durbin explained, the Amendment was enacted at a time when network fees were on the rise due to exclusivity deals between dominant card networks and issuers.[40] Total network fees exceeded $4.1 billion in 2009, *76 Fed. Reg. at 43,397*, due in large part to the lack of competition resulting from exclusivity agreements. As the Board explained in its NPRM:

> From the merchant perspective, the availability of multiple card networks on a debit card is attractive because it gives merchants the flexibility to route transactions over the network that will result in the lowest cost to the merchant. This flexibility may promote direct price competition among the debit card networks that are enabled on the debit card. Thus, debit card network exclusivity arrangements limit merchants' ability to route transactions over lower-cost networks and may reduce price competition.

75 Fed. Reg. at 81,748.

Congress adopted the network non-exclusivity and routing provisions "to inhibit the continued consolidation of the dominant debit networks' market power and to ensure competition and choice in the debit network market." Durbin Comments, *supra* note 5, at 11; *see also* 156 Cong. Rec. S5,926 (daily ed. July 15, 2010) (statement of Sen. Richard J. Durbin) ("All these provisions say is that [f]ederal law now blocks payment card networks from engaging in certain specific enumerated anti-competitive practices, **[*80]** and the provisions describe precisely the boundaries over which payment card networks cannot cross with respect to these specific practices."). It is clear that Congress intended to put an end to exclusivity agreements and increase merchants' choice among debit-processing networks, not restrict that choice or even preserve the status quo.

Accordingly, it defies both the letter and purpose of the Durbin Amendment to read the statute as allowing networks and issuers to continue restricting the number of networks on which an electronic debit transaction may be processed to fewer than two per transaction. Indeed, prior to the Amendment's passage, Senator Durbin explicitly confirmed that Congress wanted *subsection (b)(1)(A)* to ensure the availability of at least two competing networks for each method of cardholder authentication on which an electronic debit transaction may be processed:

> This paragraph is intended to *enable each and every* electronic debit transaction—*no matter whether that transaction is authorized by signature, PIN, or otherwise*—to be run over at least two unaffiliated networks, and the Board's regulations should ensure that networks or issuers *do not try to evade the intent* **[*81]** *of this amendment by having cards that may run on only two unaffiliated networks where one of those networks is limited and cannot be used for many types of transactions.*

156 Cong. Rec. S5,926 (daily ed. July 15, 2010) (statement of Sen. Richard J. Durbin) (emphases added). In short, Congress adopted the network non-exclusivity and routing provisions to ensure that for multiple unaffiliated routing options were available for each debit card transaction, regardless of the method of authentication. The Board's Final Rule not only fails to carry out Congress's intention; it effectively counter-

[40] *See* 156 Cong. Rec. S10,996 (daily ed. **[*79]** Dec. 22, 2010) (statement of Senator Richard J. Durbin) ("In recent years . . . the biggest networks like Visa have begun requiring banks to sign exclusive agreements under which they become the sole network on the banks' cards. This diminishes competition between networks and leads to higher prices. My amendment will restore this competition."); *see also* Durbin Comments, *supra* note 5, at 11 ("This trend toward exclusivity agreements . . . limits merchant and consumer choice; it diminishes competition by threatening to drive competing debit networks out of business; and it creates significant barriers to entry for new debit networks." (citation and internal quotation marks omitted)).

mands it!

B. The Board's Network Non-Exclusivity Regulation Is Inconsistent with the Statute.

The Board's network non-exclusivity regulation requires at least two unaffiliated payment card networks be enabled on each *debit card*, meaning that a card complies with the regulation if it has been enabled with only one PIN network and one signature network. *12 C.F.R. § 235.7(a)(2)* & Official Cmt. 1; *see also 76 Fed. Reg. at 43,447-48*. According to the Board, "[t]he plain language of the statute does not require that there by two unaffiliated payment card networks available to the merchant for each method **[*82]** of authentication." *76 Fed. Reg. at 43,447*. I disagree.

The Board's interpretation of *subsection (b)(1)(A)* cannot be reconciled with the plain meaning or spirit of the statute because it still allows networks and issuers to make only one network available for many transactions. Indeed, by the Board's own admission, several common transaction types cannot be authenticated using the PIN method, leaving signature-debit as the only available option. *See* 76 Fed. Reg. 43,395. "[H]otel stays or car rentals," not to mention "Internet, telephone, and mail transactions," are typically incompatible with PIN authorization technology. *Id.* Under a rule that allows issuers to provide just one signature network and one PIN network per card, merchants in these signature-only industries are left with no network options. *See 75 Fed. Reg. at 81,748*. This result cannot be reconciled with Congress's goal of providing all merchants with a choice between multiple unaffiliated networks for every transaction.

The Board contends that where a merchant can process both signature and PIN transactions, the customer determines the authentication method at the point of sale by choosing "debit" for PIN authentication **[*83]** or "credit" for signature authentication. 76 Fed. Reg. at 43,448. In this scenario, the Board says that its network non-exclusivity rule technically provides for multiple available networks, but "the consumer, and not the issuer or the payment card network, . . . restrict[s] the available routing choices" for the merchant. *Id.* The Board forgets, however, that it is issuers and networks who establish the availability of different routing options, well before consumers ever enter the picture. And the Board cannot be relieved of its statutory obligation to ensure that *network* and *issuer* practices do not inhibit merchant choice simply because, in many transactions, consumers choose the authentication method. In the end, any reading that denies *merchants* the ability to choose between multiple networks for each transaction cannot be squared with a statute that plainly requires at least two networks per transaction.

The Board's network non-exclusivity regulation is also inconsistent with other related statutory provisions. For example, *subsection (b)(1)(B)* instructs the Board to establish regulations that bar issuers and networks from "inhibit[ing] the ability of any person who accepts debit **[*84]** cards for payments to direct the routing of electronic debit transactions for processing over any payment card network that may process such transactions." *§ 1693o-2(b)(1)(B)*. This sister provision to *subsection (b)(1)(A)* makes sense only if merchants have a *choice* between multiple networks. It would defy all logic for Congress to safeguard merchants' ability to route transactions over the networks of their choosing while at the same time leaving it up to the Board to decide whether issuers give merchants any choice in the first place. *See Greenlaw v. United States*, 554 U.S. 237, 251, 128 S. Ct. 2559, 171 L. Ed. 2d 399 (2008) ("We resist attributing to Congress an intention to render a statute so internally inconsistent."); *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575, 102 S. Ct. 3245, 73 L. Ed. 2d 973 (1982) ("It is true that interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available."). Even the Board has recognized that its interpretation of *subsection (b)(1)(A)* limits the effectiveness of *subsection (b)(1)(B)* under the Durbin Amendment. [41]

The Board further defends its network non-exclusivity regulation by pointing out that it is not "the most aggressively pro-merchant position" that the Board could have taken. Def.'s Reply at 27. The Board obviously misses the point! Where a court concludes that a statute is unambiguous, an agency's interpretation must be rejected if it is inconsistent with clearly expressed legislative intent. *See Chevron*, 467 U.S. at 842-43; *Vill. of Barrington*, 636 F.3d at 659-60. It is not about whether the rule favors merchants or issuers; rather, it is about whether the rule implements Congress's will. And Congress's use of clear, defined language in the network non-exclusivity and routing provisions leaves *no* ambiguity or statutory gap for the agency to fill. *See United States v. Home Concrete & Supply, LLC*, 132 S. Ct. 1836, 1843, 182 L. Ed. 2d 746 (2012) ("*Chevron* and later cases find in unambiguous language a clear sign that Congress did *not* delegate gap-filling authority to an agency[.]").

Lastly, the Board noted that its two-networks-per-card approach "minimiz[es] the compliance burden on institutions" and "present[s] less **[*86]** logistical burden on the payment system overall as it would require little if any re-programming of routing logic" than would a rule requiring two networks for each payment type. 76 Fed. Reg. at 43,447. That might be the case, but the law does not impose those burdens. In fact, the Durbin Amendment does not specify how the Board should go about achieving the statute's requirement. It was possible for the Board to implement the law without requiring brand new networks be added to each card. As explained during the comment period on the NPRM, the Board could have guaranteed "multiple routing options for every transaction by barring the dominant networks' anti-competitive rules to allow PIN-only networks to process signature transactions, and vice versa." Pl.'s Mem. at 51. [42] In other words, the Board could have required networks to allow cross-routing of signature and PIN transactions, thereby ensuring that each debit card had multiple unaffiliated dual message network options on which every type of debit transaction could be processed. The Board chose instead to adopt a different approach—one that, unfortunately, is inconsistent with the statute. The final network non-exclusivity regulation **[*87]** therefore cannot stand under *Chevron* step one. *See Catawba Cnty.*, 571 F.3d at 1235.

IV. The Appropriate Remedy Is Vacatur and Remand, Staying Vacatur.

The Court concludes that the proper remedy here is to remand to the Board with instructions to vacate the Board's interchange transaction fee (*12 C.F.R. § 235.3(b)*) and network non-exclusivity (*12 C.F.R. § 235.7(a)(2)*) regulations. *See 5 U.S.C. § 706(2)* (directing that a court "shall . . . set aside agency action . . . found to be arbitrary, capricious . . . or otherwise not in accordance with law."). Although I recognize that vacatur is not required **[*88]** by our Circuit, *Advocates for Highway & Auto Safety v. Fed. Motor Carrier Safety Admin.*, 429 F.3d 1136, 1151, 368 U.S. App. D.C. 335 (D.C. Cir. 2005), I conclude that both factors to be considered when deciding whether to vacate—(1) "the seriousness of the [regulation's] deficiencies" and (2) "the disruptive consequences of an interim change that may itself be changed," *Allied-Signal, Inc. v. U.S. Nuclear Regulatory Comm'n*, 988 F.2d 146, 150-51, 300 U.S. App. D.C. 198 (D.C. Cir. 1993) (citation omitted)—weigh in favor of vacating the specified regulations *before* remanding to the Board.

[41] *See* 75 Fed. Reg. at 81,749-50 ("[T]he Board notes that Alternative A could limit the effectiveness **[*85]** of the separate prohibition on merchant routing restrictions under [§ 1693o-2(b)(1)(B)]").

[42] *See, e.g.*, Adam J. Levitin, *Comments in Response to Notice of Proposed Rulemaking on Debit Card Interchange Fees and Routing* at 2-3 (Feb. 22, 2011) ("I would suggest that the Board also be explicit in permitting PIN debit networks to process signature-debit transactions as long as the merchant and/or network is willing to assume the chargeback risk . . . . Restricting limitations on cross-routing on debit cards between PIN and signature debit networks would enhance the competition among networks for processing transactions, which is precisely the goal of the Durbin Interchange Amendment.").

First, the interchange transaction fee and network non-exclusivity regulations are fundamentally deficient. It appears that the Board completely misunderstood the Durbin Amendment's statutory directive and interpreted the law in ways that were clearly foreclosed by Congress. Because "[t]he Court cannot be sure that the agency will interpret the statute in the same way and arrive at the same conclusion after further review," *Int'l Swaps & Derivatives Ass'n v. U.S. Commodity Futures Trading Comm'n*, 887 F. Supp. 2d 259, 2012 WL 4466311, at *25 (D.D.C. 2012), let alone whether, "on further judicial review, this or a similar Final Rule will withstand **[*89]** challenge under the APA," *Humane Soc'y of U.S. v. Kempthorne*, 579 F. Supp. 2d 7, 21 (D.D.C. 2008), this factor weighs heavily in favor of vacatur.

Second, any disruptive effect of vacatur can be curtailed by a stay. This Court is mindful that interchange and network fees are critical components of the debit card system, and that the Board's Final Rule has been in effect since October 1, 2011, such that regulated interests have already made extensive commitments in reliance on it. [43] But in light of the seriously deficient nature of the regulations at issue, and the fact that the Board must develop entirely new rules to correct these errors, remand *without* vacatur would be inappropriate here. *Compare Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, 1048, 350 U.S. App. D.C. 79 (D.C. Cir. 2002) (vacatur appropriate if rule is "irredeemable"), *with WorldCom, Inc. v. FCC*, 288 F.3d 429, 434, 351 U.S. App. D.C. 176 (D.C. Cir. 2002) (where there is a "non-trivial likelihood" that agency could justify rule on remand, vacatur is not necessary). I will stay vacatur, however, to provide the Board an opportunity to replace the invalid portions of the Final Rule. In so doing, I can prevent the Board from adopting similar regulations while **[*90]** at the same time avoid the disruption of vacating the entire regime. *See Anacostia Riverkeeper, Inc. v. Jackson*, 713 F. Supp. 2d 50, 55 (D.D.C. 2010) (although pollution limits promulgated by EPA were inconsistent with Clean Water Act and thus invalid, vacatur stayed pending limits' revision because "neither the Court, nor the parties, wants the . . . waters at issue in this action to go without pollutant limits while EPA develops new pollutant limits, which will obviously take some time").

To properly effect the stay of vacatur, two issues remain: (1) the appropriate length of the stay; and (2) whether current standards should remain in place until they are replaced by valid regulations or the Board should develop interim standards sufficient to allow the Court to lift the stay. *See, e.g., Friends of the Earth, Inc. v. EPA*, 446 F.3d 140, 148, 371 U.S. App. D.C. 1 (D.C. Cir. 2006); *Cement Kiln Recycling Coal. v. EPA*, 255 F.3d 855, 872, 347 U.S. App. D.C. 127 (D.C. Cir. 2001); *Columbia Falls Aluminum Co. v. EPA*, 139 F.3d 914, 924, 329 U.S. App. D.C. 221 (D.C. Cir. 1998); *Anacostia Riverkeeper*, 713 F. Supp. 2d at 52-55. Because the parties failed to address the proper remedy in their motions, the Court will invite supplemental briefing on these issues, keeping in mind that I am inclined toward a stay of vacatur "for months, not years," *Natural Res. Def. Council v. EPA*, 489 F.3d 1250, 1265, 376 U.S. App. D.C. 414 (D.C. Cir. 2007) (Rogers, J., concurring in part and dissenting in part) (citations omitted).

CONCLUSION

For the foregoing reasons, the **[*92]** Court GRANTS plaintiffs' Motion for Summary Judgment and DENIES defendant's Cross-Motion for Summary Judgment. Accordingly, the Court will vacate the interchange transaction fee (*12 C.F.R. § 235.3(b)*) and network non-exclusivity (*12 C.F.R. § 235.7(a)(2)*) regulations, staying vacatur until further Order of this Court, and will

---

[43] *See* Ronald M. Levin, *"Vacation" at Sea: Judicial Remedies and Equitable Discretion in Administrative Law*, 53 Duke L.J. 291, 300 (2003) ("Frequently, when a rule is held invalid after it has already gone into effect, private citizens will already have arranged their expectations around it. Companies may have entered into contracts, made capital investments, and shifted business operations in light of the rule."); *MCI Telecomms. Corp. v. FCC*, 143 F.3d 606, 609, 330 U.S. App. D.C. 92 (D.C. Cir. 1998) ("Here, **[*91]** vacating the order would leave payphone service providers all but uncompensated for coinless calls made from their payphones, and disrupt the business plans they have made on the basis of their expectation of compensation.").

remand to the Board for further proceedings consistent with this Memorandum Opinion. An appropriate order shall follow.

/s/ Richard J. Leon

RICHARD J. LEON

United States District Judge

ORDER

For the reasons set forth in the Memorandum Opinion entered this date, it is this 31st day of July, 2013, hereby

ORDERED that the plaintiffs' Motion for Summary Judgment [Dkt. #20] is **GRANTED;** and it is further

ORDERED that the defendant's Cross-Motion for Summary Judgment [Dkt. #23] is **DENIED;** and it is further

ORDERED that a status conference will be held in Courtroom 18 on 8/14/13 at 11:30am to discuss briefing of the vacatur issues.

SO ORDERED.

/s/ Richard J. Leon

RICHARD J. LEON

United States District Judge

Exhibit V

Exhibit W

Exhibit X

Exhibit Y

Exhibit Z

Exhibit AA

Exhibit BB

Exhibit CC

Exhibit DD

Exhibit EE

Exhibit FF

Exhibit GG

Exhibit HH

Exhibit II

Exhibit JJ

Exhibit KK

Exhibit LL

Exhibit MM

Exhibit NN

Exhibit OO

Exhibit PP

Exhibit QQ

Exhibit RR

JUDGE RAKOFF

13 CIV 3775

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EXPRESSIONS HAIR DESIGN, LINDA FIACCO, THE BROOKLYN FARMACY & SODA FOUNTAIN, INC., PETER FREEMAN, BUNDA STARR CORP., DONNA PABST, FIVE POINTS ACADEMY, STEVE MILLES, PATIO.COM LLC, and DAVID ROSS,

Plaintiffs,

v.

ERIC T. SCHNEIDERMAN, in his official capacity as Attorney General of the State of New York,

Defendant.

No. ____________

COMPLAINT

Introduction

Every time a consumer uses a credit card to make a purchase, the merchant incurs a fee—known colloquially as a "swipe fee." These fees are typically passed on to all consumers in the form of higher prices for goods and services. Both state and federal law, however, permit merchants to pass swipe fees on to only those consumers who pay with credit cards. Merchants may charge two different prices depending on which payment method the consumer uses: a higher price for using a credit card, and a lower price for using other payment methods (cash, a personal check, or a debit card). But, in New York, merchants may engage in dual pricing only if they communicate the difference between the cash price and the credit price using the right *language:* The state allows merchants to offer "discounts" for using cash or a debit card, yet makes it a criminal offense to impose "surcharges" for using a credit card—even though the conduct in both cases (the use of dual pricing) is the same.

This New York no-surcharge law, N.Y. Gen. Bus. Law § 518, violates the First Amendment to the U.S. Constitution, is unconstitutionally vague, and is preempted by federal antitrust law. The plaintiffs are merchants who seek a declaration that the law is unconstitutional and an injunction preventing the Attorney General of the State of New York from enforcing the law against them.

Jurisdiction

1. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3).

Parties

2. Plaintiff Expressions Hair Design is a unisex hair salon in Vestal, New York, founded in 2006. For a small business like Expressions, credit-card swipe fees make an enormous difference. Expressions has found that most of its customers are not aware of the high cost of swipe fees or the ways in which they burden small businesses. But when they learn of the fees, customers are generally sympathetic. Expressions therefore seeks to do what it can to ensure that its customers learn about the cost of using credit cards and take that information into account in deciding how to pay for haircuts and other salon services. Ultimately, Expressions wants credit-card companies to reduce their swipe fees, either as a result of market forces or action by Congress, and is hopeful that educating its customers about swipe fees will cause them to act—both as consumers and as citizens.

3. Until 2012, Expressions posted a sign at its counter informing all customers that, due to the high swipe fees charged by the credit-card industry, Expressions would charge customers 3% more for using a credit card. But Expressions took down its sign and stopped communicating that policy to its customers when one customer (who is also a lawyer) informed the salon that New York law makes it illegal to impose a "surcharge" on customers for paying with a credit card (even though merchants

are allowed to provide a "discount" for paying with cash, check, or debit card). Because of the New York no-surcharge law, the salon's current policy is to charge two different prices for haircuts and other services—a lower price for customers paying with cash, check, or debit card and a higher price for customers paying with a credit card. Expressions tries to be as careful as it can to avoid characterizing that price difference as a "surcharge" or an "extra" charge for paying with a credit card, even though its customers *do* effectively pay more for using a credit card.

4. By engaging in dual pricing, Expressions increases its prices to account for the cost of credit cards (which New York permits) and does so only for those who use credit cards (which New York also permits). But Expressions cannot communicate its price difference in the way that it would like—by calling the difference a "surcharge" for using credit—because New York's no-surcharge law bars Expressions from using that word. Instead, Expressions is forced to describe the lower price as the "cash price" and the higher one as the "credit price," which Expressions believes is far less effective at conveying the costs of credit to its customers (and thus at reducing the amount Expressions pays in swipe fees) than having a "regular price" with a "surcharge" for credit. Indeed, Expressions knows from experience that customers who are presented with an extra charge for using a credit card are much more likely to respond by using a cheaper payment method.

5. Expressions is also concerned that even this less effective way of labeling its pricing could violate the no-surcharge law, depending on how Expressions' staff describe the price difference to customers. If even one staff member inadvertently refers to the difference as a "surcharge" for credit, or says that credit is "extra" or "more," Expressions is afraid that its truthful speech could subject the business to criminal sanctions. This fear

is not merely hypothetical: New York's Attorney General has arrested and criminally prosecuted a gas station owner that maintained a similar dual-pricing policy solely because the gas station's cashier used the word "extra" to describe the price difference in a conversation with a customer. *See People v. Fulvio*, 517 N.Y.S.2d 1008 (Crim. Ct. N.Y. 1987). Expressions must therefore be exceedingly vigilant in instructing its staff on how to characterize the price difference, and in monitoring what they say to ensure compliance. Even then, Expressions is unsure what constitutes a surcharge and what constitutes a discount. "If a customer asks us whether we charge more for paying with a credit card," wonders one of the salon's owners, "should we ignore or dodge the question? Are we required to answer falsely? Or should we say something like the following? 'State law does not allow us to tell you that you are paying more for using a credit card, but we can tell you that you are paying less for not using a credit card.'"

6. Plaintiff Linda Fiacco is one of three co-owners of Expressions Hair Design and is responsible for its day-to-day management.

7. Plaintiff The Brooklyn Farmacy & Soda Fountain, Inc. is an ice-cream parlor and soda fountain in Brooklyn, New York, founded in 2010. It is in a competitive industry with low profit margins, and swipe fees significantly cut into these margins. Brooklyn Farmacy pays an average of 2% to 3% per credit transaction in swipe fees and has paid thousands of dollars in fees since starting the business. Swipe fees are Brooklyn Farmacy's largest non-payroll-related expense besides rent. Although the company tries to reduce credit-card use by requiring a $10-minimum purchase amount to pay with credit, it currently does not have a dual-pricing system. This means that swipe fees get passed on to *all* of Brooklyn Farmacy's customers, cash and credit users alike, in the form of higher prices. And because these fees are kept hidden, customers who meet the

minimum purchase amount have no disincentive to use credit—just the opposite, in fact, because of the benefits that most credit cards offer—which raises fees even higher.

8. The reason Brooklyn Farmacy does not offer dual pricing is because of the law's prohibition on speech and also because of its vagueness. As to the former: Brooklyn Farmacy would like to communicate the price difference as a "surcharge" for credit—not a "discount" for cash, which would make prices look higher than they are—because the company believes that this would most effectively convey the costs of credit to its customers. New York's no-surcharge law blocks it from doing so. As to the latter: The law is so vague about what it prohibits that Brooklyn Farmacy is afraid to have any dual pricing at all, lest it accidentally subject itself to criminal prosecution. The company would have to instruct its employees on the difference between a "surcharge" and a "discount," which even its owners do not fully understand, and then constantly monitor the employees to make sure that each one is sticking to the script. Rather than risk criminal prosecution to say something that it believes is only marginally effective at communicating its message, Brooklyn Farmacy stays away from dual pricing altogether.

9. Plaintiff Peter Freeman is the co-founder of Brooklyn Farmacy and is responsible for its day-to-day management.

10. Plaintiff Bunda Starr Corp. owns Brite Buy Wine & Spirits, a liquor store in lower Manhattan founded in 1980. Brite Buy has accepted credit cards since the mid-1980s, when the New York State Liquor Authority changed its laws to allow liquor to be purchased with credit. Between 60% and 70% of Brite Buy's sales are now made with some form of payment card (usually a credit card), which means that the company incurs swipe fees for most of its sales transactions. Each year, Brite Buy pays tens of thousands of dollars in swipe fees. To cut down on these fees, the company had previously required a

minimum purchase amount to pay with a credit card, but that strategy proved ineffective. Brite Buy would like to communicate the cost of credit to customers by calling it a "surcharge," which the company believes would be effective at getting them to reduce credit use, but New York's no-surcharge law makes using that label a crime.

11. Because of New York's law, Brite Buy does not currently engage in dual pricing, even though it would like to (and even though that conduct is permitted). The company does not do so for the same reasons as Brooklyn Farmacy: (1) because the law imposes criminal punishment on the company's most effective way of conveying to its customers the true costs of credit, and (2) because the law's vagueness leaves the company uncertain as to whether it could implement a dual-pricing system in a lawful way.

12. Plaintiff Donna Pabst is president of Bunda Starr Corp. and is responsible for Brite Buy's day-to-day management.

13. Plaintiff Five Points Academy is a martial arts and fitness studio in lower Manhattan founded in 2003. It pays on average between 2.4% and 3.3% per credit transaction in swipe fees. Over the years, an increasing percentage of Five Points' members have chosen to pay their monthly dues and other expenses by credit card. This has caused a sharp increase in the amount the company pays each year in fees, to the point where it paid more than $50,000 in fees in 2012 alone. Five Points wants to offer a dual pricing system, but it will do so only if it can communicate the price difference as a "surcharge" for using credit (which the company believes is the best way to convey the costs of credit) and only if the law is clear about what it permits (and what it criminalizes). New York's no-surcharge law prevents both of these conditions from being satisfied.

14. Plaintiff Steve Milles is Vice President of Five Points Academy and is responsible for its day-to-day management.

15. Plaintiff Patio.com LLC is an outdoor furniture and billiards company founded in 1984. It has stores in Mount Kisco, Scarsdale, South Hampton, and Westbury, New York, as well as in six other states and online. Credit cards have become an increasingly popular payment method among Patio.com's customers. About 80% of the company's storefront sales are now made with a credit card. Patio.com pays on average between 2% and 3% per credit transaction in swipe fees. It paid more than $200,000 in swipe fees in 2012.

16. New York's no-surcharge law harms Patio.com in at least two ways. The law prevents the company from informing its customers of swipe fees by imposing a "surcharge" for credit, which it would like to do. And the law effectively prevents the company from having a dual-pricing system by (1) outlawing the most effective way of conveying that system and (2) being so unclear about how such a system can be lawfully described.

17. Plaintiff David Ross is the founder and president of Patio.com LLC, and is responsible for its day-to-day management.

18. Defendant Eric T. Schneiderman is the Attorney General of New York and is responsible for enforcing the laws of the state, including the state's no-surcharge law. He is sued in his official capacity.

Factual Background

19. Americans pay some of the highest swipe fees in the world—seven or eight times those paid by Europeans, according to estimates by the Merchants Payments Coalition. The main reason swipe fees are so high is that they are kept hidden from consumers, who decide which payment method to use and thus determine whether a fee will be incurred in the first place. According to one survey, about 41% of American

credit-card users are completely unaware that merchants are charged fees to process credit-card transactions. Although merchants are allowed to charge consumers more for using credit than for using cash, merchants cannot effectively communicate that added cost because New York and other states force them to call it a "discount" for cash rather than a "surcharge" for credit.

20. New York's no-surcharge law makes it a criminal offense—punishable by a fine of $500 and up to one year of imprisonment—for any "seller in any sales transaction [to] impose a surcharge on a holder who elects to use a credit card in lieu of payment by cash, check, or similar means." N.Y. Gen. Bus. Law § 518. New York's no-surcharge law does *not*, however, outlaw dual pricing. This is clear from (1) the state's own interpretation of the law, (2) the law's legislative history, (3) the only court decision to have addressed the question, and (4) federal law.

21. As the state itself has recognized, the no-surcharge law "'prohibits a vendor from charging a surcharge for credit card usage, but would not interfere with that same vendor establishing the higher price for credit card sales and then allowing a comparable discount for cash purchases.'" *Fulvio*, 517 N.Y.S.2d at 1011 (ellipsis omitted) (quoting Attorney General's memorandum). That is, "'[c]ash discounts are allowed, credit surcharges are impermissible.'" *Id.* at 1014. Moreover, the state has applied that distinction to cover speech uttered by employees, having prosecuted a gas-station owner because the station's cashier told a customer that using a credit card would cost "extra"—even though the station's pricing system was otherwise lawful. *Id.* at 1010.

22. The no-surcharge law's differential treatment of "surcharges" and "discounts" is also reflected in the law's legislative history, which makes clear that, under the law, a "merchant would be able to offer a discount for cash if they so desire." And the

only court to address the line between "surcharges" and "discounts" interpreted the no-surcharge law as prohibiting the former but permitting the latter, in part because the purpose of the law was "to fill the gap created by expiration of the federal ban on surcharges" (which is discussed below), with the understanding that the federal "provision permitting a merchant to offer a discount for cash would still be permitted." *Id.* at 1012.

23. Until January 2013, New York's no-surcharge law was effectively redundant because credit-card companies imposed similar speech prohibitions in their contracts with merchants. But after federal antitrust litigation caused the two dominant credit-card companies (Visa and MasterCard) to change their contracts to remove their no-surcharge rules, New York's law took on added importance. It is now the only thing keeping the plaintiffs from saying what they would like: that they impose a "surcharge" for using credit because credit costs more.

I. Why labels matter: the communicative difference between "surcharges" and "discounts"

24. A "surcharge" on credit and a "discount" for cash "are different frames for presenting the same price information—a price difference between two things." Adam J. Levitin, *Priceless? The Economic Costs of Credit Card Merchant Restraints*, 55 UCLA L. Rev. 1321, 1351-52 (2008). They are identical in every way except one: the *label* that the merchant uses to communicate that price difference.

25. But labels can matter. "[T]he frame within which information is presented can significantly alter one's perception of that information, especially when one can perceive the information as a gain or a loss," as with the price difference between using cash and using credit. Jon D. Hanson & Douglas A. Kysar, *Taking Behavioralism Seriously: Some Evidence Of Market Manipulation*, 112 Harv. L. Rev. 1420, 1441 (1999). This is largely

because of a well-known cognitive phenomenon called "loss aversion," which refers to people's tendency to let "changes that make things worse (losses) loom larger than improvements or gains" of an equivalent amount. Daniel Kahneman, Jack L. Knetsch, & Richard H. Thaler, *Anomalies: The Endowment Effect, Loss Aversion, and Status Quo Bias*, 5 J. Econ. Persp. 193, 199 (1991). Put more simply: "people have stronger reactions to losses and penalties than to gains." Adam J. Levitin, *The Antitrust Super Bowl: America's Payment Systems, No-Surcharge Rules, and the Hidden Costs of Credit*, 3 Berkeley Bus. L.J. 265, 280 (2006).

26. Because of this, "[c]onsumers react very differently to surcharges and discounts," even though they present the exact same pricing information. *Id.* Consumers are more likely to respond to surcharges (which are perceived as *losses* for using credit) than to discounts (which are perceived as *gains* for not using credit). *Id.* Research shows just how wide this gap is. In one study, 74% of consumers had a negative or strongly negative reaction to credit surcharges, while fewer than half had a negative or strongly negative reaction to cash discounts. That difference—the difference in how the same pricing information is understood by consumers—influences their behavior, making "surcharges" a much more effective way to communicate the costs of credit to consumers.

27. The effectiveness of surcharges is why the plaintiffs in this case seek to impose them: surcharges inform consumers of the costs of credit, letting consumers decide for themselves whether credit's benefits outweigh its costs. That exchange of information creates meaningful competition, which in turn drives down costs—as demonstrated by price-transparency reforms in Europe and Australia. If consumers are made aware of swipe fees and determine that they are too high, consumers will use a different payment method, and banks and credit-card companies will have to lower their fees to attract

more business. Indeed, in Australia, where regulators in 2003 allowed complete transparency of price information and merchants have responded with surcharges, swipe fees have greatly declined.

28. But when the government criminalizes framing the added cost of credit as a "surcharge," as New York has done, merchants lose their most effective means of informing consumers of the high costs of credit. Moreover, because the dividing line between what constitutes a "surcharge" and what constitutes a "discount" is so blurry, many merchants (including many of the plaintiffs in this case) do not even attempt to offer dual pricing, even though the law allows it, to avoid accidentally subjecting themselves to criminal punishment. And many other merchants falsely believe that they may not offer any dual pricing at all. The upshot, then, is that merchants end up passing on swipe fees to *all* consumers by raising the prices of goods and services across the board. This means that consumers are unaware of how much they pay for credit and have no incentive to reduce their credit-card use because they will pay the same price regardless. As a result, swipe fees have soared.

29. Swipe fees thus function as an invisible tax, channeling vast amounts of money from consumers to some of the nation's largest banks and credit-card companies. Because cash and credit purchasers both pay this tax, swipe fees are also highly regressive: low-income cash purchasers subsidize the cost of credit cards, while enjoying none of their benefits or convenience. According to Federal Reserve economists, "[b]y far, the bulk of [this subsidy] is enjoyed by high-income credit card buyers," who receive an average of $2,188 every year, paid disproportionately by poor and minority households.

30. For these reasons, numerous prominent economists and consumer advocates—from Joseph Stiglitz to Elizabeth Warren—have opined that no-surcharge policies are bad for consumers and hurt competition.

II. The credit-card industry's concerted efforts to prevent merchants from communicating the costs of credit as "surcharges"

31. The invisibility of swipe fees is no accident. It is the product of concerted efforts by the credit-card industry over many decades to ensure that merchants cannot communicate to consumers the added price they pay for using credit. Over the years, the industry has succeeded, both through contractual provisions and legislative measures, to silence merchants' attempts to call consumers' attention to the true costs of credit.

The industry's early ban on differential pricing ends

32. In the early days of credit cards, any attempt at differential pricing between credit and non-credit transactions was strictly forbidden by rules imposed on merchants in their contracts with credit-card companies. That changed in 1974 after two important developments. *First*, Consumers Union sued American Express on the ground that its contractual ban on differential pricing was an illegal restraint on trade. Rather than face the prospect that federal courts would mandate full price transparency, American Express almost immediately settled the suit by agreeing to allow merchants to provide consumers with differential price information.

33. *Second*, Congress then enacted legislation protecting the right of merchants to have dual-pricing systems. Congress amended the Truth in Lending Act to provide that "a card issuer may not, by contract, or otherwise, prohibit any such seller from offering a discount to a cardholder to induce the cardholder to pay by cash, check, or similar means rather than use a credit card." Pub. L. No. 93, § 495, 88 Stat. 1500 (1974).

The credit-card industry shifts its strategy to labeling

34. The 1974 amendments were initially considered a victory for consumers. But the credit-card industry, seizing on Congress's use of the word "discount," soon shifted its focus to the way merchants could *label* and *describe* such pricing to consumers. Aware that how information is presented to consumers can have a huge impact on their behavior—and that many merchants would avoid dual pricing altogether if "surcharges" were outlawed—the credit-card lobby "insist[ed] that any price difference between cash and credit purchases should be labeled a cash discount rather than a credit card surcharge." Amos Tversky & Daniel Kahneman, *Rational Choice and the Framing of Decisions*, 59 J. Bus. S251, S261 (1986).

The credit-card industry's labeling strategy achieves short-lived success at the national level

35. In 1976, after two years of lobbying Congress to impose the credit-card industry's preferred speech code, the industry succeeded in getting Congress to enact a temporary ban on "surcharges," despite the authorization for "discounts." *See* Pub. L. No. 94–222, 90 Stat. 197 ("No seller in any sales transaction may impose a surcharge on a cardholder who elects to use a credit card in lieu of payment by cash, check, or similar means."). This controversial measure set the stage for a series of battles over renewal of the ban, culminating in an intense political debate in the mid-1980s that pitted both the Reagan Administration and consumer groups against the credit-card industry.

36. With the "surcharge" ban set to expire in 1981, the federal government and consumer advocates registered the impact that it had on consumers' and merchants' behavior. The Chairman of the Federal Trade Commission, writing in opposition to extending the law, recognized that the "surcharge" label drives home the true marginal

cost of a credit transaction to the consumer. S. Rep. 97-23, at 11-12. Although "a discount and a surcharge are equivalent concepts," he remarked, "one is hidden in the cash price and the other is not," meaning that a ban on "surcharges" prohibited merchants from disclosing to their customers the true cost of credit. *Id.* at 10. Despite the opposition, Congress gave in to industry lobbying and renewed the law for an additional three years. Pub. L. 97–25, 95 Stat. 144 (1981).

37. In 1984, the no-surcharge law was again set to expire. Senator William Proxmire of Wisconsin, one of the ban's chief opponents, cut to the chase: "Not one single consumer group supports the proposal to continue the ban on surcharges," he observed. "The nation's giant credit card companies want to perpetuate the myth that credit is free." Irvin Molotsky, *Extension of Credit Surcharge Ban*, N.Y. Times, Feb. 29, 1984, at D12. The credit-card industry, acutely conscious of the threat that merchants' disclosure of credit's true cost posed to its business model, responded by unleashing a massive lobbying campaign to oppose ending the ban. Stephen Engelberg, *Credit Card Surcharge Ban Ends*, N.Y. Times, Feb. 27, 1984, at D1. One senior vice president of Shearson/American Express remarked in 1984 that his company had been opposing ending the ban for eight years. He observed that consumers do not write angry letters to credit-card companies about cash discounts, but do complain about surcharges. *Id.* He concluded that ending the ban "could potentially hurt the image of" credit cards, revealing that the industry viewed its legislative efforts as playing a key role in dictating the perception of credit cards among consumers. *Id.* The industry's efforts failed, and the ban lapsed in 1984. Levitin, *Priceless?*, 55 UCLA L. Rev. at 1381.

38. A 1981 report of the Senate Banking Committee, prepared as part of the law's initial renewal, stressed the law's role in regulating how a merchant could frame a

dual-pricing system. The Committee observed that "while discounts for cash and surcharges on credit cards may be mathematically the same, their practical effect and the impact they may have on consumers is very different." S. Rep. 97-23, at 3. The no-surcharge law thus effectively set forth a speech code, requiring that merchants label their prices in the way that best hid the costs of credit and most enabled the credit-card companies to take advantage of the framing effect: by advertising the credit price as the "regular" price, and the cash price as a "discount" from that price.

39. Furthermore, the vague distinction between "discounts" and "surcharges," and the risk of inadvertently describing a dual-pricing system in an unlawful way, led merchants to steer clear of such systems. In an editorial in *The New York Times*, Senator Christopher Dodd of Connecticut, a proponent of allowing surcharges, noted that "many merchants are not sure what the difference between a discount and a surcharge is and thus do not offer different cash and credit prices for fear they will violate the ban on surcharges." Sen. Christopher J. Dodd, *Credit Card Surcharges: Let the Gouger Beware*, N.Y. Times, Mar. 12, 1984, at A16. *See also* Carol Krucoff, *When Cash Pays Off*, Wash. Post, Sept. 22, 1981 (describing consumer activist who argued that merchants have not offered cash discounts because "the regulations have been so complicated. Smaller business people, who are most likely to offer them, may have been intimidated by the fear it could be viewed as an illegal surcharge."); Engelberg, *Credit Card Surcharge Ban Ends*, at D1 ("A House aide said that one explanation for the relative unpopularity of cash discounts is that retailers, aware that surcharges on credit purchases are illegal, have erroneously assumed that discounts are not permitted.").

The credit-card industry lobbies the states to enact no-surcharge laws and adopts contractual no-surcharge rules

40. After the controversial federal ban expired, the credit-card industry briefly turned to the states, convincing fewer than a dozen (including New York) to enact no-surcharge laws of their own. In an early instance of the phenomenon now known as "astroturfing," American Express and Visa went to great lengths to create the illusion of grassroots support for such laws, even going so far as to create and bankroll a fake consumer group called "Consumers Against Penalty Surcharges." But real consumer groups—including Consumers Union and Consumer Federation of America—opposed state no-surcharge laws because they discouraged merchants from making the costs of credit transparent, which resulted in an enormous hidden tax paid by all consumers whenever they made a purchase.

41. New York's law took effect in June 1984, just after expiration of the temporary federal ban. N.Y. Gen. Bus. Law § 518. The law's legislative history does not hide the fact that it was intended to influence consumers' perceptions of credit cards by controlling the labels that merchants may use to describe mathematically equivalent transactions. For example, one state official justified the law as follows: "Surcharges, even if only psychologically, impose penalties on purchasers and may actually dampen retail sales. A cash discount, on the other hand, operates as an incentive and encourages desired behavior." Memorandum from Mollie Lampi, Associate Counsel, State Consumer Protection Board, to Gerald C. Crotty, Counsel to the Governor (June 1, 1984).

42. The only court to analyze the New York no-surcharge law concluded that, under the law, "precisely the same conduct by an individual may be treated either as a criminal offense or as lawfully permissible behavior depending only upon the *label* the

individual affixes to his economic behavior, without substantive difference." *Fulvio*, 517 N.Y.S.2d at 1011 (emphasis in original). The court explained: "[W]hat General Business Law § 518 *permits* is a price differential, in that so long as that differential is characterized as a discount for payment by cash, it is legally permissible; what General Business Law § 518 *prohibits* is a price differential, in that so long as that differential is characterized as an additional charge for payment by use of a credit card, it is legally impermissible. . . . General Business Law § 518 creates a distinction without a difference; it is not the *act* which is outlawed, but the *word* given that act." *Id.* at 1015 (emphasis in original).

43. Around the same time that New York's no-surcharge law was enacted, the major credit-card companies changed their contracts with merchants to include no-surcharge rules. No-surcharge laws in New York and other states thus function as a legislative extension of the restrictions that credit-card issuers imposed more overtly by contract. For instance, American Express's contracts with merchants include an elaborate speech code. The contracts provide that merchants may not "indicate or imply that they prefer, directly or indirectly, any Other Payment Products over our Card"; "try to dissuade Cardmembers from using the Card"; "criticize … the Card or any of our services or programs"; or "try to persuade or prompt Cardmembers to use any Other Payment Products or any other method of payment (e.g., payment by check)."

The Durbin Amendment and the recent political controversy over swipe fees

44. From the mid-1980s until the 2000s the issue of swipe fees remained largely in the shadows. Even in the majority of states without anti-surcharge laws, the contractual no-surcharge rules ensured that consumers were rarely informed of the true

costs of credit. Developments in the late 2000s, however, caused swipe fees to reemerge as a volatile political issue.

45. The global financial crisis of 2007-2008 and the ensuing push for financial-regulation reform resulted in renewed focus on swipe fees. Senator Dick Durbin of Illinois proposed an amendment to the Senate version of the Dodd-Frank Wall Street Reform and Consumer Protection Act that aimed to reduce the fees associated with transactions by both debit and credit cards. Although proposed legislation to regulate *credit-card* swipe fees was defeated, the Durbin Amendment was enacted into law. As enacted, it establishes a procedure by which the Federal Reserve Board now sets the maximum swipe fees for *debit-card* transactions. 15 U.S.C. § 1693o-2(a). It also includes a provision protecting merchants' rights to offer consumers incentives for using different payment methods: "A payment card network shall not … by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person to provide a discount or in-kind incentive for payment by the use of cash, checks, debit cards, or credit cards." *Id.* § 1693o-2(b)(2).

46. The fight over the Durbin Amendment shone a spotlight on the amount of revenue that banks generate from swipe fees, initiated a frenzy of lobbying by the credit-card industry, and touched off a contentious national political debate. Many merchants sought to convey their opposition to swipe fees directly to their customers—and voters—at the checkout counter. The national convenience store chain 7-Eleven, for example, put up signs asking customers to "STOP UNFAIR CREDIT CARD FEES" and gathered a total of 1.6 million signatures on a petition to support legislation on credit-card fees. 7-Eleven claimed that its petition represented the largest quantity of signatures ever presented to Congress—trumping even the 1.3 million signatures presented to Congress regarding national healthcare reform.

Visa & MasterCard drop their no-surcharge rules

47. In May 2005, Animal Land Inc., a pet-relocation company based in Atlanta, Georgia, sued Visa for a declaration that its no-surcharge rule violated antitrust laws by preventing Animal Land and other merchants from assessing a discrete, denominated charge upon customers using credit cards, as opposed to cash, checks, or debit cards. *Animal Land, Inc. v. Visa USA, Inc.*, No. 05-CV-1210 (N.D. Ga.). In the ensuing months, numerous U.S. merchants and trade associations brought claims against the dominant credit-card networks, alleging that they engaged in illegal price-fixing and impermissibly banned merchants from encouraging customers to use less expensive payment methods. The lead plaintiff in the lawsuit was Mitch Goldstone, the owner of a small photo-processing business. Troubled by consumers' ignorance about swipe fees and merchants' passive acceptance of them, Goldstone became an activist against the credit-card issuers, challenging their business practices in media interviews and blog postings in addition to his role as lead plaintiff in the lawsuit.

48. Under the terms of a national class-action settlement, Visa and MasterCard in January 2013 dropped their prohibitions against merchants imposing surcharges on credit-card transactions. As a result, state no-surcharge laws—previously redundant because of contractual no-surcharge rules—have now gained added importance. And as they did in the 1980s, credit-card companies are once again seeking to discourage dual pricing by pushing state legislation that dictates the labels that merchants can use for such systems.

Claims for Relief

Claim One: Violation of the First Amendment (under 42 U.S.C. § 1983)

49. New York's no-surcharge law regulates how the plaintiffs may characterize the price differences they may lawfully charge for credit and cash purchases. The law allows them to tell their customers that they are paying *less* for using cash or other means of payment (a "discount"), but not that they are paying *more* for using credit (a "surcharge"). This state-imposed speech code prevents the plaintiffs from effectively conveying to their customers—who absorb the costs of credit through higher prices for goods and services—that credit cards are a more expensive means of payment.

50. By prohibiting certain disfavored speech by merchants—and enforcing that prohibition with criminal penalties—New York's no-surcharge law violates the plaintiffs' First Amendment rights, as applied to the states through the Fourteenth Amendment. Because the no-surcharge law is a content- and speaker-based restriction on speech, it is subject to heightened scrutiny under the First Amendment. *See Sorrell v. IMS Health Inc.*, 131 S. Ct. 2653 (2011). Regardless of whether the law is analyzed under a special commercial speech inquiry, it cannot survive. The prohibited speech concerns lawful activity (engaging in dual pricing) and is not misleading; New York has no substantial interest in prohibiting the speech; and New York's no-surcharge law does not directly advance—and is far more extensive than necessary to serve—any interest the state might have. *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York*, 447 U.S. 557 (1980).

Claim Two: Void for vagueness (under 42 U.S.C. § 1983)

51. New York's no-surcharge law does not provide guidance about what speech is permitted and invites arbitrary and discriminatory enforcement. Because the

law makes criminal liability turn on the blurry difference between two ways of describing the same conduct, the law does not provide a person of ordinary intelligence reasonable opportunity to know what is prohibited. Additionally, the law lacks explicit standards for those charged with its enforcement. It is therefore unconstitutionally vague under the Due Process Clause of the Fourteenth Amendment.

Claim Three: Sherman Act preemption (under 42 U.S.C. § 1983)

52. New York's no-surcharge law allows credit-card companies to keep the costs of credit hidden from consumers by preventing merchants from communicating these costs in an effective manner. The prohibition on communication insulates credit-card companies from competition, causes the costs of credit to skyrocket, and frustrates the purposes of federal antitrust law—just as Visa and MasterCard's no-surcharge rules did. Because those rules constituted an antitrust violation, the no-surcharge law that now carries them out does so as well. *See Calif. Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97 (1980); *Hertz Corp. v. City of New York*, 1 F.3d 121 (2d Cir. 1993). The New York law violates, and is preempted by, the Sherman Act. 15 U.S.C. § 1 *et seq*.

Request for Relief

The plaintiffs request that the Court:

A. Declare that New York's no-surcharge law is unconstitutional and preempted by the Sherman Act, and enjoin its enforcement;

B. Award the plaintiffs their reasonable costs, expenses, and attorney's fees under 42 U.S.C. § 1988; and

C. Grant the plaintiffs all other appropriate relief.

June 4, 2013

Respectfully submitted,

DEEPAK GUPTA
(*pro hac vice* application forthcoming)
GREGORY A. BECK
BRIAN WOLFMAN
JONATHAN E. TAYLOR
GUPTA BECK PLLC
1625 Massachusetts Avenue, NW
Suite 500
Washington, DC 20036
(202) 470-3826
deepak@guptabeck.com

GARY B. FRIEDMAN
TRACEY KITZMAN
FRIEDMAN LAW GROUP LLP
270 Lafayette Street
New York, NY 10012
(212) 680-5150
gfriedman@flgllp.com

Counsel for Plaintiffs

Exhibit W

Top

Why is there a convenience fee for credit cards and debit cards charged as credit?
Payment card companies charge the City of Portland (and all governments and businesses) a fee based on a percentage of each credit and debit card transaction; this is called a “merchant fee.” Government agencies are allowed to charge a “convenience fee” when offering credit and debit cards as a payment option to offset the cost of the merchant fee and for the customer’s convenience of using one. Most tax collection agencies including the IRS and Oregon Department of Revenue charge convenience fees (through third party credit and debit card processors) for the same reason the City of Portland does. If the City of Portland did not recover a 99-cent (99¢) fee, credit and debit card merchant fees would significantly reduce tax collections and ultimately result in less funding for teachers and the arts.

Top

Why isn’t the Revenue Bureau accepting debit cards?

Starting April 8, the Revenue Bureau is accepting debit cards charged as credit.

Top

Is the Revenue Bureau charging more in convenience fees than it has to?
No. The Revenue Bureau made the decision to charge less than the amount needed to cover merchant fees. Assuming 45,000 taxpayers (about 20%) choose to pay the $35 tax using a credit or debit card with a merchant fee of 3% [three percent] *of the transaction amount*, the Bureau will incur merchant fees of $47,250. For simplicity, the Bureau made a decision to charge a flat convenience fee of 99-cent (99¢) *per transaction,* no matter the transaction amount. At 99-cents (99¢) each, 45,000 single transactions will yield convenience fee revenue of $44,550, or $2,700 less than is needed to cover the associated merchant fee expenses. Moreover, since many taxpayers will choose to file *for more than one person at a time*, actual convenience fees received will be lower than $44,550; each of these multi-person transactions (for example, $70, $105) will result in merchant fees of 3% *of the transaction amount* ($2.10 or $3.15 in this example) but the convenience fee collected will remain 99-cent (99¢).

Top

How can I avoid paying a convenience fee?
Pay with an ACH payment, also known as an electronic check. There isn't a convenience fee for ACH payments, but please check with your bank first if you have done this before. Your bank may require you to authorize Automated Clearing House (ACH) payments. If ACH payments are not authorized, the check will be rejected and subject to a $25 returned check fee from the bureau (and your bank may assess charges).

Top

Is my online transaction secure?
Yes. The site is encrypted and includes visual clues (e.g., closed padlock symbol in the browser). You can view the security certificates by clicking on the padlock.

Top

Does the City store my online credit or debit card or electronic check (ACH) information?
Only if you choose the “split payment” option (two $18 charges) and then only until the second transaction has processed. The City does not retain credit or debit card information after a single transaction has cleared or after the second of two transactions has cleared.

Top

How soon will my online payment post to show that I have paid this year's tax?
Your payment will post to your account on the next business day.

Top

Can I cancel a payment I just made online?
Yes, but not online. All requests for online payment cancellation must be received before 5pm on the same day the payment was made. Call 503-865-4278, Monday through Friday, 8:00am until 5:00pm, except holidays.

Top

What are the acceptable forms of payment?
Online:

Exhibit X

CONTACT

City of Norman
Finance Dept.
P.O. Box 370
201-C West Gray
Norman, OK 73070

Phone: (405) 366-5413
Fax: (405) 366-5417
Email

City of Norman
Utility Services
P.O. Box 5599
201-C West Gray
Norman, OK 73070

Phone: (405) 366-5320
Fax: (405) 366-5417
Email

Utility Service Hours & Policy

Our office hours are **8:00 A.M. to 5:00 P.M. Monday through Friday**. For the convenience of our customers, a drive through window is located on the West side of our Building. The drive through window has the same business hours as our office, and we do ask that you have a copy of your billing with you when using the drive through window.

Also located on the West side of our building is our night deposit box. This box is for use by our customers who cannot come in during business hours. However, payment received in the night deposit after 5:00 P.M. on the due date are still subject to late fees of 10% of the unpaid balance.

Failure to receive your bill does not avoid or waive your billing or penalty.

Payment arrangements for delinquent accounts can be made if the customer calls prior to delinquent date. If service has been discontinued for nonpayment, a $50.00 trip charge is assessed to the account. In order to have service restored payment in full must be received in our office.

Monthly charges will continue to accrue until such time a customer requests service be turned off, or taken out of their name.

Payment may be made in the form of cash, check, money order, cashier's check, Visa or MasterCard.

NOTE: A convenience fee of $3.00 is applied to all credit and debit card payments.

Printer-friendly version | Send to friend | PDF version

FINANCE LINKS

- Financial Services
  - Accounting
  - Budget Services
  - Information Technology
  - Local Tax Information
  - Meter Readers
  - Printing Services
  - Purchasing
  - Treasury Services
  - Utility Services
    - Bank Drafts
    - Helpful Links
    - Hours & Policy
    - Pay Online
      - Frequently Asked Questions
    - Rates
    - Start Up Costs
    - Water Trivia

City of Norman
Utility Services
P.O. Box 5599
201-C West Gray
Norman, OK 73070

Phone: (405) 366-5320
Fax: (405) 366-5417
Email

Utility Pay Online

Welcome to the City of Norman

Online Payment Service

Click Here To Pay Online

Introduction:

This service allows you to view your account, water usage (consumption) and payment history as well as make a payment online!

VeriSign Secured

Setting Up Your Online Account:

To sign up, you will need the account number and your temporary PIN (Personal Identification Number) from your water bill. Your account number will be located in the top left portion of your bill and your PIN will be located in the bottom left corner of the bill. You will also need a valid e-mail account for the system to verify your information.

> Note: When entering your information, please be sure to enter the account number including the '-' dash. (123456-123456) Also you will need to enter the leading "**0**" (zeros) in your PIN.

You will be prompted to change your PIN after your information has been verified. Please be sure that you choose a PIN that you can remember, yet that is hard enough that someone else cannot guess it.

Payment Options:

At this time we are accepting payments with Visa or MasterCard at the counter, at the drive-thru (201 West Gray, Building C), over the telephone and internet. **NOTE: A convenience fee of $3.00 is applied to all credit and debit card payments when paying through the telephone or internet.** Cash or check payments must be made through the drive-thru or at the customer service counter. As always, you can still make your payments by check through the mail.

Other Payment Options:

You may still visit our office at City Hall, located at 201-C West Gray. Parking is available on the east side of the building. Our business hours are 8 a.m. to 5 p.m., Monday through Friday. You can also take advantage of our drive-thru service located on the west side of the building (behind the library) during this same time period or use the night deposit if this time is not convenient for you. Both are accessible from the Daws St. entrance.

You can also pay by telephone by calling our automated customer service number **405-366-5320**. Using this method you can check your balance as well as make a payment on your account.

If you don't want to worry about "due dates" then you can also sign up for automatic bank drafts and your account will be paid automatically on the date the payment is due.

Third Party Payment Options:

If you use a third party on-line check service, please enter your account number "Exactly" as shown on your bill, with the DASH ("-") included. Account numbers without the DASH ("-") can delay the processing of your payment.

Many financial institutions offer bill payment services. If you use one of these servirices, be aware that the bank may be generating a check and mailing it rather than transferring funds electronically, so please allow adequate time to avoide making a late payment.

Security:

We realize that security is very important to you. We have setup the system so all information is encrypted through VeriSign so that no one can access your personal information.

System Down Time:

The system will be down from 10:20 p.m. through 12:45 a.m. CST for nightly maintenance. If you experience problems at any other time, please call the customer service number **405-366-5320**.

Click Here To Pay Your Bill or Access Your Account Information

Exhibit Y

Visa U.S.A. Interchange Reimbursement Fees

The following tables set forth the interchange reimbursement fees applied on Visa financial transactions completed within the 50 United States and the District of Columbia.

Visa uses interchange reimbursement fees as transfer fees between financial institutions to balance and grow the payment system for the benefit of all participants. Merchants do not pay interchange reimbursement fees; merchants pay "merchant discount" to their financial institution. This is an important distinction, because merchants buy a variety of processing services from financial institutions; all these services may be included in their merchant discount rate, which is typically a percentage rate per transaction.

Visa U.S.A. Consumer Check Card Exempt & Regulated Interchange Reimbursement Fees

Rates Effective April 20, 2013

Fee Program	EXEMPT Visa Check Card	REGULATED Visa Check Card
Card Present Transactions		
CPS/Supermarket, Debit	$0.30	0.05% + $0.21*
CPS/Retail, Debit	0.80% + $0.15	0.05% + $0.21*
CPS/Automated Fuel Dispenser (AFD), Debit	0.80% + $0.15 ($0.95 Cap)	0.05% + $0.21*
CPS/Service Station, Debit	0.80% + $0.15 ($0.95 Cap)	0.05% + $0.21*
CPS/Small Ticket, Debit	1.55% + $0.04[1]	0.05% + $0.21*
CPS/Restaurant, Debit	1.19% + $0.10	0.05% + $0.21*
CPS/Hotel and Car Rental Card Present, Debit	1.19% + $0.10	0.05% + $0.21*
CPS/Passenger Transport Card Present, Debit	1.19% + $0.10	0.05% + $0.21*
Travel Service, Debit	1.19% + $0.10	0.05% + $0.21*
CPS/Retail Key Entry, Debit[2]	1.65% + $0.15	0.05% + $0.21*
Card Not Present Transactions[2]		
CPS/Retail 2 – Card Not Present, Debit	0.65% + $0.15 ($2.00 Cap)	0.05% + $0.21*
CPS/Debt Repayment	0.65% + $0.15 ($2.00 Cap)	0.05% + $0.21*
CPS/Utility, Debit	$0.65	0.05% + $0.21*
CPS/Debit Tax Payment[3]	0.65% + $0.15 ($2.00 Cap)	0.05% + $0.21*
CPS/Card Not Present, Debit	1.65% + $0.15	0.05% + $0.21*
CPS/e-Commerce Basic, Debit	1.65% + $0.15	0.05% + $0.21*
CPS/e-Commerce Preferred Retail, Debit	1.60% + $0.15	0.05% + $0.21*
CPS/e-Commerce Preferred Hotel and Car Rental, Debit	1.70% + $0.15	0.05% + $0.21*
CPS/e-Commerce Preferred Passenger Transport, Debit	1.70% + $0.15	0.05% + $0.21*
CPS/Hotel and Car Rental Card Not Present, Debit	1.70% + $0.15	0.05% + $0.21*
CPS/Passenger Transport Card Not Present, Debit	1.70% + $0.15	0.05% + $0.21*
CPS/Account Funding, Debit	1.75% + $0.20	0.05% + $0.21*
Electronic Interchange Reimbursement Fee (EIRF), Debit[4]	1.75% + $0.20	0.05% + $0.21*
Standard Interchange Reimbursement Fee, Debit	1.90% + $0.25	0.05% + $0.21*

Note: Prices in this table are listed in U.S. dollars; fees paid to cardholder financial institution.

* Issuers that certify to Visa their compliance with the interim fraud prevention standards will receive an additional US $0.01.

[1] Small-ticket interchange rate on PIN-authenticated Visa Debit transactions applies only to Visa Network 002 transactions.

[2] Not applicable to PIN-authenticated transactions.

[3] Applies to both CPS/Debit Tax Payment 1 and CPS/Debit Tax Payment 2.

[4] EIRF transactions from AFDs and service stations are eligible for a US $0.95 cap.

Visa U.S.A. Consumer Prepaid Exempt & Regulated and Other Exempt Products Interchange Reimbursement Fees

Rates Effective April 20, 2013

Fee Program	EXEMPT Visa Consumer Prepaid and Other Exempt	REGULATED Visa Consumer Prepaid
Card Present Transactions		
CPS/Supermarket, Prepaid	1.15% + $0.15 ($0.35 Cap)	0.05% + $0.21*
CPS/Retail, Prepaid	1.15% + $0.15	0.05% + $0.21*
CPS/Automated Fuel Dispenser (AFD), Prepaid	1.15% + $0.15 ($0.95 Cap)	0.05% + $0.21*
CPS/Service Station, Prepaid	1.15% + $0.15 ($0.95 Cap)	0.05% + $0.21*
CPS/Small Ticket, Prepaid	1.60% + $0.05[1]	0.05% + $0.21*
CPS/Hotel and Car Rental Card Present, Prepaid	1.15% + $0.15	0.05% + $0.21*
CPS/Restaurant, Prepaid	1.15% + $0.15	0.05% + $0.21*
CPS/Passenger Transport Card Present, Prepaid	1.15% + $0.15	0.05% + $0.21*
Travel Service, Prepaid	1.15% + $0.15	0.05% + $0.21*
CPS/Retail Key Entry, Prepaid[2]	1.75% + $0.20	0.05% + $0.21*
Card Not Present Transactions[2]		
CPS/Retail 2 Card Not Present, Prepaid	0.65% + $0.15 ($2.00 Cap)	0.05% + $0.21*
CPS/Debt Repayment	0.65% + $0.15 ($2.00 Cap)	0.05% + $0.21*
CPS/Utility, Prepaid	$0.65	0.05% + $0.21*
CPS/Debit Tax Payment[3]	0.65% + $0.15 ($2.00 Cap)	0.05% + $0.21*
CPS/Card Not Present, Prepaid	1.75% + $0.20	0.05% + $0.21*
CPS/e-Commerce Basic, Prepaid	1.75% + $0.20	0.05% + $0.21*
CPS/e-Commerce Preferred Retail, Prepaid	1.75% + $0.20	0.05% + $0.21*
CPS/e-Commerce Preferred Hotel and Car Rental, Prepaid	1.75% + $0.20	0.05% + $0.21*
CPS/e-Commerce Preferred Passenger Transport, Prepaid	1.75% + $0.20	0.05% + $0.21*
CPS/Hotel and Car Rental Card Not Present, Prepaid	1.75% + $0.20	0.05% + $0.21*
CPS/Passenger Transport, Prepaid	1.75% + $0.20	0.05% + $0.21*
CPS/Account Funding, Prepaid	1.80% + $0.20	0.05% + $0.21*
Electronic Interchange Reimbursement Fee (EIRF), Prepaid[4]	1.80% + $0.20	0.05% + $0.21*
Standard Interchange Reimbursement Fee, Prepaid	1.90% + $0.25	0.05% + $0.21*

Note: Prices in this table are listed in U.S. dollars; fees paid to cardholder financial institution.
* Issuers that certify to Visa their compliance with the interim fraud prevention standards will receive an additional US $0.01.
[1] Small-ticket interchange rate on PIN-authenticated Visa Prepaid transactions applies only to Visa Network 002.
[2] Not applicable to PIN-authenticated transactions.
[3] Applies to both CPS/Debit Tax Payment 1 and CPS/Debit Tax Payment 2.
[4] EIRF transactions from AFDs and service stations are eligible for a US $0.95 cap.

Visa U.S.A. Consumer Credit Interchange Reimbursement Fees

Rates Effective April 20, 2013

<table>
<tr><th>Fee Program</th><th>Visa Signature Preferred</th><th>Visa Signature</th><th>Traditional Rewards</th><th>All Other Products</th></tr>
<tr><td>CPS/Supermarket Credit—Performance Threshold* I</td><td rowspan="9">2.10% + $0.10</td><td rowspan="3">CPS/Rewards 1
1.65% + $0.10</td><td colspan="2">1.15% + $0.05</td></tr>
<tr><td>CPS/Supermarket Credit—Performance Threshold* II</td><td colspan="2">1.20% + $0.05</td></tr>
<tr><td>CPS/Supermarket Credit—Performance Threshold* III</td><td colspan="2">1.22% + $0.05</td></tr>
<tr><td>CPS/Supermarket Credit—All Other</td><td colspan="2">CPS/Rewards 1
1.65% + $0.10</td><td>1.22% + $0.05</td></tr>
<tr><td>CPS/Retail Credit-Performance Threshold* I</td><td rowspan="3">CPS/Rewards 1
1.65% + $0.10</td><td colspan="2">1.43% + $0.10</td></tr>
<tr><td>CPS/Retail Credit-Performance Threshold* II</td><td colspan="2">1.47% + $0.10</td></tr>
<tr><td>CPS/Retail Credit-Performance Threshold* III</td><td colspan="2">1.51% + $0.10</td></tr>
<tr><td>CPS/Retail—All Other</td><td colspan="2">CPS/Rewards 1
1.65% + $0.10</td><td>1.51% + $0.10</td></tr>
<tr><td>CPS/Small Ticket</td><td colspan="3">1.65% + $0.04</td></tr>
<tr><td>CPS/Retail 2</td><td>2.40% + $0.10**</td><td colspan="3">1.43% + $0.05</td></tr>
<tr><td>CPS/Charity</td><td colspan="4">1.35% + $0.05</td></tr>
<tr><td>CPS/Automated Fuel Dispenser (AFD)</td><td colspan="4">1.15% + $0.25 ($1.10 Cap)</td></tr>
<tr><td>CPS/Service Station</td><td colspan="4">1.15% + $0.25 ($1.10 Cap)</td></tr>
<tr><td>CPS/Utility</td><td colspan="4">$0.75</td></tr>
<tr><td>CPS/Retail Key Entry</td><td>2.10% + $0.10</td><td colspan="2" rowspan="3">CPS/Rewards 2
1.95% + $0.10</td><td>1.80% + $0.10</td></tr>
<tr><td>CPS/Card Not Present</td><td rowspan="3">2.40% + $0.10
(except for B2B
which receives
2.10% + $0.10)</td><td>1.80% + $0.10</td></tr>
<tr><td>CPS/e-Commerce Basic</td><td>1.80% + $0.10</td></tr>
<tr><td>CPS/e-Commerce Preferred Retail</td><td colspan="3">1.80% + $0.10</td></tr>
<tr><td>CPS/e-Commerce Preferred Hotel and Car Rental</td><td rowspan="7">2.40% + $0.10</td><td rowspan="6">EIRF
2.30% + $0.10</td><td rowspan="6">CPS/
Rewards 2
1.95% + $0.10</td><td>1.54% + $0.10</td></tr>
<tr><td>CPS/e-Commerce Preferred Passenger Transport</td><td>1.70% + $0.10</td></tr>
<tr><td>CPS/Hotel and Car Rental Card Present</td><td>1.54% + $0.10</td></tr>
<tr><td>CPS/Hotel and Car Rental Card Not Present</td><td>1.54% + $0.10</td></tr>
<tr><td>CPS/Passenger Transport</td><td>1.70% + $0.10</td></tr>
<tr><td>CPS/Restaurant</td><td>1.54% + $0.10</td></tr>
<tr><td>CPS/Account Funding</td><td colspan="3">2.14% + $0.10</td></tr>
<tr><td>Electronic Interchange Reimbursement Fee (EIRF)[1]</td><td>2.40% + $0.10</td><td colspan="3">2.30% + $0.10</td></tr>
<tr><td>Standard Interchange Reimbursement Fee</td><td>2.95% + $0.10[2]</td><td colspan="3">2.70% + $0.10</td></tr>
</table>

Note: Prices in this table are listed in U.S. dollars; fees paid to cardholder financial institution.
* See page 5 for performance threshold criteria. ** MCC 6300 eligible for B2B (2.10% + $0.10).
[1] EIRF transactions from AFDs and service stations are eligible for a US $1.10 cap.
[2] Standard transactions on VSP cards from AFDs and service stations are eligible for a US $1.10 cap.

Visa U.S.A. Credit Performance Threshold Criteria For Retail and Supermarket Categories

Effective April 20, 2013, based on 12 months of activity ending September 30, 2012

Visa Consumer Credit

Performance Thresholds	Transaction Minimum	Volume Minimum	Maximum Chargeback Ratio*	PCI Compliance
Threshold I	53.5 million	$3.5 billion	0.020%	✓
Threshold II	33.0 million	$1.8 billion		
Threshold III	9.0 million	$485 million		

* Chargeback ratio calculated as a percentage of a merchant's gross transaction count.

Please reference the Visa International Operating Regulations for complete detail on performance threshold criteria.

Visa U.S.A. Corporate and Purchasing Interchange Reimbursement Fees

Rates Effective April 20, 2013

Fee Program	Purchasing	Corporate T&E
Commercial Level III	1.95% + $0.10	1.95% + $0.10
Commercial Level II	2.05% + $0.10	2.05% + $0.10
Commercial Business-to-Business	2.40% + $0.10	2.10% + $0.10
Commercial Retail	2.40% + $0.10	2.10% + $0.10
Commercial Card Not Present	2.65% + $0.10	2.20% + $0.10
Commercial Travel Service	2.45% + $0.10	2.55% + $0.10
Commercial Electronic Interchange Reimbursement (EIRF) Fee	2.75% + $0.10	2.75% + $0.10
Commercial Standard Interchange Reimbursement Fee	2.95% + $0.10	2.95% + $0.10
Government-to-Government (G2G)	1.65% + $0.10	na
GSA Large Ticket	1.20% + $39.00	na
Visa Purchasing Large Ticket	1.45% + $35.00	na

Visa Large Purchase Advantage Fee Program	Applicable Interchange Rate
Card Present Transactions	
All Ticket Sizes	Visa Purchasing card rates apply
Card Not Present Transactions	
$10,000 or less	Visa Purchasing card rates apply
$10,000.01 - $25,000	0.70% + $49.50
$25,000.01 - $100,000	0.60% + $52.50
$100,000.01 - $500,000	0.50% + $55.50
Greater than $500,000	0.40% + $58.50

Note: Prices in this table are listed in U.S. dollars; fees paid to cardholder financial institution.
* Issuers that certify to Visa their compliance with the interim fraud prevention standards will receive an additional US $0.01.

Visa U.S.A. Corporate and Purchasing Prepaid Exempt and Regulated Interchange Reimbursement Fees

Rates Effective April 20, 2013

Fee Program	EXEMPT Visa Corporate Prepaid / Visa Business Prepaid	EXEMPT Visa Purchasing Prepaid	REGULATED Visa Commercial Prepaid
Standard	2.95% + $0.10	2.95% + $0.10	0.05% + $0.21*
Card Present	2.15% + $0.10	2.15% + $0.10	0.05% + $0.21*
Card Not Present	2.65% + $0.10	2.65% + $0.10	0.05% + $0.21*
Visa Purchasing Prepaid Large Ticket	na	1.45% + $35.00	0.05% + $0.21*
Business Utilities (Visa Business Prepaid Only)	$1.50	na	0.05% + $0.21*

Note: Prices in this table are listed in U.S. dollars; fees paid to cardholder financial institution.
* Issuers that certify to Visa their compliance with the interim fraud prevention standards will receive an additional US $0.01.

Visa U.S.A. Business (excluding Prepaid) Interchange Reimbursement Fees

Rates Effective April 20, 2013

Business Credit Fee Program	Business Credit	Business Credit Enhanced	Signature Business Credit
Business Level II	2.05% + $0.10	2.05% + $0.10	2.05% + $0.10
Business Business-to-Business	2.10% + $0.10	2.25% + $0.10	2.40% + $0.10
Business Retail	2.20% + $0.10	2.30% + $0.10	2.40% + $0.10
Business Card Not Present	2.25% + $0.10	2.45% + $0.15	2.60% + $0.20
Business Electronic Interchange Reimbursement (EIRF) Fee	2.40% + $0.10	2.75% + $0.15	2.85% + $0.20
Business Standard Interchange Reimbursement Fee	2.95% + $0.20	2.95% + $0.20	2.95% + $0.20
Business Utility Program	$1.50	$1.50	$1.50

Business Debit Fee Program	EXEMPT Business Debit	REGULATED Business Debit
Business Debit, Card Present	1.70% + $0.10	0.05% + $0.21*
Business Debit, Card Not Present	2.45% + $0.10	0.05% + $0.21*
Business Debit, Standard	2.95% + $0.10	0.05% + $0.21*
Business Utility Program, Card Not Present Only	$1.50	0.05% + $0.21*

Note: Prices in this table are listed in U.S. dollars; fees paid to cardholder financial institution.

* Issuers that certify to Visa their compliance with the interim fraud prevention standards will receive an additional US $0.01.

Visa U.S.A. Other Transactions Interchange Reimbursement Fees

Rates Effective April 20, 2013

Credit Voucher Transactions	
Passenger Transport Service Category—Credit	2.33%
Non-Passenger Transport—Consumer Credit	1.76%
Non-Passenger Transport—Corporate and Business Card	2.35%
Mail/Phone Order and eCommerce Merchants—Consumer Credit	2.05%
Credit Voucher—Debit	0.00%
Non-Passenger Transport—Non GSA Purchasing Transactions	
$0 - $10,000	2.40%
$10,000.01 - $25,000	2.30%
$25,000.01 - $100,000	2.20%
$100,000.01 - $500,000	2.00%
$500,000.01 +	1.80%
Non-Passenger Transport—GSA Purchasing Transactions	
$0 - $10,000	2.35%
$10,000.01 - $25,000	2.15%
$25,000.01 - $100,000	2.00%
$100,000.01 +	1.80%
Visa Prepaid Load Service Network	
Visa Prepaid Load Network Interchange Reimbursement Fee	$0.05
Visa Money Transfer	
Visa Money Transfer Original Credit	$0.10
Cash Disbursement Transactions	
ATM Cash Disbursement Reimbursement Fee—Level 1	$0.35
ATM Cash Disbursement Reimbursement Fee—Level 2	$0.42
ATM Cash Disbursement Reimbursement Fee—Level 3	$0.50
Manual Cash Disbursement Reimbursement Fee	$2.00

Note: Prices in this table are listed in U.S. dollars; fees paid to merchant financial institution, except for Original Credit transactions (OCT). OCT interchange fee paid by institution originating transaction to recipient institution.

Visa U.S.A. International Transactions†
Interchange Reimbursement Fees

Rates Effective April 20, 2013

† Visa cards used at a U.S. merchant but issued outside the U.S.

Industry Fee Program	Visa Classic / Visa Gold / Electron	Visa Signature / Visa Premium[1]	Visa Infinite[2]	All Visa Commercial Products
Interregional Regulated Debit	0.05% + $0.21*			
Airline	1.10%	1.80%	1.97%	2.00%
Contact Chip Incentive Rates[3]				
Issuer Chip Card	1.20%	1.80%	1.97%	2.00%
Secure eCommerce Incentive Rates				
Secure eCommerce Transaction[4]	1.44%	1.80%	1.97%	2.00%
Electronic and Standard Programs				
Electronic	1.10%	1.80%	1.97%	2.00%
Standard	1.60%	1.80%	1.97%	2.00%
Original Credits (Interchange payable from sending institution to receiving institution, in U.S. Dollars)				
Original Credit	$0.49			
Visa Money Transfer Fast Funds	$0.89			

Cash Disbursement Transactions (Interchange payable from Issuer to Acquirer, in U.S. Dollars)

	Visa Inc. Issued Card	Visa Europe Issued Card	Any Visa Prepaid Travel Card
Cash Disbursement – Tier II ATM (No access fee charged to cardholder)	$0.55 + 0.42%	$1.50	$1.00
Cash Disbursement – Tier II ATM[5] (Access fee charged to cardholder)	$0.50 + 0.15%		
Cash Disbursement – Manual	$1.75 + 0.33%		

* Issuers that certify their compliance with the interim fraud prevention standards will receive an additional US $0.01.

Note: Prices in this table are listed in U.S. dollars; fees paid by the Acquirer to the Issuer on purchases, except as noted.

[1] Canadian-issued Visa Infinite cards receive Visa Premium Interchange; Visa Premium applies to all Visa Platinum cards issued outside of the U.S. and Canada.

[2] Does not apply to Canadian-issued Visa Infinite cards.

[3] Excluding airline transactions.

[4] Available to qualified transactions.

[5] Includes Visa Prepaid Travel.

Exhibit Z

MasterCard Worldwide

U.S. and Interregional Interchange Rates

MasterCard Worldwide

Rates and Criteria Effective as of October 2012

Table of Contents

Introduction

Financial institutions that provide card acceptance services to merchants are typically referred to as "acquirers." Although MasterCard has no involvement in acquirer and merchant pricing policies or agreements, it is generally understood that interchange fees are one component of the Merchant Discount Rate (MDR) established by acquirers, which is paid by merchants to acquirers in consideration for card acceptance services.

MasterCard interchange rates are established by MasterCard, and are generally paid by acquirers to card issuers on purchase transactions conducted on MasterCard® cards. Interchange rates are only one of many cost components included in a MDR, and are a necessary and efficient method by which MasterCard maintains a strong and vibrant payments network. Setting interchange rates is a challenging proposition that involves an extremely delicate balance. If interchange rates are set too high, such that they lead to disproportionately high MDRs, merchants' desire and demand for MasterCard acceptance will drop. If interchange rates are set too low, card issuers' willingness to issue and promote MasterCard cards will drop, as will consumer demand for such cards. In response to these competitive forces, MasterCard strives to maximize the value of the MasterCard system, including the dollar volume spent on MasterCard cards, the number and types of MasterCard cards in circulation, and the number and types of merchants accepting MasterCard cards, by setting default interchange rates at levels that balance the benefits and costs to both cardholders and merchants.

Although MasterCard interchange rates have generally been available to merchants through requests to acquirers or other card acceptance service providers, MasterCard believes that providing easy access to our interchange rates will provide additional transparency to merchants. Accordingly, MasterCard is publishing interchange rates that apply to U.S.-merchants' transactions, which include U.S. interchange rates (that is, the interchange rates that apply to transactions conducted on a U.S.-issued card at a U.S. merchant) and Interregional interchange rates (that is, the interchange rates that apply to transactions conducted on a non–U.S.-issued card at a U.S. merchant).

Two new Interchange programs that were added October 1, 2011 are valid for regulated transactions between the US Region and the following U.S. territories: American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands, as per the Durbin Amendment.

MasterCard has included a Merchant Category Guide, as well as the key criteria associated with each interchange rate and a Glossary of Terms, to help merchants determine which of the many interchange rates may apply to their transactions. The interchange rate tables are organized by product type. Each interchange rate has a series of requirements, all of which must be satisfied in order for a transaction to qualify for that rate. The requirements include such factors as: merchant category; the time between authorization and clearing; the presence or absence of magnetic stripe data; the submission of enhanced transaction data; and a merchant's MasterCard sales and transaction volume. MasterCard systems ensure that all requirements are met when a transaction is submitted for a particular interchange rate. Merchants and acquirers should strive to meet all of the criteria necessary to qualify transactions for the rate(s) that are most advantageous to them.

MasterCard interchange rates are typically updated semiannually, and MasterCard will publish its interchange rates generally concurrent with each rate update. While we will endeavor to keep the rates and the related criteria in this document up to date, it is possible that this document will not be absolutely current in all regards. In the event of any discrepancy between the rates and the criteria found in this document and those rates and criteria MasterCard deems to be the official rates and criteria, the official rates and criteria will apply.

MasterCard is confident that this document provides merchants with the information needed to understand the interchange rates and structure and determine which rates may apply to their transactions. However, we also recognize that this information is being made available to a very diverse audience, with diverse needs and expectations. MasterCard encourages merchants to speak with their acquirer or other card acceptance service provider, if they have questions regarding any aspect of MasterCard interchange rates, acceptance of MasterCard cards, or their card acceptance agreement.

Merchant Category Guide

The following table lists the Program Names of the U.S. interchange rates that generally apply to purchase transactions in each Merchant Classification. Merchants should identify the Merchant Classification most closely related to their line(s) of business, to determine which interchange rates may apply to their transactions. The rates and key criteria associated with each interchange rate can be found in the interchange rate tables, beginning on Page 10.

Merchant Classification	Interchange Rate Structure					
	Consumer Credit Core Value and Enhanced Value	**Consumer Credit World**	**Consumer Credit World Elite and World High Value**	**Consumer Debit & Prepaid**	**MasterCard PIN Debit POS**	**Commercial-Debit and Credit**
	See pages 10-34	See pages 35-46	See pages 47-72	See pages 73-86	See pages 87-89	See pages 90-103
Airline and Passenger Railway	Standard Full UCAF Merchant UCAF Merit 1 Merit 3 Public Sector	Standard T&E Public Sector	Standard Airline T&E T&E Large Ticket Public Sector	Standard Full UCAF Merchant UCAF Merit 1 Merit 3 Emerging Markets Regulated Rates (see pg 104)	All Other Regulated POS Debit Reg.POS Debit w/ Fraud Adj.	Standard T&E 1 T&E 2 T&E 3 Regulated Rates (see pg 104)
Cruise Line	Standard Full UCAF Merchant UCAF Merit 1 Lodging and Auto Rental	Standard T&E	Standard T&E T&E Large Ticket	Standard Full UCAF Merchant UCAF Merit 1 Lodging and Auto Rental Regulated Rates (see pg 104)	All Other Regulated POS Debit Reg.POS Debit w/ Fraud Adj.	Standard Data Rate 1-3 Face-to-Face Large Ticket 1-3 Large Ticket MPG 1-3 Regulated Rates (see pg 104)

MasterCard U.S. and Interregional Interchange Rate Programs

MasterCard Worldwide

The following table lists the Program Names of the U.S. interchange rates that generally apply to purchase transactions in each Merchant Classification. Merchants should identify the Merchant Classification most closely related to their line(s) of business, to determine which interchange rates may apply to their transactions. The rates and key criteria associated with each interchange rate can be found in the interchange rate tables, beginning on Page 10.

Merchant Classification	Interchange Rate Structure					
	Consumer Credit Core Value and Enhanced Value	**Consumer Credit World**	**Consumer Credit World Elite and World High Value**	**Consumer Debit & Prepaid**	**MasterCard PIN Debit POS**	**Commercial-Debit and Credit**
	See pages 10-34	See pages 35-46	See pages 47-72	See pages 73-86	See pages 87-89	See pages 90-103
Gas Stations and Convenience Stores	Standard Convenience Purchases Full UCAF Key-Entered Merchant UCAF Merit 1 Merit 3 Petroleum	Standard Convenience Purchases Full UCAF Key-Entered Merchant UCAF Merit 1 Merit 3 Petroleum	Standard Convenience Purchases Full UCAF Key-Entered Merchant UCAF Merit 1 Merit 3 Petroleum	Standard Full UCAF Key-Entered Merchant UCAF Merit 1 Merit 3 Petroleum- CAT/AFD Petroleum –Service Stations Small Ticket Regulated Rates (see pg 104)	Convenience Regulated POS Debit Reg.POS Debit w/ Fraud Adj.	Standard Data Rate 1 Data Rate 2 Petroleum Data Rate 3 Face-to-Face Petroleum Large Ticket 1-3 Large Ticket MPG 1-3 Regulated Rates (see pg 104)
Government	Standard Full UCAF Merchant UCAF Merit 1 Merit 3 Public Sector	Standard Full UCAF Merchant UCAF Merit 1 Merit 3 Public Sector	Standard Full UCAF Merchant UCAF Merit 1 Merit 3 Public Sector	Standard Emerging Markets Full UCAF Merchant UCAF Merit 1 Merit 3 Regulated Rates (see pg 104)	All Other Regulated POS Debit Reg.POS Debit w/ Fraud Adj.	Standard Data Rate 1-3 Face-to-Face Large Ticket 1-3 Large Ticket MPG 1-3 Regulated Rates (see pg 104)
Lodging and Vehicle Rental	Standard Full UCAF Merchant UCAF Merit 1 Lodging and Auto Rental	Standard T&E	Standard T&E T&E Large Ticket	Standard Full UCAF Merchant UCAF Merit 1 Lodging and Auto Rental Regulated Rates (see pg 104)	All Other Regulated POS Debit Reg.POS Debit w/ Fraud Adj.	Standard T&E 1-3 Regulated Rates (see pg 104)

MasterCard U.S. and Interregional Interchange Rate Programs

The following table lists the Program Names of the U.S. interchange rates that generally apply to purchase transactions in each Merchant Classification. Merchants should identify the Merchant Classification most closely related to their line(s) of business, to determine which interchange rates may apply to their transactions. The rates and key criteria associated with each interchange rate can be found in the interchange rate tables, beginning on Page 10.

Merchant Classification	Interchange Rate Structure					
	Consumer Credit Core Value and Enhanced Value	**Consumer Credit World**	**Consumer Credit World Elite and World High Value**	**Consumer Debit & Prepaid**	**MasterCard PIN Debit POS**	**Commercial-Debit and Credit**
	See pages 10-34	See pages 35-46	See pages 47-72	See pages 73-86	See pages 87-89	See pages 90-103
Restaurant	Standard Full UCAF Key-Entered Merchant UCAF Merit 1 Merit 3	Standard Convenience Purchases Restaurant T&E	Standard Convenience Purchases Restaurant T&E T&E Large Ticket	Standard Full UCAF Key-Entered Merchant UCAF Merit 1 Merit 3 Restaurant Small Ticket Regulated Rates (see pg 104))	All Other Regulated POS Debit Reg.POS Debit w/ Fraud Adj.	Standard Data Rate 1-3 Face-to-Face Large Ticket 1-3 Large Ticket MPG 1-3 T&E 1 Regulated Rates (see pg 104)
Retail/Services	Standard Convenience Full UCAF Key-Entered Merchant UCAF Merit 1 Merit 3	Standard Convenience Full UCAF Key-Entered Merchant UCAF Merit 1 Merit 3	Standard Convenience Full UCAF Key-Entered Merchant UCAF Merit 1 Merit 3	Standard Emerging Markets Full UCAF Key-Entered Merchant UCAF Merit 1 Merit 3 Small Ticket Regulated Rates (see pg 104)	All Other Convenience Regulated POS Debit Reg.POS Debit w/ Fraud Adj.	Standard Data Rate 1-3 Face-to-Face Large Ticket 1-3 Large Ticket MPG 1-3 Regulated Rates (see pg 104)

MasterCard U.S. and Interregional Interchange Rate Programs

MasterCard Worldwide

The following table lists the Program Names of the U.S. interchange rates that generally apply to purchase transactions in each Merchant Classification. Merchants should identify the Merchant Classification most closely related to their line(s) of business, to determine which interchange rates may apply to their transactions. The rates and key criteria associated with each interchange rate can be found in the interchange rate tables, beginning on Page 10.

Merchant Classification	Interchange Rate Structure					
	Consumer Credit Core Value and Enhanced Value	**Consumer Credit World**	**Consumer Credit World Elite and World High Value**	**Consumer Debit & Prepaid**	**MasterCard PIN Debit POS**	**Commercial-Debit and Credit**
	See pages 10-34	See pages 35-46	See pages 47-72	See pages 73-86	See pages 87-89	See pages 90-103
Supermarket/ Warehouse	Standard Full UCAF Key-Entered Merchant UCAF Merit 1 Merit 3 Supermarket Warehouse	Standard Full UCAF Key-Entered Merchant UCAF Merit 1 Merit 3 Supermarket Warehouse	Standard Full UCAF Key-Entered Merchant UCAF Merit 1 Merit 3 Supermarket Warehouse	Standard Full UCAF Key-Entered Merchant UCAF Merit 1 Merit 3 Supermarket Warehouse Regulated Rates (see pg 104)	Supermarket/Warehouse Regulated POS Debit Reg.POS Debit w/ Fraud Adj.	Standard Data Rate 1-3 Face-to-Face Large Ticket 1-3 Large Ticket MPG 1-3 Warehouse Regulated Rates (see pg 104)
Transportation and Tolls	Standard Full UCAF Merchant UCAF Merit 1 Merit 3 Public Sector	Standard Full UCAF Merchant UCAF Merit 1 Merit 3 Public Sector	Standard Full UCAF Key-Entered Merchant UCAF Merit 1 Merit 3	Standard Emerging Markets Full UCAF Merchant UCAF Merit 1 Merit 3 Small Ticket Regulated Rates (see pg 104)	All Other Regulated POS Debit Reg.POS Debit w/ Fraud Adj.	Standard Data Rate 1-3 Face-to-Face Large Ticket 1-3 Large Ticket MPG 1-3 Regulated Rates (see pg 104)

MasterCard U.S. and Interregional Interchange Rate Programs

MasterCard Worldwide

The following table lists the Program Names of the U.S. interchange rates that generally apply to purchase transactions in each Merchant Classification. Merchants should identify the Merchant Classification most closely related to their line(s) of business, to determine which interchange rates may apply to their transactions. The rates and key criteria associated with each interchange rate can be found in the interchange rate tables, beginning on Page 10.

Merchant Classification	Interchange Rate Structure					
	Consumer Credit Core Value and Enhanced Value	**Consumer Credit World**	**Consumer Credit World Elite and World High Value**	**Consumer Debit & Prepaid**	**MasterCard PIN Debit POS**	**Commercial-Debit and Credit**
	See pages 10-34	See pages 35-46	See pages 47-72	See pages 73-86	See pages 87-89	See pages 90-103
Travel Agencies	Standard Full UCAF Merchant UCAF Merit 1 Merit 3	Standard T&E	Standard T&E T&E Large Ticket	Standard Full UCAF Merchant UCAF Merit 1 Merit 3 Regulated Rates (see pg 104)	All Other Regulated POS Debit Reg.POS Debit w/ Fraud Adj.	Standard Data Rate 1-3 Face-to-Face Large Ticket 1-3 Large Ticket MPG 1-3 Regulated Rates (see pg 104)
Utilities	Standard Utilities	Standard Utilities	Standard Utilities	Standard Utilities Regulated Rates (see pg 104)	All Other Regulated POS Debit Reg.POS Debit w/ Fraud Adj.	Standard Data Rate 1 Data Rate 2 Data Rate 3 Face-to-Face Large Ticket 1-3 Large Ticket MPG 1-3 Utilities Regulated Rates (see pg 104)

Interchange Rate Tables

U.S. Interchange Rates

MasterCard Consumer Credit Core Value Cards

The following consumer credit interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer credit Core Value cards issued in the U.S., including: MasterCard® Standard Card, Gold MasterCard® Card, and Platinum MasterCard® Card.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit Core Value Standard	2.95% + USD 0.10	All	N/A	N/A	Authorization not required Magnetic stripe data not required	N/A
Consumer Credit Core Value Convenience Purchases Base	1.90% + USD 0.00	Limousines and Taxis (4121), Fast Food (5814), Miscellaneous Food Stores (5499), Variety Stores (5331) and Motion Picture Theaters (7832)	2	N/A for Fast 10% for all other	Electronic authorization required Magnetic stripe data required unless a transponder was used	For transactions with MCC 4121, the transaction amount must be equal to or less than USD 25
Consumer Credit Core Value Convenience Purchases Tier One	1.35% + USD 0.00	Limousines and Taxis (4121), Fast Food (5814), Miscellaneous Food Stores (5499), Variety Stores (5331) and Motion Picture Theaters (7832)	2	N/A for Fast Food 10% for all other	Electronic authorization required Magnetic stripe data required unless a transponder was used	For transactions with MCC 4121, the transaction amount must be equal to or less than USD 25

U.S. Interchange Rates

MasterCard Consumer Credit Core Value Cards

The following consumer credit interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer credit Core Value cards issued in the U.S., including: MasterCard® Standard Card, Gold MasterCard® Card, and Platinum MasterCard® Card.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit Core Value Full UCAF	1.68% + USD 0.10	All except Utilities (4900), Automobile/Vehicle Rental (3351-3500, 7512, 7513, or 7519), Lodging (3501-3999 or 7011), and Cruise (4411).	2	N/A	Electronic authorization required Magnetic stripe data not required and Electronic Commerce identifiers must be present	This is an Internet transaction UCAF enabled by the Merchant and the cardholder is authenticated by the Issuer T&E categories require enhanced data
Consumer Credit Core Value Key-Entered	1.89% + USD 0.10	Retail and Restaurant (5812, 5813, 5814)	2	N/A for Restaurant, Bar and Fast Food 10% for all other	Electronic authorization required Magnetic stripe data not required	The transaction must be face-to-face with failed attempt at reading the magnetic stripe data
Consumer Credit Core Value Merchant UCAF	1.58% + USD 0.10	All except Utilities (4900), Automobile/Vehicle Rental (3351-3500, 7512, 7513, or 7519), Lodging (3501-3999 or 7011), and Cruise (4411).	2	N/A	Electronic authorization required Magnetic stripe data not required and Electronic Commerce identifiers must be present	This is an Internet transaction UCAF enabled by Merchant T&E categories require enhanced data
Consumer Credit Core Value Merit 1	1.89% + USD 0.10	All except Utilities (4900)	3	N/A for Restaurant, Bar, Fast Food, Limo/Taxi and non face-to face txns. 25% for Beauty Salons 10% for all other	Electronic authorization required Magnetic stripe data not required	Airline and Passenger Railway categories require enhanced data

MasterCard Worldwide

U.S. Interchange Rates

MasterCard Consumer Credit Core Value Cards

The following consumer credit interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer credit Core Value cards issued in the U.S., including: MasterCard® Standard Card, Gold MasterCard® Card, and Platinum MasterCard® Card.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit Core Value Merit 1 - Insurance	1.43% + USD 0.05	Insurance (5960, 6300)	3	10%	Electronic authorization required Magnetic stripe data not required	N/A
Consumer Credit Core Value Merit 1 – Real Estate	1.10% + USD 0.00	Real Estate (6513)	3	10%	Electronic authorization required Magnetic stripe data not required	N/A
Consumer Credit Core Value Merit 3—Base	1.58% + USD 0.10	All except Service Stations (5541), Automated Fuel Dispenser (5542), Utilities (4900), Automobile/Vehicle Rental (3351-3500, 7512, 7513, or 7519), and Lodging (3501-3999 or 7011).	2	N/A for Restaurant, Bar, Fast Food, and Limo/Taxi 25% for Beauty Salons 10% for all other	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Airline and Passenger Railway categories require enhanced data

U.S. Interchange Rates

MasterCard Consumer Credit Core Value Cards

The following consumer credit interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer credit Core Value cards issued in the U.S., including: MasterCard® Standard Card, Gold MasterCard® Card, and Platinum MasterCard® Card.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit Core Value Merit 3—Tier 1	1.43% + USD 0.10	All except Service Stations (5541) and Automated Fuel Dispenser (5542), Automobile/Vehicle Rental (3351-3500, 7512, 7513, or 7519), and Lodging (3501-3999 or 7011).	2	N/A for Restaurant, Bar and Fast Food 10% for all other	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Only retail and restaurant MCCs may qualify. Requires at least USD 1.8 billion in combined Consumer Credit Core Value, Enhanced Value, World, World High Value and World Elite MasterCard volume processed through GCMS that qualified for any Consumer Credit Core Value, Enhanced Value, World, World High Value or World Elite Merit 3 rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID

MasterCard Worldwide

U.S. Interchange Rates

MasterCard Consumer Credit Core Value Cards

The following consumer credit interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer credit Core Value cards issued in the U.S., including: MasterCard® Standard Card, Gold MasterCard® Card, and Platinum MasterCard® Card.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit Core Value Merit 3—Tier 2	1.48% + USD 0.10	All except Service Stations (5541) and Automated Fuel Dispenser (5542), Automobile/Vehicle Rental (3351-3500, 7512, 7513, or 7519), and Lodging (3501-3999 or 7011).	2	N/A for Restaurant, Bar and Fast Food 10% for all other	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Only retail and restaurant MCCs may qualify. Requires at least USD 1.25 billion in combined Consumer Credit Core Value, Enhanced Value, World, World High Value and World Elite MasterCard volume processed through GCMS that qualified for any Consumer Credit Core Value, Enhanced Value, World, World High Value or World Elite Merit 3 rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID

MasterCard Worldwide

U.S. Interchange Rates

MasterCard Consumer Credit Core Value Cards

The following consumer credit interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer credit Core Value cards issued in the U.S., including: MasterCard® Standard Card, Gold MasterCard® Card, and Platinum MasterCard® Card.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit Core Value Merit 3—Tier 3	1.55% + USD 0.10	All except Service Stations (5541), Automated Fuel Dispenser (5542), Automobile/Vehicle Rental (3351-3500, 7512, 7513, or 7519), and Lodging (3501-3999 or 7011).	2	N/A for Restaurant, Bar and Fast Food 10% for all other	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Only retail and restaurant MCCs may qualify. Requires at least USD 750 million in combined Consumer Credit Core Value, Enhanced Value, World, World High Value and World Elite MasterCard volume processed through GCMS that qualified for any Consumer Credit Core Value, Enhanced Value, World, World High Value or World Elite Merit 3 rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID
Consumer Credit Core Value Passenger Transport	1.75% + USD 0.10	Airline (3000-3299, 4511)	3	N/A	Electronic authorization required Magnetic stripe data not required	Enhanced data required

U.S. Interchange Rates

MasterCard Consumer Credit Core Value Cards

The following consumer credit interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer credit Core Value cards issued in the U.S., including: MasterCard® Standard Card, Gold MasterCard® Card, and Platinum MasterCard® Card.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit Core Value Petroleum	1.90% + USD 0.00 (USD 0.95 maximum)	Service Stations (5541) and Automated Fuel Dispenser (5542)	2	N/A	Electronic authorization required Magnetic stripe data required unless a transponder was used	N/A
Consumer Credit Core Value Public Sector	1.55% + USD 0.10	Tax Payments (9311), Fines (9222), Court Costs (9211), Bail and Bond Payments (9223), Government Services (9399), Transportation—Commuter (4111), Passenger Railway (4112), Bridge and Road Fee, Tolls (4784) and Postal Services—Government Only (9402)	3	10%	Electronic authorization required Magnetic stripe data not required	Passenger Railway category requires enhanced data
Consumer Credit Core Value Service Industries	1.15% + USD 0.05	Telecommunications (4814), Cable/Pay Television (4899)	2	10%	Electronic authorization required Magnetic stripe data must not be present	This is a recurring payments transaction Merchant registration required The transaction must not be face-to-face

U.S. Interchange Rates

MasterCard Consumer Credit Core Value Cards

The following consumer credit interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer credit Core Value cards issued in the U.S., including: MasterCard® Standard Card, Gold MasterCard® Card, and Platinum MasterCard® Card.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit Core Value Supermarket—Base	1.48% + USD 0.10	Supermarket (5411)	2	10%	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face
Consumer Credit Core Value Supermarket—Tier 1	1.07% + USD 0.05	Supermarket (5411)	2	10%	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Requires at least USD 6 billion in combined Consumer Credit Core Value, Enhanced Value, World, World High Value and World Elite MasterCard volume processed through GCMS that qualified for any Consumer Credit Core Value, Enhanced Value, World, World High Value or World Elite Supermarket rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID

MasterCard U.S. and Interregional Interchange Rate Programs

MasterCard Worldwide

U.S. Interchange Rates

MasterCard Consumer Credit Core Value Cards

The following consumer credit interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer credit Core Value cards issued in the U.S., including: MasterCard® Standard Card, Gold MasterCard® Card, and Platinum MasterCard® Card.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit Core Value Supermarket—Tier 2	1.15% + USD 0.05	Supermarket (5411)	2	10%	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Requires at least USD 2 billion in combined Consumer Credit Core Value, Enhanced Value, World, World High Value and World Elite MasterCard volume processed through GCMS that qualified for any Consumer Credit Core Value, Enhanced Value, World, World High Value or World Elite Supermarket rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID

U.S. Interchange Rates

MasterCard Consumer Credit Core Value Cards

The following consumer credit interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer credit Core Value cards issued in the U.S., including: MasterCard® Standard Card, Gold MasterCard® Card, and Platinum MasterCard® Card.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit Core Value Supermarket—Tier 3	1.22% + USD 0.05	Supermarket (5411)	2	10%	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Requires at least USD 750 million in combined Consumer Credit Core Value, Enhanced Value, World, World High Value and World Elite MasterCard volume processed through GCMS that qualified for any Consumer Credit Core Value, Enhanced Value, World, World High Value or World Elite Supermarket rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID
Consumer Credit Core Value Lodging and Auto Rental	1.58% + USD 0.10	Lodging, Vehicle Rental and Cruise Line MCCs	2	N/A	Electronic authorization required Magnetic stripe data not required	Lodging and Vehicle Rental categories require enhanced data

U.S. Interchange Rates

MasterCard Consumer Credit Core Value Cards

The following consumer credit interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer credit Core Value cards issued in the U.S., including: MasterCard® Standard Card, Gold MasterCard® Card, and Platinum MasterCard® Card.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit Core Value Utilities	0.00% + USD 0.65 Commercial Business & Business World 0.00% + USD 1.50	Utilities (4900)	2	10%	Electronic authorization required Magnetic stripe data not required	Commercial Business and Business World products can qualify
Consumer Credit Core Value Warehouse—Base	0.90% + USD 0.00	Warehouse (5300), Service Stations (5541) and Automated Fuel Dispenser (5542)	2	10%	Electronic authorization required Magnetic stripe data not required	Merchant registration required Commercial products can qualify

U.S. Interchange Rates

MasterCard Consumer Credit Core Value Cards

The following consumer credit interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer credit Core Value cards issued in the U.S., including: MasterCard® Standard Card, Gold MasterCard® Card, and Platinum MasterCard® Card.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit Core Value Warehouse—Tier 1	0.60% + USD 0.00	Warehouse (5300), Service Stations (5541) and Automated Fuel Dispenser (5542)	2	10%	Electronic authorization required Magnetic stripe data not required	Merchant registration required Commercial products can qualify Requires at least USD 3.0 billion in combined Consumer Credit Core Value, Enhanced Value, World, World High Value and World Elite MasterCard volume processed through GCMS that qualified for any Consumer Credit Core Value, Enhanced Value, World, World High Value or World Elite Warehouse rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID
Consumer Credit Refund Group 2	2.09% + USD 0.00	MO/TO, Utilities and Travel Agencies	N/A	N/A	Authorization not required Magnetic stripe data not required	Payable to the acquirer from the issuer

U.S. Interchange Rates

MasterCard Consumer Credit Core Value Cards

The following consumer credit interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer credit Core Value cards issued in the U.S., including: MasterCard® Standard Card, Gold MasterCard® Card, and Platinum MasterCard® Card.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit Refund Group 3	1.95% + USD 0.00	Professional Services, Drug Store, Recreation, Education, Repairs Shops, Other Services, Restaurants/Bars and Airline	N/A	N/A	Authorization not required Magnetic stripe data not required	Payable to the acquirer from the issuer
Consumer Credit Refund Group 4	1.82% + USD 0.00	Other Retail, Gas Stations, Hardware, Healthcare, Sporting—Toy Stores, Discount Stores, Clothing Stores, Other Transport and Vehicle Rental	N/A	N/A	Authorization not required Magnetic stripe data not required	Payable to the acquirer from the issuer
Consumer Credit Refund Group 5	1.73% + USD 0.00	Department Stores, Electric-Appliance, Interior Furnishing, Vehicles, Quasi Cash, Food Stores/Warehouse and Lodging	N/A	N/A	Authorization not required Magnetic stripe data not required	Payable to the acquirer from the issuer

U.S. Interchange Rates

MasterCard Consumer Credit Enhanced Value Cards

The following consumer credit interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer credit Enhanced Value cards issued in the U.S., including: MasterCard® Standard Card, Gold MasterCard® Card, and Platinum MasterCard® Card.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit Enhanced Value Standard	2.95% + USD 0.10	All	N/A	N/A	Electronic authorization required Magnetic stripe data not required	N/A
Consumer Credit Enhanced Value Convenience Purchases Base	1.90% + USD 0.00	Limousines and Taxis (4121), Fast Food (5814), Miscellaneous Food Stores (5499), Variety Stores (5331) and Motion Picture Theaters (7832)	2	N/A for Fast 10% for all other	Electronic authorization required Magnetic stripe data required unless a transponder was used	For transactions with MCC 4121, the transaction amount must be equal to or less than USD 25
Consumer Credit Enhanced Value Convenience Purchases Tier One	1.35% + USD 0.00	Limousines and Taxis (4121), Fast Food (5814), Miscellaneous Food Stores (5499), Variety Stores (5331) and Motion Picture Theaters (7832)	2	N/A for Fast Food 10% for all other	Electronic authorization required Magnetic stripe data required unless a transponder was used	For transactions with MCC 4121, the transaction amount must be equal to or less than USD 25
Consumer Credit Enhanced Value Full UCAF	1.83% + USD 0.10	All except Utilities (4900), Automobile/Vehicle Rental (3351-3500, 7512, 7513, or 7519), Lodging (3501-3999 or 7011), and Cruise (4411).	2	N/A	Electronic authorization required Magnetic stripe data not required and Electronic Commerce identifiers must be present	This is an Internet transaction UCAF enabled by the Merchant and the cardholder is authenticated by the Issuer T&E categories require enhanced data

U.S. Interchange Rates

MasterCard Consumer Credit Enhanced Value Cards

The following consumer credit interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer credit Enhanced Value cards issued in the U.S., including: MasterCard® Standard Card, Gold MasterCard® Card, and Platinum MasterCard® Card.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit Enhanced Value Key-Entered	2.04% + USD 0.10	Retail and Restaurant (5812, 5813, 5814)	2	N/A for Restaurant, Bar and Fast Food 10% for all other	Electronic authorization required Magnetic stripe data not required	The transaction must be face-to-face with failed attempt at reading the magnetic stripe data
Consumer Credit Enhanced Value Merchant UCAF	1.73% + USD 0.10	All except Utilities (4900), Automobile/Vehicle Rental (3351-3500, 7512, 7513, or 7519), Lodging (3501-3999 or 7011), and Cruise (4411).	2	N/A	Electronic authorization required Magnetic stripe data not required and Electronic Commerce identifiers must be present	This is an Internet transaction UCAF enabled by Merchant T&E categories require enhanced data
Consumer Credit Enhanced Value Merit 1	2.04% + USD 0.10	All except Utilities (4900)	3	N/A for Restaurant, Bar, Fast Food, Limo/Taxi and non face-to face txns. 25% for Beauty Salons 10% for all other	Electronic authorization required Magnetic stripe data not required	Airline and Passenger Railway categories require enhanced data
Consumer Credit Enhanced Value Merit 1 - Insurance	1.43% + USD 0.05	Insurance (5960, 6300)	3	10%	Electronic authorization required Magnetic stripe data not required	N/A

U.S. Interchange Rates

MasterCard Consumer Credit Enhanced Value Cards

The following consumer credit interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer credit Enhanced Value cards issued in the U.S., including: MasterCard® Standard Card, Gold MasterCard® Card, and Platinum MasterCard® Card.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit Enhanced Value Merit 1 – Real Estate	1.10% + USD 0.00	Real Estate (6513)	3	10%	Electronic authorization required Magnetic stripe data not required	N/A
Consumer Credit Enhanced Value Merit 3—Base	1.73% + USD 0.10	All except Service Stations (5541), Automated Fuel Dispenser (5542), Utilities (4900), Automobile/Vehicle Rental (3351-3500, 7512, 7513, or 7519), and Lodging (3501-3999 or 7011).	2	N/A for Restaurant, Bar, Fast Food, and Limo/Taxi 25% for Beauty Salons 10% for all other	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Airline and Passenger Railway categories require enhanced data

U.S. Interchange Rates

MasterCard Consumer Credit Enhanced Value Cards

The following consumer credit interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer credit Enhanced Value cards issued in the U.S., including: MasterCard® Standard Card, Gold MasterCard® Card, and Platinum MasterCard® Card.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit Enhanced Value Merit 3—Tier 1	1.43% + USD 0.10	All except Service Stations (5541) and Automated Fuel Dispenser (5542), Automobile/Vehicle Rental (3351-3500, 7512, 7513, or 7519), and Lodging (3501-3999 or 7011).	2	N/A for Restaurant, Bar and Fast Food 10% for all other	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Only retail and restaurant MCCs may qualify. Requires at least USD 2 billion in combined Consumer Credit Core Value, Enhanced Value, World, World High Value and World Elite MasterCard volume processed through GCMS that qualified for any Consumer Credit Core Value, Enhanced Value, World, World High Value or World Elite Merit 3 rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID

U.S. Interchange Rates

MasterCard Consumer Credit Enhanced Value Cards

The following consumer credit interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer credit Enhanced Value cards issued in the U.S., including: MasterCard® Standard Card, Gold MasterCard® Card, and Platinum MasterCard® Card.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit Enhanced Value Merit 3—Tier 2	1.48% + USD 0.10	All except Service Stations (5541) and Automated Fuel Dispenser (5542), Automobile/Vehicle Rental (3351-3500, 7512, 7513, or 7519), and Lodging (3501-3999 or 7011).	2	N/A for Restaurant, Bar and Fast Food 10% for all other	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Only retail and restaurant MCCs may qualify. Requires at least USD 1.25 billion in combined Consumer Credit Core Value, Enhanced Value, World, World High Value and World Elite MasterCard volume processed through GCMS that qualified for any Consumer Credit Core Value, Enhanced Value, World, World High Value or World Elite Merit 3 rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID

MasterCard Worldwide

U.S. Interchange Rates

MasterCard Consumer Credit Enhanced Value Cards

The following consumer credit interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer credit Enhanced Value cards issued in the U.S., including: MasterCard® Standard Card, Gold MasterCard® Card, and Platinum MasterCard® Card.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit Enhanced Value Merit 3—Tier 3	1.55% + USD 0.10	All except Service Stations (5541) and Automated Fuel Dispenser (5542), Automobile/Vehicle Rental (3351-3500, 7512, 7513, or 7519), and Lodging (3501-3999 or 7011).	2	N/A for Restaurant, Bar and Fast Food 10% for all other	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Only retail and restaurant MCCs may qualify. Requires at least USD 750 million in combined Consumer Credit Core Value, Enhanced Value, World, World High Value and World Elite MasterCard volume processed through GCMS that qualified for any Consumer Credit Core Value, Enhanced Value, World, World High Value or World Elite Merit 3 rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID
Consumer Credit Enhanced Value Passenger Transport	1.90% + USD 0.10	Airline (3000-3299, 4511)	3	N/A	Electronic authorization required Magnetic stripe data not required	Enhanced data required

U.S. Interchange Rates

MasterCard Consumer Credit Enhanced Value Cards

The following consumer credit interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer credit Enhanced Value cards issued in the U.S., including: MasterCard® Standard Card, Gold MasterCard® Card, and Platinum MasterCard® Card.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit Enhanced Value Petroleum	1.90% + USD 0.00 (USD 0.95 maximum)	Service Stations (5541) and Automated Fuel Dispenser (5542)	2	N/A	Electronic authorization required Magnetic stripe data required unless a transponder was used	N/A
Consumer Credit Enhanced Value Public Sector	1.55% + USD 0.10	Tax Payments (9311), Fines (9222), Court Costs (9211), Bail and Bond Payments (9223), Government Services (9399), Transportation—Commuter (4111), Passenger Railway (4112), Bridge and Road Fee, Tolls (4784) and Postal Services—Government Only (9402)	3	10%	Electronic authorization required Magnetic stripe data not required	Passenger Railway category requires enhanced data
Consumer Credit Enhanced Value Service Industries	1.15% + USD 0.05	Telecommunications (4814), Cable/Pay Television (4899)	2	10%	Electronic authorization required Magnetic stripe data <u>must</u> <u>not</u> be present	This is a recurring payments transaction Merchant registration required The transaction <u>must</u> <u>not</u> be face-to-face

U.S. Interchange Rates

MasterCard Consumer Credit Enhanced Value Cards

The following consumer credit interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer credit Enhanced Value cards issued in the U.S., including: MasterCard® Standard Card, Gold MasterCard® Card, and Platinum MasterCard® Card.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit Enhanced Value Supermarket—Base	1.48% + USD 0.10	Supermarket (5411)	2	10%	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face
Consumer Credit Enhanced Value Supermarket—Tier 1	1.07% + USD 0.05	Supermarket (5411)	2	10%	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Requires at least USD 6 billion in combined Consumer Credit Core Value, Enhanced Value, World, World High Value and World Elite MasterCard volume processed through GCMS that qualified for any Consumer Credit Core Value, Enhanced Value, World, World High Value or World Elite Supermarket rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID

U.S. Interchange Rates

MasterCard Consumer Credit Enhanced Value Cards

The following consumer credit interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer credit Enhanced Value cards issued in the U.S., including: MasterCard® Standard Card, Gold MasterCard® Card, and Platinum MasterCard® Card.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit Enhanced Value Supermarket—Tier 2	1.15% + USD 0.05	Supermarket (5411)	2	10%	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Requires at least USD 2 billion in combined Consumer Credit Core Value, Enhanced Value, World, World High Value and World Elite MasterCard volume processed through GCMS that qualified for any Consumer Credit Core Value, Enhanced Value, World, World High Value or World Elite Supermarket rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID

U.S. Interchange Rates

MasterCard Consumer Credit Enhanced Value Cards

The following consumer credit interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer credit Enhanced Value cards issued in the U.S., including: MasterCard® Standard Card, Gold MasterCard® Card, and Platinum MasterCard® Card.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit Enhanced Value Supermarket—Tier 3	1.22% + USD 0.05	Supermarket (5411)	2	10%	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Requires at least USD 750 million in combined Consumer Credit Core Value, Enhanced Value, World, World High Value and World Elite MasterCard volume processed through GCMS that qualified for any Consumer Credit Core Value, Enhanced Value, World, World High Value or World Elite Supermarket rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID
Consumer Credit Enhanced Value Lodging and Auto Rental	1.80% + USD 0.10	Lodging, Vehicle Rental and Cruise Line MCCs	2	N/A	Electronic authorization required Magnetic stripe data not required	Lodging and Vehicle Rental categories require enhanced data
Consumer Credit Enhanced Value Utilities	0.00% + USD 0.65	Utilities (4900)	2	10%	Electronic authorization required Magnetic stripe data not required	

U.S. Interchange Rates

MasterCard Consumer Credit Enhanced Value Cards

The following consumer credit interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer credit Enhanced Value cards issued in the U.S., including: MasterCard® Standard Card, Gold MasterCard® Card, and Platinum MasterCard® Card.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit Enhanced Value Warehouse—Base	0.90% + USD 0.00	Warehouse (5300), Service Stations (5541) and Automated Fuel Dispenser (5542)	2	10%	Electronic authorization required Magnetic stripe data not required	Merchant registration required
Consumer Credit Enhanced Value Warehouse—Tier 1	0.60% + USD 0.00	Warehouse (5300), Service Stations (5541) and Automated Fuel Dispenser (5542)	2	10%	Electronic authorization required Magnetic stripe data not required	Merchant registration required Requires at least USD 3.0 billion in combined Consumer Credit Core Value, Enhanced Value, World, World High Value and World Elite MasterCard volume processed through GCMS that qualified for any Consumer Credit Core Value, Enhanced Value, World, World High Value or World Elite Warehouse rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID
Consumer Credit Refund Group 2	2.09% + USD 0.00	MO/TO, Utilities and Travel Agencies	N/A	N/A	Authorization not required Magnetic stripe data not required	Payable to the acquirer from the issuer

U.S. Interchange Rates

MasterCard Consumer Credit Enhanced Value Cards

The following consumer credit interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer credit Enhanced Value cards issued in the U.S., including: MasterCard® Standard Card, Gold MasterCard® Card, and Platinum MasterCard® Card.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit Refund Group 3	1.95% + USD 0.00	Professional Services, Drug Store, Recreation, Education, Repairs Shops, Other Services, Restaurants/Bars and Airline	N/A	N/A	Authorization not required Magnetic stripe data not required	Payable to the acquirer from the issuer
Consumer Credit Refund Group 4	1.82% + USD 0.00	Other Retail, Gas Stations, Hardware, Healthcare, Sporting—Toy Stores, Discount Stores, Clothing Stores, Other Transport and Vehicle Rental	N/A	N/A	Authorization not required Magnetic stripe data not required	Payable to the acquirer from the issuer
Consumer Credit Refund Group 5	1.73% + USD 0.00	Department Stores, Electric-Appliance, Interior Furnishing, Vehicles, Quasi Cash, Food Stores/Warehouse and Lodging	N/A	N/A	Authorization not required Magnetic stripe data not required	Payable to the acquirer from the issuer

U.S. Interchange Rates

MasterCard Consumer Credit World Cards

The following World MasterCard® interchange rate programs apply to transactions acquired in the U.S. that are initiated with consumer credit World MasterCard Cards issued in the U.S.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit World Standard	2.95% + USD 0.10	All	N/A	N/A	Authorization not required Magnetic stripe data not required	N/A
Consumer Credit World Convenience Purchases	2.00% + USD 0.00	Limousines and Taxis (4121), Fast Food (5814), Miscellaneous Food Stores (5499), Variety Stores (5331) and Motion Picture Theaters (7832)	2	N/A for Fast Food 10% for all other	Electronic authorization required Magnetic stripe data required unless a transponder was used	For transactions with MCC 4121, the transaction amount must be equal to or less than USD 25
Consumer Credit World Convenience Purchases Tier One	1.45% + USD 0.00	Limousines and Taxis (4121), Fast Food (5814), Miscellaneous Food Stores (5499), Variety Stores (5331) and Motion Picture Theaters (7832)	2	N/A for Fast Food 10% for all other	Electronic authorization required Magnetic stripe data required unless a transponder was used	For transactions with MCC 4121, the transaction amount must be equal to or less than USD 25
Consumer Credit World Full UCAF	1.87% + USD 0.10	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112), Cruise Line (4411), Travel Agencies (4722), Restaurant (5812, 5813, 5814) and Utilities (4900)	2	N/A	Electronic authorization required Magnetic stripe data not required and Electronic Commerce identifiers must be present	This is an Internet transaction UCAF enabled by the Merchant and the cardholder is authenticated by the Issuer

U.S. Interchange Rates

MasterCard Consumer Credit World Cards

The following World MasterCard® interchange rate programs apply to transactions acquired in the U.S. that are initiated with consumer credit World MasterCard Cards issued in the U.S.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit World Key-Entered	2.05% + USD 0.10	Retail and Restaurant (5813, 5814)	2	N/A for Bar and Fast Food 10% for all other	Electronic authorization required Magnetic stripe data not required	The transaction must be face-to-face with failed attempt at reading the magnetic stripe data
Consumer Credit World Merchant UCAF	1.77% + USD 0.10	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112), Cruise Line (4411), Travel Agencies (4722), Restaurant (5812, 5813, 5814) and Utilities (4900)	2	N/A	Electronic authorization required Magnetic stripe data not required and Electronic Commerce identifiers must be present	This is an Internet transaction UCAF enabled by Merchant
Consumer Credit World Merit 1	2.05% + USD 0.10	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112), Cruise Line (4411), Travel Agencies (4722), Restaurant (5812) and Utilities (4900)	3	N/A for Restaurant, Bar, Fast Food, Limo/Taxi and non face-to face txns. 25% for Beauty Salons 10% for all other	Electronic authorization required Magnetic stripe data not required	N/A
Consumer Credit World Merit 1 - Insurance	1.43% + USD 0.05	Insurance (5960, 6300)	3	10%	Electronic authorization required Magnetic stripe data not required	N/A

U.S. Interchange Rates

MasterCard Consumer Credit World Cards

The following World MasterCard® interchange rate programs apply to transactions acquired in the U.S. that are initiated with consumer credit World MasterCard Cards issued in the U.S.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit World Merit 1 – Real Estate	1.10% + USD 0.00	Real Estate (6513)	3	10%	Electronic authorization required Magnetic stripe data not required	N/A
Consumer Credit World Merit 3—Base	1.77% + USD 0.10	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112), Travel Agencies (4722), Restaurant (5812), Service Stations (5541), Automated Fuel Dispenser (5542) and Utilities (4900)	2	N/A for Restaurant, Bar, Fast Food, and Limo/Taxi 25% for Beauty Salons 10% for all other	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face

U.S. Interchange Rates

MasterCard Consumer Credit World Cards

The following World MasterCard® interchange rate programs apply to transactions acquired in the U.S. that are initiated with consumer credit World MasterCard Cards issued in the U.S.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit World Merit 3—Tier 1	1.53% + USD 0.10	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112), Travel Agencies (4722), Restaurant (5812), Service Stations (5541) and Automated Fuel Dispenser (5542)	2	N/A for Bar and Fast Food 10% for all other	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Only retail and restaurant MCCs may qualify. Requires at least USD 2 billion in combined Consumer Credit Core Value, Enhanced Value, World, World High Value and World Elite MasterCard volume processed through GCMS that qualified for any Consumer Credit Core Value, Enhanced Value, World, World High Value or World Elite Merit 3 rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID

U.S. Interchange Rates

MasterCard Consumer Credit World Cards

The following World MasterCard® interchange rate programs apply to transactions acquired in the U.S. that are initiated with consumer credit World MasterCard Cards issued in the U.S.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit World Merit 3—Tier 2	1.58% + USD 0.10	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112), Travel Agencies (4722), Restaurant (5812), Service Stations (5541) and Automated Fuel Dispenser (5542)	2	N/A for Bar and Fast Food 10% for all other	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Only retail and restaurant MCCs may qualify. Requires at least USD 1.25 billion in combined Consumer Credit Core Value, Enhanced Value, World, World High Value and World Elite MasterCard volume processed through GCMS that qualified for any Consumer Credit Core Value, Enhanced Value, World, World High Value or World Elite Merit 3 rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID

U.S. Interchange Rates

MasterCard Consumer Credit World Cards

The following World MasterCard® interchange rate programs apply to transactions acquired in the U.S. that are initiated with consumer credit World MasterCard Cards issued in the U.S.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit World Merit 3—Tier 3	1.65% + USD 0.10	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112), Travel Agencies (4722), Restaurant (5812), Service Stations (5541) and Automated Fuel Dispenser (5542)	2	N/A for Bar and Fast Food 10% for all other	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Only retail and restaurant MCCs may qualify. Requires at least USD 750 million in combined Consumer Credit Core Value, Enhanced Value, World, World High Value and World Elite MasterCard volume processed through GCMS that qualified for any Consumer Credit Core Value, Enhanced Value, World, World High Value or World Elite Merit 3 rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID
Consumer Credit World Petroleum	2.00% + USD 0.00 (USD 0.95 maximum)	Service Stations (5541) and Automated Fuel Dispenser (5542)	2	N/A	Electronic authorization required Magnetic stripe data required unless a transponder was used	N/A

U.S. Interchange Rates

MasterCard Consumer Credit World Cards

The following World MasterCard® interchange rate programs apply to transactions acquired in the U.S. that are initiated with consumer credit World MasterCard Cards issued in the U.S.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit World Public Sector	1.55% + USD 0.10	Tax Payments (9311), Fines (9222), Court Costs (9211), Bail and Bond Payments (9223), Government Services (9399), Transportation – Commuter (4111), Passenger Railway (4112), Bridge and Road Fee, Tolls (4784) and Postal Services—Government Only (9402)	3	10%	Electronic authorization required Magnetic stripe data not required	Passenger Railway category requires enhanced data
Consumer Credit World Restaurant	1.73% + USD 0.10	Restaurant (5812)	2	N/A	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Transaction amount must be equal to or less than USD 60
Consumer Credit World Service Industries	1.15% + USD 0.05	Telecommunications (4814), Cable/Pay Television (4899)	2	10%	Electronic authorization required Magnetic stripe data must not be present	This is a recurring payments transaction Merchant registration required The transaction must not be face-to-face
Consumer Credit World Supermarket—Base	1.58% + USD 0.10	Supermarket (5411)	2	10%	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face

U.S. Interchange Rates

MasterCard Consumer Credit World Cards

The following World MasterCard® interchange rate programs apply to transactions acquired in the U.S. that are initiated with consumer credit World MasterCard Cards issued in the U.S.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit World Supermarket—Tier 1	1.07% + USD 0.05	Supermarket (5411)	2	10%	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Requires at least USD 6 billion in combined Consumer Credit Core Value, Enhanced Value, World, World High Value and World Elite MasterCard volume processed through GCMS that qualified for any Consumer Credit Core Value, Enhanced Value, World, World High Value or World Elite Supermarket rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID

U.S. Interchange Rates

MasterCard Consumer Credit World Cards

The following World MasterCard® interchange rate programs apply to transactions acquired in the U.S. that are initiated with consumer credit World MasterCard Cards issued in the U.S.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit World Supermarket—Tier 2	1.25% + USD 0.05	Supermarket (5411)	2	10%	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Requires at least USD 2 billion in combined Consumer Credit Core Value, Enhanced Value, World, World High Value and World Elite MasterCard volume processed through GCMS that qualified for any Consumer Credit Core Value, Enhanced Value, World, World High Value or World Elite Supermarket rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID

U.S. Interchange Rates

MasterCard Consumer Credit World Cards

The following World MasterCard® interchange rate programs apply to transactions acquired in the U.S. that are initiated with consumer credit World MasterCard Cards issued in the U.S.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit World Supermarket—Tier 3	1.32% + USD 0.05	Supermarket (5411)	2	10%	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Requires at least USD 750 million in combined Consumer Credit Core Value, Enhanced Value, World, World High Value and World Elite MasterCard volume processed through GCMS that qualified for any Consumer Credit Core Value, Enhanced Value, World, World High Value or World Elite Supermarket rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID
Consumer Credit World T&E	2.30% + USD 0.10	Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Cruise Line (4411), Travel Agencies (4722) and Restaurant (5812)	3	N/A	Electronic authorization required Magnetic stripe data not required	Airline, Lodging and Vehicle Rental categories require enhanced data

U.S. Interchange Rates

MasterCard Consumer Credit World Cards

The following World MasterCard® interchange rate programs apply to transactions acquired in the U.S. that are initiated with consumer credit World MasterCard Cards issued in the U.S.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit World Utilities	0.00% + USD 0.65	Utilities (4900)	2	10%	Electronic authorization required Magnetic stripe data not required	
Consumer Credit World Warehouse—Base	0.90% + USD 0.00	Warehouse (5300), Service Stations (5541) and Automated Fuel Dispenser (5542)	2	10%	Electronic authorization required Magnetic stripe data not required	Merchant registration required
Consumer Credit World Warehouse—Tier 1	0.60% + USD 0.00	Warehouse (5300), Service Stations (5541) and Automated Fuel Dispenser (5542)	2	10%	Electronic authorization required Magnetic stripe data not required	Merchant registration required Requires at least USD 3.0 billion in combined Consumer Credit Core Value, Enhanced Value, World, World High Value and World Elite MasterCard volume processed through GCMS that qualified for any Consumer Credit Core Value, Enhanced Value, World, World High Value or World Elite Warehouse rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID

U.S. Interchange Rates

MasterCard Consumer Credit World Cards

The following World MasterCard® interchange rate programs apply to transactions acquired in the U.S. that are initiated with consumer credit World MasterCard Cards issued in the U.S.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit World Refund Group 1	2.42% + USD 0.00	Airline, Vehicle Rental, Cruise Line, Lodging, Passenger Railway, Restaurant (5812) and Travel Agencies	N/A	N/A	Authorization not required Magnetic stripe data not required	Payable to the acquirer from the issuer
Consumer Credit World Refund Group 2	2.09% + USD 0.00	MO/TO and Utilities	N/A	N/A	Authorization not required Magnetic stripe data not required	Payable to the acquirer from the issuer
Consumer Credit World Refund Group 3	1.95% + USD 0.00	Professional Services, Drug Store, Recreation, Education, Repairs Shops, Other Services, Fast Food and Bars	N/A	N/A	Authorization not required Magnetic stripe data not required	Payable to the acquirer from the issuer
Consumer Credit World Refund Group 4	1.82% + USD 0.00	Other Retail, Gas Stations, Hardware, Healthcare, Sporting—Toy Stores, Discount Stores, Clothing Stores, Other Transport [except Passenger Railways (4112) and Cruise Lines (4411)]	N/A	N/A	Authorization not required Magnetic stripe data not required	Payable to the acquirer from the issuer
Consumer Credit World Refund Group 5	1.73% + USD 0.00	Department Stores, Electric-Appliance, Interior Furnishing, Vehicles, Quasi Cash and Food Stores/Warehouse	N/A	N/A	Authorization not required Magnetic stripe data not required	Payable to the acquirer from the issuer

U.S. Interchange Rates

MasterCard Consumer Credit World High Value Cards

The following consumer credit interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer credit World High Value cards issued in the U.S. including: MasterCard® World Card. MasterCard World High Value cards must be qualified by MasterCard.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit World High Value Standard	3.25% + USD 0.10	All	N/A	N/A	Authorization not required Magnetic stripe data not required	N/A
Consumer Credit World High Value Airline	2.30% + USD 0.10	Airline (3000-3299, 4511)	3	N/A	Electronic authorization required Magnetic stripe data not required	Requires enhanced data
Consumer Credit World High Value Convenience Purchases Base	2.00% + USD 0.00	Limousines and Taxis (4121), Fast Food (5814), Miscellaneous Food Stores (5499), Variety Stores (5331) and Motion Picture Theaters (7832)	2	N/A for Fast Food 10% for all other	Electronic authorization required Magnetic stripe data required unless a transponder was used	For transactions with MCC 4121, the transaction amount must be equal to or less than USD 25
Consumer Credit World High Value Convenience Purchases Tier 1	1.60% + USD 0.00	Limousines and Taxis (4121), Fast Food (5814), Miscellaneous Food Stores (5499), Variety Stores (5331) and Motion Picture Theaters (7832)	2	N/A for Fast Food 10% for all other	Electronic authorization required Magnetic stripe data required unless a transponder was used	For transactions with MCC 4121, the transaction amount must be equal to or less than USD 25

U.S. Interchange Rates

MasterCard Consumer Credit World High Value Cards

The following consumer credit interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer credit World High Value cards issued in the U.S. including: MasterCard® World Card. MasterCard World High Value cards must be qualified by MasterCard.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit World High Value Full UCAF	2.30% + USD 0.10	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112), Cruise Line (4411), Travel Agencies (4722), Restaurant (5812, 5813, 5814) and Utilities (4900)	2	N/A	Electronic authorization required Magnetic stripe data not required and Electronic Commerce identifiers must be present	This is an Internet transaction UCAF enabled by the Merchant and the cardholder is authenticated by the Issuer
Consumer Credit World High Value Key-Entered	2.50% + USD 0.10	Retail and Restaurant (5813, 5814)	2	N/A for Bar and Fast Food 10% for all other	Electronic authorization required Magnetic stripe data not required	The transaction must be face-to-face with failed attempt at reading the magnetic stripe data
Consumer Credit World High Value Merchant UCAF	2.20% + USD 0.10	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112), Cruise Line (4411), Travel Agencies (4722), Restaurant (5812, 5813, 5814) and Utilities (4900)	2	N/A	Electronic authorization required Magnetic stripe data not required and Electronic Commerce identifiers must be present	This is an Internet transaction UCAF enabled by Merchant

MasterCard U.S. and Interregional Interchange Rate Programs

MasterCard Worldwide

U.S. Interchange Rates

MasterCard Consumer Credit World High Value Cards

The following consumer credit interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer credit World High Value cards issued in the U.S. including: MasterCard® World Card. MasterCard World High Value cards must be qualified by MasterCard.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit World High Value Merit 1	2.50% + USD 0.10	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112), Cruise Line (4411), Travel Agencies (4722), Restaurant (5812) and Utilities (4900)	3	N/A for Restaurant, Bar, Fast Food, Limo/Taxi and non face-to face txns. 25% for Beauty Salons 10% for all other	Electronic authorization required Magnetic stripe data not required	N/A
Consumer Credit World High Value Merit 1 - Insurance	2.20% + USD 0.10	Insurance (5960, 6300)	3	10%	Electronic authorization required Magnetic stripe data not required	N/A
Consumer Credit World High Value Merit 1 – Real Estate	2.20% + USD 0.10	Real Estate (6513)	3	10%	Electronic authorization required Magnetic stripe data not required	N/A
Consumer Credit World High Value Merit 3—Base	2.20% + USD 0.10	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112), Travel Agencies (4722), Restaurant (5812), Service Stations (5541), Automated Fuel Dispenser (5542) and Utilities (4900)	2	N/A for Restaurant, Bar, Fast Food, and Limo/Taxi 25% for Beauty Salons 10% for all other	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face

MasterCard Worldwide

U.S. Interchange Rates

MasterCard Consumer Credit World High Value Cards

The following consumer credit interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer credit World High Value cards issued in the U.S. including: MasterCard® World Card. MasterCard World High Value cards must be qualified by MasterCard.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit World High Value Merit 3—Tier 1	2.05% + USD 0.10	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112), Travel Agencies (4722), Restaurant (5812), Service Stations (5541) and Automated Fuel Dispenser (5542)	2	N/A for Bar and Fast Food 25% for Beauty Salons 10% for all other	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Only retail and restaurant MCCs may qualify. Requires at least USD 2 billion in combined Consumer Credit Core Value, Enhanced Value, World, World High Value and World Elite MasterCard volume processed through GCMS that qualified for any Consumer Credit Core Value, Enhanced Value, World, World High Value or World Elite Merit 3 rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID

U.S. Interchange Rates

MasterCard Consumer Credit World High Value Cards

The following consumer credit interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer credit World High Value cards issued in the U.S. including: MasterCard® World Card. MasterCard World High Value cards must be qualified by MasterCard.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit World High Value Merit 3—Tier 2	2.10% + USD 0.10	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112), Travel Agencies (4722), Restaurant (5812), Service Stations (5541) and Automated Fuel Dispenser (5542)	2	N/A for Bar and Fast Food 25% for Beauty Salons 10% for all other	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Only retail and restaurant MCCs may qualify. Requires at least USD 1.25 billion in combined Consumer Credit Core Value, Enhanced Value, World, World High Value and World Elite MasterCard volume processed through GCMS that qualified for any Consumer Credit Core Value, Enhanced Value, World, World High Value or World Elite Merit 3 rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID

U.S. Interchange Rates

MasterCard Consumer Credit World High Value Cards

The following consumer credit interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer credit World High Value cards issued in the U.S. including: MasterCard® World Card. MasterCard World High Value cards must be qualified by MasterCard.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit World High Value Merit 3—Tier 3	2.15% + USD 0.10	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112), Travel Agencies (4722), Restaurant (5812), Service Stations (5541) and Automated Fuel Dispenser (5542)	2	N/A for Bar and Fast Food 25% for Beauty Salons 10% for all other	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Only retail and restaurant MCCs may qualify. Requires at least USD 750 million in combined Consumer Credit Core Value, Enhanced Value, World, World High Value and World Elite MasterCard volume processed through GCMS that qualified for any Consumer Credit Core Value, Enhanced Value, World, World High Value or World Elite Merit 3 rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID
Consumer Credit World High Value Petroleum	2.00% + USD 0.00 (USD 0.95 maximum)	Service Stations (5541) and Automated Fuel Dispenser (5542)	2	N/A	Electronic authorization required Magnetic stripe data required unless a transponder was used	N/A

MasterCard Worldwide

U.S. Interchange Rates

MasterCard Consumer Credit World High Value Cards

The following consumer credit interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer credit World High Value cards issued in the U.S. including: MasterCard® World Card. MasterCard World High Value cards must be qualified by MasterCard.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit World High Value Public Sector	1.55% + USD 0.10	Tax Payments (9311), Fines (9222), Court Costs (9211), Bail and Bond Payments (9223), Government Services (9399), Transportation – Commuter (4111), Passenger Railway (4112), Bridge and Road Fee, Tolls (4784) and Postal Services—Government Only (9402)	3	10%	Electronic authorization required Magnetic stripe data not required	Passenger Railway category requires enhanced data
Consumer Credit World High Value Restaurant	2.20% + USD 0.10	Restaurant (5812)	2	N/A	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Transaction amount must be equal to or less than USD 60
Consumer Credit World High Value Service Industries	1.15% + USD 0.05	Telecommunications (4814), Cable/Pay Television (4899)	2	10%	Electronic authorization required Magnetic stripe data must not be present	This is a recurring payments transaction Merchant registration required The transaction must not be face-to-face

U.S. Interchange Rates

MasterCard Consumer Credit World High Value Cards

The following consumer credit interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer credit World High Value cards issued in the U.S. including: MasterCard® World Card. MasterCard World High Value cards must be qualified by MasterCard.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit World High Value Supermarket - Base	1.90% + USD 0.10	Supermarket (5411)	2	10%	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face
Consumer Credit World High Value Supermarket—Tier 1	1.07% + USD 0.05	Supermarket (5411)	2	10%	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Requires at least USD 6 billion in combined Consumer Credit Core Value, Enhanced Value, World, World High Value and World Elite MasterCard volume processed through GCMS that qualified for any Consumer Credit Core Value, Enhanced Value, World or World Elite Supermarket rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID

U.S. Interchange Rates

MasterCard Consumer Credit World High Value Cards

The following consumer credit interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer credit World High Value cards issued in the U.S. including: MasterCard® World Card. MasterCard World High Value cards must be qualified by MasterCard.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit World High Value Supermarket—Tier 2	1.25% + USD 0.05	Supermarket (5411)	2	10%	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Requires at least USD 2 billion in combined Consumer Credit Core Value, Enhanced Value, World, World High Value and World Elite MasterCard volume processed through GCMS that qualified for any Consumer Credit Core Value, Enhanced Value, World or World Elite Supermarket rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID

MasterCard Worldwide

U.S. Interchange Rates

MasterCard Consumer Credit World High Value Cards

The following consumer credit interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer credit World High Value cards issued in the U.S. including: MasterCard® World Card. MasterCard World High Value cards must be qualified by MasterCard.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit World High Value Supermarket—Tier 3	1.32% + USD 0.05	Supermarket (5411)	2	10%	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Requires at least USD 750 million in combined Consumer Credit Core Value, Enhanced Value, World, World High Value and World Elite MasterCard volume processed through GCMS that qualified for any Consumer Credit Core Value, Enhanced Value, World or World Elite Supermarket rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID
Consumer Credit World High Value T&E	2.75% + USD 0.10	Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Cruise Line (4411), Travel Agencies (4722) and Restaurant (5812)	3	N/A	Electronic authorization required Magnetic stripe data not required	Lodging and Vehicle Rental categories require enhanced data

U.S. Interchange Rates

MasterCard Consumer Credit World High Value Cards

The following consumer credit interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer credit World High Value cards issued in the U.S. including: MasterCard® World Card. MasterCard World High Value cards must be qualified by MasterCard.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit World High Value T&E Large Ticket	2.00% + USD 0.00	Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Cruise Line (4411), Travel Agencies (4722) and Restaurant (5812)	3	N/A	Electronic authorization required Magnetic stripe data not required	Airline, Lodging and Vehicle Rental categories require enhanced data Transaction amount must be equal to or greater than USD 2,500
Consumer Credit World High Value Utilities	0.00% + USD 0.75	Utilities (4900)	2	10%	Electronic authorization required Magnetic stripe data not required	
Consumer Credit World High Value Warehouse – Base	0.90% + USD 0.00	Warehouse (5300), Service Stations (5541) and Automated Fuel Dispenser (5542)	2	10%	Electronic authorization required Magnetic stripe data not required	Merchant registration required

U.S. Interchange Rates

MasterCard Consumer Credit World High Value Cards

The following consumer credit interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer credit World High Value cards issued in the U.S. including: MasterCard® World Card. MasterCard World High Value cards must be qualified by MasterCard.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit World High Value Warehouse – Tier 1	0.60% + USD 0.00	Warehouse (5300), Service Stations (5541) and Automated Fuel Dispenser (5542)	2	10%	Electronic authorization required Magnetic stripe data not required	Merchant registration required Requires at least USD 3.0 billion in combined Consumer Credit Core Value, Enhanced Value, World, World High Value and World Elite MasterCard volume processed through GCMS that qualified for any Consumer Credit Core Value, Enhanced Value, World, World High Value or World Elite Warehouse rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID
Consumer Credit World High Value Refund Group 1	2.42% + USD 0.00	Airline, Vehicle Rental, Cruise Line, Lodging, Passenger Railway, Restaurant (5812) and Travel Agencies	N/A	N/A	Authorization not required Magnetic stripe data not required	Payable to the acquirer from the issuer

U.S. Interchange Rates

MasterCard Consumer Credit World High Value Cards

The following consumer credit interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer credit World High Value cards issued in the U.S. including: MasterCard® World Card. MasterCard World High Value cards must be qualified by MasterCard.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit World High Value Refund Group 2	2.09% + USD 0.00	MO/TO and Utilities	N/A	N/A	Authorization not required Magnetic stripe data not required	Payable to the acquirer from the issuer
Consumer Credit World High Value Refund Group 3	1.95% + USD 0.00	Professional Services, Drug Store, Recreation, Education, Repairs Shops, Other Services, Fast Food and Bars	N/A	N/A	Authorization not required Magnetic stripe data not required	Payable to the acquirer from the issuer
Consumer Credit World High Value Refund Group 4	1.82% + USD 0.00	Other Retail, Gas Stations, Hardware, Healthcare, Sporting – Toy Stores, Discount Stores, Clothing Stores, Other Transport [except Passenger Railways (4112) and Cruise Lines (4411)]	N/A	N/A	Authorization not required Magnetic stripe data not required	Payable to the acquirer from the issuer
Consumer Credit World High Value Refund Group 5	1.73% + USD 0.00	Department Stores, Electric-Appliance, Interior Furnishing, Vehicles, Quasi Cash and Food Stores/Warehouse	N/A	N/A	Authorization not required Magnetic stripe data not required	Payable to the acquirer from the issuer

MasterCard Worldwide

U.S. Interchange Rates

MasterCard Consumer Credit World Elite Cards

The following World Elite™ MasterCard® interchange rate programs apply to transactions acquired in the U.S. that are initiated with consumer credit World Elite MasterCard Cards issued in the U.S.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit World Elite Standard	3.25% + USD 0.10	All	N/A	N/A	Authorization not required Magnetic stripe data not required	N/A
Consumer Credit World Elite Airline	2.30% + USD 0.10	Airline (3000-3299, 4511)	3	N/A	Electronic authorization required Magnetic stripe data not required	Requires enhanced data
Consumer Credit World Elite Convenience Purchases Base	2.00% + USD 0.00	Limousines and Taxis (4121), Fast Food (5814), Miscellaneous Food Stores (5499), Variety Stores (5331) and Motion Picture Theaters (7832)	2	N/A for Fast Food 10% for all other	Electronic authorization required Magnetic stripe data required unless a transponder was used	For transactions with MCC 4121, the transaction amount must be equal to or less than USD 25
Consumer Credit World Elite Convenience Purchases Tier One	1.60% + USD 0.00	Limousines and Taxis (4121), Fast Food (5814), Miscellaneous Food Stores (5499), Variety Stores (5331) and Motion Picture Theaters (7832)	2	N/A for Fast Food 10% for all other	Electronic authorization required Magnetic stripe data required unless a transponder was used	For transactions with MCC 4121, the transaction amount must be equal to or less than USD 25

U.S. Interchange Rates

MasterCard Consumer Credit World Elite Cards

The following World Elite™ MasterCard® interchange rate programs apply to transactions acquired in the U.S. that are initiated with consumer credit World Elite MasterCard Cards issued in the U.S.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit World Elite Full UCAF	2.30% + USD 0.10	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112), Cruise Line (4411), Travel Agencies (4722), Restaurant (5812, 5813, 5814) and Utilities (4900)	2	N/A	Electronic authorization required Magnetic stripe data not required and Electronic Commerce identifiers must be present	This is an Internet transaction UCAF enabled by the Merchant and the cardholder is authenticated by the Issuer
Consumer Credit World Elite Key-Entered	2.50% + USD 0.10	Retail and Restaurant (5813, 5814)	2	N/A for Bar and Fast Food 10% for all other	Electronic authorization required Magnetic stripe data not required	The transaction must be face-to-face with failed attempt at reading the magnetic stripe data
Consumer Credit World Elite Merchant UCAF	2.20% + USD 0.10	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112), Cruise Line (4411), Travel Agencies (4722), Restaurant (5812, 5813, 5814) and Utilities (4900)	2	N/A	Electronic authorization required Magnetic stripe data not required and Electronic Commerce identifiers must be present	This is an Internet transaction UCAF enabled by Merchant

U.S. Interchange Rates

MasterCard Consumer Credit World Elite Cards

The following World Elite™ MasterCard® interchange rate programs apply to transactions acquired in the U.S. that are initiated with consumer credit World Elite MasterCard Cards issued in the U.S.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit World Elite Merit 1	2.50% + USD 0.10	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112), Cruise Line (4411), Travel Agencies (4722), Restaurant (5812) and Utilities (4900)	3	N/A for Restaurant, Bar, Fast Food, Limo/Taxi and non face-to face txns. 25% for Beauty Salons 10% for all other	Electronic authorization required Magnetic stripe data not required	N/A
Consumer Credit World Elite Merit 1 - Insurance	2.20% + USD 0.10	Insurance (5960, 6300)	3	10%	Electronic authorization required Magnetic stripe data not required	N/A
Consumer Credit World Elite Merit 1 – Real Estate	2.20% + USD 0.10	Real Estate (6513)	3	10%	Electronic authorization required Magnetic stripe data not required	N/A
Consumer Credit World Elite Merit 3—Base	2.20% + USD 0.10	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112), Travel Agencies (4722), Restaurant (5812), Service Stations (5541), Automated Fuel Dispenser (5542) and Utilities (4900)	2	N/A for Bar and Fast Food 25% for Beauty Salons 10% for all other	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face

U.S. Interchange Rates

MasterCard Consumer Credit World Elite Cards

The following World Elite™ MasterCard® interchange rate programs apply to transactions acquired in the U.S. that are initiated with consumer credit World Elite MasterCard Cards issued in the U.S.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit World Elite Merit 3—Tier 1	2.05% + USD 0.10	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112), Travel Agencies (4722), Restaurant (5812), Service Stations (5541) and Automated Fuel Dispenser (5542)	2	N/A for Bar and Fast Food 25% for Beauty Salons 10% for all other	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Only retail and restaurant MCCs may qualify. Requires at least USD 2 billion in combined Consumer Credit Core Value, Enhanced Value, World, World High Value and World Elite MasterCard volume processed through GCMS that qualified for any Consumer Credit Core Value, Enhanced Value, World, World High Value or World Elite Merit 3 rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID

U.S. Interchange Rates

MasterCard Consumer Credit World Elite Cards

The following World Elite™ MasterCard® interchange rate programs apply to transactions acquired in the U.S. that are initiated with consumer credit World Elite MasterCard Cards issued in the U.S.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit World Elite Merit 3—Tier 2	2.10% + USD 0.10	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112), Travel Agencies (4722), Restaurant (5812), Service Stations (5541) and Automated Fuel Dispenser (5542)	2	N/A for Bar and Fast Food 25% for Beauty Salons 10% for all other	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Only retail and restaurant MCCs may qualify. Requires at least USD 1.25 billion in combined Consumer Credit Core Value, Enhanced Value, World, World High Value and World Elite MasterCard volume processed through GCMS that qualified for any Consumer Credit Core Value, Enhanced Value, World, World High Value or World Elite Merit 3 rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID

U.S. Interchange Rates

MasterCard Consumer Credit World Elite Cards

The following World Elite™ MasterCard® interchange rate programs apply to transactions acquired in the U.S. that are initiated with consumer credit World Elite MasterCard Cards issued in the U.S.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit World Elite Merit 3—Tier 3	2.15% + USD 0.10	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112), Travel Agencies (4722), Restaurant (5812), Service Stations (5541) and Automated Fuel Dispenser (5542)	2	N/A for Bar and Fast Food 25% for Beauty Salons 10% for all other	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Only retail and restaurant MCCs may qualify. Requires at least USD 750 million in combined Consumer Credit Core Value, Enhanced Value, World, World High Value and World Elite MasterCard volume processed through GCMS that qualified for any Consumer Credit Core Value, Enhanced Value, World, World High Value or World Elite Merit 3 rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID
Consumer Credit World Elite Petroleum	2.00% + USD 0.00 (USD 0.95 maximum)	Service Stations (5541) and Automated Fuel Dispenser (5542)	2	N/A	Electronic authorization required Magnetic stripe data required unless a transponder was used	N/A

U.S. Interchange Rates

MasterCard Consumer Credit World Elite Cards

The following World Elite™ MasterCard® interchange rate programs apply to transactions acquired in the U.S. that are initiated with consumer credit World Elite MasterCard Cards issued in the U.S.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit World Elite Public Sector	1.55% + USD 0.10	Tax Payments (9311), Fines (9222), Court Costs (9211), Bail and Bond Payments (9223), Government Services (9399), Transportation – Commuter (4111), Passenger Railway (4112), Bridge and Road Fee, Tolls (4784) and Postal Services—Government Only (9402)	3	10%	Electronic authorization required Magnetic stripe data not required	Passenger Railway category requires enhanced data
Consumer Credit World Elite Restaurant	2.20% + USD 0.10	Restaurant (5812)	2	N/A	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Transaction amount must be equal to or less than USD 60
Consumer Credit World Elite Service Industries	1.15% + USD 0.05	Telecommunications (4814), Cable/Pay Television (4899)	2	10%	Electronic authorization required Magnetic stripe data <u>must</u> <u>not</u> be present	This is a recurring payments transaction Merchant registration required The transaction <u>must</u> <u>not</u> be face-to-face
Consumer Credit World Elite Supermarket - Base	1.90% + USD 0.10	Supermarket (5411)	2	10%	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face

MasterCard Worldwide

U.S. Interchange Rates

MasterCard Consumer Credit World Elite Cards

The following World Elite™ MasterCard® interchange rate programs apply to transactions acquired in the U.S. that are initiated with consumer credit World Elite MasterCard Cards issued in the U.S.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit World Elite Supermarket—Tier 1	1.07% + USD 0.05	Supermarket (5411)	2	10%	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Requires at least USD 6 billion in combined Consumer Credit Core Value, Enhanced Value, World, World High Value and World Elite MasterCard volume processed through GCMS that qualified for any Consumer Credit Core Value, Enhanced Value, World, World High Value or World Elite Supermarket rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID

U.S. Interchange Rates

MasterCard Consumer Credit World Elite Cards

The following World Elite™ MasterCard® interchange rate programs apply to transactions acquired in the U.S. that are initiated with consumer credit World Elite MasterCard Cards issued in the U.S.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit World Elite Supermarket—Tier 2	1.25% + USD 0.05	Supermarket (5411)	2	10%	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Requires at least USD 2 billion in combined Consumer Credit Core Value, Enhanced Value, World, World High Value and World Elite MasterCard volume processed through GCMS that qualified for any Consumer Credit Core Value, Enhanced Value, World, World High Value or World Elite Supermarket rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID

U.S. Interchange Rates

MasterCard Consumer Credit World Elite Cards

The following World Elite™ MasterCard® interchange rate programs apply to transactions acquired in the U.S. that are initiated with consumer credit World Elite MasterCard Cards issued in the U.S.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit World Elite Supermarket—Tier 3	1.32% + USD 0.05	Supermarket (5411)	2	10%	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Requires at least USD 750 million in combined Consumer Credit Core Value, Enhanced Value, World, World High Value and World Elite MasterCard volume processed through GCMS that qualified for any Consumer Credit Core Value, Enhanced Value, World, World High Value or World Elite Supermarket rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID
Consumer Credit World Elite T&E	2.75% + USD 0.10	Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Cruise Line (4411), Travel Agencies (4722) and Restaurant (5812)	3	N/A	Electronic authorization required Magnetic stripe data not required	Lodging and Vehicle Rental categories require enhanced data

U.S. Interchange Rates

MasterCard Consumer Credit World Elite Cards

The following World Elite™ MasterCard® interchange rate programs apply to transactions acquired in the U.S. that are initiated with consumer credit World Elite MasterCard Cards issued in the U.S.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit World Elite T&E Large Ticket	2.00% + USD 0.00	Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Cruise Line (4411), Travel Agencies (4722) and Restaurant (5812)	3	N/A	Electronic authorization required Magnetic stripe data not required	Airline, Lodging and Vehicle Rental categories require enhanced data Transaction amount must be equal to or greater than USD 2,500
Consumer Credit World Elite Utilities	0.00% + USD 0.75	Utilities (4900)	2	10%	Electronic authorization required Magnetic stripe data not required	
Consumer Credit World Elite Warehouse – Base	0.90% + USD 0.00	Warehouse (5300), Service Stations (5541) and Automated Fuel Dispenser (5542)	2	10%	Electronic authorization required Magnetic stripe data not required	Merchant registration required

MasterCard Worldwide

U.S. Interchange Rates

MasterCard Consumer Credit World Elite Cards

The following World Elite™ MasterCard® interchange rate programs apply to transactions acquired in the U.S. that are initiated with consumer credit World Elite MasterCard Cards issued in the U.S.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit World Elite Warehouse – Tier 1	0.60% + USD 0.00	Warehouse (5300), Service Stations (5541) and Automated Fuel Dispenser (5542)	2	10%	Electronic authorization required Magnetic stripe data not required	Merchant registration required Requires at least USD 3.0 billion in combined Consumer Credit Core Value, Enhanced Value, World, World High Value and World Elite MasterCard volume processed through GCMS that qualified for any Consumer Credit Core Value, Enhanced Value, World, World High Value or World Elite Warehouse rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID
Consumer Credit World Elite Refund Group 1	2.42% + USD 0.00	Airline, Vehicle Rental, Cruise Line, Lodging, Passenger Railway, Restaurant (5812) and Travel Agencies	N/A	N/A	Authorization not required Magnetic stripe data not required	Payable to the acquirer from the issuer

U.S. Interchange Rates

MasterCard Consumer Credit World Elite Cards

The following World Elite™ MasterCard® interchange rate programs apply to transactions acquired in the U.S. that are initiated with consumer credit World Elite MasterCard Cards issued in the U.S.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Credit World Elite Refund Group 2	2.09% + USD 0.00	MO/TO and Utilities	N/A	N/A	Authorization not required Magnetic stripe data not required	Payable to the acquirer from the issuer
Consumer Credit World Elite Refund Group 3	1.95% + USD 0.00	Professional Services, Drug Store, Recreation, Education, Repairs Shops, Other Services, Fast Food and Bars	N/A	N/A	Authorization not required Magnetic stripe data not required	Payable to the acquirer from the issuer
Consumer Credit World Elite Refund Group 4	1.82% + USD 0.00	Other Retail, Gas Stations, Hardware, Healthcare, Sporting – Toy Stores, Discount Stores, Clothing Stores, Other Transport [except Passenger Railways (4112) and Cruise Lines (4411)]	N/A	N/A	Authorization not required Magnetic stripe data not required	Payable to the acquirer from the issuer
Consumer Credit World Elite Refund Group 5	1.73% + USD 0.00	Department Stores, Electric-Appliance, Interior Furnishing, Vehicles, Quasi Cash and Food Stores/Warehouse	N/A	N/A	Authorization not required Magnetic stripe data not required	Payable to the acquirer from the issuer

MasterCard U.S. and Interregional Interchange Rate Programs

MasterCard Worldwide

U.S. Interchange Rates

MasterCard Consumer Debit & Prepaid Cards

The following consumer debit card interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer debit cards issued in the U.S., including: Debit MasterCard® Card, Debit Gold MasterCard® Card, Platinum Debit MasterCard® Card, and prepaid MasterCard cards.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Debit Standard	1.90% + USD 0.25	All	N/A	N/A	Authorization not required Magnetic stripe data not required	N/A
Consumer Debit Emerging Markets	0.80% + USD 0.25	Government (9211, 9222, 9223, 9311, 9399), Cable (4899), Education (8211, 8220, 8299), Insurance Services (5960, 6300), Transportation – Commuter (4111), Passenger Railway (4112), Bridge and Road Fee, Tolls (4784) and Postal Services—Government only (9402)	3	10%	Electronic authorization required Magnetic stripe data not required	Passenger Railway category requires enhanced data
Consumer Debit Full UCAF	1.15% + USD 0.15	All except Utilities (4900), Automobile/Vehicle Rental (3351-3500, 7512, 7513, or 7519), Lodging (3501-3999 or 7011), Cruise (4411), Direct Marketing – Insurance Services (5960) and Insurance Sales (6300)	2	N/A	Electronic authorization required Magnetic stripe data not required and Electronic Commerce identifiers must be present	This is an Internet transaction UCAF enabled by the Merchant and the cardholder is authenticated by the Issuer T&E categories require enhanced data

U.S. Interchange Rates

MasterCard Consumer Debit & Prepaid Cards

The following consumer debit card interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer debit cards issued in the U.S., including: Debit MasterCard® Card, Debit Gold MasterCard® Card, Platinum Debit MasterCard® Card, and prepaid MasterCard cards.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Debit Key-Entered	Consumer Debit 1.60% + USD 0.15 Consumer Prepaid 1.76% + USD 0.20	Retail and Restaurant (5812, 5813, 5814)	2	N/A for Restaurant, Bar and Fast Food 10% for all other	Electronic authorization required Magnetic stripe data not required	The transaction must be face-to-face with failed attempt at reading the magnetic stripe data
Consumer Debit Merchant UCAF	1.05% + USD 0.15	All except Utilities (4900), Automobile/Vehicle Rental (3351-3500, 7512, 7513, or 7519), Lodging (3501-3999 or 7011), and Cruise (4411), Direct Marketing – Insurance Services (5960), Insurance Sales (6300) and Real Estate (6513)	2	N/A	Electronic authorization required Magnetic stripe data not required and Electronic Commerce identifiers must be present	This is an Internet transaction UCAF enabled by Merchant T&E categories require enhanced data
Consumer Debit Merit 1	Consumer Debit 1.60% + USD 0.15 Consumer Prepaid 1.76% + USD 0.20	All except Utilities (4900), Direct Marketing – Insurance Services (5960) and Insurance Sales (6300)	3	N/A for Restaurant, Bar, Fast Food, Limo/Taxi and non face-to face txns. 25% for Beauty Salons 10% for all other	Electronic authorization required Magnetic stripe data not required	Airline and Passenger Railway categories require enhanced data

U.S. Interchange Rates

MasterCard Consumer Debit & Prepaid Cards

The following consumer debit card interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer debit cards issued in the U.S., including: Debit MasterCard® Card, Debit Gold MasterCard® Card, Platinum Debit MasterCard® Card, and prepaid MasterCard cards.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Debit Merit 1 – Real Estate	1.10% + USD 0.00	Real Estate (6513)	3	10%	Electronic authorization required Magnetic stripe data not required	N/A
Consumer Debit Merit 3—Base	1.05% + USD 0.15	All except Automated Fuel Dispenser (5542), Utilities (4900), Insurance Sales (6300), Real Estate (6513), Automobile/Vehicle Rental (3351-3500, 7512, 7513, or 7519), and Lodging (3501-3999 or 7011)..	2	N/A for Restaurant, Bar and Fast Food 25% for Beauty Salons 10% for all other	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Airline and Passenger Railway categories require enhanced data
Consumer Debit Merit 3—Tier 1	0.70% + USD 0.15	All except Automated Fuel Dispenser (5542), Automobile/Vehicle Rental (3351-3500, 7512, 7513, or 7519), and Lodging (3501-3999 or 7011).	2	N/A for Restaurant, Bar and Fast Food 25% for Beauty Salons 10% for all other	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Only retail and restaurant MCCs may qualify. Requires at least 750 million USD volume processed through GCMS that qualified for any Consumer Debit Merit 3 rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID

MasterCard Worldwide

U.S. Interchange Rates

MasterCard Consumer Debit & Prepaid Cards

The following consumer debit card interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer debit cards issued in the U.S., including: Debit MasterCard® Card, Debit Gold MasterCard® Card, Platinum Debit MasterCard® Card, and prepaid MasterCard cards.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Debit Merit 3—Tier 2	0.83% + USD 0.15	All except Automated Fuel Dispenser (5542), Automobile/Vehicle Rental (3351-3500, 7512, 7513, or 7519), and Lodging (3501-3999 or 7011).	2	N/A for Restaurant, Bar and Fast Food 25% for Beauty Salons 10% for all other	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Only retail and restaurant MCCs may qualify. Requires at least 500 million USD volume processed through GCMS that qualified for any Consumer Debit Merit 3 rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID

U.S. Interchange Rates

MasterCard Consumer Debit & Prepaid Cards

The following consumer debit card interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer debit cards issued in the U.S., including: Debit MasterCard® Card, Debit Gold MasterCard® Card, Platinum Debit MasterCard® Card, and prepaid MasterCard cards.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Debit Merit 3—Tier 3	0.95% + USD 0.15	All except Automated Fuel Dispenser (5542), Automobile/Vehicle Rental (3351-3500, 7512, 7513, or 7519), and Lodging (3501-3999 or 7011).	2	N/A for Restaurant, Bar and Fast Food 25% for Beauty Salons 10% for all other	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Only retail and restaurant MCCs may qualify. Requires at least 250 million USD volume processed through GCMS that qualified for any Consumer Debit Merit 3 rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID
Consumer Debit Passenger Transport	1.60% + USD 0.15	Airline (3000-3299, 4511)	9	N/A	Electronic authorization required Magnetic stripe data not required	Enhanced data required
Consumer Debit Petroleum—CAT/AFD	0.70% + USD 0.17 (USD 0.95 maximum)	Automated Fuel Dispenser (5542)	2	N/A	Electronic authorization required Magnetic stripe data required	Card and cardholder must be present at the time of the transaction

U.S. Interchange Rates

MasterCard Consumer Debit & Prepaid Cards

The following consumer debit card interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer debit cards issued in the U.S., including: Debit MasterCard® Card, Debit Gold MasterCard® Card, Platinum Debit MasterCard® Card, and prepaid MasterCard cards.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Debit Petroleum—Service Stations	0.70% + USD 0.17 (USD 0.95 maximum)	Service Stations (5541)	2	N/A	Electronic authorization required Magnetic stripe data required unless a transponder was used	N/A
Consumer Debit Restaurant	1.19% + USD 0.10	Restaurants (5812) and Fast Food Restaurants (5814)	2	N/A	Electronic authorization required Magnetic stripe data required unless a transponder was used	The transaction must be face-to-face
Consumer Debit Service Industries	1.15% + USD 0.05	Telecommunications (4814), Cable/Pay Television (4899)	2	10%	Electronic authorization required Magnetic stripe data <u>must</u> <u>not</u> be present	This is a recurring payments transaction Merchant registration required The transaction <u>must</u> <u>not</u> be face-to-face

This document includes MasterCard U.S. and Interregional interchange rate tables and key qualifying criteria; additional business and processing criteria may apply. In the event of any discrepancy between the rates and criteria found in this document and those rates and criteria MasterCard deems to be the official rates and criteria, the official rates and criteria will apply.

MasterCard Worldwide

U.S. Interchange Rates

MasterCard Consumer Debit & Prepaid Cards

The following consumer debit card interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer debit cards issued in the U.S., including: Debit MasterCard® Card, Debit Gold MasterCard® Card, Platinum Debit MasterCard® Card, and prepaid MasterCard cards.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Debit Small Ticket	1.55% + USD 0.04	Transportation (4111), Limousines & Taxi (4121), Bus Lines (4131), Bridges and Road Fees, Toll (4784), Misc. Food Stores/ Convenience (5499), Restaurants (5812), Fast Food Restaurants (5814), News Dealers and Newsstands (5994), Laundry (7211), Dry Cleaners (7216), Quick Copy, Reproduction Services (7338), Parking Lots & Garages (7523), Car Washes (7542), Motions Picture Theaters (7832), Video Rental (7841) and Postal Services-Government Only (9402)	2	N/A for Restaurant and Fast Food 10% for all other	Electronic authorization required Magnetic stripe data required unless a transponder was used	Transaction amount must be equal to or less than USD 15

U.S. Interchange Rates

MasterCard Consumer Debit & Prepaid Cards

The following consumer debit card interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer debit cards issued in the U.S., including: Debit MasterCard® Card, Debit Gold MasterCard® Card, Platinum Debit MasterCard® Card, and prepaid MasterCard cards.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Debit Small Ticket Tier 1	1.30% + USD 0.03	Transportation (4111), Limousines & Taxi (4121), Bus Lines (4131), Bridges and Road Fees, Toll (4784), Misc. Food Stores/ Convenience (5499), Restaurants (5812), Fast Food Restaurants (5814), News Dealers and Newsstands (5994), Laundry (7211), Dry Cleaners (7216), Quick Copy, Reproduction Services (7338), Parking Lots & Garages (7523), Car Washes (7542), Motions Picture Theaters (7832), Video Rental (7841) and Postal Services-Government Only (9402)	2	N/A for Restaurant and Fast Food 10% for all other	Electronic authorization required Magnetic stripe data required unless a transponder was used	Transaction amount must be equal to or less than USD 15 Requires at least 100 million transactions processed through GCMS in Oct'10-Sept'11 that qualified for Consumer Debit Small Ticket Requires a MasterCard approved and assigned Merchant ID
Consumer Debit Supermarket—Base	1.05% + USD 0.15 (USD 0.35 maximum)	Supermarket (5411)	2	10%	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face

U.S. Interchange Rates

MasterCard Consumer Debit & Prepaid Cards

The following consumer debit card interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer debit cards issued in the U.S., including: Debit MasterCard® Card, Debit Gold MasterCard® Card, Platinum Debit MasterCard® Card, and prepaid MasterCard cards.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Debit Supermarket—Tier 1	0.70% + USD 0.15 (USD 0.35 maximum)	Supermarket (5411)	2	10%	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Requires at least 750 million USD volume processed through GCMS that qualified for any Consumer Debit Supermarket rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID
Consumer Debit Supermarket—Tier 2	0.83% + USD 0.15 (USD 0.35 maximum)	Supermarket (5411)	2	10%	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Requires at least 500 million USD volume processed through GCMS that qualified for any Consumer Debit Supermarket rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID

U.S. Interchange Rates

MasterCard Consumer Debit & Prepaid Cards

The following consumer debit card interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer debit cards issued in the U.S., including: Debit MasterCard® Card, Debit Gold MasterCard® Card, Platinum Debit MasterCard® Card, and prepaid MasterCard cards.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Debit Supermarket—Tier 3	0.95% + USD 0.15 (USD 0.35 maximum)	Supermarket (5411)	2	10%	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Requires at least 250 million USD volume processed through GCMS that qualified for any Consumer Debit Supermarket rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID
Consumer Debit Lodging and Auto Rental	1.15% + USD 0.15	Lodging, Vehicle Rental and Cruise Line MCCs	2	N/A	Electronic authorization required Magnetic stripe data not required	Lodging and Vehicle Rental categories require enhanced data
Consumer Debit Utilities	<u>Consumer Debit</u> USD 0.45 <u>Consumer Prepaid</u> USD 0.65	Utilities (4900)	2	10%	Electronic authorization required Magnetic stripe data not required	

U.S. Interchange Rates

MasterCard Consumer Debit & Prepaid Cards

The following consumer debit card interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer debit cards issued in the U.S., including: Debit MasterCard® Card, Debit Gold MasterCard® Card, Platinum Debit MasterCard® Card, and prepaid MasterCard cards.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Debit Warehouse—Base	1.05% + USD 0.15 (USD 0.35 maximum)	Warehouse (5300)	2	10%	Electronic authorization required Magnetic stripe data required	Merchant registration required The transaction must be face-to-face
Consumer Debit Warehouse—Tier 1	0.70% + USD 0.15 (USD 0.35 maximum)	Warehouse (5300)	2	10%	Electronic authorization required Magnetic stripe data required	Merchant registration required The transaction must be face-to-face Requires at least 750 million USD volume processed through GCMS that qualified for any Consumer Debit Warehouse rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID

U.S. Interchange Rates

MasterCard Consumer Debit & Prepaid Cards

The following consumer debit card interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer debit cards issued in the U.S., including: Debit MasterCard® Card, Debit Gold MasterCard® Card, Platinum Debit MasterCard® Card, and prepaid MasterCard cards.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Debit Warehouse—Tier 2	0.83% + USD 0.15 (USD 0.35 maximum)	Warehouse (5300)	2	10%	Electronic authorization required Magnetic stripe data required	Merchant registration required The transaction must be face-to-face Requires at least USD 500 million USD volume processed through GCMS that qualified for any Consumer Debit Warehouse rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID

U.S. Interchange Rates

MasterCard Consumer Debit & Prepaid Cards

The following consumer debit card interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer debit cards issued in the U.S., including: Debit MasterCard® Card, Debit Gold MasterCard® Card, Platinum Debit MasterCard® Card, and prepaid MasterCard cards.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Debit Warehouse—Tier 3	0.95% + USD 0.15 (USD 0.35 maximum)	Warehouse (5300)	2	10%	Electronic authorization required Magnetic stripe data required	Merchant registration required The transaction must be face-to-face Requires at least 250 million USD volume processed through GCMS that qualified for any Consumer Debit Warehouse rate in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID
Consumer Debit Cash Back at POS	0.00% + USD 0.00	N/A	N/A	N/A	N/A	Applies to the cash-back amount provided as part of a face-to-face purchase transaction
Consumer Debit Refund Group 1	1.72% + USD 0.00	All except Airline or Passenger Railway	N/A	N/A	Authorization not required Magnetic stripe data not required	Transaction must be non face-to-face Payable to the acquirer from the issuer

MasterCard Worldwide

U.S. Interchange Rates

MasterCard Consumer Debit & Prepaid Cards

The following consumer debit card interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard consumer debit cards issued in the U.S., including: Debit MasterCard® Card, Debit Gold MasterCard® Card, Platinum Debit MasterCard® Card, and prepaid MasterCard cards.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Debit Refund Group 2	1.68% + USD 0.00	Airline and Passenger Railway	N/A	N/A	Authorization not required Magnetic stripe data not required	Payable to the acquirer from the issuer
Consumer Debit Refund Group 3	1.40% + USD 0.00	All except Airline, Passenger Railway, and MO/TO.	N/A	N/A	Authorization not required Magnetic stripe data not required	Transaction must be face-to-face Payable to the acquirer from the issuer

MasterCard Worldwide

U.S. Interchange Rates

MasterCard PIN Debit POS Cards

The following MasterCard PIN Debit POS interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard PIN Debit POS cards issued in the U.S.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
MasterCard PIN Debit POS Convenience—Base	0.75% + USD 0.17 (USD 0.95 maximum)	Fast Food (5814), Miscellaneous Food Stores (5499), Service Stations (5541), Automated Fuel Dispenser (5542) and Motion Picture Theaters (7832)	N/A	N/A	PIN authorization required Magnetic stripe data required	N/A
MasterCard PIN Debit POS Convenience—Tier 1	0.75% + USD 0.17 (USD 0.95 maximum)	Fast Food (5814), Miscellaneous Food Stores (5499), Service Stations (5541), Automated Fuel Dispenser (5542) and Motion Picture Theaters (7832)	N/A	N/A	PIN authorization required Magnetic stripe data required	Requires at least 25 million MasterCard Pin Debit POS transactions settled through MDS in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID
MasterCard PIN Debit POS Convenience—Tier 2	0.75% + USD 0.17 (USD 0.95 maximum)	Fast Food (5814), Miscellaneous Food Stores (5499), Service Stations (5541), Automated Fuel Dispenser (5542) and Motion Picture Theaters (7832)	N/A	N/A	PIN authorization required Magnetic stripe data required	Requires at least 9 million MasterCard Pin Debit POS transactions settled through MDS in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID
MasterCard PIN Debit POS Supermarket/ Warehouse—Base	1.05% + USD 0.15 (USD 0.35 maximum)	Supermarket (5411), Warehouse (5300)	N/A	N/A	PIN authorization required Magnetic stripe data required	N/A

U.S. Interchange Rates

MasterCard PIN Debit POS Cards

The following MasterCard PIN Debit POS interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard PIN Debit POS cards issued in the U.S.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
MasterCard PIN Debit POS Supermarket/ Warehouse—Tier 1	0.00% + USD 0.18	Supermarket (5411), Warehouse (5300)	N/A	N/A	PIN authorization required Magnetic stripe data required	Requires at least 25 million MasterCard Pin Debit POS transactions settled through MDS in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID
MasterCard PIN Debit POS Supermarket/ Warehouse—Tier 2	0.00% + USD 0.23	Supermarket (5411), Warehouse (5300)	N/A	N/A	PIN authorization required Magnetic stripe data required	Requires at least 9 million MasterCard Pin Debit POS transactions settled through MDS in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID
MasterCard PIN Debit POS All Other—Base	0.90% + USD 0.15	All except those qualified for Convenience and Supermarket/Warehouse rates	N/A	N/A	PIN authorization required Magnetic stripe data required	N/A
MasterCard PIN Debit POS All Other—Tier 1	0.50% + USD 0.08 (USD 0.50 maximum)	All except those qualified for Convenience and Supermarket/Warehouse rates	N/A	N/A	PIN authorization required Magnetic stripe data required	Requires at least 25 million MasterCard Pin Debit POS transactions settled through MDS in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID

MasterCard Worldwide

U.S. Interchange Rates

MasterCard PIN Debit POS Cards

The following MasterCard PIN Debit POS interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard PIN Debit POS cards issued in the U.S.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
MasterCard PIN Debit POS All Other—Tier 2	0.60% + USD 0.12 (USD 0.65 maximum)	All except those qualified for Convenience and Supermarket/Warehouse rates	N/A	N/A	PIN authorization required Magnetic stripe data required	Requires at least 9 million MasterCard Pin Debit POS transactions settled through MDS in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID

U.S. Interchange Rates

MasterCard Commercial including Business, Corporate, Purchasing, and Fleet Card.

The following commercial interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard commercial, Business, Corporate including Corporate World and Corporate World Elite, Purchasing and Fleet cards issued in the U.S

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Commercial Standard	2.95% + USD 0.10	All	N/A	N/A	Authorization not required Magnetic stripe data not required	N/A
Commercial Data Rate 1	2.65% + USD 0.10	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112) and Restaurant (5812)	3	N/A	Electronic authorization required Magnetic stripe data not required	Enhanced data required
Commercial Data Rate 2	<u>BusinessCard</u> 2.20% + USD 0.10 <u>Corporate Card and Purchasing Card</u> 2.10% + USD 0.10 <u>Fleet Card</u> 2.50% + USD 0.10	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112), Restaurant (5812), Marinas (4468), Service Stations (5541), Fuel Dispensers - Automated (5542), Convenience Stores (5499), Fuel Dealers (5983) and Truck Stops (7511)	3	N/A	Electronic authorization required Magnetic stripe data not required	Enhanced data required

U.S. Interchange Rates

MasterCard Commercial including Business, Corporate, Purchasing, and Fleet Card.

The following commercial interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard commercial, Business, Corporate including Corporate World and Corporate World Elite, Purchasing and Fleet cards issued in the U.S

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Commercial Data Rate 2 Petroleum	2.05% + USD 0.10	Marinas (4468), Service Stations (5541), Fuel Dispensers - Automated (5542), Convenience Stores (5499), Fuel Dealers (5983) and Truck Stops (7511)	3	N/A	Electronic authorization required Magnetic stripe data not required	Enhanced data required
Commercial Data Rate 3	Corporate Card and Purchasing Card 1.90% + USD 0.10 All Other 1.80% + USD 0.10	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112), Restaurant (5812), and Corporate Fleet transactions at fuel locations (MCC 4468, 5541, 5542, 5499, 5983 and 7511)	3	N/A	Electronic authorization required Magnetic stripe data not required	Enhanced data required
Commercial Face-to-Face	BusinessCard 2.20% + USD 0.10 Corporate Card and Purchasing Card 2.10% + USD 0.10 Fleet Card 2.50% + USD 0.10	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112), Restaurant (5812), Marinas (4468), Service Stations (5541), Fuel Dispensers - Automated (5542), Convenience Stores (5499), Fuel Dealers (5983) and Truck Stops (7511)	2	N/A for Bar and Fast Food 25% for Beauty Salons 10% for all other	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Enhanced data required

U.S. Interchange Rates

MasterCard Commercial including Business, Corporate, Purchasing, and Fleet Card.

The following commercial interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard commercial, Business, Corporate including Corporate World and Corporate World Elite, Purchasing and Fleet cards issued in the U.S

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Commercial Face-to-Face Petroleum	Fleet Cards n/a All Other 2.05% + USD 0.10	Marinas (4468), Service Stations (5541), Convenience Stores (5499), Fuel Dealers (5983) and Truck Stops (7511)	2	N/A for Service Stations 10% for all other	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Enhanced data required
Commercial Large Ticket 1	Business and Fleet 1.25% + USD 40.00 Corporate and Purchasing 1.35% + USD 40.00	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112) and Restaurant (5812)	2	N/A for Bar, Fast Food and Petroleum 25% for all other	Electronic authorization required Magnetic stripe data not required	Enhanced data required Transaction amount must be greater than USD 7,255
Commercial Large Ticket 2	Business and Fleet 1.25% + USD 40.00 Corporate and Purchasing 1.35% + USD 40.00	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112) and Restaurant (5812)	2	N/A for Bar, Fast Food and Petroleum 25% for all other	Electronic authorization required Magnetic stripe data not required	Enhanced data required Transaction amount must be greater than USD 25,000
Commercial Large Ticket 3	Business and Fleet 1.25% + USD 40.00 Corporate and Purchasing 1.35% + USD 40.00	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112) and Restaurant (5812)	2	N/A for Bar, Fast Food and Petroleum 25% for all other	Electronic authorization required Magnetic stripe data not required	Enhanced data required Transaction amount must be greater than USD 100,000

U.S. Interchange Rates

MasterCard Commercial including Business, Corporate, Purchasing, and Fleet Card.

The following commercial interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard commercial, Business, Corporate including Corporate World and Corporate World Elite, Purchasing and Fleet cards issued in the U.S

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Commercial Large Ticket 1 MPG	1.20% + USD 0.00	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112) and Restaurant (5812)	2	N/A for Bar, Fast Food and Petroleum 25% for all other	Electronic authorization required Magnetic stripe data not required	Enhanced data required Transaction amount must be greater than USD 7,255 Transaction must be processed through the MPG
Commercial Large Ticket 2 MPG	0.90% + USD 0.00	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112) and Restaurant (5812)	2	N/A for Bar, Fast Food and Petroleum 25% for all other	Electronic authorization required Magnetic stripe data not required	Enhanced data required Transaction amount must be greater than USD 25,000 Transaction must be processed through the MPG
Commercial Large Ticket 3 MPG	0.70% + USD 0.00	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112) and Restaurant (5812)	2	N/A for Bar, Fast Food and Petroleum 25% for all other	Electronic authorization required Magnetic stripe data not required	Enhanced data required Transaction amount must be greater than USD 100,000 Transaction must be processed through the MPG

U.S. Interchange Rates

MasterCard Commercial including Business, Corporate, Purchasing, and Fleet Card.

The following commercial interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard commercial, Business, Corporate including Corporate World and Corporate World Elite, Purchasing and Fleet cards issued in the U.S

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Commercial Supermarket	1.07% + USD 0.05	Supermarket 5411	2	10%	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Enhanced data required Requires at least USD 750 million in combined Commercial volume processed through GCMS with the Supermarket MCC 5411 in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID
Commercial T&E 1	BusinessCard and Corporate Card 2.50% + USD 0.00 Purchasing Card 2.65% + USD 0.00 Fleet Card 2.70% + USD 0.00	Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112) and Restaurant (5812)	3	N/A	Electronic authorization required Magnetic stripe data not required	Airline and Passenger Railway categories require enhanced data

U.S. Interchange Rates

MasterCard Commercial including Business, Corporate, Purchasing, and Fleet Card.

The following commercial interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard commercial, Business, Corporate including Corporate World and Corporate World Elite, Purchasing and Fleet cards issued in the U.S

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Commercial T&E 2	BusinessCard and Corporate Card 2.35% + USD 0.10 Purchasing Card 2.50% + USD 0.10 Fleet Card 2.55% + USD 0.10	Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011) and Passenger Railway (4112)	3	N/A	Electronic authorization required Magnetic stripe data not required	Enhanced data required
Commercial T&E 3	BusinessCard and Corporate Card 2.30% + USD 0.10 Purchasing Card 2.45% + USD 0.10 Fleet Card 2.50% + USD 0.10	Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011) and Passenger Railway (4112)	3	N/A	Electronic authorization required Magnetic stripe data not required	Enhanced data required
Commercial Utilities	Business Card 0.00% + USD 1.50 All Others n/a	Utilities (4900)	2	10%	Electronic authorization required Magnetic stripe data not required	

MasterCard Worldwide

U.S. Interchange Rates

MasterCard Commercial including Business, Corporate, Purchasing, and Fleet Card.

The following commercial interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard commercial, Business, Corporate including Corporate World and Corporate World Elite, Purchasing and Fleet cards issued in the U.S

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Warehouse Base and Tier 1	Base 0.90% + 0.00 Tier 1 0.60% + 0.00	Warehouse (5300), Service Stations (5541) and Automated Fuel Dispenser (5542)	2	10%	Electronic authorization required Magnetic stripe data not required	This is a Consumer rate that Commercial products can qualify. See Consumer rates for additional qualifying and Criteria Notes.
Commercial Refund Group 1	2.37% + USD 0.00	Quasi Cash, Other Transport, Food Stores—Warehouse, Discount Stores, Drug Stores, Recreation, Restaurants/Bars and Utilities	N/A	N/A	Authorization not required Magnetic stripe data not required	Payable to the acquirer from the issuer Refund 1-4 exclude the regulated transactions
Commercial Refund Group 2	2.30% + USD 0.00	Vehicle Rental, Lodging, Sporting—Toy Stores, Clothing Stores, Vehicles, Education, Repair Shops and Travel Agencies	N/A	N/A	Authorization not required Magnetic stripe data not required	Payable to the acquirer from the issuer Refund 1-4 exclude the regulated transactions
Commercial Refund Group 3	2.21% + USD 0.00	Airline, Other Retail, Health Care, Professional Services, Other Services, Hardware and MO/TO	N/A	N/A	Authorization not required Magnetic stripe data not required	Payable to the acquirer from the issuer Refund 1-4 exclude the regulated transactions
Commercial Refund Group 4	2.16% + USD 0.00	Department Stores, Electric-Appliances, Gas Stations and Interior Furnishings	N/A	N/A	Authorization not required Magnetic stripe data not required	Payable to the acquirer from the issuer Refund 1-4 exclude the regulated transactions

U.S. Interchange Rates

MasterCard Business Enhanced, Business World and Business World Elite Cards

The following commercial interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard commercial, Business Enhanced, Business World and Business World Elite cards issued in the U.S

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Commercial Standard	Business Enhanced 3.07% + USD 0.10 Business World 3.12% + USD 0.10 Bus. World Elite 3.17% + USD 0.10	All	N/A	N/A	Authorization not required Magnetic stripe data not required	N/A
Commercial Data Rate 1	Business Enhanced 2.77% + USD 0.10 Business World 2.82% + USD 0.10 Bus. World Elite 2.87% + USD 0.10	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112) and Restaurant (5812)	3	N/A	Electronic authorization required Magnetic stripe data not required	Enhanced data required
Commercial Data Rate 2	Business Enhanced 2.32% + USD 0.10 Business World 2.37% + USD 0.10 Bus. World Elite 2.42% + USD 0.10	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112), Restaurant (5812), Marinas (4468), Service Stations (5541), Fuel Dispensers - Automated (5542), Convenience Stores (5499), Fuel Dealers (5983) and Truck Stops (7511)	3	N/A	Electronic authorization required Magnetic stripe data not required	Enhanced data required

U.S. Interchange Rates

MasterCard Commercial including Business, Corporate, Purchasing, and Fleet Card.

The following commercial interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard commercial, Business, Corporate including Corporate World and Corporate World Elite, Purchasing and Fleet cards issued in the U.S

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Commercial Data Rate 2 Petroleum	Business Enhanced 2.17% + USD 0.10 Business World 2.22% + USD 0.10 Bus. World Elite 2.27% + USD 0.10	Marinas (4468), Service Stations (5541), Fuel Dispensers - Automated (5542), Convenience Stores (5499), Fuel Dealers (5983) and Truck Stops (7511)	3	N/A	Electronic authorization required Magnetic stripe data not required	Enhanced data required
Commercial Data Rate 3	Business Enhanced 1.92% + USD 0.10 Business World 1.97% + USD 0.10 Bus. World Elite 2.02% + USD 0.10	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112), Restaurant (5812), and Corporate Fleet transactions at fuel locations (MCC 4468, 5541, 5542, 5499, 5983 and 7511)	3	N/A	Electronic authorization required Magnetic stripe data not required	Enhanced data required

MasterCard U.S. and Interregional Interchange Rate Programs

MasterCard Worldwide

U.S. Interchange Rates

MasterCard Commercial including Business, Corporate, Purchasing, and Fleet Card.

The following commercial interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard commercial, Business, Corporate including Corporate World and Corporate World Elite, Purchasing and Fleet cards issued in the U.S

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Commercial Face-to-Face	Business Enhanced 2.32% + USD 0.10 Business World 2.37% + USD 0.10 Bus. World Elite 2.42% + USD 0.10	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112), Restaurant (5812), Marinas (4468), Service Stations (5541), Fuel Dispensers - Automated (5542), Convenience Stores (5499), Fuel Dealers (5983) and Truck Stops (7511)	2	N/A for Bar and Fast Food 25% for Beauty Salons 10% for all other	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Enhanced data required
Commercial Face-to-Face Petroleum	Business Enhanced 2.17% + USD 0.10 Business World 2.22% + USD 0.10 Bus. World Elite 2.27% + USD 0.10	Marinas (4468), Service Stations (5541), Convenience Stores (5499), Fuel Dealers (5983) and Truck Stops (7511)	2	N/A for Service Stations 10% for all other	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Enhanced data required
Commercial Large Ticket 1	Business Enhanced 1.37% + USD 40.00 Business World 1.42% + USD 40.00 Bus. World Elite 1.47% + USD 40.00	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112) and Restaurant (5812)	2	N/A for Bar, Fast Food and Petroleum 25% for all other	Electronic authorization required Magnetic stripe data not required	Enhanced data required Transaction amount must be greater than USD 7,255

U.S. Interchange Rates

MasterCard Commercial including Business, Corporate, Purchasing, and Fleet Card.

The following commercial interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard commercial, Business, Corporate including Corporate World and Corporate World Elite, Purchasing and Fleet cards issued in the U.S

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Commercial Large Ticket 2	Business Enhanced 1.37% + USD 40.00 Business World 1.42% + USD 40.00 Bus. World Elite 1.47% + USD 40.00	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112) and Restaurant (5812)	2	N/A for Bar, Fast Food and Petroleum 25% for all other	Electronic authorization required Magnetic stripe data not required	Enhanced data required Transaction amount must be greater than USD 25,000
Commercial Large Ticket 3	Business Enhanced 1.37% + USD 40.00 Business World 1.42% + USD 40.00 Bus. World Elite 1.47% + USD 40.00	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112) and Restaurant (5812)	2	N/A for Bar, Fast Food and Petroleum 25% for all other	Electronic authorization required Magnetic stripe data not required	Enhanced data required Transaction amount must be greater than USD 100,000
Commercial Large Ticket 1 MPG	1.20% + USD 0.00	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112) and Restaurant (5812)	2	N/A for Bar, Fast Food and Petroleum 25% for all other	Electronic authorization required Magnetic stripe data not required	Enhanced data required Transaction amount must be greater than USD 7,255 Transaction must be processed through the MPG
Commercial Large Ticket 2 MPG	0.90% + USD 0.00	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112) and Restaurant (5812)	2	N/A for Bar, Fast Food and Petroleum 25% for all other	Electronic authorization required Magnetic stripe data not required	Enhanced data required Transaction amount must be greater than USD 25,000 Transaction must be processed through the MPG

MasterCard Worldwide

U.S. Interchange Rates

MasterCard Commercial including Business, Corporate, Purchasing, and Fleet Card.

The following commercial interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard commercial, Business, Corporate including Corporate World and Corporate World Elite, Purchasing and Fleet cards issued in the U.S

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Commercial Large Ticket 3 MPG	0.70% + USD 0.00	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112) and Restaurant (5812)	2	N/A for Bar, Fast Food and Petroleum 25% for all other	Electronic authorization required Magnetic stripe data not required	Enhanced data required Transaction amount must be greater than USD 100,000 Transaction must be processed through the MPG
Commercial Supermarket	1.07% + USD 0.05	Supermarket 5411	2	10%	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face Enhanced data required Requires at least USD 750 million in combined Commercial volume processed through GCMS with the Supermarket MCC 5411 in Oct'10-Sept'11 Requires a MasterCard approved and assigned Merchant ID

U.S. Interchange Rates

MasterCard Commercial including Business, Corporate, Purchasing, and Fleet Card.

The following commercial interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard commercial, Business, Corporate including Corporate World and Corporate World Elite, Purchasing and Fleet cards issued in the U.S

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Commercial T&E 1	Business Enhanced 2.62% + USD 0.10 Business World 2.67% + USD 0.10 Bus. World Elite 2.72% + USD 0.10	Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112) and Restaurant (5812)	3	N/A	Electronic authorization required Magnetic stripe data not required	Airline and Passenger Railway categories require enhanced data
Commercial T&E 2	Business Enhanced 2.47% + USD 0.10 Business World 2.52% + USD 0.10 Bus. World Elite 2.57% + USD 0.10	Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011) and Passenger Railway (4112)	3	N/A	Electronic authorization required Magnetic stripe data not required	Enhanced data required
Commercial T&E 3	Business Enhanced 2.42% + USD 0.10 Business World 2.47% + USD 0.10 Bus. World Elite 2.52% + USD 0.10	Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011) and Passenger Railway (4112)	3	N/A	Electronic authorization required Magnetic stripe data not required	Enhanced data required
Commercial Utilities	0.00% + USD 1.50	Utilities (4900)	2	10%	Electronic authorization required Magnetic stripe data not required	

U.S. Interchange Rates

MasterCard Commercial including Business, Corporate, Purchasing, and Fleet Card.

The following commercial interchange rate programs apply to transactions acquired in the U.S. that are initiated with MasterCard commercial, Business, Corporate including Corporate World and Corporate World Elite, Purchasing and Fleet cards issued in the U.S

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Warehouse Base and Tier 1	Base 0.90% + 0.00 Tier 1 0.60% + 0.00	Warehouse (5300), Service Stations (5541) and Automated Fuel Dispenser (5542)	2	10%	Electronic authorization required Magnetic stripe data not required	This is a Consumer rate that Commercial products can qualify. See Consumer rates for additional qualifying and Criteria Notes.
Commercial Refund Group 1	2.37% + USD 0.00	Quasi Cash, Other Transport, Food Stores—Warehouse, Discount Stores, Drug Stores, Recreation, Restaurants/Bars and Utilities	N/A	N/A	Authorization not required Magnetic stripe data not required	Payable to the acquirer from the issuer
Commercial Refund Group 2	2.30% + USD 0.00	Vehicle Rental, Lodging, Sporting—Toy Stores, Clothing Stores, Vehicles, Education, Repair Shops and Travel Agencies	N/A	N/A	Authorization not required Magnetic stripe data not required	Payable to the acquirer from the issuer
Commercial Refund Group 3	2.21% + USD 0.00	Airline, Other Retail, Health Care, Professional Services, Other Services, Hardware and MO/TO	N/A	N/A	Authorization not required Magnetic stripe data not required	Payable to the acquirer from the issuer
Commercial Refund Group 4	2.16% + USD 0.00	Department Stores, Electric-Appliances, Gas Stations and Interior Furnishings	N/A	N/A	Authorization not required Magnetic stripe data not required	Payable to the acquirer from the issuer

MasterCard Worldwide

U.S. Interchange Rates

MasterCard Regulated Rates – Debit and Prepaid

The following regulated debit/prepaid card interchange rate programs are for all Consumer and Commercial debit and prepaid transactions from issuers that are regulated per the Durbin Amendment. When an issuer and/or its prepaid account ranges are identified as regulated, these transactions will only be able to qualify for the following IRDs.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Regulated POS Debit	0.05% + USD 0.21	All	N/A	N/A	Authorization not required Magnetic stripe data not required	N/A
Regulated POS Debit with Fraud Adjustment	0.05% + USD 0.22	All	N/A	N/A	Authorization not required Magnetic stripe data not required	N/A
Regulated POS Debit Small Ticket	0.05% + USD 0.21	Fast Food Restaurants and Video Entertainment Rental Stores	N/A	N/A	Authorization not required Magnetic stripe data not required	Transaction amount must be equal to or less than USD 10 Only Signature txns qualify
Consumer Debit Regulated POS Debit Small Ticket with Fraud Adjustment	0.05% + USD 0.22	Fast Food Restaurants and Video Entertainment Rental Stores	N/A	N/A	Authorization not required Magnetic stripe data not required	Transaction amount must be equal to or less than USD 10 Only Signature txns qualify

Interregional Interchange Rates

MasterCard Consumer Cards

The following interregional consumer interchange rate programs apply to cross-border transactions acquired in the U.S. that are initiated with MasterCard consumer cards issued outside the U.S., excluding the consumer premium and consumer super premium card products referred to on pages 119 – 122.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Standard	1.60% + USD 0.00	All	N/A	N/A	Authorization not required Magnetic stripe data not required	N/A
Consumer Electronic	1.10% + USD 0.00	All except Automated Fuel Dispenser (5542)	5	N/A for Restaurant, Bar, Fast Food 25% for Beauty Salons 10% for all other	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face
Consumer Full UCAF	1.54% + USD 0.00	All	5	N/A	Electronic authorization required Magnetic stripe data not required and Electronic Commerce identifiers must be present	This is an Internet transaction UCAF enabled by the Merchant and the cardholder is authenticated by the Issuer
Consumer Merchant UCAF	1.44% + USD 0.00	All	5	N/A	Electronic authorization required Magnetic stripe data not required and Electronic Commerce identifiers must be present	This is an Internet transaction UCAF enabled by Merchant

Interregional Interchange Rates

MasterCard Consumer Premium Cards

The following interregional consumer premium interchange rate programs apply to cross-border transactions acquired in the U.S. that are initiated with MasterCard consumer premium cards issued outside the U.S., including: Platinum MasterCard® Card (issued in the Asia/Pacific, South Asia/Middle East/Africa, Latin America/Caribbean region or Europe region), Debit Platinum MasterCard® Card (issued in the Asia/Pacific, South Asia/Middle East/Africa, Latin America/Caribbean region or Europe region), Titanium MasterCard® Card (issued in the Asia/Pacific, South Asia/Middle East/Africa, Latin America/Caribbean region, Canada region or Europe region), World MasterCard® Card (issued in the Canada region and Latin America/Caribbean region), and World Elite MasterCard® Card (issued in the Canada region). Transactions initiated with a Platinum MasterCard® Card or a Debit Platinum MasterCard® Card issued in the Canada region qualify for the Consumer interchange rate programs (see pages 117 – 118).

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Premium Standard	1.85% + USD 0.00	All	N/A	N/A	Authorization not required Magnetic stripe data not required	N/A
Consumer Premium Electronic	1.85% + USD 0.00	All except Automated Fuel Dispenser (5542)	5	N/A for Restaurant, Bar, Fast Food 25% for Beauty Salons 10% for all other	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face
Consumer Premium Full UCAF	1.85% + USD 0.00	All	5	N/A	Electronic authorization required Magnetic stripe data not required and Electronic Commerce identifiers must be present	This is an Internet transaction UCAF enabled by the Merchant and the cardholder is authenticated by the Issuer

MasterCard Worldwide

Interregional Interchange Rates

MasterCard Consumer Premium Cards

The following interregional consumer premium interchange rate programs apply to cross-border transactions acquired in the U.S. that are initiated with MasterCard consumer premium cards issued outside the U.S., including: Platinum MasterCard® Card (issued in the Asia/Pacific, South Asia/Middle East/Africa, Latin America/Caribbean region or Europe region), Debit Platinum MasterCard® Card (issued in the Asia/Pacific, South Asia/Middle East/Africa, Latin America/Caribbean region or Europe region), Titanium MasterCard® Card (issued in the Asia/Pacific, South Asia/Middle East/Africa, Latin America/Caribbean region, Canada region or Europe region), World MasterCard® Card (issued in the Canada region and Latin America/Caribbean region), and World Elite MasterCard® Card (issued in the Canada region). Transactions initiated with a Platinum MasterCard® Card or a Debit Platinum MasterCard® Card issued in the Canada region qualify for the Consumer interchange rate programs (see pages 117 – 118).

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Premium Merchant UCAF	1.85% + USD 0.00	All	5	N/A	Electronic authorization required Magnetic stripe data not required and Electronic Commerce identifiers must be present	This is an Internet transaction UCAF enabled by Merchant

Interregional Interchange Rates

MasterCard Consumer Super Premium Cards

The following interregional consumer super premium interchange rate programs apply to cross-border transactions acquired in the U.S. that are initiated with MasterCard consumer super premium cards issued outside the U.S., including: World MasterCard® Card (issued in the Asia/Pacific, South Asia/Middle East/Africa or Europe region), MasterCard® Black Card (issued in the Latin America/Caribbean region) and World Elite MasterCard® Card (issued in the Asia/Pacific, South Asia/Middle East/Africa or Latin America/Caribbean region). Transactions initiated with a World MasterCard® Card or a World Elite MasterCard® Card issued in the Canada region qualify for the Consumer Premium interchange rate programs (see pages 119 – 120).

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Super Premium Standard	1.98% + USD 0.00	All	N/A	N/A	Authorization not required Magnetic stripe data not required	N/A
Consumer Super Premium Electronic	1.98% + USD 0.00	All except Automated Fuel Dispenser (5542)	5	N/A for Restaurant, Bar, Fast Food 25% for Beauty Salons 10% for all other	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face
Consumer Super Premium Full UCAF	1.98% + USD 0.00	All	5	N/A	Electronic authorization required Magnetic stripe data not required and Electronic Commerce identifiers must be present	This is an Internet transaction UCAF enabled by the Merchant and the cardholder is authenticated by the Issuer

Interregional Interchange Rates

MasterCard Consumer Super Premium Cards

The following interregional consumer super premium interchange rate programs apply to cross-border transactions acquired in the U.S. that are initiated with MasterCard consumer super premium cards issued outside the U.S., including: World MasterCard® Card (issued in the Asia/Pacific, South Asia/Middle East/Africa or Europe region), MasterCard® Black Card (issued in the Latin America/Caribbean region) and World Elite MasterCard® Card (issued in the Asia/Pacific, South Asia/Middle East/Africa or Latin America/Caribbean region). Transactions initiated with a World MasterCard® Card or a World Elite MasterCard® Card issued in the Canada region qualify for the Consumer Premium interchange rate programs (see pages 119 – 120).

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Consumer Super Premium Merchant UCAF	1.98% + USD 0.00	All	5	N/A	Electronic authorization required Magnetic stripe data not required and Electronic Commerce identifiers must be present	This is an Internet transaction UCAF enabled by Merchant

Interregional Interchange Rates

MasterCard Commercial Cards

The following interregional commercial interchange rate programs apply to cross-border transactions acquired in the U.S. that are initiated with MasterCard Commercial, Business or Corporate cards, except MasterCard® Corporate World, MasterCard® Corporate World Elite, World MasterCard for Business and World Elite MasterCard for Business.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Commercial Standard	2.00% + USD 0.00	All	N/A	N/A	Authorization not required Magnetic stripe data not required	All commercial products eligible except MasterCard Corporate Purchasing Card, MasterCard Corporate Fleet Card, MasterCard Corporate World, MasterCard Corporate World Elite, World MasterCard for Business and World Elite MasterCard for Business.
Commercial Purchasing Standard	2.00% + USD 0.00	All	N/A	N/A	Authorization not required Magnetic stripe data not required	Must be MasterCard Corporate Purchasing Card and MasterCard Corporate Fleet Card
Commercial Purchasing Data Rate 2	1.70% + USD 0.00	All except Corporate Fleet transactions at fuel locations (MCC 4468, 5541, 5542, 5499, 5983 and 7511)	5	N/A	Electronic authorization required Magnetic stripe data not required	Must be MasterCard Corporate Purchasing Card and MasterCard Corporate Fleet Card Enhanced data required

MasterCard U.S. and Interregional Interchange Rate Programs

Interregional Interchange Rates

MasterCard Commercial Cards

The following interregional commercial interchange rate programs apply to cross-border transactions acquired in the U.S. that are initiated with MasterCard Commercial, Business or Corporate cards, except MasterCard® Corporate World, MasterCard® Corporate World Elite, World MasterCard for Business and World Elite MasterCard for Business.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Commercial Purchasing Large Ticket	0.90% + USD 30.00	All except Airline (3000-3299, 4511), Vehicle Rental (3351-3500, 7512, 7513, 7519), Lodging (3501-3999, 7011), Passenger Railway (4112) and Restaurant (5812)	30	N/A	Electronic authorization required Magnetic stripe data not required	Must be MasterCard Corporate Purchasing Card and MasterCard Corporate Fleet Card

Interregional Interchange Rates

MasterCard Commercial Premium Cards

The following interregional commercial premium interchange rate programs applies to cross-border transactions acquired in the U.S. that are initiated with MasterCard® Corporate World, MasterCard® Corporate World Elite, World MasterCard for Business or World Elite MasterCard for Business cards.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Commercial Premium Standard	2.00% + USD 0.00	All	N/A	N/A	Authorization not required Magnetic stripe data not required	N/A

MasterCard Worldwide

Interregional Interchange Rates

MasterCard Electronic Cards

The following interregional MasterCard® Electronic™ interchange rate programs apply to cross-border transactions acquired in the U.S. that are initiated with MasterCard® Electronic™ consumer and commercial cards issued outside the U.S.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
MasterCard Electronic Consumer Card Face-to-Face	1.10% + USD 0.00	All except Automated Fuel Dispenser (5542)	5	10%	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face
MasterCard Electronic Commercial Card	1.85% + USD 0.00	All except Automated Fuel Dispenser (5542)	5	N/A	Electronic authorization required Magnetic stripe data required	The transaction must be face-to-face

Interregional Interchange Rates

Maestro Cards

The following interregional Maestro interchange rate programs apply to transactions acquired in the U.S. that are initiated with Maestro® cards issued outside the U.S.

Program Name	Interchange Rate	Qualified Categories (MCC)	Number of Days Between Authorization and Clearing	Permitted Variance Between the Authorization and Clearing Amounts	Authorization and Magnetic Stripe Data Requirements	Additional Qualifying Criteria and Notes
Maestro EMV Chip POS Terminals	0.60% + USD 0.00	All	N/A	N/A	PIN authorization required Magnetic stripe data required	POS terminal must be EMV Chip enabled
Maestro Magnetic Stripe PIN Verified	0.65% + USD 0.00	All	N/A	N/A	PIN authorization required Magnetic stripe data required	N/A
Maestro Electronic Commerce Transaction	0.90% + USD 0.25	All	N/A	N/A	Electronic authorization required Magnetic stripe data not required Electronic Commerce identifiers must be present	This is an Internet transaction UCAF enabled by the Merchant and the cardholder is authenticated by the Issuer

Enhanced Data Requirements

U.S. Interchange Rates—Enhanced Data Requirements

Airline—Consumer Cards

When a transaction is conducted on MasterCard consumer cards at an **Airline** merchant, and is submitted for one of the following interchange rate programs, enhanced data must be submitted with the transaction.

Field Name	Consumer Credit Core Value and Enhanced Value Merit 1 and Consumer Debit Merit 1	Consumer Credit Core Value and Enhanced Value Merit 3 and Consumer Debit Merit 3	Consumer Credit Core Value and Enhanced Value Merchant/Full UCAF and Consumer Debit Merchant/Full UCAF	Consumer Credit Core Value and Enhanced Value Passenger Transport and Consumer Debit Passenger Transport	Consumer Credit World T&E	Consumer Credit World Elite & World High Value Airline, World Elite & World High Value T&E Large Ticket
Passenger Name	X	X	X	X	X	X
Ticket Number	X	X	X	X	X	X
Issuing Carrier	X	X	X	X	X	X
Travel Date		X	X	X	X	X
Carrier Code		X	X	X	X	X
Service Class Code		X	X	X	X	X
City of Origin/Airport Code		X	X	X	X	X
City of Destination/Airport Code		X	X	X	X	X

X = required data element

U.S. Interchange Rates—Enhanced Data Requirements

Lodging—Consumer Cards

When a transaction is conducted on MasterCard consumer cards at a **Lodging** merchant, and is submitted for one of the following interchange rate programs, enhanced data must be submitted with the transaction.

Field Name	Consumer Credit Core Value and Enhanced Value Merchant/Full UCAF and Consumer Debit Merchant/Full UCAF	Consumer Credit Core Value and Enhanced Value Travel Industries Premier Service and Consumer Debit Travel Industries Premier Service	Consumer Credit World T&E	Consumer Credit World Elite & World High Value T&E, World Elite & World High Value T&E Large Ticket
Customer Service Toll Free (800) Number	X	X	X	X
Property Phone Number	X	X	X	X
Arrival Date	X	X	X	X
Departure Date	X	X	X	X
Folio Number	X	X	X	X
Property Phone Number	X	X	X	X

X = required data element

U.S. Interchange Rates—Enhanced Data Requirements

Passenger Railway—Consumer Cards

When a transaction is conducted on MasterCard consumer cards at a **Passenger Railway** merchant, and is submitted for one of the following interchange rate programs, enhanced data must be submitted with the transaction.

Field Name	Consumer Credit Core Value and Enhanced Value Merit 1 and Consumer Debit Merit 1	Consumer Credit Core Value and Enhanced Value Merit 3 and Consumer Debit Merit 3	Consumer Credit Core Value and Enhanced Value Merchant/Full UCAF and Consumer Debit Merchant/Full UCAF	Consumer Credit Core Value and Enhanced Value Public Sector and Consumer Debit Emerging Markets	Consumer Credit Public Sector	Consumer Credit World Elite & World High Value T&E, World Elite & World High Value T&E Large Ticket
Passenger Name	X	X	X	X	X	
Ticket Number	X	X	X	X	X	
Issuing Carrier	X	X	X	X	X	
Passenger Name (additional)		X	X	X	X	
Travel Date		X	X	X	X	
Start Station		X	X	X	X	
Destination Station		X	X	X	X	
Passenger Description		X	X	X	X	

X = required data element

MasterCard U.S. and Interregional Interchange Rate Programs

MasterCard Worldwide

U.S. Interchange Rates—Enhanced Data Requirements

Vehicle Rental—Consumer Cards

When a transaction is conducted on MasterCard consumer cards at a **Vehicle Rental** merchant, and is submitted for one of the following interchange rate programs, enhanced data must be submitted with the transaction.

Field Name	Consumer Credit Core Value and Enhanced Value Merchant/Full UCAF and Consumer Debit Merchant/Full UCAF	Consumer Credit Core Value and Enhanced Value Travel Industries Premier Service and Consumer Debit Travel Industries Premier Service	Consumer Credit World T&E	Consumer Credit World Elite & World High Value T&E, World Elite & World High Value T&E Large Ticket
Rental Agreement Number	X	X	X	X
Renter Name	X	X	X	X
Rental Return City	X	X	X	X
Rental Return State/Province Code	X	X	X	X
Rental Return Country	X	X	X	X
Rental Return Location ID	X	X	X	X
Rental Return Date	X	X	X	X
Rental Checkout Date	X	X	X	X
Customer Service Toll Free (800) Number	X	X	X	X

X = required data element

U.S. Interchange Rates—Enhanced Data Requirements

Airline—Commercial Cards

When a transaction is conducted on a MasterCard BusinessCard, Corporate Card, Corporate Purchasing Card, Corporate Fleet Card, World for Business, World Elite for Business, Corporate World or Corporate World Elite card at an **Airline** merchant, and is submitted for one of the following interchange rate programs, enhanced data must be submitted with the transaction.

Field Name	Commercial T&E 1	Commercial T&E 2	Commercial T&E 3
Card Acceptor Tax ID	X	X	X
Passenger Name	X	X	X
Ticket Number	X	X	X
Issuing Carrier	X	X	X
Travel Date		X	X
Carrier Code		X	X
Service Class Code		X	X
City of Origin/Airport Code		X	X
City of Destination/Airport Code		X	X
Stop Over Code			X
Fare Basis Code			X
Flight Number			X
Departure Time			X
Total Fare			X

X = required data element

U.S. Interchange Rates—Enhanced Data Requirements

Fuel—Commercial Cards

When a transaction is conducted on a MasterCard Corporate Fleet Card at a **Fuel** merchant and is submitted for one of the following interchange rate programs, enhanced data must be submitted with the transaction.

Field Name	Commercial Data Rate 1	Commercial Data Rate 2 Petroleum	Commercial Large Ticket 1/2/3
Oil Company Brand Name	X	X	X
Purchase Time	X	X	X
Motor Fuel Information	X	X	X
Odometer Reading		X	X
Vehicle Number		X	X
Driver Number/ID Number		X	X
Product Type Code		X	X

X = required data element

U.S. Interchange Rates—Enhanced Data Requirements

Lodging—Commercial Cards

When a transaction is conducted on a MasterCard BusinessCard, Corporate Card, Corporate Purchasing Card, Corporate Fleet Card, World for Business, World Elite for Business, Corporate World or Corporate World Elite card at a **Lodging** merchant, and is submitted for one of the following interchange rate programs, enhanced data must be submitted with the transaction.

Field Name	Commercial T&E 1	Commercial T&E 2	Commercial T&E 3
Card Acceptor Tax ID	X	X	X
Customer Service Toll Free (800) Number		X	X
Property Phone Number		X	X
Arrival Date		X	X
Departure Date		X	X
Folio Number		X	X
Room Rate			X
Room Tax			X
Total Room Nights			X
Fire Safety Act Indicator			X

X = required data element

U.S. Interchange Rates—Enhanced Data Requirements

Passenger Railway—Commercial Cards

When a transaction is conducted on a MasterCard BusinessCard, Corporate Card, Corporate Purchasing Card, Corporate Fleet Card, World for Business, World Elite for Business, Corporate World or Corporate World Elite card at a **Passenger Railway** merchant, and is submitted for one of the following interchange rate programs, enhanced data must be submitted with the transaction.

Field Name	Commercial T&E 1	Commercial T&E 2	Commercial T&E 3
Card Acceptor Tax ID	X	X	X
Passenger Name	X	X	X
Ticket Number	X	X	X
Issuing Carrier	X	X	X
Passenger Name		X	X
Travel Date		X	X
Start Station		X	X
Destination Station		X	X
Passenger Description		X	X
Total Fare			X
Ticket Number			X
Service Type			X

X = required data element

U.S. Interchange Rates—Enhanced Data Requirements

Shipping/Courier—Commercial Cards

When a transaction is conducted on a MasterCard BusinessCard, Corporate Card, Corporate Purchasing Card, Corporate Fleet Card, World for Business, World Elite for Business, Corporate World or Corporate World Elite card at a **Shipping/Courier** merchant, and is submitted for one of the following interchange rate programs, enhanced data must be submitted with the transaction.

Field Name	Commercial Data Rate 1	Commercial Data Rate 2 & Large Ticket MPG 1-3	Commercial Face-to-Face	Commercial Data Rate 3	Commercial Large Ticket 1-3
Card Acceptor Tax ID	X	X	X	X	X
Customer Code		X	X	X	X
Total Tax Amount		X	X	X	X
Card Acceptor Type		X	X	X	X
Customer Code (additional)				X	X
Total Tax Amount (additional)				X	X
Service Descriptor Code				X	X
Tracking Number or Pickup Number				X	X
Shipping Net Amount				X	X
Pickup Date				X	X
Number of Packages				X	X
Package Weight				X	X
Unit of Measure				X	X
Shipping Party Information				X	X
Shipping Party Address				X	X
Shipping Party Postal Information				X	X
Shipping Party Contact				X	X
Delivery Party Information				X	X
Delivery Party Address				X	X
Delivery Party Postal Information				X	X
Delivery Party Contact				X	X

X = required data element

U.S. Interchange Rates—Enhanced Data Requirements

Temporary Services—Commercial Cards

When a transaction is conducted on a MasterCard BusinessCard, Corporate Card, Corporate Purchasing Card, Corporate Fleet Card, World for Business, World Elite for Business, Corporate World or Corporate World Elite card at a **Temporary Services** merchant, and is submitted for one of the following interchange rate programs, enhanced data must be submitted with the transaction.

Field Name	Commercial Data Rate 1	Commercial Data Rate 2 & Large Ticket MPG 1-3	Commercial Face-to-Face	Commercial Data Rate 3	Commercial Large Ticket 1-3
Card Acceptor Tax ID	X	X	X	X	X
Customer Code		X	X	X	X
Total Tax Amount		X	X	X	X
Card Acceptor Type		X	X	X	X
Customer Code (additional)				X	X
Employee/Temp Name/ID				X	X
Job Description				X	X
Temp Start Date				X	X
Temp Week Ending				X	X
Requestor Name or ID				X	X
Regular Hours Worked				X	X
Overtime Hours Worked				X	X
Miscellaneous Expenses				X	X
Regular Hours Rate				X	X
Overtime Hours Rate				X	X

X = required data element

U.S. Interchange Rates—Enhanced Data Requirements

Various—Commercial Cards

When a transaction is conducted on a MasterCard BusinessCard, Corporate Card or Corporate Purchasing Card, World for Business, World Elite for Business, Corporate World or Corporate World Elite card at **All Merchants except T&E, Shipping/Courier or Temporary Services** or a Corporate Fleet Card at **All Merchants except Fuel, T&E, Shipping/Courier or Temporary Services** and is submitted for one of the following interchange rate programs, enhanced data must be submitted with the transaction.

Field Name	Commercial Data Rate 1	Commercial Data Rate 2 & Large Ticket MPG 1-3	Commercial Face-to-Face	Commercial Data Rate 3	Commercial Large Ticket 1/2/3
Card Acceptor Tax ID	X	X	X	X	X
Customer Code		X	X	X	X
Total Tax Amount		X	X	X	X
Card Acceptor Type		X	X	X	X
Product Code				X	X
Item Description				X	X
Item Quantity				X	X
Item Unit of Measure				X	X
Extended Item Amount				X	X
Debit or Credit Indicator				X	X

X = required data element

U.S. Interchange Rates—Enhanced Data Requirements

Vehicle Rental—Commercial Cards

When a transaction is conducted on a MasterCard BusinessCard, Corporate Card, Corporate Purchasing Card, Corporate Fleet Card, World for Business, World Elite for Business, Corporate World or Corporate World Elite card at a **Vehicle Rental** merchant, and is submitted for one of the following interchange rate programs, enhanced data must be submitted with the transaction.

Field Name	Commercial T&E 1	Commercial T&E 2	Commercial T&E 3
Card Acceptor Tax ID	X	X	X
Rental Agreement Number		X	X
Renter Name		X	X
Rental Return City		X	X
Rental Return State/Province Code		X	X
Rental Return Country		X	X
Rental Return Location ID		X	X
Rental Return Date		X	X
Rental Checkout Date		X	X
Customer Service Toll Free (800) Number		X	X
Rental Location City			X
Rental Location State/Province			X
Rental Location Country			X
Rental Class ID			X
Tax Exempt Indicator			X
Days Rented			X

X = required data element

MasterCard Worldwide

Interregional Interchange Rates—Enhanced Data Requirements

Various—Commercial Cards

When a transaction is conducted on a MasterCard BusinessCard, Corporate Card, Corporate Purchasing Card, World for Business, World Elite for Business, Corporate World or Corporate World Elite card at **All Merchants** or a Corporate Fleet Card at **All Merchants except Fuel** and is submitted for one of the following interchange rate programs, enhanced data must be submitted with the transaction.

Field Name	Commercial Purchasing Large Ticket	Commercial Purchasing Data Rate 2
Card Acceptor Tax ID	X	X
Customer Code		X
Total Tax Amount		X

X = required data element

Glossary of Terms

Acquirer

A MasterCard member financial institution that maintains the merchant relationship and acquires the data relating to a transaction from the merchant or card acceptor.

Card acceptor business code/merchant category code (MCC)

A 4-digit numerical representation of the type of business in which the card acceptor (merchant) engages.

Cardholder-activated terminal/automated fuel dispenser (CAT/AFD)

A cardholder-activated terminal (usually unattended) used to accept payment for dispensing a product or providing a service when activated by the cardholder, for example, automated fuel dispenser.

Clearing

The process of exchanging financial transaction detail between an acquirer and an issuer to facilitate posting of a cardholder's account and reconciliation of a customer's settlement position. See GCMS (Global Clearing Management System.)

Core Value cards

Refers to Standard, Gold MasterCard, or Platinum MasterCard consumer credit cards that are either not enrolled in, or do not meet the requirements of, the Enhanced Value Program.

EMV chip card

A payments card containing a computer chip with memory and processing capabilities used to store cardholder account data and process payment data. Also called an Integrated Circuit Card or a Smart Card.

Enhanced data

Transaction-level data required for select interchange rate programs, card products, or merchant categories. Examples include airline itinerary data, fuel transaction data, and itemized purchase data.

Enhanced Value Program

Refers to Standard, Gold MasterCard, or Platinum MasterCard consumer credit cards that are both enrolled in, and meet the requirements of, the Enhanced Value Program.

Face-to-face

A transaction where the card, cardholder, and merchant representative are all present at the time of the transaction.

Global Clearing Management System (GCMS)

A centralized clearing facility owned and operated by MasterCard for the daily processing and routing of financial transactions between MasterCard and its member financial institutions.

Interchange Rate

An interchange rate is typically presented as %+$, and is used to calculate the interchange fee that will apply to a transaction. The interchange fee is calculated by multiplying the transaction amount by the %, and then adding the per-transaction $ fee. For example, if the interchange rate is 1.50% + USD 0.10, and the transaction amount is USD 100, then the calculated interchange fee = (USD 100 x 1.50%) + USD 0.10 = USD 1.60. The interchange fee on a purchase transaction flows from the acquirer to the issuer. The interchange fee on a refund/return transaction flows from the issuer to the acquirer.

Issuer

A member financial institution that issues payments cards bearing the MasterCard brand to cardholders.

Magnetic stripe data

The magnetically encoded stripe on the plastic card that contains information pertinent to the cardholder account. See also EMV Chip Card and Transponder.

MCC

See card acceptor business code/merchant category code.

Mail Order/Telephone Order (MO/TO)

Refers to the Card Acceptor Business codes (MCCs) designated for direct marketing merchants.

MasterCard Payments Gateway (MPG)

Refers to the gateway hosted by MasterCard and used for routing and settling commercial e-payments between buyers and sellers.

Personal Identification Number (PIN)

A four to twelve character alphanumeric code that enables an issuer to authenticate the cardholder to approve an ATM or point-of-sale transaction.

Recurring Payment

Payment by an issuer to an acquirer on behalf of a cardholder who authorizes a merchant to bill the cardholder's account on a recurring basis (such as monthly or quarterly). The amount of each payment may be the same or may fluctuate.

Travel and Entertainment (T&E)

Refers to the card acceptor business codes/merchant category codes (MCCs) relating to travel and entertainment (including Airline, Vehicle Rental, Lodging, Passenger Railway, Restaurants, etc.)

Transponder

A device that uses radio frequency signals to exchange identification information with cardholder-activated terminals or other point-of-sale devices to initiate a transaction.

Universal Cardholder Authentication Field (UCAF)

A field to support a universal, multipurpose data transport infrastructure that MasterCard uses to communicate authentication information among cardholders, merchants, issuers and acquirers when conducting an e-commerce/Internet transaction.

EXHIBIT AA

Why You May Soon See Higher Credit Card Fees

By: Brian O'Connell

NEW YORK (BankingMyWay) — U.S. retailers are bracing themselves for a less-than-stellar year, with consumer spending expected to check in at a rate lower than in 2011.

But merchants, online and offline, could be getting a nice shot in the arm from an arcane rule that gives them a bigger slice of the pie from credit card sales.

The National Retail Federation says retail industry sales will rise by 3.4% this year, less than the 4.2% expected at this time last year. The NRF points to a mediocre holiday shopping season as a big reason growth is down.

Despite widespread agreement among U.S. economists that the economy is improving, consumers haven't gone “all in” on their own household financial forecasts — they are holding back just enough to vex those economists and U.S. retailers.

“What we witnessed during the holiday season is an indication of what we are likely to see in 2013,” NRF President Matthew Shay says. “Consumers read troubling economic headlines every day and look at their bottom lines at the end of the month, and they don’t like what they see. Pushing fiscal policy decisions down the road will lead to even greater uncertainty, and will continue to impact consumers’ desire and ability to spend on discretionary items. The administration and congress need to pursue and enact policies that lead to growth and economic expansion, or it could be another challenging year for retailers and consumers alike.”

But retailers can still benefit from higher point-of-sale credit card fees — surcharges put in place after a legal settlement between credit card carriers and U.S. retailers.

So-called credit card “checkout fees” could climb as high as 4% of total consumer transactions after a deal between the nation’s merchants and big card companies such as MasterCard and Visa. In a $7.3 billion settlement, retailers earned the right to charge those checkout fees to compensate for higher card swipe fees from credit card issuers.

Previously, credit card firms didn’t allow merchants to charge “checkout fees” to credit card consumers. The deal does not affect debit card or cash payments for purchases.

For now, big retailers and service providers say they won’t add credit card surcharges to purchases, including big-name U.S. brands such as McDonald’s, Target and Wal-Mart.

In addition, 10 U.S. states — California, Colorado, Connecticut, Florida, Kansas, Maine, Massachusetts, New York, Oklahoma and Texas — don’t allow retailers to impose credit card surcharges on consumer purchases. The NRF says the deal between merchants and credit card carriers mandates that *all* stores in a chain must charge extra for credit card purchases, so retailers may not be able to put surcharges in place because if they're banned in the 10 states that bar them.

Other industry groups, including the Electronic Payments Coalition, say the deal is evolving and there is, or will soon be, no reason why a store in Baton Rouge, La., won’t add those surcharges even if a store in the same chain can’t charge them in Boston.

There is some history here, and it doesn’t favor consumers.

A similar surcharge ruling in Australia in 2003 showed consumers have reason to worry. While few retailers chose to add card charges shortly after the Aussie rule was handed down, data show that more than 30% are now charging consumers more to use credit cards.

What can consumers do to fight back, or at least avoid new fees?

For one, vote with your feet. It might be worth sending a note to retailers who charge such a fee (you can tell by looking at your receipt, where the card charge is a separate line item cost from your purchase) to say you’re taking your business to a non-surcharging retailer. If enough consumers take a stand, retailers may back off.

Otherwise, use a debit card or cash for purchase and avoid any fees altogether.

In reality, the smoke is just starting to clear from the legal settlement between card providers and U.S. merchants. As the situation evolves, consumers will see which retailers charge the credit card fee and which will not. With potentially 4% of the total purchase price on the line, it's well worth keeping an eye on the issue

EXHIBIT BB

In the High Court of New Zealand
Auckland Registry

Commercial List **CIV-2006-485-2535**

Under	The Commerce Act 1986
Between	**Commerce Commission**
	Plaintiff
And	**Cards NZ Limited**
	First Defendant And others

CIV-2006-485-2693

Between	**DSE (NZ) Limited**
	First Plaintiff And others
And	**Cards NZ Limited**
	First Defendant And others

Brief of evidence of Professor Jerry Hausman

4 May 2009

Open version

Materials obtained through public sources

Solicitors		Counsel
P Taylor / M Borrowdale Commerce Commission Level 6, Vector Building 44-52 The Terrace PO Box 2351, Wellington Telephone (04) 924-3600 Facsimile (04) 924-3700	H J P Wilson Kensington Swan Level 9, Novell House 89 The Terrace PO Box 10246, Wellington Telephone (04) 472 7877 Facsimile (04) 472 2291	David Goddard QC Thorndon Chambers Level 6, Maritime Tower 10 Customhouse Quay, Wellington PO Box 1530, Wellington Telephone (04) 499 6040 Facsimile (04) 499 6118

Email: interchange@comcom.govt.nz

'974875.14

1 **Introduction**

1.1 I am the MacDonald Professor of Economics at the Massachusetts Institute of Technology ("MIT") in Cambridge, Massachusetts. I confirm that I have read, and agree to comply with, the Code of Conduct as specified in rule 9.43 and Schedule 4 of the High Court Rules.

2 **Qualifications and experience**

2.1 I graduated from Brown University in 1968. I received a D.Phil. (Ph.D.) in economics from Oxford University in 1973 where I was a Marshall Scholar. I have been at MIT since completing my D.Phil. My academic specialties are econometrics, the application of statistical methods to economic data, and applied microeconomics, the study of behavior by firms and consumers. I teach a graduate course in applied industrial organization, which is the study of how markets operate.

2.2 In December 1985, I received the John Bates Clark Award of the American Economic Association, awarded every other year for the most "significant contributions to economics" by an economist under the age of 40. In 1980, I was awarded the Frisch Medal of the Econometric Society. I have received numerous other academic and economic society awards, including the Biennial Medal of the Modeling and Simulation Society of Australia and New Zealand in 2005. I have been a member of numerous government advisory committees for both the U.S. government, the Australian government, the UK government, the Hong Kong government, and the Chinese government. I have published over 150 academic research papers in leading economic journals, including the American Economic Review, Econometrica, and the Rand (Bell) Journal of Economics. I have been an associate editor of Econometrica, a leading economics journal, and the Rand (Bell) Journal of Economics, a leading journal of applied microeconomics. My curriculum vitae is attached as Appendix A.

2.3 I have extensive experience analyzing antitrust and industrial organization issues. I have published a number of papers in this area, including "A Proposed Method for Analyzing Competition Among Differentiated Products," Antitrust Law Journal, 1992; "Competitive Analysis With Differentiated Products," Annales d'Economie et de Statistique, 1994; "Market Definition Under Price Discrimination," Antitrust Law Journal, 1996; "Valuation of New Goods Under Perfect and Imperfect Competition," in T. Bresnahan and R. Gordon, eds., The Economics of New Goods, University of Chicago Press, 1997; "Economic Analysis of Differentiated Products Mergers Using Real World Data," George Mason Law Review, 1997; "Efficiencies From the Consumer Viewpoint," George Mason Law Review, 1999; "A Consumer-Welfare

Approach to the Mandatory Unbundling of Telecommunications Networks," Yale Law Journal, 1999; "The Competitive Effects of a New Product Introduction: A Case Study," Journal of Industrial Economics, 2002; "Does Bell Company Entry into Long-Distance Telecommunications Benefit Consumers?," Antitrust Law Journal, 2002; "Did Mandatory Unbundling Achieve Its Purpose? Empirical Evidence from Five Countries," Journal of Competitive Law and Economics, 2005; and "Evaluation of Market Power Using a Competitive Benchmark Rather than the Herfindahl-Hirschman Index," 2007.

2.4 I have extensive experience in antitrust matters. I have testified as an expert witness in a number of antitrust proceedings in the U.S., Canada, Australia, New Zealand, the EU, the UK and Slovenia. My consulting and expert witness activity in civil litigation has been on behalf of both plaintiffs and defendants. I have also been involved in actions before the U.S. Department of Justice, the Federal Trade Commission, the Canadian Antitrust Agency, the Australian competition authorities (Australian Competition & Consumer Commission, "ACCC"), the New Zealand competition authorities (New Zealand Commerce Commission, "NZCC"), the U.K. competition authorities, the German competition authorities, the Slovenian competition authorities, and the European Commission. In addition, I have given a number of invited lectures on antitrust issues to members of the Department of Justice, the Federal Trade Commission, the Australian competition authorities, The European Commission, the American Bar Association, and the Australian Trade Practices Bar Group.

2.5 I have previously testified in competition proceedings in New Zealand on behalf of both the Commerce Commission and private firms. These previous proceedings include: *Clear Communication Ltd v. Sky Network Television Ltd and Sky Brands Limited and Telecom Corporation of New Zealand Limited and First Media Limited* (High Court Wellington, 1/8/1997, Gallen J and M Brunt, CP19/96); *Commerce Commission v. Telecom Corporation of New Zealand Ltd. and Telecom New Zealand Ltd* (2008) 12 TCLR 168, (2008) 8 NZBLC 102,239 ('0867' litigation); *Woolworths Ltd v. Commerce Commission* (2008) 8 NZBLC 102,128; *Commerce Commission v. Telecom Corporation of New Zealand Ltd. and Telecom New Zealand Ltd* (CIV-2004-485-613) (decision pending).

2.6 In respect to the recent case of *Woolworths Ltd v. Commerce Commission*, I made an extensive study of food retailing, especially from supermarkets, and general merchandise retailing, especially from the Warehouse, in New Zealand. I also have considerable experience in the supermarket industries in the U.S. and UK, both on a consulting basis and as a topic of academic research. I have written 3 academic papers in the last 5 years on competition in the supermarket industry in the U.S. and consumers' choices among the competing supermarkets. I have also co authored a recent paper on competition among electronics stores in the U.S.

2.7 I have extensive experience analyzing the economic issues that arise in this case. I have consulted, done academic research, and studied credit and debit markets for approximately 15 years. I have been involved in a number of transactions involving these markets in the United States and overseas. I have consulted for First Data, the largest U.S. merchant acquirer and for Citibank, among the largest credit card issuers, and for both American Express and Discover, both of which operate their own credit card networks. I have also consulted for China Union Pay, who operates a debit and credit card network in China. I gave an invited keynote paper on these markets in Berlin in 2001 at a conference sponsored by the European Commission. The paper has been published: J. Hausman, *et al.*, "On nonexclusive membership of competing joint ventures," Rand Journal of Economics, 2003. I also wrote a report and was deposed in 2005 in *Visa U.S.A. Inc. v. First Data Corp.*, and I wrote two reports and was deposed in 2007-2008 in *Discover Financial Services et. al. v. Visa USA. Inc and MasterCard Inc et. al.* Both of these matters have now ended.

2.8 I refer to a letter of 25 March 2009 from Kensington Swan. The letter outlines the economic issues that the Commission asked me to address in my evidence. It also explains the legal framework and gives assumptions which provide a partial framework for my economic analysis. I attach the letter from Kensington Swan as Appendix B. I also attach a list of documents I considered in preparing this brief as Appendix C.

3 Conclusions

3.1 There is a relevant market for merchant acquiring services in New Zealand. Merchant acquirers do authorization and processing of credit card transactions for merchants who accept payment from customers using Visa and MasterCard cards.

3.2 The Visa and MasterCard schemes and the member banks have agreed to certain rules that have the effect of decreasing competition in the merchant acquiring market. The rules have the effect of increasing merchant service fees (MSFs) which increase costs to merchants and decrease competition.

3.3 MIF is a variable cost for MSFs. MIF is by far the largest variable cost representing approximately 70%-80% of total costs. MIF provides a floor to the MSF because no acquirer could charge below the MIF and make a profit.

3.4 Economic analysis, market outcomes, and the view of New Zealand bank employees all lead to the conclusion that a reduction in MIF will lead to a reduction in MSF.

Economic analysis and experience in the U.S., Australia, and New Zealand confirm the expectation that changes in MIF cause changes in MSFs. My econometric analysis finds near complete pass through of changes in MIF to changes in MSF in Australia and New Zealand.

3.5 The agreements among merchant acquirers to follow the Visa and MasterCard rules challenged by the Commission, e.g. no surcharge, have anti-competitive effects. If these agreements were prohibited, my economic analysis finds that there are likely outcomes which would represent a significant increase in competition compared to the current situation. The MSF would decrease in the acquiring market by a significant amount.

3.6 There would not be a "death spiral" in which bank issued credit cards would exit from New Zealand.

4 Market definition

General framework

4.1 Defining a relevant antitrust market is often used as a first step in assessing the competitive effects of alleged antitrust violations. Although it is not always necessary to define markets in order to understand the competitive effects of a business practice, it can be helpful to do so in order to identify rivals, understand the competing products, and assess whether the firms at issue have the power to harm competition and consumers.

4.2 Markets include both a product and a geographic dimension. Economists and antitrust authorities consider two products to be in the same product market if they are viewed as sufficiently close substitutes by consumers so as to render a small, but significant, non-transitory increase in price unprofitable. Economists typically refer to this approach as the SSNIP test. A common method of defining a relevant product market is to use the "hypothetical monopolist test" described in the Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission, and also in the NZCC Merger Guidelines and the ACCC Merger Guidelines.[1] This approach starts with a small collection of products and asks whether a hypothetical monopolist over this group of products could profitably raise price above the competitive level by a small but significant amount, say 5%-

1 U.S. Department of Justice and the Federal Trade Commission, Horizontal Merger Guidelines, issued April 2, 1992, rev'd April 8, 1997 ("DOJ Guidelines"); NZCC Mergers and Acquisitions Guidelines, issued Dec. 2003; and ACCC Merger Guidelines, issued 21 November 2008.

10%, and for a non-transitory period of time. If in response to such a price increase consumers substitute other products in great enough numbers to make the price increase unprofitable, then the group of products is too small to be a relevant market. The set of products considered is enlarged until the hypothetical monopolist can profitably raise price. The smallest set of products for which the hypothetical monopolist can raise price is considered a relevant product market under the Guidelines test. Similarly, products from firms at different geographic locations are considered to be in the same geographic market if consumers consider them to be sufficiently close substitutes. While the New Zealand and Australian approaches also consider supply side substitution in market definition in assessing profitability of an attempted price increase, the U.S. approach considers only demand side substitution in terms of market definition, while considering supply side substitution as uncommitted entry. However, this distinction does not have an effect on my analysis in this proceeding.

4.3 In determining whether consumers consider a set of products to be sufficiently close substitutes so that a price increase by a hypothetical monopolist over the set of products would be unprofitable, economists assess, through direct or indirect evidence, the elasticity of consumer demand for the products.

Relevant markets

4.4 This proceeding concerns competition in the market for acquiring credit card transactions.[2] In my analysis I concentrate on the market for general purpose credit and charge cards ("credit card" market) although at times I will discuss the "debit card" market which includes EFTPOS cards and Visa debit cards.[3] In terms of acquiring, I focus on acquiring credit card transactions, although credit card acquirers also acquire for Visa debit cards. However, Visa debit cards are such a small proportion of transactions and volume that I do not pay much attention to them in my analysis.

4.5 The Commission alleges anti-competitive effects in a market for acquiring Visa and MasterCard credit card transactions.[4] I do my economic analysis in the framework of this market. However, I first define a credit card issuing market to provide an economic context for my analysis of competition in the acquiring market. In previous

2 Second Amended Statement of Claim, 23 February 2009, ¶13-15.

3 MasterCard has published an interchange fee schedule for debit cards, but has not yet introduced a debit card in New Zealand. Proposed Statement of Evidence of Andre Sekulic, ¶16. Brief of Evidence of Michael Henry McCormack, ¶124 and Figure 22.

4 Second Amended Statement of Claim, 23 February 2009, ¶51-77.

legal proceedings significant controversy has arisen with Visa and MasterCard witnesses claiming that a broader market definition that includes EFTPOS (debit cards), cash, and cheques should be included. To the best of my knowledge, no U.S. Court has accepted this wider market definition while many Courts have used the market definition that I propose in this proceeding. However, if the Court in this proceeding were to accept a wider market definition, it would be unlikely to change my economic analysis of anti-competitive outcomes in the credit card acquiring market.

General purpose credit and charge card issuing market

4.6 There is a relevant product market for the issuing of general purpose credit and charge cards.

4.7 From the consumer perspective, there are no close substitutes for general purpose credit and charge cards. Consumers use credit and charge cards for completing transactions and as a source of credit. While consumers also use other means of payment, *i.e.*, cash, cheques, debit cards, and single purpose cards and other sources of credit, *e.g.*, secured loans and overdraft protection, the fact that consumers may rely upon several different payment methods does not indicate that those products are substitutes for any particular class of transactions. Rather, it can indicate that the products are complements. My review of the facts suggests that is the case here. If a hypothetical monopolist of credit card issuing reduced credit cards rewards (e.g. mileage points) on average by 5% (or imposed some other effective 5% price increase such as reducing the "free float" period), it is very unlikely that it would be unprofitable given the absence of rewards and the absence of free float offered by other payment methods such as EFTPOS.[5] Also, the limited availability of alternative revolving credit facilities in New Zealand make credit cards by far the largest source of non-secured consumer credit for typical consumer purchases.[6] Further, credit cards and charge cards offer consumers reward points (loyalty points) for using the cards. These reward points are highly valued by consumers, are emphasized by credit card issuers in New Zealand, and are not

---

5 Mr. Vernon of BNZ discusses the importance of rewards programs in increasing BNZ's credit card business. (Evidence of Blair Robert Vernon, ¶42)

6 I do not consider here either house mortgages or automobile loans since both are loans with specialized markets and typically must be pre-approved before purchase. Personal loans must also be pre-approved. In October 2008, according to RBNZ statistics, personal credit card credit (RBNZ series CC1.7) was $4542 million while personal non-housing overdraft total (RBNZ series CC1.2) was $694 million. Credit debt is approximately 70% of personal non-housing debt according to a RBNZ survey reference in a July 2007 MasterCard presentation, "MasterCard Background Briefings" (p. 17).

offered by EFTPOS or Visa debit cards.[7] Credit cards also offer a credit free period of approximately 25-55 days for users who do not have an outstanding balance (transactors).[8] Neither EFTPOS nor Visa debit cards offer this free float period since the payment is almost immediately withdrawn from the consumer's account.[9] Credit cards also have international acceptance while cheques and EFTPOS have very limited overseas acceptance.[10] Credit cards also allow for "card not present" transactions, e.g. purchases over the internet, which EFTPOS does not allow for.[11] Further, supply side substitution is not a constraining factor given the significant barriers to entry which exist.

4.8 Thus, to take an example, if the hypothetical monopolist reduced free float from, say, 25 days to 23.8 days, a 5% reduction of approximately 1 day, and also reduced rewards value by 5% while increasing the annual fee from $29.00 to $30.45, would sufficient volume switch to signature debit (Visa) or PIN debit (EFTPOS) to defeat their price increase?[12] Since EFTPOS and Visa debit offer limited or no free float and no loyalty points, no economic incentive exists for the credit card transactors or revolvers to switch to debit apart from the additional $1.45 per year payment.[13] This

---

7 See C. Chandran, C. Matthew and D. Tripe, "Competition in the New Zealand Credit Card Market from the Consumer Perspective," Journal of Asia-Pacific Business, Vol 6(1), 2005. The authors find that loyalty points and convenience of payment were the two factors that most influenced credit card use.

8 Mr. Laing states the free float period is usually up to 55 days. See Witness Statement of Michael Thomas Laing, ¶20. Mr. Wilkshire also discusses the number of interest free days. See Witness Statement of Mark Edward Wilkshire, ¶36.

9 Neither EFTPOS nor Paymark PIN debit networks charge an MIF. I will refer to PIN based debit as EFTPOS. Visa debit card has no MIF for card present transactions. Visa has instituted a MIF for the 'prepaid' Visa debit cards used in both card-present and card-not-present merchant venues. For bank offers which emphasize loyalty points and the interest free period in NZ, see e.g. http://www.westpac.co.nz/olcontent/olcontent.nsf/Content/credit+cards; https://www.bnz.co.nz/Credit_Cards/1,1184,6,00.html; visited Nov. 24, 2008.

10 In my experience the former use of travelers' cheques overseas has decreased significantly. For a similar conclusion see Wilkshire, op. cit. ¶58-60.

11 See e.g. ANZN.039.0005, p. 4.

12 I use $29 annual fee as an example. It is the amount charged by Westpac for a MasterCard or Visa card. See http://www.westpac.co.nz/olcontent/olcontent.nsf/Content/Credit+card+fees#MasterCard+fees

13 Transactors are credit card customers who pay off their bill each month. Credit cards offer a superior product than either debit cards or cash for these customers and would remain so after the hypothetical change. Revolvers are customers who maintain a credit balance and pay interest each month. They do not receive the free float period, but they do receive loyalty points. Again after the hypothetical change credit cards remain a superior product for these customers. Data collected by the

extra payment is much too small to cause switching since it arises from approximately $290 of annual expenditure (or less) in terms of loyalty points rewards.[14] Thus, the price increase by the hypothetical monopolist would be successful.[15]

4.9 General purpose credit and charge cards provide deferred payment and, with credit cards, the opportunity to revolve balances over time.[16] Other payment systems do not offer credit facilities. Therefore, general purpose credit and charge cards are better suited for large purchases that a consumer needs to finance over time than are payment methods such as cash, cheques, and debit cards that do not allow deferred payment. This feature is reflected in statistics of consumer payment patterns, which show that the average transaction size for credit and charge card transactions consistently has significantly exceeded the average ticket for debit card transactions in both the U.S. and Australia. In New Zealand during 2007 Q4 the average domestic Visa and MasterCard transaction was about $105 while the

---

Reserve Bank of New Zealand ("RBNZ") indicates that about 2/3 of all accounts are transactor accounts. See e.g. RBNZ: http://www.rbnz.govt.nz/statistics/monfin/c12/data.html?sheet=2. Also, see Vernon, op. cit., ¶39. However, in terms of outstanding amounts, about **[Confidential:]** is from revolver accounts. Mr. Vernon of BNZ states that the free float period is the most important feature for credit card customers. (Op. cit., ¶29). Note that when Mr. Vernon states that when BNZ reduced its free float period it lost customers to competitors, these are credit card competitors which supports my market definition of credit cards as a separate product market which does not include EFTPOS, cash, or cheques.

14 I calculate $290 from the offer of 1 loyalty point per dollar of expenditure which can be used for Air New Zealand tickets using Airpoint Dollars. 200 loyalty points equal One Airpoint Dollar from Westpac. https://www.hotpoints.co.nz/airpoints.aspx. $290 is about 3-4 average sized credit card transactions per year. MasterCard 2007 data yields an estimate of **[Confidential:]** per average transaction while Visa 2007 data yields an average estimate of US$71 per transaction. See Visa and MasterCard Summary Data Responses 2008. Bank of New Zealand offers a better exchange rate of 1 Airpoint Dollar per $150 of Visa or MasterCard expenditure although the annual fee is $55 per year. See https://www.bnz.co.nz/Credit_Cards/1,1184,8-132-385,html. Mr. Wilkshire of ANZ states: "As I will explain in this part of my evidence, credit cards offer cardholders a bundle of benefits that other payment options cannot, including: access to revolving credit, almost ubiquitous domestic and international use, largely no transaction fees, loyalty benefits and remote access." Wilkshire, op. cit., ¶31.

15 Mr. Laing, former CEO of Visa in NZ, and now an industry consultant, does not see credit and debit cards as close substitutes for each other, although he does say they compete to some extent. (Laing, op. cit., ¶211)

16 In the case of charge cards, payment is deferred but the credit extension is available for only a limited period of time.

average electronic (EFTPOS) transaction was $54.[17] Thus, the average credit card transaction amount is approximately two times larger than the average EFTPOS transaction amount.

4 10 Evidence from Australia subsequent to the regulatory reform by the RBA is consistent with credit and charge cards being a relevant market. The RBA reforms have decreased the average interchange amount (MIF) for Visa and MasterCard from approximately 0.90% of the transaction amount in March 2003 to 0.55% in March 2004 and to 0.50% in March 2007 where the MIF remains currently.[18] Credit card issuers in Australia have increased their fees to consumers. However, American Express (AMEX) and Diners have not been subject to regulation of their fees to merchants. Over this same period, fees for using either EFTPOS or Visa debit cards did not change or perhaps changed by a small amount (EFTPOS) with a decrease in fees. The RBA states:

> The consultation process revealed a general agreement on a number of effects of the reforms. These included: a significant reduction in merchant service fees; a significant change in relative prices facing cardholders for credit cards and debit cards; an improvement in the competition position of merchants; and a significant increase in the prevalence of surcharging for credit card payments...[19]

The RBA calculates that the lower interchange fees for Visa and MasterCard have led to a reduction in the value of reward points and higher annual fees, so that for a $100 transaction where the credit card's balance is paid by the due date the price has increased from -$1.30 prior to the reforms to -$1.10 currently.[20] This is a price increase of 15.4%. The RBA finds that credit card transactions have not grown as fast as before and uses an example of a 5% decrease in credit card use because of the reforms.[21] A change in credit card usage of this magnitude given the price change is consistent with a separate credit card market.

---

17 See Statistics New Zealand, "Electronic Card Transactions," October 2008. Mr. Preston reports that for ASB the average credit card transaction was **[Confidential:**] and average EFTPOS transaction was approximately **[Confidential:**] in January 2008. (Brief of Evidence of Sean Victor Preston, ¶84)

18 See e.g. McCormack, op. cit., ¶109. See also Reserve Bank of Australia ("RBA"), "Payments Systems Board Annual Report 2007," p. 19.

19 RBA, "Reform of Australia's Payment System, Preliminary Conclusions of the 2007/08 Review", April 2008, p. 10.

20 Ibid, p. 17.

21 Ibid, p. 19.

4.11 MasterCard claims in its comments on the Australian reforms: "The regulations have had the unintended consequence of benefiting the three-party schemes and the use of cash rather than the intended result of encouraging the use of debit."[22] Indeed, MasterCard states that the rate of growth of the value of credit transactions has exceeded the rate of growth of debit transactions throughout the last two years in Australia.[23] The "three party schemes" are AMEX and Diners in Australia. Thus, when the price of credit cards increased to consumers according to MasterCard, consumers have switched to charge cards or credit cards with unregulated interchange. These credit cards and charge cards are all in the same market. However, MasterCard claims there has not been a significant shift from credit cards to EFTPOS and debit cards. MasterCard also states: "Credit card usage continues to grow at expense of debit cards."[24] These outcomes are consistent with my market definition

4.12 Thus, the evidence demonstrates that credit and charge cards have a unique bundle of characteristics that consumers find useful for certain types of transactions, and for which other payment methods are not close substitutes.[25] A market-wide increase in cardholder fees would not cause sufficient decline in usage for the price increase to be unprofitable; market demand is sufficiently inelastic to establish a market for the issuing of general purpose credit and charge cards. Because consumers view credit

---

22 MasterCard, "Payment System Regulation: Response by MasterCard Worldwide to the Issues for the 2007/08 Review," August 31, 2007, p. 29. Mr. Sekulic of MasterCard claims that higher merchant service fees charged by AMEX to New Zealand merchants arise from a lack of efficiencies of scale and scope economies compared to four party schemes, such as MasterCard. (Op. cit. ¶37). I disagree with this statement. AMEX has maintained a corporate strategy of charging higher MSFs to make its card attractive to consumers by offering perceived better rewards than either MasterCard or Visa issuers. Mr. Sekulic agrees that AMEX "fund[s] attractive rewards packages to its cardholders." (Op. cit. ¶52) Contrary to AMEX, Discover, also a three party network in the U.S., historically charged significantly lower MSFs than the MSFs charged by either MasterCard or Visa acquirers for most merchants. Thus, the magnitude of the MSFs did not depend on whether a three party or four party network was being used. Mr. Laing also mistakenly claims: "Multilateral models produce lower interchange fees (more efficient)..." (Op. cit., ¶262) He also claims that lower MSFs also result from setting MIFs. (Ibid., ¶268, ¶270) He fails to consider the experience of Discover in the U.S. which had lower MSFs than either Visa or MasterCard for most merchants.

23 MasterCard, "Payment System Regulation: Response by MasterCard Worldwide to the Issues for the 2007/08 Review," August 31, 2007, pp. 27-29.

24 July 2007 MasterCard presentation, "MasterCard Background Briefings," p. 30.

25 For example, Mr. Vernon of BNZ states: "They [credit cards] are the only card payment method that facilitates the fast and simple purchase of goods on credit." (Vernon, op. cit., ¶28)

and charge cards as unique, there are no close substitutes available for issuing banks. Nor is supply side substitution sufficient to provide a constraining effect.

4.13 A significant amount of academic research has recently appeared analyzing the credit card market as a two-sided market.[26] I agree that a two-sided model framework is a useful analytical approach. However, the fact that a market is two-sided does not preclude one or the other side, or both sides, from being a relevant market, nor does it preclude application of a hypothetical monopolist test. I do not think that the two-sided nature of the credit card market means that the SSNIP test should be applied to interchange fees when analyzing market definition. The pricing relevant to the hypothetical monopolist test in the issuing market, for example, is issuer pricing to cardholders, which I discuss above, not interchange received by the issuer. I use marketplace responses to changes in interchange pricing to corroborate the analytical framework of the SSNIP test, not as part of it.

4.14 Another approach to market definition and deciding whether EFTPOS and cash constrain a hypothetical monopolist in the credit and general charge card market is to pose the question: If all six credit card issuing banks in New Zealand as well as AMEX and Diners in New Zealand merged their credit card and charge card issuing operations, would the price to consumers increase in terms of higher fees, higher interest rates, and lower effective loyalty points or decreased free float periods?[27] Since the banks currently compete on these factors, if this competition were to disappear prices to consumers would increase. Neither EFTPOS nor cash offer revolving credit, a free float period, and loyalty points. EFTPOS or cash could not effectively constrain a price increase after a merger.[28]

Merchant acquiring services

---

26 See e.g. J. Rochet and J. Tirole, "Cooperation among competitors: some economics of payment card associations," Rand Journal of Economics, 33, Winter 2002, pp. 549-570 and more recently G. Guthrie and J. Wright, "Competing Payment Schemes," Journal of Industrial Economics, 60, March 2007, pp. 37-67 and J. Rochet, "Competing Payment Systems: Key Insights from the Academic Literature," 29 November 2007, paper prepared for the Payments System Review Conference organized by the RBA and the Centre for Business and Public Policy.

27 In New Zealand AMEX and Diners issue proprietary cards. BNZ and Westpac also issue AMEX cards along with Visa and MasterCard. Westpac offers a **[Confidential:**], but BNZ has decided not to issue a **[Confidential:**]. (Vernon op. cit., ¶236)

28 My conclusion would remain the same if I considered the use of cheques as a potential constraining factor. I understand the use of cheques in New Zealand has decreased to a very low level so as to be insignificant from an economic viewpoint in market definition.

4.15 Merchant acquirers do authorization and processing of credit card transactions for merchants who accept payment from customers using Visa and MasterCard cards.[29] They also collect the transaction amount from the credit card issuer and remit the amount less the merchant service fee (MSF) to the merchant.[30] As occurs in the U.S. and many other countries, merchant acquirers typically acquire for both Visa and MasterCard.[31]

4.16 A hypothetical monopolist of Visa and MasterCard acquiring services could profitably impose a SSNIP of between 5%-10% on the net amount of the MSF charged to merchants less the MIF (interchange) payment to the issuer.[32] For example, if the MSF is 1.35% of the transaction amount and MIF is 0.92% the net amount is 0.43% (1.35 – 0.92). A 5% increase would be 0.0215% which would increase the MSF to 1.3722%, an increase of 1.6%. Thus, on a $100 transaction the merchant receives $98.65 before the price increase and $98.63 after the price increase, a difference of $0.02. A merchant who accepts credit cards has no alternative means to collect the transactions amounts from card issuers except through the use of merchant acquiring services given Visa and MasterCard rules.[33] The economic question for market definition is whether credit card use would decrease by a sufficient amount when the MSF increases to make the attempted price increase unprofitable. Since in New Zealand, neither Visa nor MasterCard permit merchant surcharging, the primary way in which credit card usage would decrease is that some merchants would stop accepting credit cards.[34]

4.17 Economic data and views of market participants, which I discuss next, all concur that merchant demand for credit cards is price inelastic. Given that the price elasticity is

29 See e.g. McCormack, op. cit., ¶41- 44.
30 See e.g. McCormack, op. cit., ¶48 and Figure 8.
31 See e.g. McCormack, op. cit., ¶63. In my experience, I have not encountered a merchant acquirer who acquires for only one of Visa or MasterCard, but not both.
32 I net out the interchange payment because the merchant acquirer is bound by contract to pay the MIF to the credit card issuer. However, if I used the entire MSF as the basis for my analysis, I would come to the same conclusion.
33 See e.g. McCormack, op. cit., ¶48 and Figure 8.
34 Attempts at "steering" by merchants which would cause credit card users to switch to EFTPOS or cash would be unlikely to be effective given that from a consumer viewpoint the consumer receives loyalty points and a free float, neither of which occur with the use of EFTPOS or cash.

less than unity (in magnitude) a price increase will always lead to an increase in both revenues and profits.[35]

4.18 Economic data from the U.S. show that despite substantial increases in the MSF over time no merchants have stopped accepting Visa and MasterCard.[36] The economic literature on credit cards has also assumed this price insensitivity.[37] Lastly, MasterCard also states that merchant demand for credit cards is inelastic which explains why interchange fees have flowed from acquirers to issuers.[38] Given this price inelasticity, the hypothetical monopolist test leads to the conclusion that merchant acquiring is a relevant market. Supply side substitution is not possible given Visa and MasterCard rules.

4.19 I have defined a merchant acquiring market where acquirers acquire for both Visa and MasterCard issuing banks. One could define a more narrow market of Visa acquiring and similarly a market for MasterCard acquiring. A hypothetical monopolist could increase prices in each of these more narrow markets because a merchant receiving payment from a customer using a Visa card has no choice but to have that transaction processed by an acquirer of Visa transactions that is a member of the Visa scheme. There is no substitute available to the merchant for this service. In particular, the merchant cannot get the transaction processed and cleared through the MasterCard network, so MasterCard acquiring services are not a substitute for Visa acquiring services. Nor would I expect a SSNIP in respect of Visa acquiring services to result in a significant number of merchants ceasing to accept Visa, and accepting only MasterCard, because the increase of 0.02% (calculated above) is less than the observed differences between Visa and MasterCard MIF, yet almost all merchants accept a blended acquiring rate which combines Visa and MasterCard MIFs. For the few large merchants who do have separate rates a hypothetical Visa acquiring monopolist would not necessarily increase their MSF, but would increase the MSF of other merchants by more than 5% so that the average increase would be

35 Indeed, microeconomic analysis demonstrates that a monopolist will always increase prices to the point where the price elasticity will exceed unit (in magnitude). Otherwise, the monopolist is not maximizing profits. See e.g. D. Carlton and J. Perloff, Modern Industrial Organization, 1990, pp. 89-94, p. 103 and G. Stigler, The Theory of Price, (4th Ed. 1987), p. 197.

36 Judge Jones found this fact in her 2004 opinion. (United States v. Visa, 163 F. Supp. 2d at 337) Based on my personal knowledge from testimony in Discover Financial Services et. al. v. Visa USA. Inc and MasterCard Inc et. al. this pattern has continued.

37 See footnote 27 above.

38 See e.g. July 2007 MasterCard presentation, "MasterCard Background Briefings," p. 13.

5%. This price discrimination strategy by the hypothetical monopolist would be profitable. However, none of the subsequent economic analyses would change, so I will do my analysis in the context of a combined Visa and MasterCard acquiring market. I use an acquiring market for both Visa and MasterCard because merchant acquirers typically use a blended MSF rate for Visa and MasterCard combined, except [**Confidential:**].[39]

4.20 I also consider a broader market for merchant acquiring services which would include acquirers that acquire for Visa and MasterCard and also American Express and Diners Club. AMEX and Diners operate what are known as "three party" card networks where they often issue and acquire for themselves in contrast to the "four party" card networks of Visa and MasterCard where banks issue credit cards and are separate from merchant acquirers.[40] Use of this broader market would not change my economic analysis. The fundamental economic fact is that only Visa merchant acquirers can acquire Visa credit card transactions and a similar situation exists for MasterCard merchant acquirers.

Geographic markets

4.21 The geographic dimension of the relevant markets defined above is New Zealand. The MIF and MSF apply only to New Zealand, so a proper analysis of competitive effects should focus on New Zealand. The fact that Visa and MasterCard set policies and pricing separately for New Zealand from other countries also implies recognition that New Zealand is a separate geographic area of competition.

4.22 The geographic scope of the relevant markets is not broader than New Zealand because New Zealand consumers would not find credit cards issued in other countries — and therefore other currencies — to be good substitutes for credit or debit cards issued by New Zealand banks.

39 See e.g. McCormack, op. cit., ¶134, ¶149.

40 In the U.S. in the last few years, Discover card, which owns Diners, and AMEX have begun "hybrid" operations where they both acquire for themselves but also use independent acquirers for some merchants. In New Zealand all merchant acquirers for Visa and MasterCard are also credit card issuers. This outcome does not exist in the U.S. where the largest acquirer, First Data Corporation, does not issue credit cards. However, some large issuers in the U.S. also are large merchant acquirers.

5 **Analysis of restrictive rules in the acquiring market**

5.1 MIF Provisions: Visa and MasterCard establish the MIFs respectively for their cards used in New Zealand.[41] The bank merchant acquirers agree with bank issuers to pay the MIF to the issuers for all credit card transactions. The MIFs are required to be paid by merchant acquirers to issuers. As I discuss below the MIF is the primary economic determinant of the MSF charged to merchants in the merchant acquiring market. Both Visa and MasterCard and the banks have been able to raise interchange fees without loss of merchant acceptance or transaction volume.[42] This trend has been recently observed in New Zealand with the increases in the "MasterCard Titanium" and "Visa Platinum Card" (and corporate card interchange tiers) interchange rates. Visa and MasterCard have imposed these increases, while gaining transaction volume, without losing any appreciable merchant acceptance.[43]

5.2 Visa and MasterCard together with the bank merchant acquirers have been able to enforce policies that restrict merchants from using business strategies to lower the cost of credit cards transactions in the merchant acquiring market. I analyze these restrictive policies:

No surcharge: Neither Visa nor MasterCard rules permit surcharges to be levied on credit card transactions in New Zealand.[44] Evidence from Australia demonstrates that some merchants will levy surcharges for credit card use to recover the MSFs when the "no surcharge" rule is eliminated.[45]

---

41 While in principle bilateral MIFs can be agreed upon under the scheme rules, in practice I am unaware of any bilateral MIFs being used in New Zealand.

42 For example, Visa has increased its interchange rate for premium cards from 1.60% in 2008 to **[Confidential:** **]** in 2009. MasterCard has also significantly increased its premium card interchange rates, launching a premium rate in 2006 at 1.85% and increasing it to 2.00% in 2007. Yet according to discovery data, no significant effect has occurred with merchants deciding to stop accepting either Visa or MasterCard. However, Mr. McLeod states that about **[Confidential:** **]** of merchants for whom ANZ does merchant acquiring accept Visa and MasterCard but do not accept AMEX or Diners. (Brief of evidence of Peter John McLeod, ¶68(b)) Indeed, this lack of merchant acceptance may partly explain the lack of take up of BNZ issued AMEX cards, which Mr. Vernon of BNZ finds "surprising." (Op. cit., ¶231-233) Supermarkets did successfully stop Visa from increasing its interchange rate, but I am unaware of any other successful merchant resistance to recent increases in Visa and MasterCard interchange. Supermarkets receive a separate category of low MIF in New Zealand, as they do in other countries.

43 See discovery data responses from banks.

44 See e.g. McCormack, op. cit., ¶81(A).

45 See e.g. RBA, "Reform of Australia's Payments System," op. cit., p. 10. Mr. Laing states that in New Zealand both travel agents and computer companies surcharged

If the no surcharge rules did not exist, a significant number of consumers would switch to other lower cost payment vehicles, e.g. credit cards which did not have a surcharge. The result would be lower merchant costs since merchant acquirers would compete to keep their MSFs low so that their transactions would not be surcharged, and this business strategy would in turn place competitive pressure on issuers to keep any interchange fees low so that transactions using their cards would not be singled out for surcharge. Thus, an increase in competition would occur if the Visa and MasterCard no surcharge rules were eliminated.

Also, I find it likely that elimination of the no surcharge rule would lead to unblended MSFs and different surcharges on different credit cards. Currently, all New Zealand acquirers offer almost all merchants a single MSF that blends the MIFs of Visa and MasterCard and the different interchange rates for different types of cards, e.g. "premium cards."[46] This outcome of differential surcharges would likely lead to increased competition as some consumers would choose credit cards with lower surcharges charged by merchants so credit cards issuers would compete to offer consumers choices with low surcharges. This increased competition among

credit card transactions, even though it violated their agreements with acquirers. (Laing, op. cit, ¶134) These market actions refute the claim that only large merchants, with market power, will surcharge credit card transactions if permitted to do so. Mr. Laing also records that Westpac wanted to eliminate the Visa no surcharge rule in 2002, but Visa International claimed it was prepared to take legal action to preserve the no surcharge rule. (Ibid., ¶174-175). Mr. Wilson states that in 2006 he sought a waiver of the no surcharge rule in New Zealand, because "...Cards NZ considered the rule to be damaging to the Visa brand in New Zealand." (Witness Statement of William McLeod Wilson, ¶74) Visa International refused the request. Mr. Wilson states that the no surcharge rule had "little support" among the Cards NZ board members. (Ibid,. ¶97) Mr. Wilson also states that the no surcharge rule was not enforced while he was Chairman and instances of surcharging continued. (Ibid., ¶79) Mr. Darlow discusses that the Cards NZ Board attempted to gain a waiver of the no surcharge rule from Visa International again in 2008 but Visa International again refused the change. (Witness Statement of Christopher Robert Darlow, ¶34-36) Mr. McLeod states he is not in favour of the no surcharge rule although he does not believe it would be a widely used business strategy. (Op. cit., ¶143, ¶157-159) Mr. Spicer of ASB states that ASB would not object to merchant surcharges. (Brief of Evidence of Mark Warwick Spicer, ¶118) Mr. Briant of BNZ states that BNZ is in favour of removing the no surcharge rule. (Statement of Evidence of Russell James Briant, ¶139)

46 One exception that I am aware of is **[Confidential:** **]**. **[Confidential:**] receives separate MSFs for Visa and MasterCard and the interchange paid by their acquirers does not vary with the type of card used.

issuers would lead to lower MSFs and increased competition in the acquiring market.

I understand that the Visa and MasterCard rules do not prohibit merchants from offering a discount for cash. However, discounts for cash are not equivalent to surcharges for many merchants because handling cash is higher cost than accepting credit cards. The least cost acceptance vehicle for many merchants is EFTPOS. The use of EFTPOS will increase if surcharges are levied on credit card transactions. Also, I would expect the usage of credit cards with lower MSFs to increase because surcharges on those cards would be lower than the surcharges on cards with higher MSFs.

Honor All Cards (HAC): Visa has imposed the "honor all cards rule" which requires merchants who accept Visa credit cards to also accept Visa debit cards and all Visa credit cards, including e.g. the premium cards. MasterCard has a similar rule.[47] An important effect of the HAC rules is that a merchant must accept all cards from an issuing bank that belongs to Visa or MasterCard.[48] While Visa does not charge interchange for debit card usage in New Zealand, merchants such as Progressive **[Confidential:**

].[49] Many other merchants pay the same MSF for

47 See e.g. McCormack, op. cit., ¶81(B). MasterCard has not yet begun to issue debit cards in New Zealand. (Sekulic, op. cit.,¶16) Mr. Sekulic states: "The honour all cards rule is necessary as it provides certainty to cardholders that their MasterCard card will be universally accepted by all merchants who accept MasterCard cards….If merchants who accepted MasterCard cards were able to choose not to accept some MasterCard products this would lead to confusion and uncertainty. Such negative cardholder experience would undoubtedly damage and dilute the value of the MasterCard brand." (Ibid,. ¶154-155). He fails to note that MasterCard dropped this requirement in the U.S. with respect to debit cards in 2003 as part of a settlement of a legal case. Similarly, Mr. Sheedy of Visa fails to note this development in the U.S. as Visa also dropped the requirement. (Written Statement of Proposed Evidence in Chief of William Morgan Sheedy, ¶7.1) I am unaware of evidence from the U.S. that demonstrates that the viability of (signature) debit cards of either MasterCard or Visa has been significantly threatened or that the competitiveness of these debit cards has decreased significantly. Neither Mr. Sekulic nor Mr. Sheedy cite to any studies that demonstrate that "consumer confusion" or a decrease in the value of the MasterCard or Visa brand has occurred. **[Confidential:**

]. See Statement of Evidence of Stuart McKinlay, ¶29.

48 This outcome is sometimes called the "Honor All Issuers" rule.

49 **[Confidential:** **]**.
See Statement of Evidence of Gideon Thomas, ¶44. The Visa scheme does have

certain Visa debit card transactions as they do for credit card transactions so they are made worse off when consumers use a Visa debit card instead of an EFTPOS card in these circumstances.[50]

Both networks have recently developed issuer products that NZ banks have commenced issuing which have significantly higher MIF. These card products are called "premium cards" and "commercial cards." For a standard retail merchant the interchange fee for accepting a NZ issued Visa consumer card is 0.87% while for a premium "Platinum" card it is 1.60% and for a commercial card it is 1.26%.Visa has increased these rates to **[Confidential:** **]** effective April 2009.[51] For a MasterCard transaction at the same retail merchant, the interchange fee for a consumer card is 0.95% while for Premium and Corporate card products, it is 2.00%.[52]

Since the introduction of these cards is sufficiently recent and their growth has only begun in the last few years, the higher MIFs of these cards do not appear to have yet had a significant effect on MSFs.[53] However, economic analysis and the experiences in other countries, e.g. the U.S., demonstrate that over time the higher MIFs of premium and commercial cards will lead to higher MSFs as is beginning to happen now in New Zealand.[54] Further, the

---

an interchange fee for card not present debit card usage. There is also an interchange fee for prepaid debit cards as I discussed above.

50 See McCormack, op. cit. ¶19.

51 See McCormack, op. cit., ¶115 and Figure 18D. See also Second Amended Statement of Claim, 23 February 2009, Schedule 5, pp. 47-48. Mr. Tan of Visa states that the cost of consumer credit cards is actually **[Confidential:** **]** than the cost of commercial credit cards according to Visa's most recent cost study for New Zealand. See Written Statement of Proposed Evidence in Chief of Andrew Tan, ¶38. See also VIS002.0018 and VIS007.0807 which also state that the cost of commercial credit cards is less than the cost of consumer credit cards in New Zealand. These higher rates do not apply to all merchants, e.g. supermarkets and Air New Zealand. (Sheedy, op. cit. ¶5.36)

52 See McCormack, op. cit., ¶124, ¶126 and Figure 22. See also Second Amended Statement of Claim, 23 February 2009, Schedule 14, p. 66. These higher rates do not apply to all merchants, e.g. supermarkets. (McKinlay, op. cit. ¶48)

53 See McCormack op. cit., Figures 19 and 22; ¶150-151. See also ¶176-177 and Figures 35-36. McCormack discusses the reasons for the lack of an effect on the MSFs to date; see ¶178-187.

54 Mr. McLeod of ANZ states while ANZ **[Confidential:**

]. (Op. cit., ¶177-178) Mr. Hansen states that ANZ **[Confidential:**

introduction of these premium and commercial cards has led to an increase in effective MIF payments in New Zealand. Over the period September 2005 to September 2007 (the last month of data), credit card spend for Visa and MasterCard increased by **[Confidential:**] while interchange paid increased by **[Confidential:**].[55] HAC rules with respect to these cards lead to higher increases in MSF than would occur otherwise. In the absence of the HAC rules, some merchants would refuse to accept these premium cards, e.g. a convenience store, because the increased customer expenditure that arises with these cards (if any for a given merchant) is not worth the higher MSFs that arise with their usage.[56]

No Discrimination: MasterCard and perhaps Visa enforce rules which prohibit merchants from using certain methods of steering customers to the use of other cards, e.g. EFTPOS, which have significantly lower MSFs (in the case of EFTPOS, there is no incremental MSF for each additional transaction).[57] This includes rules that prohibit merchants giving economic

---

], which will cause the pass through rates of changes in MIF to changes in MSF to be even closer to 1.0 as I explain subsequently. (Brief of Evidence of Peter Jeremy Hansen, ¶25) Mr. Hansen also states that the higher spend on platinum cards was one of the reasons that ANZ recently decided to re-price the MSFs mid-contract. (Ibid., ¶34, ¶85 discussing MSF increase to Harvey Norman) **[Confidential:**

]. (Brief of Evidence of David Wayne Taylor, ¶5.14) Mr. Briant of BNZ explains that BNZ's "Revised Pricing Model" will take account of the percentage of premium and corporate card usage in determining the MSF. (Op. cit., ¶116) Mr. Dodd of ASB states that although ASB has not yet taken account of the higher interchange from premium cards, he expects ASB to do so going forward. (Brief of Evidence of Andrew John Dodd, ¶98)

55 See Witness Statement of Charles John Gove, ¶118.

56 A significantly lower percentage of merchants accept AMEX cards in the U.S. and other countries than MasterCard and Visa. A similar situation exists in New Zealand. See Written Statement of Proposed Evidence in Chief of Iain Jamieson, ¶5.1. AMEX has significantly higher MSFs than do Visa and MasterCard. Ibid., ¶5.6. Mr. McLeod states about **[Confidential:**] of merchants who accept Visa and MasterCard do not accept AMEX. (op. cit., ¶68(b))

57 Visa and MasterCard Operating Regulations/Rules prevent this activity e.g. COM024.0001, Visa International Operating Regulations, Volume 1 – General Rules, 15 November 2006, Section 5.1.B.2, Cards NZ Limited Operating Rules, 12 December 2006, Section 9.5; CINT001.0049, MasterCard International Bylaws and Rules, October 2005, Article I – Membership, Section 5(c), Rules Sections 3.11, 9.11, 9.12, MasterCard Rules, February 2008, section 5.6.1 and 5.9.1. Mr. Sheedy of Visa claims that no such non-discrimination rule is applicable in New Zealand under the Visa scheme rules. (op. cit., ¶10.2) However, he does not claim that acquirers have not contracted for and enforced such a rule. Mr. Darlow states in

incentives to use other types of cards such as sweepstakes prizes or discounts.[58] Lastly, a merchant must accept all of an issuer's cards from either Visa or MasterCard under the same conditions, e.g. the merchant cannot give economic incentives to consumers or cause them to use a card with a lower MSF. No discrimination rules restrict the ability of merchants to develop strategies that lead to the use of lower cost payment options. Thus, no discrimination rules decrease competition in the acquiring market and increase merchants' costs.

5.3 It is sometimes claimed that even if these rules increase merchant costs by decreasing competition in the acquiring market, economic efficiency is not decreased because issuer competition causes the increase in interchange rates to be passed through to cardholders in the form of benefits like lower fees and increased rewards. My understanding from Kensington Swan's letter is that this claim, even if true, would not be a factor to be considered in the current proceeding. However, the economic facts do not support the claim. While some of the increase in interchange is passed through, no reason exists to believe that all of the increase in interchange is passed on to consumers.[59] Indeed, most of the academic papers assume that issuers are not perfectly competitive and instead are imperfectly competitive through product differentiation strategies.[60] In this situation, economic analysis does not predict that all of the interchange increases will have been passed on in terms of higher rewards (or other benefits) to consumers. Thus, increased interchange fees, partly passed on to consumers and partly kept by issuers, will

---

2008 that Cards NZ clarified the issue that Visa does not currently have a no discrimination rule. (op. cit., ¶39) I will await the outcome of the fact evidence before reaching a conclusion on this issue.

58 See McCormack, op. cit., ¶81(C).

59 Indeed, in Chang et. al., "The Effect of Regulatory Intervention in Two-Sided Markets: An Assessment of Interchange Fee-capping in Australia," Review of Network Economics, 4, December 2005, the authors find that only about 30%-40% of the decrease in interchange had been passed through in terms of higher fees to credit card users. This finding is consistent with the evidence of Mr. Preston of ASB who states that ASB did not expect to pass on to consumers all the increase in interchange from the introduction of the Visa Platinum card. (Op. cit. **[Confidential:**], ¶124)

60 Economic models of two-sided markets for credit cards often make the assumption that credit card issuers have significant market power arising from imperfect competition. See, e.g., J. Rochet and J. Tirole, "Platform Competition in Two-Sided Markets," Journal of the European Economic Association, 1, 2003, pp. 990-1029, Section 7.1; "Cooperation among competitors: some economics of payment card associations," Rand Journal of Economics, 33, Winter 2002, pp. 549-570, p. 553.

increase the profit of issuers.[61] As a result, Visa and MasterCard would find it in the best economic interests of their issuers to increase interchange to the extent that net interchange revenue increased for issuers.[62]

5.4 Individual merchant acquiring banks set their own MSFs which differ across merchants. Each merchant typically contracts with one merchant acquirer. A significant degree of price competition does exist among the merchant acquirers.[63] Over the 2003-2007 time period the average MIF decreased from 1.14% to 1.03% or 0.11%. The average MSF decreased from 1.53% to 1.45% or 0.08%. Thus, a substantial proportion of the decrease in MIF was passed through by the merchant acquirers.[64]

5.5 Access Rules: Visa and MasterCard member banks enforce additional restrictive rules ("access rules") in the acquiring market. The MasterCard Rules do not permit acquiring by a firm unless it also is a credit card issuer. The Visa Rules have at different times contained different forms of restrictions on which firms can act as acquirers, including requirements that an acquirer must be a bank or similar financial institution. These rules do not exist in the same form in other countries, e.g. the U.S., where many of the largest merchant acquirers do not issue credit cards and are not banks, e.g. First Data Corporation has been the largest merchant acquirer in the U.S. with between 40%-50% of the U.S. acquiring market volume until very recently.[65] It is likely in New Zealand that acquirers that are not issuers and are not

---

61 See documents discussed in McCormack, op. cit., ¶173-177.

62 Merchant acquirers might be expected to oppose increases in interchange rates if the increases led to decreased volume. However, all of the merchant acquirers in New Zealand are also the largest issuers. More importantly, to the extent that the observed price elasticity of merchants to increases in interchange rates is extremely small, increased interchange could lead to greater credit card usage because the greater rewards offered by issuers with the portion of the increased interchange that they pass on will increase the economic incentive to use credit cards. Indeed, Rochet and Tirole find that the outcome of "excessive" credit card usage, relative to the social optimum, is more likely to occur when "merchant resistance" is low. J. Rochet and J. Tirole, "Cooperation among competitors: some economics of payment card associations," Rand Journal of Economics, 33, Winter 2002, pp. 549-570, p. 559. Mr. Sheedy in this proceeding, and in other proceedings in which I have been involved, acknowledges that the low price sensitivity (price elasticity) of merchants leads to merchants bearing a higher proportion of the cost of the network than issuers and may even lead to cross-subsidization (price below marginal cost) of the issuing side of the market. Op. cit., ¶5.13.

63 McCormack, op. cit., ¶136-137.

64 Data from McCormack, op. cit., ¶159.

65 Merchant acquirers in the U.S. must have a relationship with a bank but need not be an issuer. In the U.S. many of the largest issuers exited from the acquiring market

banks would enter the acquiring market, which would likely lead to increased competition as occurred in the U.S..[66] These non-issuer merchant acquirers would have different economic incentives than the current situation where all merchant acquirers are also issuers. The new entrants would not receive any increases in interchange when MIF increased. This increased entry could lead to decreased MSFs, a higher quality of service and greater innovation in New Zealand, as has happened in the U.S. Indeed, the level of service offered by merchant acquirers in New Zealand appears to be behind the comparable level in countries such as the U.S.[67]

5.6 Overall, the Visa and MasterCard rules discussed above have significant effects on competition in the merchant acquiring market.[68] In their role as issuers, banks profit from higher MIFs because they do not pass through all of the MIF to credit card users in terms of rewards and other features. In their role as acquirers, these same banks profit from a greater volume of transactions when MIF increases, because higher rewards provide an economic incentive for greater credit card usage and merchant elasticity in terms of credit card acceptance is low. Thus, in New Zealand it is in the best interests of both issuers and acquirers for Visa and MasterCard to set high MIFs. These high MIFs lead to high MSFs, as I now discuss. Thus, the actions by MasterCard and Visa member banks lead to higher costs and higher prices for merchants which lead to significantly less competition in the merchant acquiring market.

5.7 In terms of what "significantly less competition" connotes, I mean that the price paid by merchants in the merchant acquiring market, the MSF, is significantly higher than it would be in the absence of the member banks agreeing to enforce the Visa and MasterCard rules discussed above. Economists typically find that a decrease in competition occurs when price is higher, or quality is lower, because of factors such

---

about 15 years ago because they could not compete with the greater efficiency of non-bank acquirers such as First Data and its predecessor companies. First Data and Chase Paymentech ended their joint venture in November 2008, which decreased First Data's share of the U.S. acquiring market. See e.g. Nilson Report, Issue 922, March 2009, p. 9.

66 See, for example, Statement of Evidence of Hans-Josef Stollmann, ¶40-55. Spicer, op. cit., ¶25-29, ¶33.

67 See McCormack, op. cit, ¶187.

68 Indeed, I find it significant that the member banks enforce certain rules, e.g. the no surcharge rule, that most banks find against their individual best economic interests. This type of outcome is often the outcome of an explicit agreement ("explicit collusion") when individual firms take actions that are against the firm's best economic interests acting unilaterally.

as the enforcement of the Visa and MasterCard rules by the member banks.[69] While the usage of credit cards would likely decrease in the counterfactual if some or all of the rules were no longer being enforced compared to the factual, so the amount of transactions in the acquiring market could decrease, it is important to note in a two-sided market that an output decrease is not an anti-competitive outcome.[70] Since fees from one side of the market, MSF paid by merchants, are being used to subsidize the other side of the market no economic welfare conclusions can be inferred from the amount of credit card transactions. Indeed, economic research finds that "excessive credit card usage" occurs relative to an efficient economic outcome in certain situations.[71]

6 Section 30 analysis: MSFs are maintained and controlled by the issuing banks

6.1 Visa and MasterCard set MIFs that all Visa and MasterCard issuing banks agree to charge merchant acquirers. A high degree of overlap exists between the Visa and MasterCard issuing banks because of duality (i.e. dual issuance) in New Zealand.[72] The issuing banks agree to charge merchants acquirers the MIF which is, by far, the largest cost component of the MSFs, on the order of [redacted][73] Thus, the issuing banks, through their agreement to charge the Visa and MasterCard-set MIFs, maintain and control the MSFs, i.e. prices, charged in the merchant acquiring market.

The relation between MIF and MSF

---

69 This statement is subject to the proviso that the product continues to exist. In my view, in the absence of the restrictive rules credit cards would continue to exist in New Zealand. I discuss this issue subsequently.

70 In a typical one-sided market economists often judge an outcome to be pro-competitive if output increases and vice-versa.

71 See J. Rochet and J. Tirole, "Cooperation among competitors: some economics of payment card associations," Rand Journal of Economics, 33, Winter 2002, pp. 549-570, p. 559. As I stated above, Mr. Sheedy acknowledges that the low price sensitivity (price elasticity) of merchants leads to merchants bearing a higher proportion of the cost of the network than issuers and may even lead to cross-subsidization (price below marginal cost) of the issuing side of the market. Sheedy, op. cit. ¶5.13.

72 As stated above, the four largest credit card issuers in New Zealand are all dual issuers of both Visa and MasterCard. I analyze the effects of duality in my academic paper J. Hausman, et al., "On nonexclusive membership of competing joint ventures," Rand Journal of Economics, Spring 2003, 34, pp. 43-62.

73 See e.g. CANZ008.0032, pp. 19-20, where a 2005 Visa study finds it to be **[Confidential:**]. Mr. Hansen of ANZ states interchange is **[Confidential:**] of total costs. (Op. cit., ¶55)

6.2 MIF is a variable input cost for acquirers. Econom c analysis finds that changes in variable costs will be passed on to some extent in terms of changes in prices.[74] Previous academic research has considered this question and has found that when taxes or other variable costs change, the "downstream" firm will pass on part or all of the tax or cost changes.[75] The amount of pass through depends on the degree of competition and the shape of the demand curve which the downstream firm faces. While estimating the shape of the demand curve for a given firm can be difficult, pass through typically becomes quite high when the degree of competition is high. Since competition among acquirers is usually quite high, I would expect a significant amount of pass through. While the pass through may not occur or may only partially occur in the short run, in the medium run I except variable cost decreases to be passed through as firms compete for business and conversely, variable cost increases to be passed through as firms attempt to maintain their profit margins.[76]

---

74 This analysis of the effect of MIF on MSF is confirmed by Mr. McLeod of ANZ who states that interchanges fees are a "...cost to factor into pricing our MSFs. Interchange fees are treated in the same way as scheme fees and telecommunications costs in that they are variable marginal costs that we incur on each transaction. If these costs are not recovered in the price we charge merchants, our merchant credit card acquiring business would not be profitable." (Op. cit., ¶173) Mr. Hansen of ANZ also confirms that MIFs are costs that are passed through to MSFs which is "required to cover estimated costs and achieve our target margin." (Op. cit., ¶53-55) See also ANZN.034.1450. Mr. Dodd of ASB also states that the MIF for a particular merchant, along with difference in transaction volumes and the merchant importance to ASB, "...explains why MSFs vary between merchants." (Op. cit., ¶90)

75 Indeed, more than 100% of the tax or cost change can be passed on in changed prices. See e.g. J. Bulow and P Pfleiderer, "A Note on the Effect of Cost Changes on Prices," Journal of Political Economy, 91, 1983 and J. Hausman and G. Leonard, "Efficiencies from the Consumer Viewpoint," George Mason Law Review, 7, 1999.

76 This view of pass through in the MSFs is confirmed by the experience of ANZ which Mr. McLeod discusses. (Op. cit., ¶176-177) He states **[Confidential**:

]

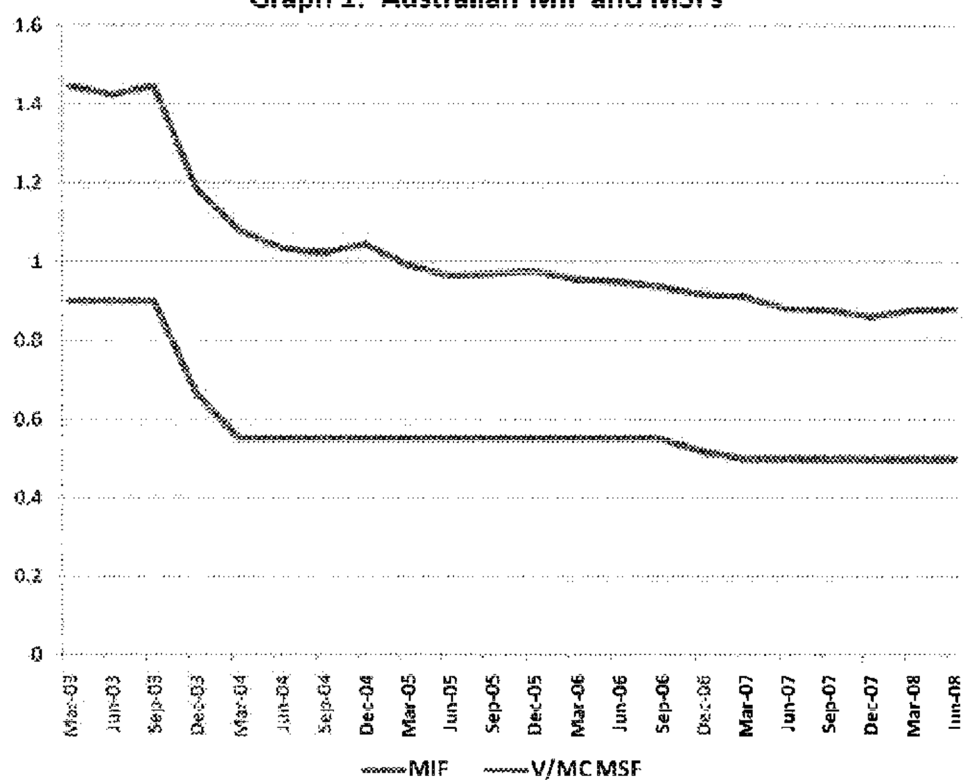
For documents that expect MSF to decrease when MIF decreases see e.g.: ANZN.014.0163, ANZN.014.0166, ANZN.014.0169-71, ANZN.024.0015, ANZN.040.0045, p. 2. Mr. Letica of BNZ also confirms pass through of changes in MIF to changes in MSF when he states if **[Confidential:**

]. (Statement of Evidence of Jared Timothy Letica, ¶44) Mr. Briant of BNZ also demonstrates how the level of the MIF directly affects their MSF pricing to **[Confidential:** **]** and how changes in the MIF lead to changes in the MSF. (Op. cit., e.g. ¶184-185; see also BNZ.055.0180). For examples of pass through of MIF reductions due to competitive pressures see e.g. BNZ.013.0022 **[Confidential:**

]. See also

6.3 In my experience in the U.S., when Visa and MasterCard have increased their MIFs the merchant acquirers, e.g. First Data, have increased the MSFs in a very short period of time or even contemporaneously with the MIF increases.[77] The recent experience in Australia where RBA regulation has decreased average MIFs has also led to corresponding decreases in average MSFs as demonstrated in Graph 1.[78]

Graph 1: Australian MIF and MSFs



Note in Graph 1 when the RBA lowered the average MIF from 0.90% to 0.55% the MSF initially decreased from 1.45% to approximately 1.00% which is the same

---

BNZ.034.0116 [**Confidential:**

]. See BNZ.050.0008 for a discussion of potential increases in the MSF for supermarket in response to proposed increases in supermarket MIF by Visa. (See also BNZ.055.0173) See also ASB.103.0019 **[Confidential:**

] (ASB.103.0019)

77 Mr. Sheedy of Visa states there is "no requirement" for changes in interchange to be passed on. (Op. cit., ¶5.15) However, market competition will lead to a high proportion of changes in interchange being passed on.

78 Data in Graph 1 from RBA, Bulletin Table C.3: Merchant Fees for Credit and Charge Cards.

amount of change, although subsequently the MSF decreased even further to 0.94%.[79] A further decrease caused by RBA regulation caused the MIF to go from 0.55% to 0.50% with a change in the MSF from 0.94% to 0.88% which is approximately the same amount of change. These types of approximately 1-1 changes, i.e. full pass through, are what an economist expects in a highly competitive industry.[80] While I have not had experience consulting in the merchant acquiring industry in Australia, my experience in the U.S. has led me to the conclusion that the U.S. merchant acquiring industry is highly competitive.

6.4 When I do a straightforward linear regression of average MSF on average MIF using data from Graph 1 with a sample from March 2003 to June 2008, and including a time trend, I estimate a coefficient of 1.07 with a high degree of statistical precision (s.e. = 0.044).[81] Thus, I estimate complete pass through of changes in the MIF to changes in the MSF. Again, this result is consistent with the expected outcome in a highly competitive industry.

6.5 I now similarly consider the relationship between MIF and MSF in New Zealand. Given that no regulatory intervention or other major change has affected MIF in New Zealand, I analyze yearly data from 2002-2007 for the 4 NZ acquirer banks: ANZ, ASB, BNZ, and Westpac. I use the average MSF and average MIF for each bank because I understand each bank offers merchants a blended MSF rate for Visa and MasterCard. When I estimate regression models for the relationship between MIF and MSF for Visa and MasterCard at these 4 acquiring banks I find an estimated pass through coefficient of between 0.932 (s.e. = 0.101) and 1.107 (s.e. = 0.081).[82] Thus, I find a very high pass through rate, where neither of the two estimates is statistically significantly different from 1.0, which would be full pass through.

---

79 The difference between the MSF and MIF had been decreasing before the RBA instituted the regulatory reform which caused the MIF to decrease.

80 Mr Karai states that Woolworths in Australia has received reduced MSF rates and greater competition among acquirers has led to reduced acquiring margins as a result of the RBA regulatory intervention. (Statement of Evidence of Dhun Karai, ¶3.27-3.28)

81 Thus, the estimated coefficient is not significantly different from 1.0. If I do instrumental variables, I estimate an effect of 1.12. The results are not statistically different based on a Hausman specification test. If I estimate by first differences, I find a coefficient of 1.012 (s.e. = 0.061). Thus, all of my estimates are near full pass through.

82 This estimate is from random effects. A Hausman specification test does not reject the hypothesis that the fixed effects and random effects models yield the same result, i.e. the right hand side variable, MIF, is orthogonal to the stochastic term. The t-statistic with 1 d.f. = 0.65.

6.6 The relationship between MSF and MIF for the acquirer banks in New Zealand is demonstrated in Graph 2 where I plot the difference between MSF and MIF.

[Confidential: Graph 2 deleted**]**

The relationship between MSF and MIF for each acquirer bank is relatively constant, **[Confidential:**]. This relationship means that changes in MIF are almost fully passed through in changes to MSFs.[83] For example, the difference between MSF and MIF for ASB varies between **[Confidential:**] so the maximum range is only **[Confidential:**]. ANZ has the **[Confidential:**] but this maximum range is still less than **[Confidential:**] of the average difference between MSF and MIF for ANZ. Thus,

---

83 Large merchants typically have **[Confidential:**] MSFs and receive MSFs with a **[Confidential:**] markup over MIF compared to smaller merchants. (See e.g. ANZN.031.0011 (p. 3, 4 and p. 8), ANZN.029.0017, ANZN.015.0233 (p. 52)) See also Hansen for ANZ National Bank Limited. Mr. Hansen discusses why larger merchants typically achieve lower MSFs. See also Mr. Hansen of ANZ who explains that acquiring margins are generally [**Confidential**]. (Op. cit., ¶56 (a), ¶71, ¶79 (c)) Mr. Taylor of Westpac confirms this relationship of large merchants. (Op. cit., ¶5.35) Mr. Spicer of ASB also states that large merchants expect a low MSF rate. (Spicer, op. cit., ¶53) Mr. Dodd of ASB also confirms this relationship. (Op. cit., ¶48, ¶57, ¶75) **[Confidential:**]. (ANZN.027.0385 (pp. 121-183), ANZN.032.0704 (pp. 5-6), ANZN.032.0786 (p. 7)) **[Confidential:**]. I redo the econometrics discussed in the preceding paragraph restricting the sample across the four acquirers to 2004-2007 to check the effect of this change in ANZ's acquiring portfolio. I estimate the pass through coefficient to be 0.98 (s.e. = .124). Thus, I confirm the earlier results demonstrating near complete pass through of changes in MIF to changes in MSF.

the relative constancy of each of the lines in the graphs demonstrates that the acquirer banks change their MSFs to pass through most of the changes in MIFs.[84]

6.7 From these results and my experience in other countries such as the U.S., I expect if Visa and MasterCard MIFs decreased in New Zealand that a corresponding decrease in MSFs would occur.[85] The amount of the decrease in MSFs would depend on the degree of competition in the merchant acquiring market in New Zealand. The speed of the decrease to a new equilibrium outcome would depend in part on the contracts between merchant acquirers and their merchant customers. However, I have no doubt that, holding other factors equal, significantly decreased MIFs will cause decreased MSFs in New Zealand. Indeed, I expect most of the decrease in MIFs to be passed through which would result in lower MSFs by approximately the same amount of the reduction in MIFs.

6.8 According to Visa data, approximately [redacted] of Visa's acquired total in 2005 was "On-us" transactions while the amount increased to [redacted] in 2006.[86] MIFs do not apply to on-us transactions because the same bank is both the issuer and acquirer for the transaction. However, banks typically take account of the "foregone interchange" and often make intra-bank transfers for on-us transaction MIF revenues.[87] This outcome is consistent with economic analysis which would take the

84 I understand Mr. Sheedy of Visa to say that if MIF decreased "acquirers were unlikely to lower merchant service fees." (op. cit. ¶6.2) If I understand him correctly, I find this statement quite surprising given the experience in both the U.S. and Australia, which I know Mr. Sheedy is familiar with. Mr. Sheedy's statement is contradicted by the statement of Mr. Hansen of ANZ in the previous footnote. The relative constancy over time in Graph 2 and the econometric regression estimates also contradict Mr. Sheedy's claim that **[Confidential:**

]. (op. cit. ¶6.4 (d)).

85 **[Confidential:**

]

86 McCormack op. cit., ¶100-101. See also CANZ008.0021.

87 Ibid., ¶101.

"foregone interchange" to be an opportunity cost of an on-us transaction, and would predict that acquirers would take account of this opportunity cost in setting MSFs.[88]

6.9 When MIFs decrease I also expect that credit card issuers will increase fees and decrease effective loyalty points to consumers.[89] These effects have occurred in Australia.[90] However, to date no evidence has been put forward of complete pass through to consumers and the finding would be unlikely given the imperfect competition that exists in the credit card issuing market. As instructed by counsel in the letter from Kensington Swan (¶4.2), I do not consider changes in benefits that go to consumers from using credit cards such as loyalty point rewards. I understand in the New Zealand context that the card schemes would need to apply for an authorization to have changes in offsetting benefits considered. Thus, I do my competitive analysis only in the merchant acquiring market in terms of the effects on the MSF.

6.10 The Commission has claimed that the MIF provides a "floor price" for the MSF.[91] This statement is correct because the MSF cannot be below the MIF when the MIF is approximately 70%-80% of the cost of the MSF. If MIFs were set to zero, I would expect the MSFs which currently average about **[Confidential:**] to decrease below the average MIF which is currently about **[Confidential:**].[92] Indeed, I

88 Mr. Hansen of ANZ confirms this analysis. (Op. cit., ¶36) Mr. Taylor of Westpac also confirms this analysis. (Op. cit., ¶5.29) See also Mr. Spicer for ASB. (Op. cit., ¶64) Mr. Dodd of ASB also confirms this analysis. (Op. cit., ¶102) Economic analysis would lead to the conclusion that banks which acquire a larger than usual proportion of on-us transactions may charge lower MSFs because of increased profitability. This outcome is demonstrated by the economic analysis of "double marginalization." See e.g. J. Tirole, The Theory of Industrial Organization, MIT Press, 1988, pp. 174-176. **[Confidential:**]. (Op. cit., ¶5.30) However, despite the potential for double marginalization, many of the largest credit card issuers in the U.S. exited the acquiring market and First Data is the largest acquirer, while not issuing credit cards.

89 By effective loyalty points, I mean the rewards amount that a consumer receives when charging $100 to a credit card.

90 See e.g. Chang et. al., op. cit. who find that 30%-40% of the change in MIF was passed on in higher fees to Australian credit card consumers.

91 Second Amended Statement of Claim, 23 February 2009, ¶ 56.1(a), ¶67.1(a). The European Commission has come to a similar conclusion regarding the MIF setting a floor for the MSF. See European Commission, "Commission Decision of 19/XII/2007 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement", 19 December 2007, ¶2, ¶ 435-436 MasterCard has appealed the decision

92 Mr. Dodd of ASB **[Confidential:**]. (Op. cit., ¶104)

would expect the average MSF after the change to be substantially below **[Confidential:**]. In this sense the MIF provides a floor for the MSF.

6.11 The Commission also states that some merchants have "cost plus" contracts which it terms "MIF plus".[93] I am familiar with these contracts in the U.S. context where they are commonly observed for large merchants.[94] Changes in MIF are passed through on a 1-1 basis. If the MIF decreased, I would expect the MSF to decrease by approximately the same amount. In particular, if the MIFs were decreased to zero, I would expect the MSFs to be between 0.10% and 1.0% depending on the size of the merchant and other merchant characteristics.[95]

6.12 Similar economic analysis which leads to the conclusion that changes to the MIF will cause changes in the MSF over time, also leads to the conclusion that decreased MSF will cause lower prices by retailers to final consumers. The MSF is a variable cost to merchants who pay an approximate 1%-2% "tax" in terms of their revenues for consumers who pay with credit cards. They recover this payment by increasing their prices to all consumers, whether or not the consumers are using credit cards. As an example suppose a pair of running shoes would have a price of $100 in the absence of credit cards. If 40% of a store's customers were using credit cards the price would increase to $100.80 ($100 + 0.4*2.0), for the store to cover its increased

---

93 Second Amended Statement of Claim, 23 February 2009, ¶ 56.2(a), ¶67.2(d).

94 I understand that one merchant with a "MIF plus" contract in New Zealand is Progressive (Woolworths). ANZ (EFTPOS) charged **[Confidential:**] MIF for both MasterCard and Visa transactions from 2002-2005, and from 2006-2008 charged **[Confidential:**] MIF for MasterCard and **[Confidential:**] MIF for Visa transactions. See Thomas, op. cit., ¶20, 24-25. Farmers used to have a MIF plus arrangement of 25 bp above MIF for both MasterCard and Visa, but it ceased being used in 2005. (Witness Statement of Michael David Power, ¶27) **[Confidential:**]. (Op. cit., ¶20-21) **[Confidential:**]. (Ibid., ¶22) **[Confidential**].

95 Mr. Hansen of ANZ states that the current MSF for Foodstuffs' accounts is **[Confidential:**], and the MIF for Foodstuffs is **[Confidential:**] for Visa and **[Confidential:**] for MasterCard. (Op. cit., ¶29, ¶95) **[Confidential:**], as a result of a reduction in the MasterCard MIF, according to Mr Carter of Foodstuffs (Statement of Evidence of Antony John Carter, ¶14).

costs.[96] Thus, consumers who do not use credit cards, but instead use EFTPOS, pay a "tax" which is used to subsidize consumers who use credit cards.[97] Part of the $0.80 extra amount would be expected to disappear over time if the MIF were eliminated. While I am not taking account of this effect in my analysis of the competitive effects of the challenged rules as instructed by Kensington Swan in its letter (¶4.2), I do this analysis because I expect economic experts for the banks and Visa and MasterCard will emphasize that credit card users will be made worse off if the rules are not permitted to be enforced by the banks through their agreements.

6.13 Considerable controversy exists about the experience in Australia with respect to this pass through point of lower prices to consumers. Various members of the RBA have claimed that while it is difficult to precisely measure the effect given the relatively small amount and the other changes in costs and prices that are ongoing, they believe the effect has occurred. However, Visa and MasterCard consultants have claimed that the empirical evidence does not find evidence of price decreases caused by the decreases in the MSF over the past few years in Australia.[98] Given

---

96 In my example I am using 2% for the MSF of an athletic shoe store which typically pays significantly higher MSFs than larger stores such as supermarkets. I disagree with Mr. Preston of ASB who claims that wealthier consumers who switch to higher interchange cards, e.g. Visa Platinum, will be attracted to merchants who accept the cards. (Op. cit., ¶125) While it is correct that wealthier consumers spend more, I am unaware of research that demonstrates that for a given merchant its receipts increase when it accepts a higher interchange credit card.

97 It has been claimed that some stores will not accept credit cards and continue to charge $100. While this outcome could occur under perfect competition, I find it unlikely to occur in the real world. A typical retail store earns a markup of price over marginal cost of approximately 20%-50%. If a customer leaves the store because it does not accept credit cards, the loss is substantially more than if the store pays a 1.4%-2% MSF amount. Thus, competition typically causes most stores in a category to accept credit cards, especially where the retail markup is significant. For example if the MSF for a given merchant is 1.5% and the margin is 25%, a lost $40 transaction leads to a lower incremental profit of $10. Thus, a merchant increases profits by accepting credit cards if it were to lose more than 1 out of 17 transactions if it refused to accept credit cards. In my experience in the U.S., no one has given an example where a merchant has stopped accepting Visa or MasterCard, even though MSFs have increased significantly in the U.S.. A similar experience has been observed in the EU. See European Commission, op. cit., fn. 572, p. 142.

98 See H. Chang et.al.," The Effect of Regulatory Intervention in Two-Sided Markets: An Assessment of Interchange-Fee Capping in Australia," Review of Network Economics, 4, 2005, pp. 340-341 and R. Stillman, et. al., "Regulatory intervention in the payment card industry by the Reserve Bank of Australia," Charles River Associates, 28 April, 2008, pp. 30-33. Mr. Sheedy of Visa states that low MSFs in Australia have led to "higher profits to merchants with no measureable benefits to consumers." (op. cit., ¶5.43) However, he cites to no evidence or reports to support his statement. Mr. Laing discusses pass through issues in the supermarket and

the small changes in total costs of doing business for retailers, I believe it would be difficult to find econometric evidence of retail price decreases. While I have not studied the Australian experience with respect to retail prices changing, I expect that it is likely to occur over time given the academic literature on the effect of tax changes and tariff changes. I understand that whether or not pass through of lower MSF to lower consumer prices occurs, it is not an issue in this proceeding that needs to be determined as Kensington Swan states in its letter to me (¶4.2). However, I do find that lower MIF will lead to lower MSF paid by merchants to acquirers and will thus reduce costs of New Zealand retailers.[99]

Counterfactual analysis

6.14 I now consider a number of counterfactual situations that could occur in the absence of the provisions that are challenged in this proceeding. Kensington Swan has outlined the assumptions of these counterfactual situations in its letter to me (¶3.9-3.11) My analysis determines what the effect on the MSF would be given the likely changes to the MIF in the different counterfactuals, also depending on whether some or all of the challenged rules are removed. I then infer what the effect on competition would be in the merchant acquiring market given the change in the MSF. In three of the four counterfactuals I consider, I find that the MSF would decrease significantly and competition would increase significantly. In the fourth counterfactual, the effect on the MSF and competition depends on the specific assumptions made about which of the rules remain, and which are deleted.

Counterfactual A: No MIF occurs

6.15 Kensington Swan has instructed me to assume that one relevant counterfactual is the elimination of MIFs and unilaterally or bilaterally set (between issuers and acquirers) interchange fees in New Zealand.[100] No requirement would exist for a

---

petrol market in Australia, but he presents no evidence about actual pass through. (Op. cit., ¶217-218)

99 MasterCard consultants find that lower MIF led to lower MSF for Visa and MasterCard with approximately a 1.0 pass through, similar to my econometric analysis. See Stillman et. al., op. cit., pp. 23-25. Chang et. al. do not dispute the RBA's conclusion that lower MIF led to decreased MSF.

100 This outcome has recently occurred in the European Union with respect to cross-border credit card transactions. See EU Commission Decision of 19/12/2007, "Comp/34.579 MasterCard, Comp/36.518 Euro Commerce, Comp/38.580 Commercial Cards." I understand Mr. Manchisi of MasterCard to say that this outcome would not cause operational problems for MasterCard. See Proposed statement of evidence for Michael Manchisi, ¶38. In April 2009 the EU and MasterCard reached and agreement such that interchange will exist again on these transactions at a rate of 0.30%. See e.g.

merchant acquirer to pay an interchange fee as a condition for accepting and clearing a credit card transaction. In this situation merchant acquirers would continue to charge a service fee to merchants because of the costs associated with authorization and collection of the funds, but I would expect the MSF to decrease greatly since currently the MIF is approximately **[Confidential:]** of the average MSF in New Zealand.[101]

6.16 In New Zealand there are six financial institutions which issue credit cards and four of these institutions are the only merchant acquirers in New Zealand.[102] Competition among the six credit card issuers would set the fees for credit card usage for consumers. The largest source of revenue for issuers, **[Confidential:**

].[103]

Thus, it is likely that yearly fees to consumers for credit cards would increase and the value of loyalty points would decrease. Competition among the four merchant acquirers would establish the MSF which would be substantially lower in the absence of current MIFs. Merchants' costs from credit card transactions would likely decrease by about 0.7%-0.9% to between 0.1%-1.0% of the transaction value.[104] This decrease in the MSF would lead to a significant increase in competition in the merchant acquiring market because price would be significantly lower.

6.17 Also in this situation, if the HAC rules are eliminated and the no surcharge and no discrimination rules which restrict steering are eliminated, there would be additional competitive constraints on acquiring margins. Merchants would encourage customers to use EFTPOS instead of credit cards, for example by surcharging credit

---

http://paymentsnews.com/2009/04/mastercard-europe-reaches-interchange-understanding-with-european-commission.html.

101 For example, in 2007 the average MIF for Visa and MasterCard was **[Confidential:]** while the average MSF was **[Confidential:]**. See McCormack, op. cit., Figure 1, ¶4 and ¶159. A 2005 Visa study estimated that 78.9% of the acquirer's overall cost was the MIF. See McCormack, op. cit., ¶142.

102 Bank credit card issuers are ANZ and NBNZ, BNZ, Westpac, ASB, Kiwi and TSB. The first four issuers are also the merchant acquirers. Kiwi and TSB have **[Confidential:]** of credit card accounts in Q4 2007. See McCormack op. cit., Figure 38b, ¶188.

103 Source: Bank Defendant Responses to Commission data request # 9. McCormack op. cit., Figure 40, ¶190. Mr. Preston of ASB states that **[Confidential]** of credit card revenue. (Op. cit., ¶167)

104 The amount of decrease would depend on the type of merchant. For example, interchange charged to supermarkets in New Zealand is significantly lower than the standard fee charged to other merchants.

card transactions. Since merchants pay significantly less for EFTPOS usage or even receive a payment for accepting EFTPOS, their costs would decrease.

6.18 While the usage of credit cards would likely decrease in this counterfactual compared to the factual, it is important to note in a two-sided market that an output decrease is not an intrinsically anti-competitive outcome, as I discussed above.[105] Since a significant proportion of the merchant costs incurred by paying the MSF are transferred to issuers as revenue via the MIF, and issuers use MIF revenue to help fund the free float period and loyalty points, consumers are expected to decrease their use of credit cards to the extent the effective price to consumers of using credit cards increases, in comparison with the factual.

Counterfactual B: No jointly agreed MIF but bilateral negotiation permitted

6.19 Counterfactual B describes the position if the challenged provisions are deleted and if bilateral negotiations are not precluded by the Commerce Act. In this counterfactual, I assume that no jointly agreed MIF for either Visa or MasterCard is permitted to be used by the banks, but bilateral agreements between credit card issuers and merchant acquirers are permitted.[106] However, no bilaterally agreed interchange fee is required as a condition for accepting and clearing credit card transactions. Thus, the effective "default rate" for interchange is zero, because in the absence of agreement between an issuer and an acquirer, no interchange is payable.

---

105 In a typical one-sided market economists often judge an outcome to be pro-competitive if output increases and vice-versa.

106 Mr. Sekulic of MasterCard states that as of 2008 MasterCard will set a default MIF that will only apply if there are no bilateral agreements in place. (op. cit. ¶201.1) Given the small number of acquirers and issuers in New Zealand, a default rate should not be needed. As I discuss subsequently the "small numbers" situation in New Zealand is quite different from the "large numbers" situation in the U.S.. While Mr. Sekulic states that bilateral interchange could occur, he states that because of "thousands of banks" a default rule is required. (Ibid., ¶240). I am puzzled by this statement since New Zealand has only 5 banks that issue MasterCard (ANZ, ASB, Westpac , BNZ and Kiwibank) as well as one other issuer (Warehouse Financial Services which is 51% owned by Westpac). If interchange is permitted in New Zealand, an international interchange rate for overseas visitors set by MasterCard is not ruled out by my analysis. Mr. Jonas of MasterCard states that its system already permits bilateral rates so no significant problems should arise in a shift to this arrangement. See Proposed Statement of Evidence of Steven Joel Jonas, ¶9. Mr. Sheedy of Visa claims a default rate is necessary, even for domestic transactions, to stop potential "hold up" problems. (op. cit., ¶5.26-5.28) However, he assumes the Honor All Cards rule is a necessary condition when making this claim.

6.20 Merchants would attempt to find the merchant acquirer with the lowest MSF for the given merchant's mix of business, holding quality at an acceptable level. Since there are only 4 merchant acquirers in New Zealand and 4 main credit card issuers plus two quite small additional issuers, each merchant acquirer would negotiate with each of the credit card issuers to determine an interchange rate, if any, for a given credit card issuer. Given the overlap among issuers and acquirers, each acquirer would negotiate with the 3 main issuers, excluding itself, and the two smaller issuers.

6.21 As opposed to other countries, such as the U.S., where hundreds of issuers and dozens of merchant acquirers exist which could lead to a multitude of separate negotiations, the small number of issuers and acquirers in New Zealand would not lead to that many negotiations. Thus, transactions costs would not be excessively high. In this counterfactual I foresee that negotiations would not typically take place between merchants and issuers, but instead acquirers would act as agents for merchants in negotiating an interchange rate. Thus, the amount of negotiations would be reduced.

6.22 However, some large merchants, e.g. Progressive, may want to negotiate their own rates with issuers and then choose an acquirer on a cost plus basis where the MSF is the interchange rate plus a cost plus component.[107] Also, some large merchants could become their own acquirers if the current "access rules" are abolished.[108] The rule regarding merchant acquiring does not exist in the United States, where until recently the largest merchant acquirer, First Data, and other large acquirers are not credit card issuers and are not banks.[109]

---

107 Individual negotiations could well occur with negotiation between very large merchants and issuers, e.g. the two large supermarket chains in New Zealand, Progressive and Foodstuffs. In effect, this negotiation has already occurred in New Zealand where the supermarket successfully resisted an attempted increase in interchange by Visa and MasterCard. See Thomas, op. cit., ¶45-50. For Foodstuffs see witness statements of Anthony Scott McNeil, ¶14-21, Stephen Grant Anderson, ¶16-29, ¶30-31, and Carter, ¶16-41.

108 See e.g. Second Amended Statement of Claim, 23 February 2009, ¶19.7 and ¶33.6. Visa rescinded the access rule in 2006, but MasterCard continues to maintain the rule. (Ibid., ¶19.7.1 for Visa and ¶ 33.6.1 for MasterCard) Since all acquirers are also dual issuers of both Visa and MasterCard and the economics of acquiring requires acquiring for both Visa and MasterCard, all acquirers will be Visa and MasterCard issuers. In the absence of the access rule, new entry for acquiring might also take place, increasing competition. See Spicer, 12 November 2008.

109 Mr. McLeod of ANZ states new entrants would likely enter and compete only in sectors where there is margin opportunity and decrease "cross subsidization." (Op. cit., ¶165) However, this type of entry is what competition should produce by driving down excess profits in these segments. Absent regulation, as occurs in industries

6.23 Competition would likely increase significantly compared to the current situation. Merchant acquirers who are able to achieve lower bilateral interchange rate agreements with credit card issuers will be able to offer lower MSFs and thus get more business from merchants. Thus, competitive pressure will exist on acquirers to negotiate a low interchange rate.[110] No such competitive pressure exists currently since interchange rates (MIFs) are common across issuers for a given network, i.e. Visa or MasterCard. In the current situation merchant acquirers do not negotiate for lower interchange rates, but in the counterfactual such negotiation would occur because the default position would be zero interchange. Thus, the outcomes would be decreased MSFs compared to the current situation together with a significant increase in competition.

6.24 This outcome would lead to even a greater increase in competition if the no surcharge and no discrimination rules were eliminated.[111] When a customer

---

such as landline telephone, the presence of "cross subsidization" typically signals that new entry will increase competition by removing the cross-subsidies over time. If prices increase in other segments to more closely reflect actual costs, economic efficiency will increase.

110 Mr. Laing states that "multilateral fees produce better outcomes". He refers to his experience in Sweden where he states that the largest banks have agreed to higher bilateral credit card interchange fees among each other, while disadvantaging small issuers and new entrants. However, for debit cards the large banks have negotiated lower bilateral interchange rates than the default rate. (Op. cit., ¶249-250) My interpretation of the Swedish experience is that it demonstrates that bilateral negotiations are economical in a relatively small country such as Sweden or New Zealand, given that 90% of transactions are governed by bilateral agreements in Sweden. Since 95% by value of the Visa and MasterCard transactions are debit card transactions and only 5% are credit or "deferred debit," overall the interchange fees are significantly less than if the default rates were used. The outcome in Sweden also occurs under different circumstances since in Sweden the default rate is the intra-regional MIF while in this counterfactual that I have analyzed, the default rate is zero. See UK Office of Fair Trading, No. CA98/05/05, "Investigation of the multilateral interchange fees provided for in the UK domestic rules of MasterCard UK Members Forum Limited, 6 September 2005, ¶403. This difference in the bargaining framework and default rate is likely to lead to quite different outcomes. I also note that Mr. Laing's reference to the OECD report is incorrect. The correct reference is OECD Report, "Competition and Efficient Usage of Payment Cards," 2006.

111 To the extent that Visa does not currently have a no discrimination rule, my analysis would not change. The surcharge would have a greater economic effect on consumers. Mr. Sekulic of MasterCard claims that because New Zealand is a comparatively small market, "New Zealand retailers have significant market power…This means that removal of this [no surcharge] rule in New Zealand is likely to lead to excessive surcharging." (Op. cit. ¶162.1) I find this claim to be based on no economics and to be contrary to economic analysis. While Mr. Sekulic does not define "excessive surcharging," economic analysis would typically find that merchants with market power would increase prices above the competitive level to

attempts to use a credit card issued by a bank with a high interchange rate which would lead to a high MSF, the merchant could surcharge the transaction or steer the customer to use another credit card with a lower interchange rate and thus lower MSF.

6.25 Further, if the HAC rules were abolished with respect to individual issuers, a merchant could refuse to accept an issuer's card if a high interchange fee led to an above competitive MSF.[112] A high surcharge could achieve a similar outcome, but a merchant might find it better in terms of customer relations to refuse to accept a given bank's credit cards, as many merchants now do for AMEX, rather than surcharging a customer a different amount for different cards issued over the same network, e.g. Visa cards issued by different banks. Thus, I conclude that elimination of the HAC rules would further increase competition.

6.26 A question may arise of why it would be in the best interest of an issuer to offer a decreased interchange rate since the issuer receives less money from a given transaction. When steering is possible, a significant number of consumers can be induced to use a different payment card, so overall business for the issuer could well increase. Steering became important in the Wal-Mart litigation in the U.S. where merchants began steering debit customers away from Visa and MasterCard

---

all customers, not only credit card customers who could easily shift to a competing payment form, e.g. EFTPOS. Further, Mr. Sekulic cites to no evidence that finds New Zealand retailers have significant market power. Mr. Sekulic's other reasons are also contrary to economic analysis. (Ibid,. ¶162.2-162.4) For example, his claim "to protect cardholders from paying twice for using a credit card" is contrary to his previous claims of a high degree of competition between MasterCard issuers and between MasterCard issuers and Visa issuers. Competition among issuers will solve this potential problem (if it exists). Mr. Sekulic never addresses the question of why merchants should not be able to increase prices when their costs increase because of the requirement to pay a MSF when a credit card is used for a transaction. Instead, he says in the presence of a surcharge the merchant "is not paying its fair share from participating in the system..." (Ibid,. ¶163) This statement has no operational meaning with respect to firms such as banks entering into an agreement that has the effect of increasing prices. Mr. Sheedy of Visa makes a similar claim that large merchants are charging a higher price "beyond their costs of providing a good or service." (op. cit., ¶8.7) Mr. Sheedy's claim is again contrary to economic analysis since in an imperfectly competitive industry markup of variable costs often exceeds 1.0 to cover fixed costs of operation.

112 Mr. Wilkshire of ANZ assumes under the networks' rules that HAC remains in place and states "an issuer has no commercial incentive to reduce interchange fees below any default level which is in place." (Op. cit, ¶144 (b)) In the absence of HAC an issuer would be subject to competitive pressure to lower its interchange fees if its card were not being accepted by a significant group of merchants.

signature debit towards much lower cost PIN debit (EFTPOS).[113] Also, in the litigation *Visa U.S.A. Inc. v. First Data Corp.*, my research confirmed that merchants could steer customers if they and First Data offered sweepstakes or other prizes.[114] My conclusion was that offers of discounts or prizes are better than surcharges in terms of consumer relations, although both types of strategies would likely be used.[115] Indeed, MasterCard and Visa currently use these types of sweepstakes to give incentive for consumers to use their credit cards, e.g. a free trip to the Beijing Olympics last year. Thus, elimination of the no steering and no discrimination at POS rules would increase competition and cause issuers to decrease their interchange rates to increase their credit card transaction volume, and this outcome would reduce the MSFs charged by acquirers to merchants.

6.27 Elimination of the "access" rules currently in place in New Zealand, but not in the U.S. or Australia, would likely lead to further increased competition in this counterfactual. Acquirers who do not issue would not have a potential conflict of interest in bargaining for lower MSFs from issuers. Also, large merchants such as Progressive could become their own merchant acquirers and acquire for other merchants, or use the credible threat of becoming acquirers, to increase competition resulting in lower MIFs and lower MSFs.[116]

6.28 Reduction of the interchange rates here from the common MIFs now in force or even elimination of MIFs and interchange rates as in Scenario A will not lead to a "death spiral" for Visa and MasterCard where they lose their business to AMEX and Diners.[117] Competitive pressure and surcharging will lead to reduced MSFs for

113 See e.g. http://www.cbsnews.com/stories/2003/05/01/national/main551849.shtml (accessed 21 April 2009).

114 Visa U.S.A. Inc. v First Data Corp., 369 F. Supp. 2d 1121.

115 Mr. Sekulic of MasterCard states that MasterCard does not prohibit steering or merchants offering discount for the use of other payment brands. (Op. cit. ¶168)

116 Progressive has sufficient scale to permit it economically to become an acquirer, especially when combined with its Woolworths operation in Australia.

117 Mr. Sekulic of MasterCard claims: "Interchange fees are an essential component to the viability and growth of four party payment schemes such as MasterCard's." (op. cit. ¶40). Contrary to his claim and prior claims of Visa and MasterCard in Australia, the significant decrease in interchange in Australia caused by the RBA has not threatened the viability or growth of Visa or MasterCard as I discussed above. I note that while Mr. Sheedy of Visa discusses what he sees as adverse effects of eliminating interchange, he does not predict that a "death spiral" for Visa would occur in New Zealand. (op. cit. ¶5.32) Mr. Laing claims that without interchange "that would effectively dismantle credit cards as a product category. It would turn them rather into a current account accessed by a debit card." (Witness Statement of Michael Thomas Laing, op.cit., ¶91, ¶254). However, Mr. Laing only considers

AMEX and Diners so the rewards they offer to consumers will also decrease as with the credit cards. In Australia where RBA regulation has led to a significant reduction of the networks' MIFs by approximately 50%, AMEX and Diners have made only minor share gains over the past 5 years since regulation began. For 2002 and the first 3 quarters of 2003, before RBA regulation began, the total expenditure share of AMEX + Diners was 14.83%. For the last 12 months of data, October 2007 to September 2008, their combined share was 15.88% for a gain of approximately 1%. For the latest monthly data, September 2008, their combined share is 15.4%.[118] Thus AMEX + Diners have gained share, but Visa and MasterCard continue to grow their transaction volumes with no indication of financial difficulties.[119]

6.29 In regard to EFTPOS, credit cards will continue to offer revolving credit which EFTPOS cards do not offer. Nor does EFTPOS offer card not present transactions, e.g. transactions over the internet, which are becoming increasingly important. Profits from interest charged to credit card revolvers (who do not receive a free float period) are the largest source of profits for credit card issuers in my experience, significantly larger than interchange. I demonstrate the importance of net interest revenue (after subtracting out cost of funds) in Graph 3.[120]

[Confidential: Graph 3 deleted**]**

Sources: Bank defendant responses to Commerce Commission data request number 9.

"transactors"—consumers who pay their outstanding balances each month. He fails to take account of "revolvers"—consumers who carry a balance and pay interest. He fails to note that debit cards do not offer this credit facility. Nor do revolvers receive an interest free float period on their credit card transactions. In my experience, interest on balances and other associated fees are among the most profitable aspects of credit cards for issuers. Indeed, interest revenue is 54.1% of issuers' revenue as I explain below and is over two times as much as interchange revenue.

118 These data can be found in the spreadsheet from the RBA located at http://www.rba.gov.au/Statistics/Bulletin/C02hist.xls (RBA Statistical Series C2).

119 Indeed, Visa consultants Chang et. al. op. cit. found that only about 30%-40% of the reduced revenue was passed on to cardholders in terms of increased fees or lower rewards. While I would expect the percentage to grow over time the pass through is likely to remain significantly below 100%. This outcome is consistent with Mr. Sekulic of MasterCard's explanation of the use of interchange to "incentivize its members." (op. cit. ¶186) RBA regulation has the expected effect of reducing credit card issuers' margins because they no longer jointly set an MIF, but typically not all of the reduced profits are re-captured by the oligopolists.

120 ANZ's issuing revenues from interest income is about **[Confidential:** **]**. **[Confidential:**
].

In the 2005 – 2007 period interchange revenue was approximately **[Confidential:]** while net interest revenue was approximately **[Confidential:]**. This largest source of revenue would remain even if interchange revenue decreased to zero.[121]

Counterfactual C: Unilateral posting of interchange fees

6.30 In this counterfactual issuers can unilaterally post interchange rates which an acquirer must pay (if it seeks payment from the issuer). However, bilateral negotiations are also permitted as in the previous counterfactual. In the absence of the HAC rule this framework would approximate the previous counterfactual because an acquirer or a merchant could refuse to accept a given issuer's credit cards if the interchange rates were unacceptably high.

6.31 If the HAC rule remained in place but the other rules were eliminated, I would still expect an increase in competition compared to the current situation since merchants could steer customers toward credit cards with lower MSFs, which would arise from a lower interchange fee charged by the issuers so long as the no surcharge and no discrimination rules were eliminated. Also, merchants could surcharge at different rates depending on the given issuer's interchange fee. These merchant strategies would put significant competitive pressure on issuers who would want consumers to choose and use the issuer's credit card offerings.

6.32 Merchant acquirers will attempt to gain business and will attempt to play one issuer against another by charging different MSFs depending on the interchange rate charged by the issuer. Steering by merchants or differential surcharges based on the MSFs would then shift business to credit cards with lower interchange and lead to lower interchange rates and lower MSFs. Also, an even more competitive outcome would arise if point of sale prizes and discounts were permitted since they will typically have a larger effect on consumer behavior than steering alone will have.

6.33 If the no surcharge rule is eliminated in this scenario, merchants could add the interchange to the purchase amount and tell consumers correctly that it was an extra charge that arises from their credit card issuer.[122] The outcome could well be a

121 Graph 3 does not reflect card scheme incentive-marketing payments made to card issuers as described by Mr. Vernon of BNZ in his Statement of Evidence. (Vernon, op. cit., 100(d), ¶109-124).

122 In his defense of the no surcharge rule, Mr. Sheedy of Visa claims that since merchants receive benefits from credit card usage, they should not be permitted to charge for the additional costs involved. (Op. cit., ¶8.11 8.15) However, economic analysis demonstrates that a profit maximizing firm will increase prices when its variable (marginal) costs increase even though the product or service quality also

situation where issuers do not set a unilateral interchange fee as in the first scenario because their customers will go to issuers where they do not have to pay a surcharge. Thus, the situation is more competitive than the current outcome where surcharges are permitted, such as in Australia. There a merchant can only choose to levy a surcharge over all Visa or all MasterCard transactions.[123] Here the surcharges would differ across issuers and price sensitive consumers will tend to use cards from issuers with a low or even no surcharge. This competitive dynamic will cause credit card issuers to compete to set a lower interchange rate so that the applicable MSF for their cards is lower, and they will have a lower or no surcharge from merchants.

6.34 In the absence of an HAC rule, Counterfactual C is likely to be almost as competitive as Counterfactuals A or B, as I discussed above.

6.35 If the HAC rule were retained, then by requiring an acquirer to agree to the interchange fee, an issuer is likely to maintain more power over interchange than in either of the preceding Counterfactuals A or B. Thus, the MSFs in this counterfactual are likely to be higher than the MSFs in Counterfactual A or Counterfactual B, which would represent a less competitive outcome. However, Counterfactual C would be a significant improvement over the current situation in terms of more competition.

Counterfactual D: Merchant acquirers must agree on interchange with each issuer bilaterally in order to participate in the network scheme

6.36 In this counterfactual a given merchant acquirer would be required to agree on an interchange rate with an issuer on the network in order to acquire transactions involving that issuer's card holders. But the no surcharge and no discrimination rules and the HAC rules are eliminated, and the access rules are also eliminated.

6.37 So long as the no surcharge and no discrimination rules are eliminated and especially the HAC rule is eliminated, this counterfactual is likely to significantly increase competition. In the absence of the HAC rule an acquirer or merchant can decline to accept a given issuer's transactions. This business strategy will place considerable business pressure on an issuer to reach a bilateral agreement over

---

increase. It is curious that Mr. Sheedy states a fixed amount "convenience fee" might be appropriate (Ibid., ¶8.17), yet the MIF and most of the MSF is typically based on an ad valorem amount, which represents the cost to the merchant. **[Confidential:**

]. (VIS003.0018)

123 See McCormack, op. cit., ¶171-176.

interchange with an acquirer so that the issuer's cards will be accepted. Also, a large merchant, e.g. Progressive, which can self-acquire will have considerable negotiating power to reach a low interchange outcome with an issuer or Progressive can decide not to accept the issuer's cards. Thus, the outcome will approximate to some extent Counterfactual B. However, my analysis concludes that Counterfactual B will lead to a more competitive outcome because the default outcome, if no bilateral agreement is reached, is zero interchange. An acquirer or merchant would not need to make a decision, unpopular with some consumers, of not accepting a given credit card since the default rate is zero unless a bilateral agreement is reached.

6.38 I now analyze this counterfactual where I reintroduce the no surcharge, no discrimination, and most importantly the HAC rules. Now acquirers and merchants lose the ability not to accept a given issuer's cards. In turn, they lose their bargaining power to cause an issuer to reach a bilateral agreement over interchange. In this situation issuers will compete "intra-card" to achieve the highest interchange rate in order to offer the highest benefit to cardholders and to encourage consumers to choose the issuer's credit card offering. Acquirers and merchants will not be able to stop this outcome because they will be required to accept all issuers' Visa or MasterCard cards if they want to accept any credit cards. The outcome could be an increase in interchange rates from the current situation and a decrease in competition in the acquiring market. Higher MSFs would be the result. Thus, the situation could be less competitive than the current situation. In my view this situation would be less competitive than either Counterfactual A or Counterfactual B, and also be less competitive than Counterfactual C.

6.39 Lastly, I consider the likely outcome if the HAC rule remains but the no surcharge and no discrimination rules are eliminated along with the MIF. I expect an increase in competition compared to the current situation because merchants will levy (higher) surcharges on credit cards with high MSFs so long as merchant acquirers unbundle their MSFs as I discussed above. Merchants will also attempt to steer consumers to the use of lower cost payment options such as EFTPOS or credit cards with lower MSFs. Thus credit cards with higher MSFs will be charged higher surcharges as occurs currently in Australia for AMEX cards. These higher surcharges will lead to increased competition in the merchant acquiring market because the growth of premium cards with higher interchange and higher MSFs will be less than in the current situation with the no surcharge rule in place. However, this outcome will be inferior to the outcomes of Counterfactuals B or C that I analyzed above. Elimination of the HAC rule is required to attain a similar level of competition to Counterfactuals B or C.

6.40 Thus, in analyzing Counterfactual D the crucial determination is whether the schemes' rules, and in particular the HAC rule, will be eliminated or not. If all the rules are eliminated the outcome will be an increase in competition; if the rules are not eliminated I expect a decrease in competition. If the HAC rule is retained while the no surcharge and no discrimination rules are eliminated, the outcome is more competitive than the current situation, but less competitive than if the HAC rule is also eliminated and less competitive than Counterfactuals B or C.

Conclusion on counterfactuals

7 **Section 27 analysis: Competition is currently significantly decreased**

7.1 I now proceed to a Section 27 analysis.[124] I understand from my previous experience in New Zealand and from Kensington Swan's letter to me, the standard here is to consider whether competition is significantly decreased ("substantially lessened") in a market in the factual scenario with the challenged provisions, as compared to the counterfactuals that I consider. This outcome is often called an SLC, for a "substantial lessening of competition." Above I have defined the relevant market for my analysis to be the market for acquiring Visa and MasterCard credit card transactions. I will do my economic analysis within the framework of this market. Above I have discussed how the agreement among the banks to enforce the Visa and MasterCard rules leads to anti-competitive restrictions, e.g. the no surcharge rule, on possible merchant strategies to cause consumers to use lower cost payment options, e.g. EFTPOS cards. These Visa and MasterCard rules lead to higher effective MSFs paid by merchants. The MSFs are a variable cost for merchants and are passed on in higher prices to all consumers, whether they use credit cards or another form of payment. I find that in the counterfactuals if the agreement to enforce some or all of the rules is eliminated, the expected outcome is a reduction in the MSFs paid by merchants in the acquiring market, which is a pro-competitive outcome.[125]

Counterfactual analysis

124 Second Amended Statement of Claim, 23 February 2009, ¶ 55-77.

125 In a traditional one-sided market I often consider either changes in price or changes in quantity, which will lead to similar conclusions since demand curves slope downwards. However, in the two-sided market situation consideration of quantity can no longer be used because prices paid by one side of the market, e.g. merchants, are often used to subsidize the other side of the market, e.g. credit card users. Thus, in a one-sided market, increases in output are often used as a basis for assessing increases in consumer welfare. However, in a two-sided market, where one side may well cross-subsidize the other side of the market, output cannot be used to judge consumer welfare.

7.2 The analysis I did above for Counterfactuals A, B, C and D informs the Section 27 analysis. In these counterfactuals I determined that MSFs would decrease significantly from the current factual situation in the market for acquiring credit cards. These decreased prices to merchants are a pro-competitive outcome compared to the current situation. Thus, I conclude that the current situation is a SLC compared to the Counterfactuals A, B, C and D, so long as the no surcharge, no discrimination, and HAC rules are eliminated in Counterfactual D. I also conclude that the current situation is a SLC compared to Counterfactual D if the no surcharge and no discrimination rules are eliminated but the HAC rule is retained.

7.3 The analysis in Counterfactual D is more complicated from a competition analysis viewpoint as I discussed above. If the no surcharge, no discrimination and HAC rules are not eliminated in Counterfactual D, "competition" among card issuers could increase in the sense that they would compete to increase their interchange rates so they could offer more attractive rewards packages to consumers or otherwise charge lower fees to credit card users. However, this increase in "competition" would occur in the issuing market, not in the merchant acquiring market. The likely outcome is higher interchange fees and thus higher MSFs than currently occur in the factual situation. Thus, I conclude that this outcome is a significant decrease in competition compared to the current situation because prices are likely to increase to merchants in terms of higher MSFs. However, if the no surcharge, no discrimination, and HAC rules are eliminated, again the current situation is a SLC compared to Counterfactual D. Also, if the no surcharge and no discrimination rules are eliminated while the HAC rules are retained, the current situation is a SLC compared to this outcome. However, this latter outcome is likely to be an SLC compared to Counterfactuals A, B, or C as well as Counterfactual D where the no surcharge, no discrimination and HAC rules are all eliminated.

Price decreases vs. quantity increases

7.4 MasterCard, and various experts for Visa and MasterCard in U.S. proceedings in which I have been involved, claim that MIF is set at a "transaction-maximizing rate."[126] First, I have never seen an economic analysis that demonstrates this point. However, even if MasterCard had determined MIF to maximize transactions, it would not lead to an economically efficient outcome.[127] Further, I understand that in the

126 For MasterCard's claim see e.g. European Commission, op. cit., ¶ 337 and the reference to the 2006 MasterCard submission.

127 Mr. Sekulic of MasterCard claims that MasterCard uses interchange to "ultimately maximize the volume of transactions (which is just another way to say "maximize the benefit of the Scheme to both cardholders and merchants"). (Op. cit. ¶185) No

New Zealand context, member banks of Visa and MasterCard would need to apply for an authorization to be allowed to adopt rules that harm competition in a market, on economic efficiency or public welfare grounds.[128]

7.5 The claim is sometimes made that banks which are net acquirers provide a constraining effect on excessive (from an economic efficiency viewpoint) MIF charges. In New Zealand with only four acquirers, all of whom are issuers as well, Mr. Gove estimates that **[Confidential:**

].[129] Mr. McCormack estimates that in 2006 Westpac and ANZ were net acquirers while BNZ was roughly equal and ASB was a net issuer.[130] However, Westpac (or other net acquirers) do not provide a constraining effect because issuing is much more profitable than is acquiring, so Westpac has little or no incentive to seek to reduce MIF significantly. More importantly, to the extent that the observed price elasticity of merchants to increases in interchange rates is extremely small, increased interchange leads to greater credit card usage because the greater rewards offered by issuers with the portion of the increased interchange that they pass on will increase the economic incentive to use credit cards. Thus, both acquirers and issuers receive increased profits from increased interchange.[131]

7.6 Lastly, while the initial reforms of the RBA in Australia led to some claims of a possible "death spiral" for Visa and MasterCard as AMEX and Diners replaced them in the market, this outcome has not occurred. Amex and Diners have made only a small gain in share in Australia, as I discussed above.

7.7 I see no reason for a "death spiral" to occur in New Zealand. Merchants can refuse to accept AMEX and Diners if their MSFs are significantly higher than Visa and

---

demonstration of "maximum benefit" to anyone is given in his statement. Further, any calculation of benefit or efficiency must take account of other consumers who shop at merchants that accept credit cards as I discussed above. Mr. Sekulic fails to consider these consumers, especially when he discusses the no surcharge rule and the effects of interchange. Lastly, as I explained above, my understanding is that in this proceeding only effects in the merchant acquiring market matter as explained by Kensington Swan in its letter to me (¶4.2). Thus, benefits that accrue to cardholders are not taken into consideration.

128 Letter from Kensington Swan to Jerry Hausman, ¶4.2. However, I note that as a matter of economic analysis it would be incorrect to infer that a credit card transaction maximizing outcome would be economically efficient.

129 Gove, op. cit., ¶ 102.

130 McCormack, op. cit. ¶183.

131 Decreased EFTPOS usage could negatively affect banks' profits, but credit card usage, especially because of interest on revolving accounts, is typically more profitable than debit card usage.

MasterCard acquirers' MSFs. Alternatively, in a framework where surcharges are not prohibited, merchants will charge sufficiently high surcharges on AMEX and Diners to make them indifferent to whether or not to accept them.[132] Also, I expect the MSFs charged by AMEX and Diners to decrease in New Zealand when the MSFs decrease for Visa and MasterCard acquirers.[133] This outcome would be pro-competitive compared to the current situation.

Dated 3 May 2009

Jerry Hausman

132 If this proceeding results in a finding that the no surcharge rule in the Visa and MasterCard schemes is unlawful, it seems likely that AMEX and Diners would voluntarily agree to remove any prohibition on surcharging (as occurred in Australia) rather than face similar action by the New Zealand Commerce Commission.

133 There is evidence in the current NZ acquiring market of AMEX matching Visa and MasterCard MSFs to achieve merchant acceptance of AMEX card products. Mr. Briant of BNZ states Foodstuffs negotiated an AMEX MSF of **[Confidential:** ,]. BNZ acquires AMEX transactions from Foodstuffs and pays AMEX a MIF of **[Confidential:** for AMEX transactions involving non-BNZ AMEX cards, and pays no MIF on on-us transactions involving BNZ Amex cards. (Op. cit., ¶127-128, 135-137).

Appendix A: Curriculum Vitae for Jerry Hausman

March 2009

JERRY A. HAUSMAN
Massachusetts Institute of Technology
Department of Economics
Building E52-271A
Cambridge, MA 02139
(617) 253-3644
jhausman@mit.edu

EDUCATION:

OXFORD UNIVERSITY
D. Phil. 1973 (Ph.D)
B. Phil. 1972

BROWN UNIVERSITY
A.B. (Summa Cum Laude), 1968

THESIS: "A Theoretical and Empirical Study of Vintage Investment and Production in Great Britain," Oxford University, 1973.

FELLOWSHIPS, HONORS AND AWARDS:

Phi Beta Kappa
Marshall Scholar at Oxford, 1970-1972
Scholarship at Nuffield College, Oxford, 1971-1972
Fellow, Econometric Society, 1979
Frisch Medal of the Econometric Society, 1980
Fisher-Schultz Lecture for the Econometric Society, 1982
John Bates Clark Award of the American Economic Association, 1985
Smith Lectures, Brigham Young University 1986
Jacob Marschak Lecture for the Econometric Society, 1988
Hooker Lectures, Macmaster University 1989
Fellow, National Academy of Social Insurance, 1990
American Academy of Arts and Sciences, 1991
Fellow, Journal of Econometrics, 1998
Shann Memorial Lecture for the Australian Economics Society, 2003
Cenmap International Fellow, University College London, 2004
Honorary Professor, Xiamen University, 2005
Biennial Medal of the Modeling and Simulation Society of Australia and New Zealand, 2005
Fellow, Modeling and Simulation Society of Australia and New Zealand, 2005
Condliffe Memorial Lecture, University of Canterbury, NZ, 2005
Invited Lecture, Far East Meetings of Econometric Society, Beijing 2006
Keynote Speaker, ACCC Conference, Australia, 2006
Keynote Speaker, Panel Data Conference, Xiamen China, 2007
Keynote Speaker, Antitrust Conference, Northwestern Univ., 2008
Honorary Fellow, Nuffield College, Oxford University, 2008
Journal of Applied Econometrics Lectures, 2009
Leigh Lecture, Washington State University, 2009

EMPLOYMENT:

	MASSACHUSETTS INSTITUTE OF TECHNOLOGY
1992-	John and Jennie S. MacDonald Professor
1979-	Professor, Department of Economics
1976-79	Associate Professor, Department of Economics
1973-76	Assistant Professor, Department of Economics
1972-73	Visiting Scholar, Department of Economics
	VISITING APPOINTMENTS:
1986-87	Visiting Professor, Harvard Business School
1982-83	Visiting Professor, Harvard University Department of Economics
	Visiting Positions: University of Washington, Australian National University, Ecole Normale Supérieure, Oxford University, University of Sydney, Wuhan University, Beijing University, University of Western Australia, University College London, Uppsala University, Xiamen University, Sorbonne
	U.S. ARMY, ANCHORAGE, ALASKA
1968-70	Corps of Engineers

PROFESSIONAL ACTIVITIES:

Associate Editor, Bell Journal of Economics, 1974-1983
Associate Editor, Rand Journal of Economics, 1984-1988
Associate Editor, Econometrica, 1978-1987
Reviewer, Mathematical Reviews, 1978-1980
American Editor, Review of Economic Studies, 1979-82
Associate Editor, Journal of Public Economics, 1982-1998
Associate Editor, Journal of Applied Econometrics, 1985-1993
Advisory Editor, Economics Research Network and Social Science Research, 1998-
Advisory Editor, Journal of Sports Economics, 1999-
Advisory Editor, Journal of Competition Law & Economics, 2004-
Advisory Editor, Journal of Applied Economics, 2005-
Member of MIT Center for Energy and Environmental Policy Research, 1973-1995
Research Associate, National Bureau of Economic Research, 1979-
Member, American Statistical Association Committee on Energy Statistics, 1981-1984
Special Witness (Master) for the Honorable John R. Bartels, U.S. District Court for the Eastern District of New York in Carter vs. Newsday, Inc., 1981-82
Member of Governor's Advisory Council (Massachusetts) for Revenue and Taxation, 1984-1992
Member, Committee on National Statistics, 1985-1990
Member, National Academy of Social Insurance, 1990-
Member, Committee to Revise U.S. Trade Statistics 1990-1992
Director, MIT Telecommunications Economics Research Program, 1988-
Board of Directors, Theseus Institute, France Telecom University, 1988-1995
Member, Conference on Income and Wealth, National Bureau of Economic Research, 1992-
Member, Committee on the Future of Boston, 1998
Member, GAO Expert Panel to advise USDA on Econometric Models of Cattle Prices, 2001-2
Advisor, China Ministry of Information on Telecommunications Regulation, 2002-2006
Member, FTC Panel on Merger Evaluation, 2005

PUBLICATIONS:

I. Econometrics

- "Minimum Mean Square Estimators and Robust Regression," Oxford Bulletin of Statistics, *April 1974.*

- "Minimum Distance and Maximum Likelihood Estimation of Structural Models in Econometrics," delivered at the *European Econometric Congress, Grenoble: August 1974.*

- "Full-Information Instrumental Variable Estimation of Simultaneous Equation Models," Annals of Economic and Social Measurement*, vol. 3, 641-652, October 1974.*

- "Estimation and Inference in Nonlinear Structural Models," Annals of Economic and Social Measurement*, 653-665, October 1975.* (with E. Berndt, R.E. Hall, and B.H. Hall)

- "An Instrumental Variable Approach to Full-Information Estimators in Linear and Certain Nonlinear Econometric Models," Econometrica*, Vol. 43(4), 727-738, 1975.*

- "Simultaneous Equations with Errors in Variables," Journal of Econometrics *5, 1977.*

- "Social Experimentation, Truncated Distributions, and Efficient Estimation," Econometrica*, Vol. 45(4), 919-938, 1977.* (with D. Wise)

- "A Conditional Probit Model for Qualitative Choice," with D. Wise, Econometrica*, Vol. 46(2), 403-426, 1978.*

- "Specification Tests in Econometrics," Econometrica*, vol. 46(6), 1273-1291, 1978.*

- "Non-Random Missing Data," with A.M. Spence, *MIT Working Paper 200, May 1977.*

- "Attrition Bias in Experimental and Panel Data: The Gary Income Maintenance Experiment," with D. Wise, Econometrica*, vol. 47(2), 455-473, 1979.*

- "Missing Data and Self Selection in Large Panels," Annales de l'INSEE*, April 1978.* (with Z. Griliches and B.H. Hall)

- "Stratification on Endogenous Variables and Estimation," in The Analysis of Discrete Economic Data, ed. C. Manski and D. McFadden, MIT Press, 1981. (with D. Wise)

- "Les models probit de choix qualitatifs," ("Alternative Conditional Probit Specifications for qualitative Choice.") (English Version), September 1977; EPRI report on discrete choice models, Cahiers du Seminar d'Econometrie, 1980.

- "The Econometrics of Labor Supply on Convex Budget Sets," Economics Letters, *vol. 3(2), 171-174, 1979.*
- "Panel Data and Unobservable Individual Effects," Econometrica, *vol. 49(6), 1377-1398, 1981.* (with W. Taylor)
- "Comparing Specification Tests and Classical Tests," Economics Letters, *1981.*
- "The Effect of Time on Economic Experiments," invited paper at Fifth World Econometrics Conference, August 1980; in Advances in Econometrics, ed. W. Hildebrand, Cambridge University Press, 1982.
- "Sample Design Considerations for the Vermont TOD Use Survey," with John Trimble, Journal of Public Use Data, *9, 1981.*
- "Identification in Simultaneous Equations Systems with Covariance Restrictions: An Instrumental Variables Interpretation," with W. Taylor, Econometrica, *Vol. 51(5), 15-27-1549, 1983.*
- "Stochastic Problems in the Simulation of Labor Supply," in Tax Simulation Models, *ed. M. Feldstein, University of Chicago Press, 1983.*
- "The Design and Analysis of Social and Economic Experiments," invited paper for 43rd International Statistical Institute Meeting, 1981; *Review of the ISI.*
- "Specification and Estimation of Simultaneous Equation Models," in Handbook of Econometrics, *ed. Z. Griliches and M. Intriligator, vol. 1, 1983.*
- "Full-Information Estimators," in Kotz-Johnson, Encyclopedia of Statistical Science, vol. 3, 1983.
- "Instrumental Variable Estimation," in Kotz-Johnson, *Encyclopedia of Statistical Science, vol. 4, 1984.*
- "Specification Tests for the Multinomial Logit Model," with D. McFadden, Econometrica, *vol. 52(5), 1219-1240. 1984.*
- "Econometric Models for Count Data with an Application to the Patents R&D Relationship," Econometrica, *vol. 52(4), 909-938. 1984.*(with Z. Griliches and B. Hall)
- "The Econometrics of Nonlinear Budget Sets," Fisher-Shultz lecture for the Econometric Society, Dublin: 1982; Econometrica, *vol. 53(6) 1255-1282, 1985.*

- "The J-Test as a Hausman Specification Test," with H. Pesaran, Economic Letters, 1983.

- "Seasonal Adjustment with Measurement Error Present," with M. Watson, *Journal of the American Statistical Association, 1985.*

- "Efficient Estimation and Identification of Simultaneous Equation Models with Covariance Restrictions," with W. Newey and W. Taylor, *Econometrica, 55, 1987.*

- "Technical Problems in Social Experimentation: Cost Versus Ease of Analysis," with D. Wise, in Social Experimentation, ed. J. Hausman and D. Wise, 1985.

- "Errors in Variables in Panel Data," with Z. Griliches, Journal of Econometrics, 1986.

- "Specifying and Testing Econometric Models for Rank-Ordered Data," with P. Ruud; *Journal of Econometrics, vol. 34(1-2), 83-104. 1987.*

- "Semiparametric Identification and Estimation of Polynomial Errors in Variables Models," with W. Newey, J. Powell and H. Ichimura, Journal of Econometrics, 1991.

- "Flexible Parametric Estimation of Duration and Competing Risk Models," with A. Han, Journal of Applied Econometrics, 1990.

- "Consistent Estimation of Nonlinear Errors in Variables Models with Few Measurements," with W. Newey and J. Powell, 1987.

- "Optimal Revision and Seasonal Adjustment of Updated Data: Application to Housing Starts," with M. Watson, Journal of the American Statistical Association Proceedings, 1991.

- "Seasonal Adjustment of Trade Data," with R. Judson and M. Watson, ed. R. Baldwin, Behind the Numbers: U.S. Trade in the World Economy, 1992.

- "Nonlinear Errors in Variables: Estimation of Some Engel Curves," Jacob Marschak Lecture of the Econometric Society, Canberra 1988, *Journal of Econometrics, vol. 65(1), 205-233. 1995.*

- "Nonparametric Estimation of Exact Consumers Surplus and Deadweight Loss," with W. Newey, *Econometrica, vol. 63(6), 1445-1476, 1995.*

- "Misclassification of a Dependent Variable in Qualitative Response Models," with F. Scott-Morton and J. Abrevaya, Journal of Econometrics, 1998.

- "Semiparametric Estimation in the Presence of Mismeasured Dependent Variables," with J. Abrevaya, Annales D'Economie et de Statistique, 55-56, 1999.
- "A New Specification Test for the Validity of Instrumental Variables,", *Econometrica, vol. 70(1), 163-189. 2002.* (with J. Hahn)
- "Microeconometrics," Journal of Econometrics, vol. 100(1), 33-35. 2000.
- "Instrumental Variables Estimation for Dynamic Panel Models with Fixed Effects", with J. Hahn and G. Kuersteiner, mimeo May 2001, *Journal of Econometrics, 2006*
- "Mismeasured Variables in Econometric Analysis: Problems from the Right and Problems from the Left", *Journal of Economic Perspectives Vol. 15(4), 57-67. 2001.*
- "Estimation with Weak Instruments: Accuracy of Higher Order Bias and MSE Approximations," with J. Hahn and G. Kuersteiner, *Econometrics Journal vol. 7(1), 272-306. 2004.* (Chosen as one of best papers in journal over the previous 10 years, 2008)
- "Notes on Bias in Estimators for Simultaneous Equation Models", with J. Hahn, Economic Letters, 2002.
- "Triangular Structural Model Specification and Estimation with Application to Causality", *Journal of Econometrics, Vol. 112(1), 107-113, 2003.*
- "Weak Instruments: Diagnosis and Cures in Empirical Econometrics", with J. Hahn, *American Economic Review, Vol. 93(2), 118-125, 2003.*
- "Instrumental Variable Estimation with Valid and Invalid Instruments", with J. Hahn, August 2003, Annales d'Economie et Statistique, 2006.
- "Difference in Difference Meets Generalized Least Squares: Higher Order Properties of Hypotheses Tests", with G. Kuersteiner, Journal of Econometrics, 2008.
- "Response Error in a Transformation Model: Estimation of Wage Equations," with Jason Abrevaya, *Econometrics Journal, Vol. 7(2), 366-388. 2004.*
- "Asymptotic Properties of the Hahn-Hausman Test for Weak Instruments", with J. Stock and M. Yogo, *Economic Letters, vol. 89(3), 333-342. 2005.*
- "Many Weak Instruments and Microeconometric Practice," with C. Hansen and W. Newey, *Journal of Business and Economic Statistics, 26, 398-422. 2008.*

- "A Semi-Parametric Duration Model with Heterogeneity that Does Not Need to be Estimated," with T. Woutersen, Econometric Society World Meetings, London, 2005, Nov 2004.

- "Estimating the Derivative Function with Counterfactuals in Duration Models with Heterogeneity," with T. Woutersen, September 2005.

- "Using a Laplace Approximation to Estimate the Random Coefficients Logit Model by Non-linear Last Squares", with M. Harding, December 2005, International Economic Review, 2007.

- "Duration Models," forthcoming in the New Palgrave, with T. Woutersen, March 2006.

- "Hausman Tests," forthcoming in the International Encyclopedia of the Social Sciences, with H. White, June 2006.

- "IV estimation with Heteroskedasticity and Many Instruments," with W. Newey T. Woutersen, J. Chao, and N. Swanson, March 2008.

- "Testing for Causal Effects in a Generalized Regression Model with Endogenous Regressors," with J. Abrevaya and S. Khan, March 2007.

- "A Reduced Bias GMM-like Estimator with Reduced Estimator Dispersion," with K. Menzel, R. Lewis, and W. Newey, September 2007, forthcoming *Journal of Econometrics.*

- "Asymptotic Distribution of JIVE in a Heteroskedastic IV Regression with Many Instruments," with J. Chao, W. Newey, N. Swanson, and T. Woutersen, May 2008 mimeo.

- "A Bayesian Mixed Logit-Probit Model for Multinomial Choice," with M. Burda & M. Harding, April 2008 mimeo, forthcoming *Journal of Econometrics*.

II. Public Finance and Regulation

- "The Evaluation of Results from Truncated Samples," with D. Wise, Annals of Economic and Social Measurement, vol. 5, 421-446, April 1976.

- "Discontinuous Budget Constraints and Estimation: The Demand for Housing," with D. Wise, *Review of Economic Studies*, *vol. 7(146), 75-96. January 1980.*

- "The Effect of Taxation on Labor Supply: Evaluating the Gary Negative Income Tax Experiment," with G. Burtless, *Journal of Political Economy*, *vol. 86(6), 1103-1130. 1978.*

- "AFDC Participation -- Permanent or Transitory?," in Papers from the European Econometrics Meetings, ed. E. Charatsis, North Holland: 1981.

- "The Effect of Wages, Taxes, and Fixed Costs on Women's Labor Force Participation," *Journal of Public Economics, vol. 14(2), 161-194. October 1980.*

- "The Effect of Taxes on Labor Supply," in How Taxes Affect Economic Behavior, ed. H. Aaron and J. Pechman, Brookings: 1981.

- "Income and Payroll Tax Policy and Labor Supply," in The Supply Side Effects of Economic Policy, ed. G. Burtless, St. Louis: 1981.

- "Individual Retirement Decisions Under an Employer-Provided Pension Plan and Social Security," with G. Burtless, Journal of Public Economics, 1982.

- "Individual Retirement and Savings Decisions," with P. Diamond, Journal of Public Economics, 1984.

- "Retirement and Unemployment Behavior of Older Men," in H. Aaron and G. Burtless, Retirement and Economic Behavior, Brookings: 1984.

- "Tax Policy and Unemployment Insurance Effects on Labor Supply," in Removing Obstacles to Economic Growth, ed. M. Wachter, 1984.

- "Family Labor Supply with Taxes," with P. Ruud, American Economic Review, 1984.

- "Social Security, Health Status and Retirement," with D. Wise, in Pensions, Labor, and Individual Choice, ed. D. Wise, 1985.

- "The Effect of Taxes on Labor Supply," in Handbook on Public Economics, ed. A. Auerbach and M. Feldstein, 1985.

- "Choice Under Uncertainty: The Decision to Apply for Disability Insurance," with J. Halpern, *Journal of Public Economics, vol. 31(2) 131-161. 1986.*

- "Household Behavior and the Tax Reform Act of 1986," with J. Poterba, Journal of Economic Perspectives, 1987, also published in French in Annales D'Economie et de Statistique, 1988.

- "Involuntary Early Retirement and Consumption," with L. Paquette, ed. G. Burtless, Economics of Health and Aging, 1987.

- "Income Taxation and Social Insurance in China," in Sino-U.S. Scholars on Hot Issues in China's Economy, 1990.

- "On Contingent Valuation Measurement of Nonuse Values," with P. Diamond, in Contingent Valuation: A Critical Appraisal, ed. J. Hausman, 1993.

- "Does Contingent Valuation Measure Preferences? Experimental Evidence," with P. Diamond, G. Leonard, M. Denning, in Contingent Valuation: A Critical Appraisal, ed. J. Hausman, 1993.

- "Contingent Valuation: Is Some Number Better than No Number?" with P. Diamond, December 1993, *Journal of Economic Perspectives, 8(4), 45-64. 1994.*

- "A Utility-Consistent Combined Discrete Choice and Count Data Model: Assessing Recreational Use Losses Due to Natural Resource Damage," with G. Leonard and D. McFadden, *Journal of Public Economics, 56(1), 1-30. 1995.*

- "Contingent Valuation Measurement of Nonuse Values," with P. Diamond, ed. R.B. Stewart, Natural Resource Damages: A Legal, Economic, and Policy Analysis, 1995.

- "A Cost of Regulation: Delay in the Introduction of New Telecommunications Services," with T. Tardiff, 1995, ed. A. Dumort and J. Dryden, The Economics of the Information Society, 1997.

- "Valuation and the Effect of Regulation on New Services in Telecommunications," *Brookings Papers on Economic Activity: Microeconomics, 1997, 1-38.*

- "Taxation by Telecommunications Regulation," *Tax Policy and the Economy, 12(1), 29-48. 1998.*

- "Taxation by Telecommunications Regulation: The Economics of the E-Rate", AEI Press, 1998.

- "Economic Welfare and Telecommunications Welfare: The E-Rate Policy for Universal Service Subsidies," with H. Shelanski, Yale Journal on Regulation, 16, 1999.

- "Efficiency Effects on the U.S. Economy from Wireless Taxation", *National Tax Journal, 53, 733-742. September 2000.*

- "Residential Demand for Broadband Telecommunications and Consumer Access to Unaffiliated Internet Content Providers", with H. Singer and J.G. Sidak, *Yale Journal on Regulation, 18(1) 129-173, 2001.*

- "Regulating the U.S. Railroads: The Effects of Sunk Costs and Asymmetric Risk," with S. Myers, *Journal of Regulatory Economics, 22(3), 287-310. 2002.*

- "Regulated Costs and Prices in Telecommunications," in G. Madden ed. International Handbook of Telecommunications, 2003.

- Will New Regulation Derail the Railroads?, Competitive Enterprise Institute, October 2001.

- "Sources of Bias and Solutions to Bias in the CPI", NBER Discussion paper 9298, Oct. 2002, *Journal of Economic Perspectives, vol. 17(1), 23-44. 2003.*

- "CPI Bias from Supercenters: Does the BLS Know that Wal-Mart Exists?," with E. Leibtag, presented at conference on Index Numbers, Vancouver, June 2004, NBER Discussion Paper w10712, August 2004. Forthcoming in, W.E Diewert, J.S. Greenlees, and C.R. Hulten eds,, Price Index Concepts and Measurement, 2007.

- "Did Mandatory Unbundling Achieve Its Purpose? Empirical Evidence from Five Countries," with G. Sidak, *Journal of Competitive Law and Economics, vol. 1(1), 173-245. 2005.*

- "Telecommunications Regulation: Current Approaches with the End in Sight," (with G Sidak) NBER conference on regulation, September 2005, forthcoming in N. Rose. ed.

- "Commentary on International Taxation: Tax Policy when Corporate Profits are a Return to Labor Rather than Capital," with Roger Gordon, March 2007.

- "The Walmart Effect on CPI Construction," with E. Leibtag, January 2007 mimeo.

- "Are Regulators Forward-Looking? Copper Prices and Telecommunications Networks," with G. Sidak and T. Tardiff, November 2007 forthcoming *FCC Communications Journal*.

iii. Applied Micro Models

- "Project Independence Report: A Review of U.S. Energy Needs up to 1985," *Bell Journal of Economics, vol. 6(2), 517-551. Autumn 1975.*

- "Individual Discount Rates and the Purchase and Utilization of Energy Using Durables," *Bell Journal of Economics, vol. 10(1), 33-54. Spring 1979.*

- "Voluntary Participation in the Arizona Time of Day Electricity Experiment," with D. Aigner, in EPRI Report, Modeling and Analysis of Electricity Demand by Time of Day, 1979; Bell Journal of Economics, 1980.

- "A Two-level Electricity Demand Model: Evaluation of the Connecticut Time-of-Day Pricing Test," in EPRI Report, Modeling and Analysis of Electricity Demand by Time of Day, 1979; *Journal of Econometrics, vol. 10(3), 263-289. 1979.*

- "Assessing the Potential Demand for Electric Cars," with S. Beggs and S. Cardell, *Journal of Econometrics, vol. 17(1) 1-19. 1981.*

- "Assessment and Validation of Energy Models," in Validation and Assessment of Energy Models, ed. S. Gass, Washington: Department of Commerce, 1981.

- "Exact Consumer Surplus and Deadweight Loss," *American Economic Review, 71(4)m 662-676*, 1981.

- "Appliance Purchase and Usage Adaptation to a Permanent Time of Day Electricity Rate Schedule," with J. Trimble, *Journal of Econometrics, vol. 26(1-2), 115-139. 1984.*

- "Evaluating the Costs and Benefits of Appliance Efficiency Standards," with P. Joskow, *American Economic Review, 72(2), 220-225. 1982.*

- "Information Costs, Competition and Collective Ratemaking in the Motor Carrier Industry," *American University Law Review, 32 Am. U.L. Rev. 377 Winter 1983.*

- "An Overview of IFFS," in Intermediate Future Forecasting System, ed. S. Gass et al., Washington: 1983.

- "Choice of Conservation Actions in the AHS," in Energy Simulation Models, ed. R. Crow, 1983.

- "Patents and R&D: Searching for a Lag Structure," with B. Hall and Z. Griliches, in Actes du Colloque Econometric de la Recherce, Paris: 1983.

- "The Demand for Optional Local Measured Telephone Service," in H. Trebing ed., Adjusting to Regulatory, Pricing and Marketing Realities, East Lansing: 1983.

- "Patents and R&D: Is There a Lag?," with B. Hall and Z. Griliches, 1985; *International Economic Review, vol. 27(2), 265-283. 1986.*

- "Price Discrimination and Patent Policy," with J. MacKie-Mason, *Rand Journal of Economics, vol. 19(2), 253-265. 1988.*

- "Residential End-Use Load Shape Estimation from Whole-House Metered Data," with I. Schick, P. Vsoro, and M. Ruane, IEEE Transactions on Power Systems, 1988.

- "Competition in Telecommunications for Large Users in New York," with H. Ware and T. Tardiff, Telecommunications in a Competitive Environment, 1989.

- "Innovation and International Trade Policy," with J. MacKie-Mason, Oxford Review of Economic Policy, 1988.

- "The Evolution of the Central Office Switch Industry," with W. E. Kohlberg, in ed. S. Bradley and J. Hausman, Future Competition in Telecommunications, 1989.

- "Future Competition in Telecommunications," 1987; ed. S. Bradley and J. Hausman, Future Competition in Telecommunications, 1989.

- "Joint Ventures, Strategic Alliances and Collaboration in Telecommunications," Regulation, 1991.

- "An Ordered Probit Model of Intra-day Securities Trading," with A. Lo and C. MacKinlay, *Journal of Financial Economics, 1992.*

- "A Proposed Method for Analyzing Competition Among Differentiated Products," with G. Leonard and J.D. Zona, *Antitrust Law Journal, 60, 1992.*

- "Global Competition and Telecommunications," in Bradley, et al., ed., Globalization, Technology and Competition, 1993.

- "The Bell Operating Companies and AT&T Venture Abroad and British Telecom and Others Come to the US," in Bradley, et al., ed., Globalization, Technology and Competition, 1993.

- "The Effects of the Breakup of AT&T on Telephone Penetration in the US," with T. Tardiff and A. Belinfante, *American Economic Review, vol 63(2), 176-184. 1993.*

- "Competitive Analysis with Differentiated Products," with G. Leonard and D. Zona, *Annales, D'Economie et de Statistique, 34, 159-180. 1994.*

- "Proliferation of Networks in Telecommunications," ed. D. Alexander and W. Sichel, Networks, Infrastructure, and the New Task for Regulation, University of Michigan Press, 1996.

- "Valuation of New Goods Under Perfect and Imperfect Competition," ed. T. Bresnahan and R. Gordon, The Economics of New Goods, University of Chicago Press, 1997.

- "Competition in Long Distance and Equipment Markets: Effects of the MFJ," *Journal of Managerial and Decision Economics, vol. 16(4), 365-383. 1995.*

- "State Regulation of Cellular Prices," Wireless Communications Forum, volume III, April 1995.

- "Efficient Local Exchange Competition," with T. Tardiff, Antitrust Bulletin, 1995.

- "Superstars in the National Basketball Association: Economic Value and Policy," with G. Leonard, *Journal of Labor Economics, 15(4), 586-624. , 1997.*

- "Valuation of New Services in Telecommunications," with T. Tardiff, The Economics of the Information Society, ed. A. Dumort and J. Dryden, Office for Official Publications of the European Communities, Luxemborg, 1997.

- "Market Definition Under Price Discrimination," with G. Leonard and C. Vellturo, *Antitrust Law Journal, vol. 64, 367-386. 1996*

- "Characteristics of Demand for Pharmaceutical Products: An Examination of Four Cephalosporins," with S. Fisher Ellison, I. Cockburn and Z. Griliches, *Rand Journal of Economics, 28(3), 426-446. , 1997.*

- "Telecommunications: Building the Infrastructure for Value Creation," S. Bradley and R. Nolan, eds. Sense and Respond, 1998

- "Achieving Competition: Antitrust Policy and Consumer Welfare," with G. Leonard, *World Economic Affairs, Vol.. 1(2), 34-38., 1997.*

- "The CPI Commission and New Goods," The American Economic Review, May 1997.

- "Economic Analysis of Differentiated Products Mergers Using Real World Data," with G. Leonard, *George Mason Law Review, 5(3), 326-346. 1997.*

- "Cellular Telephone, New Products and the CPI," *Journal of Business and Economics Statistics, vol 17(2), 188-194. 1999.*

- "Regulation by TSLRIC: Economic Effects on Investment and Innovation," Multimedia Und Recht, 1999; also in J.G. Sidak, C. Engel, and G. Knieps eds., Competition and Regulation in Telecommunications, Boston: Kluwer Academic Publishers, 2000.

- "Efficiencies from the Consumer Viewpoint," with G. Leonard, *George Mason Law Review, vol. 7(3)., 1999.*

- "The Effect of Sunk Costs in Telecommunication Regulation," in J. Alleman and E. Noam, eds, The New Investment Theory of Real Options and its Implications for Telecommunications Economics, 2002.

- "A Consumer-Welfare Approach to the Mandatory Unbundling of Telecommunications Networks," with J. Gregory Sidak, *Yale Law Journal*, *vol. 109(3), 417-505. 1999.*

- "Competition in U.S. Telecommunications Services Four Years After the 1996 Act, with R. Crandall, in S. Peltzman and C. Winston, eds., Deregulation of Network Industries, 2000.

- "Cable Modems and DSL: Broadband Internet Access for Residential Customers," with J. Gregory Sidak, and Hal J. Singer, *American Economic Review*, *vol. 91(2), 302-307. 2001.*

- "The Competitive Effects of a New Product Introduction: A Case Study," with G. Leonard, *Journal of Industrial Economics, vol. 50(3), 237-263. 2002.*

- "Mobile Telephone," in M. Cave et. al. eds, Handbook of Telecommunications Economics, North Holland, 2002.

- "Competition and Regulation for Internet-related Services", in Korea Institute for Industrial Economics and Trade, Industrial Competitiveness and Competition Policy in the Era of Telecommunication Convergence, 2001. (also translated into Korean in a book)

- "From 2G to 3G: Wireless Competition for Internet-Related Services," presented at Brookings Conference, October 2001, R. Crandall and J. Alleman ed., Broadband, Brookings, 2002.

- "Competition and Regulation for Internet-related Services: Results of Asymmetric Regulation", presented at Columbia Univ. conference, October 2001, R. Crandall and J. Alleman ed., Broadband, Brookings, 2002.

- "United States: Lessons from the New Millennium," with R. Crandall, in A. Brown et. al. eds., Telecommunications Reform in the Asia-Pacific Region, 2004.

- "Does Bell Company Entry into Long-Distance Telecommunications Benefit Consumers?," with G. Leonard and J.G. Sidak, *Antitrust Law Journal, 70(2), 463-484, 2002.*

- "On Exclusive Membership in Competing Joint Ventures," with G. Leonard and J. Tirole, *Rand Journal of Economics*, *vol. 34(1), 43-62. 2003.*

- "Why do the Poor and the Less-Educated Pay More for Long-Distance Calls?," with J.G. Sidak, *Topics in Economics Analysis and Policy* *vol. 3(1) 1210. 2004.*

- "Estimation of Patent Licensing Value Using a Flexible Demand Specification", with G. Leonard, *Journal of Econometrics, vol. 139(2), 242-258. 2007.*

- "Cellular, 3G, Broadband and WiFi", Shann Memorial Lecture, University of Western Australia, March 2003, published in R. Cooper R and G. Madden (eds.) (2004) Frontiers of Broadband, Electronic and Mobile Commerce, Physica-Verlag.

- "Using Merger Simulation Models: Testing the Underlying Assumptions," with G. Leonard, *International Journal of Industrial Organization, vol. 23(9-10), 693-698, 2005.*

- "Competitive Analysis Using a Flexible Demand Specification," with G. Leonard, Journal *of Competition Law and Economics, vol. 1(2), 279-301. 2005.*

- "Consumer Benefits from Increased Competition in Shopping Outlets: Measuring the Effect of Wal-Mart," with E. Leibtag, presented at EC2 conference, Marseille, Dec. 2004, Journal of Applied Econometrics 2007.

- "Measurement of the Change in Economic Efficiency from New Product Introduction," with E Berndt, P. Chwelos, and I. Cockburn, August 2005, MIT mimeo, presented At EARIE conference, Porto, September 2005.

- "Two Sided Markets with Substitution: Mobile Termination Revisited," with J. Wright, June 2006.

- "Real Options and Patent Damages: The Legal Treatment of Non-Infringing Alternatives, and Incentives to Innovate," with G. Leonard, *Journal of Economic Surveys, vol. 20(4), 493-512. 2006.* (reprinted in M. McAleer and L Oxley, eds, Economic and Legal Issues in Intellectual Property (Blackwell, 2007).

- "The Falsification of Contingent Valuation: A Case Study," with T. Bock, October 2006.

- "Patent Damages and Real Options: How Judicial Characterization of Non-Infringing Alternatives Reduces Incentives to Innovate," with G. Leonard and G. Sidak, Berkeley Journal of Law and Technology, 2007.

- ""Evaluation of Market Power Using a Competitive Benchmark Rather than the Herfindahl-Hirschman Index," with G. Sidak, Antitrust Law Journal, *vol. 74(2), 387-408, 2007.*

- "The CPI: Its Importance and Prospects for Improvement." January 2008, forthcoming in Siegfried, ed.

- "Managing Product Variety in a Competitive Environment: An Empirical Investigation of Consumer Electronics Retailing," with C. Ren, Y. Hu, and J. Yuhu, December 2008.

JOINT REPORTS, TESTIMONY, AND BOOKS:

- "Project Independence: An Economic Analysis," Technology Review, May 1974.
- "The FEA's Project Independence Report: Testimony before Joint Economic Committee," U.S. Congress, March 18, 1975.
- "The FEA's Project Independence Report: An Analytical Assessment and Evaluation," NSF Report, June 1975.
- "Energy Demand in the ERDA Plan," with D. Wood, Energy Laboratory Report, August 1975.
- "A Note on Computational Simplifications and Extensions of the Conditional Probit Model," EPRI report on choice models, September 1977.
- "Labor Supply Response of Males to a Negative Income Tax," Testimony for U.S. Senate Finance Subcommittee on Public Assistance, November 22, 1978.
- "Appliance Choice with Time of Day Pricing," Energy Laboratory Report, January 1980.
- "Discrete Choice Models with Uncertain Attributes," Oak Ridge National Laboratories Report, January 1980.
- "Individual Savings Behavior," with P. Diamond, Report to the National Commission on Social Security, May 1980.
- "Wealth Accumulation and Retirement," with P. Diamond, Report to the Department of Labor, May 1982.
- "A Review of IFFS," Report to the Energy Information Agency, February 1982.
- "A Model of Heating System and Appliance Choice," with J. Berkovec and J. Rust, Report to the Department of Energy, December 1983.
- "Labor Force Behavior of Older Men After Involuntary Job Loss," with L. Paquette, Report to Department of Health and Human Services, December 1985.
- "Pollution and Work Days Lost," with D. Wise and B. Ostrow, NBER Working Paper, January 1984; Revised 1985.

- "Demand for Interstate Long Distance Telephone Service," with A. Jafee and T. Tardiff, November 1985.
- "Competition in the Information Market 1990", August 1990.
- "The Welfare Cost to the US Economy of Regulatory Restriction in Telecommunications," January 1995.
- "Benefits and Costs of Vertical Integration of Basic and Enhanced Telecommunications Services," April 1995.
- "Statement on the Natural Resource Damage Provisions of CERCLA," Testimony before the U.S. Senate Committee on Environment and Public Works, May 11, 1995; Testimony before the U.S. House of Representatives, Transportation & Infrastructure Committee, Water Resources & Environment Subcommittee, July 11, 1995.
- "Competition in Cellular Markets," Testimony before the U.S. House of Representatives, Committee on Commerce, October 12, 1995.
- "Merger Policy in Declining Demand Industries," Testimony before the U.S. Federal Trade Commission, November 14, 1995.
- "Expected Results from Early Auctions of Television Spectrum," Testimony before the U.S. Senate Budget Committee and the U.S. House of Representatives, Committee on Commerce, March 13, 1996.
- "Declaration and testimony to the Australian Consumer and Competition Commission (ACCC) regarding Cellular Telephone Competition," February 2000.
- "Estimation of Benchmark Interconnection Rates for China," with Xinzhu Zhang, report to China Minister of Information, June 2003.
- Declaration and testimony to the New Zealand Commerce Commission (NZCC) regarding unbundling of the local loop, November 2003.
- Potential use of mobile technology for debit payments in China, 2004.
- "Competition Should Replace Regulation in Australia's Telecommunications Sector," Australian Financial Review, August 7, 2006, with J. Gans.
- The Choice and Utilization of Energy Using Durables, ed. J. Hausman, Palo Alto: EPRI, 1981.
- Social Experimentation, ed. J. Hausman and D. Wise, Chicago: 1985.

- Future Competition in Telecommunications, ed. S. Bradley and J. Hausman, Harvard: 1989.
- Contingent Valuation: A Critical Appraisal, ed. J. Hausman, North Holland, 1993.
- Globalization, Technology and Competition, ed. S. Bradley, J. Hausman, R. Nolan, Harvard: 1993.
- Economic Impact of Deregulating U.S. Communications Industries, The WEFA Group, Burlington, MA, February 1995.

Appendix B: Letter to Jerry Hausman from Kensington Swan

Appendix C – Materials considered

ANZN.001.0065	ASB.101.0026	BNZ.034.0147
ANZN.014.0035	ASB.203.0005	BNZ.037.0279
ANZN.014.0163	ASB.203.0018	BNZ.037.0365
ANZN.014.0166	ASB.203.0036	BNZ.062.0033
ANZN.015.0204	ASB.203.0037	CNAT003.0001
ANZN.015.0216	ASB.214.0002	CNAT003.0002
ANZN.015.0233	ASB.401.0001	CWES004.0151
ANZN.017.0038	ASB.401.0003	CWES006.0110
ANZN.020.0094	ASB.401.0004	CWES006.0111
ANZN.024.0014	ASB.401.0005	CWES009.0015
ANZN.024.0015	ASB.401.0006	CWES012.0048
ANZN.027.0332	ASB.402.0001	CWES013.0023
ANZN.027.0384	ASB.402.0002	CWES023.0061
ANZN.029.0019	ASB.402.0003	CWES024.0003
ANZN.031.0120	ASB.402.0004	H04 018
ANZN.032.0044	ASB.402.0006	MAS.COM.094.392
ANZN.032.0507	ASB.402.0007	NOE-01-038
ANZN.032.0617	ASB.403.0002	VIS006.0082
ANZN.032.0704	ASB.403.0004	VIS006.0083
ANZN.032.0786	ASB.403.0005	VIS104.1025
ANZN.032.0795	ASB.421.0007	VIS207.0023
ANZN.032.0862	ASB.422.0001	VIS207.0024
ANZN.034.0126	ASB.422.0002	VIS207.0033
ANZN.034.0127	ASB.422.0003	VIS207.0035
ANZN.034.0186	ASB.422.0004	VIS207.0036
ANZN.034.1450	ASB.422.0005	VIS207.0037
ANZN.034.1487	ASB.422.0006	VIS207.0038
ANZN.035.0407	ASB.422.0007	VIS207.0046
ANZN.035.0416	ASB.422.0008	WEST.005.006
ANZN.035.0482	ASB.422.0009	WEST.008.076
ANZN.035.0487	ASB.422.0010	WEST.009.157

ANZN.035.0489	ASB.422.0011	WEST.009.199
ANZN.035.0512	ASB.422.0012	WEST.010.090
ANZN.035.0517	BNZ.012.0093	WEST.013.109
ANZN.035.0539	BNZ.012.0120	WEST.014.141
ANZN.035.0856	BNZ.017.0028	WEST.056.200
ANZN.035.0870	BNZ.017.0063	WEST.092.040A
ANZN.035.0928	BNZ.017.0064	WEST.102.363A
ANZN.035.1965	BNZ.019.0002	WEST.102.558A
ANZN.040.0045	BNZ.022.0020	
ANZN.041.0172	BNZ.034.0116	
ASB.101.0009	BNZ.034.0135	

- Proposed briefs of evidence provided by all parties.
- Commerce Commission's statement of claim, 9 November 2006, amended statement of claim, 30 April 2008, and second amended statement of claim, 23 February 2009.
- Statements of defence, amended statements of defence and second amended statements of defence provided by all defendants.
- Carlton, D. and J. Perloff, Modern Industrial Organization, 1990, p. 103 and G. Stigler, The Theory of Price, (4th Ed. 1987).
- Evans, D. and R. Schmalensee, Paying with Plastic (2nd. Ed., 2005).
- Stigler, G., The Theory of Price (4th Ed. 1987).
- Tirole, J., The Theory of Industrial Organization, MIT Press, 1988.
- Bulow, J. and P Pfleiderer, "A Note on the Effect of Cost Changes on Prices," Journal of Political Economy, 91, 1983 and J. Hausman and G. Leonard, "Efficiencies from the Consumer Viewpoint,' George Mason Law Review, 7, 1999.
- Chandran C., C. Matthew and D. Tripe, "Competition in the New Zealand Credit Card Market from the Consumer Perspective," Journal of Asia-Pacific Business, 2005.
- Chang, H et. al., "The Effect of Regulatory Intervention in Two-Sided Markets: The Effect of Interchange Fee-capping in Australia," Review of Network Economics, 4, 2005.
- Guthrie, G. and J. Wright, "Competing Payment Schemes," Journal of Industrial Economics, 60, 2007.

- Hausman, J., et al., "On nonexclusive membership in competing joint ventures," Rand Journal of Economics, 2003.
- Klein, B. et. al., "Competition in Two-Sided Markets: The Antitrust Economics of Payment Card Interchange Fees," Antitrust Law Journal, 73, 2006.
- Rochet , J. and J. Tirole, "Cooperation among competitors: some economics of payment card associations," Rand Journal of Economics, 33, 2002.
- Rochet, J. and J. Tirole, "Platform Competition in Two-Sided Markets," Journal of the European Economic Association, 1, 2003.
- European Commission, "Commission Decision of 19/XII/2007 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement," (Comp/34.579 MasterCard, Comp/36.518 Euro Commerce, Comp/38.580 Commercial Cards).
- MasterCard, "Payment System Regulation," August 31, 2007.
- McKinlay, Stewart and Albert Naffah "MasterCard Background Briefings," July, 2007.
- Nilson Report, February 2004.
- Nilson Report, March 2005.
- Nilson Report, March 2009.
- NZCC Mergers and Acquisitions Guidelines, issued December 2003.
- Reserve Bank of Australia, "Reform of Australia's Payment System, Preliminary Conclusions of the 2007/08 Review," April 2008.
- Rochet, J., "Competing Payment Systems: Key Insights from the Academic Literature," 2008, presented at RBA conference.
- Stillman, R., et. al., "Regulatory intervention in the payment card industry by the Reserve Bank of Australia," Charles River Associates, 28 April, 2008.
- Statistics New Zealand, "Electronic Card Transactions", October 2008.
- UK Office of Fair Trading, No. CA98/05/05, "Investigation of the multilateral interchange fees provided for in the UK domestic rules of MasterCard UK Members Forum Limited," 6 September, 2005.
- United States v. Visa, 163 F. Supp. 2d at 337.
- U.S. Department of Justice and the Federal Trade Commission, Horizontal Merger Guidelines, issued April 2, 1992, rev'd April 8, 1997.
- Visa U.S.A. Inc. v First Data Corp., 369 F. Supp. 2d 1121.
- http://www.cbsnews.com/stories/2003/05/01/national/main551849.shtml (accessed 21 April 2009)

- http://www.westpac.co.nz/olcontent/olcontent.nsf/Content/credit+cards; https://www.bnz.co.nz/Credit_Cards/1,1184,8,00.html; visited Nov. 24, 2008.
- http://www.westpac.co.nz/olcontent/olcontent.nsf/Content/Credit+card+fees#MasterCard+fees.
- https://www.hotpoints.co.nz/airpoints.aspx.
- https://www.bnz.co.nz/Credit_Cards/1,1184,8-132-385,html
- www.paymentsnews.com/2009/04/mastercard-europe-reaches-interchange-understanding-with-european-commission.html.
- Instruction Letter from Kensington Swan to Jerry Hausman dated 25 March 2000.
- Proposed fact and industry evidence provided by CNZL, MasterCard, Visa International, ANZ National, ASB, Westpac and The Warehouse, BNZ.
- Response to summary data requests provided by CNZL, MasterCard, Visa International, ANZ National, ASB, Westpac, BNZ, Kiwibank and NZ Post, TSB and associated correspondence.
- *Credit Card Fees in Australia: A Response to the Reserve Bank of Australia and Australian Competition and Consumer Commission Joint Study*, Visa International (January 2001).
- Ergas, Henry *Panel on Competition Policy in Card-based Payment Systems: Commentary* [2005] Vol 4 Issue 4 Review of Network Economics 415.
- Klein, Benjamin, Lerner, Andres V, Murphy, Kevin M, Plache, Lacey L, *Competition in Two-sided Markets- The Antitrust Economics of Payment Card Interchange* [2006] 73 Antitrust J.JK. 571.
- Laing, Michael *Submission to Payment System Board Re: Reform of Australia's Payments System: Preliminary Conclusions of 2007/08 Review.*
- Proceedings of a Conference held in Sydney: *Payments System Review Conference* (29 November 2007).
- Small, John and Wright, Julian, *Decentralised Interchange Fees in Open Payment Networks An Economic Analysis* [December 2000]
- Small, John and Wright, Julian, *The Bilateral Negotiation of Interchange Fees in Payment Schemes* (January 2002).
- von Weizsacker, C. Christian *Economics of Credit Cards: Expert report on behalf of MasterCard International Incorporated and Europay International SA* (23 January 2002).
- Weiner, Stuart E and Wright, Julian, *Interchange Fees in Various Countries: Developments and Determinants* (30 November 2005) payment Systems Research Department Federal Reserve Bank of Kansas City Working Paper 05-01

- Wright, Julian *One-sided Logic in Two-sided Markets* [2004] Vo. 3 Issue 1 Review of Network Economics 44.
- Wright, Julian *Differential Interchange Fees*, Network Economics Consulting Group Pty Ltd Presentation.

EXHIBIT CC

In the High Court of New Zealand
Auckland Registry **CIV-2006-485-2535**

Under	The Commerce Act 1986
Between	**Commerce Commission**
	Plaintiff
And	**Cards NZ Limited**
	First Defendant
	And Others

CIV-2006-485-2593

Between	**DSE (NZ) Limited**
	First Plaintiff
	And Others
And	**Cards NZ Limited**
	First Defendant
	And Others

Evidence in reply of Professor Jerry Hausman

Dated 4 September 2009

Public version

Judicial Officers: Asher J and Dr Lattimore

Solicitors

PR Taylor / M Borrowdale
Commerce Commission
Level 6, Vector Building
44-52 The Terrace
PO Box 2351, Wellington
Telephone (04) 924-3600
Facsimile (04) 924-3700

Hayden Wilson
Kensington Swan
Level 9, 89 The Terrace,
Wellington
PO Box 10-246, Wellington
Telephone (04) 915 0782
Facsimile (04) 472 2291

Counsel

David Goddard QC
Thorndon Chambers
Level 6, 10 Customhouse
Quay, Wellington
PO Box 1530, Wellington
Telephone (04) 499 6040
Facsimile (04)499 6118

Materials obtained through public sources

1 Introduction

1.1 I previously filed a brief of evidence in this matter. In that brief, I evaluated the likely economic effects of the Visa and MasterCard rules challenged in these proceedings.

1.2 I have now been asked by the Commission to review and evaluate four briefs submitted on behalf of defendants in this matter: (1) the Brief of evidence of Professor Timothy Bresnahan, 17 July 2009 ("Bresnahan Brief"); (2) the Expert Witness Statement of Benjamin Klein, 17 July 2009 ("Klein Brief"); (3) the Brief of Evidence of Professor Carl Christian von Weiszsäcker, 30 July 2009 ("von Weiszsäcker Brief"); and (4) the Written Statement of Proposed Evidence in Chief of Julian Wright on Behalf of Visa International, 20 July 2009 ("Wright Brief").

1.3 I will discuss the following issues in this brief:

(a) areas of agreement among experts;

(b) joint venture analysis of Visa and MasterCard;

(c) the issue of price increases and quantity increases;

(d) volume maximization;

(e) the challenged rules;

(f) price distortions and cross-subsidy; and

(g) counterfactuals.

1.4 A substantial amount of agreement exists among the defendants' experts and me in a number of areas. I begin by discussing these areas of agreement. I then discuss the principal areas of disagreement between the defendants' experts and my evidence. I have focused on significant issues on which we disagree, and have not sought to address every issue on which I disagree. It is not practical to discuss all the points raised in the defendants' experts' very lengthy evidence, in this reply. I do not consider the briefs of Prof. Schmalensee or Dr. Williams.

2 Areas of Agreement among Experts

2.1 All experts agree with my conclusion that there is significant competition in the acquiring market. Also, all experts either agree, or do not disagree, that the MIF is a very high cost component of the MSFs charged by acquirers and that changes in the MIF are passed through approximately 1-1 (i.e. 100%) to changes in MSFs, except for Prof. von Weizsäcker. I note that no defendant expert did any econometric analysis nor did any defendants' expert criticize my econometric analysis, which found the approximate 1-1 MIF pass through result.[1]

2.2 Prof. von Weizsäcker appears to disagree with me and to disregard the view of the other economists on this point. I discuss this disagreement in ¶5.3, ¶5.6 and ¶5.12 below.

2.3 Considerable agreement exists among the experts that the MSFs affect retail prices charged by merchants.[2] Since economic analysis states that in the medium run that prices reflect variable costs and payment of an MSF is a variable cost to a merchant, a change in the MSF will be reflected in a change in merchant prices as I explain in my initial brief of evidence (Hausman ¶6.12-6.13).

2.4 In our initial briefs Prof. Carlton and Dr. Bamberger (¶5.48, ¶5.58) and I (¶6.38) stated that bilateral negotiations will produce a higher MSF than the current system as long as the challenged Visa/MasterCard Restraints continue to apply. This proposition finds agreement among the experts who consider this situation.[3]

2.5 In my initial brief of evidence I point out that the MIF has the effect of cross subsidizing credit card usage because it levies a tax on EFTPOS users and makes the price of credit card usage below cost or even negative for consumers. (Hausman, ¶71, Klein ¶48) Thus, economic research finds that "excessive credit card usage" occurs relative to an efficient economic outcome in certain situations. Except for Prof. von Weizsäcker no other defendant expert disagrees with this proposition. Significant disagreement exists whether a consumer welfare standard or an "output test" should be applied in this situation, an issue I discuss subsequently. But no one asserts that consumer welfare is higher in the current situation as compared to the counterfactuals.[4]

2.6 Prof. von Weizsäcker does dispute the social welfare effects of credit card networks. He states: "We can say that any payment scheme accepted by the merchant at the going price of the scheme provides a net benefit to the merchant. Otherwise he would not have accepted it. This in itself limits the range within which accepted

---

[1] Prof. Timothy Bresnahan, 17 July 2009, ¶35, ¶37 and ¶274; Prof. Julian Wright, 20 July 2009, ¶8.7 and ¶8.9; and Prof. Benjamin Klein, 17 July 2009, ¶66 and ¶108.

[2] Prof. Bresnahan, ¶35(a); Prof. Klein, ¶108. In discussing my running shoe example Prof. von Weizsäcker (¶245ff) does not disagree with my conclusion that prices would increase because marginal costs are higher.

[3] Prof. Klein, ¶118-120; Prof. Wright, ¶8.30.

[4] Prof Bresnahan, ¶302; Prof. Klein, ¶164. Prof Wright at ¶5.20 refers to my brief and states that I interpret "anti-competitive" to mean anything that reduces economic welfare, "rather than its usual meaning as an activity which restricts competition". He then explains that such a welfare standard is not the appropriate standard to determine the competitive effects of the system rules in the acquiring market i.e. whether they are anti-competitive. I infer that Prof. Wright does not disagree that economic welfare may well be lower (as the economic literature demonstrates) but that he does not find it to be in the purview of an antitrust authority to remedy these situations (Prof. Wright, fn12, p 15; ¶5.20, ¶9.7).

payment schemes differ in their advantages for the merchant. In summary I do not believe that efficiency of choice of payment scheme is a great problem." (¶67) I find this claim distinctly odd. Any consumer who buys from a monopolist only does so if [s]he is made better off—otherwise [s]he would not purchase the good or service. However, a monopolist does create (economic) efficiency and social welfare problems.[5] Thus, Prof. von Weizsäcker's reference to merchants accepting credit cards due to a "quality improvement" arising from a positive MIF does not distinguish the situation from a monopoly outcome where consumers still purchase the good because they are better off. (¶308) But with a price below the monopoly price consumers would be even better off so consumer welfare and economic efficiency would increase.

2.7 In my initial brief I stated that if the cross subsidy is removed a likely effect would be reduced credit card usage. (¶5.7, fn. 125, p. 43) The defendants' experts all agree with my conclusion. However, we draw very different conclusions about the implications for consumer welfare and for whether the change is pro-competitive or anti-competitive.[6]

2.8 All the defendants' experts, with the exception of Prof. von Weizsäcker, agree that a relevant market to consider is the market for acquiring Visa and MasterCard credit card transactions.[7] This market is the primary market that I considered in my first brief (¶4.4-4.5).

2.9 Prof. von Weizsäcker disagrees with the use of the acquiring market as a relevant market definition and the use of the MIF as a price floor in this market. (¶261). His major criticism appears to be that a removal of the "supposed" restrictions will cause four party credit card systems to collapse or to transform themselves into three party systems." (¶264) I disagree with this claim of a "death spiral" as I stated in my initial brief, and Visa's and MasterCard's actions in accepting a settlement with the Commission provides actual market actions which are inconsistent with Prof. von Weizsäcker's claim.

[5] Economic efficiency and social welfare are closely related concepts and can be equivalent under certain conditions.
[6] Prof. Bresnahan, ¶269; Prof. Wright, ¶5.33 and ¶8.8; Prof. Klein ¶123 and ¶162.
[7] Prof. Bresnahan, ¶109-111; Prof. Klein at ¶72 agrees that a relevant acquiring market exists in which a hypothetical monopolist could impose a ssnip as my analysis found. However, he states that to take proper account of the two-sided characteristics of payment systems, a network services market is needed, although he limits it to credit cards. Prof. Klein agrees that one can use the acquiring market definition so long as the analysis takes account of the "benefits that flow to merchants from interchange fees" ¶94. This raises the question of how higher interchange fees that reduce "price" of use by cardholders and lead to greater credit card usage should be taken into account (which I discuss later). Prof. Wright believes that a payment systems market approach is superior to the use of an acquiring market, but states that an acquiring market would lead to similar results so long as interrelationships are taken into account (¶4.2-4.3).

i. Prof. von Weizsäcker's analysis rests on the assumption that if the MSF increased by 10% the same reduction in demand would occur if the cardholder price increased by 10%. (¶269) Prof. von Weizsäcker is incorrect for two reasons here. First, he assumes 1-1 pass through of a higher MIF to lower cardholder prices as occurs with a change in the MIF affecting the MSFs.[8] This assumption is incorrect and is contradicted by the empirical evidence from Australia where incomplete pass through of a lower MIF to a higher cardholder price has been observed. (Hausman, ¶59) The assumption is also inconsistent with most models that economists have considered. (Hausman, fn. 26, pp. 10-11) Issuing banks favor a higher MIF because of incomplete pass through as I discussed in my initial brief of evidence.

ii. The second reason that Prof. von Weizsäcker is incorrect is that he neglects to take account of the number of merchants that accept credit cards. If the MIF decreases by 10% the MSFs will decrease by approximately 10% and more merchants will accept credit cards. If the cardholder price increases by 10%, fewer cardholders will exist but no reason exists to assume that the effect would be exactly the same as a 10% change in the MSFs. Prof. von Weizsäcker has neglected to take account of the effect of a change in the MSF on merchant acceptance. Thus, his attempted equivalence of effects in the acquiring and issuing markets is incorrect. Indeed, that is why every economist that I am aware of has considered separate acquiring and issuing markets for credit cards.

iii. Prof. von Weizsäcker also claims that EFTPOS should be in the same relevant market with credit cards. (¶275) He claims there is a high substitutability between credit cards, EFTPOS and even cash. He admits to doing no empirical analysis but his claim implies no decrease in competition if Visa and MasterCard merged given his claim of high substitutability. This conclusion is incorrect because the merged firm could increase its fees which would lead to a higher MSF with no corresponding increase in the MIF. So demand would decrease in the acquiring market with no change in the issuing market, even holding the number of merchants who accept credit cards fixed. Thus, a hypothetical monopolist of credit card systems could increase prices profitably.

2.10 I next turn to the areas of disagreement between defendants' experts and me.

[8] Prof. von Weizsäcker calls this assumption his "equal weight setup" which I discuss below. However, the implication of the equal weight setup of equal pass through by acquirers and issuers is contradicted by all of the empirical evidence that I am aware of. I discuss this issue further below.

3 Joint Venture Analysis of Visa and MasterCard

3.1 A number of the defendants' experts consider Visa as a joint venture.[9] I understand that section 31 of the Commerce Act provides that section 30 does not apply to a provision of an agreement entered into for the purposes of a joint venture if certain conditions are met. One of these conditions is that the provision must relate to services that are supplied jointly by the joint venture members, or in proportion to their interest in the joint venture. However, the agreement among issuers to charge a common MIF and the agreement among acquirers to enforce the challenged rules do not relate to services that are supplied jointly. Indeed, the services provided by acquiring banks are supplied in competition with each other, not jointly. The acquiring services are not supplied in proportion to the banks' economic interests in Visa/MasterCard. Thus, I disagree with defendants' experts' claims that the Visa and MasterCard arrangements satisfy the section 31 criteria for the joint venture exception, and that a section 30 analysis cannot be used to analyze the challenged rules.

4 Price Increase and Quantity Increases

4.1 As I stated in my initial brief, I have been instructed by counsel that under NZ law only competition effects in the acquiring market should be considered. Effects on consumers in other markets are relevant only in an authorization proceeding.

4.2 In the acquiring market agreement exists among experts that a higher MIF leads to higher MSFs. Thus, merchants pay more for accepting credit cards that they would under the counterfactuals, when the rules are eliminated. These higher prices harm merchants, and also consumers who pay with EFTPOS and cash. Benefits to cardholders from that part of the higher price which is used to cross subsidize the price of credit card usage do not enter the analysis of effects in the acquiring market.

4.3 A number of defendants' experts claim that if quantity increases in a market then competition has increased.[10] I disagree with claim in the economic analysis of the acquiring market because a higher MIF leads to higher MSFs, as agreed by almost all experts (see above), and merchants are made worse off by paying the higher MSFs.[11] With lower MIFs, more consumers would instead use EFTPOS or cash so merchants' costs would be lower.[12] Merchants are the "consumers" of credit card services in the acquiring market and an increase in quantity of credit card usage arising from a higher MIF and higher MSFs makes merchants worse off. All other

---

[9] See e.g. Prof. Klein. (¶140)
[10] Prof. Bresnahan ¶71-76; Prof. Klein ¶150, ¶162-163; Prof. Wright ¶9.5.
[11] Even if merchants pass through all of the increase in MSFs, they are made worse off because prices of their products are higher and since demand curves slope downwards, merchant's profits are lower.
[12] I discuss subsequently the claim that consumers buy more when MSFs are higher.

effects in terms of credit card users receiving rewards and other benefits from using credit cards would be relevant in an authorization proceeding but not in an analysis of competition in the acquiring market. However, as I point out in my initial brief, if one is interested in overall economic welfare and considers both issuing and acquiring markets, economic analysis finds "excessive" credit card usage in certain situations.[13] This is a proposition with which significant agreement exists. Economists typically favor competition because it yields increased economic efficiency which yields increased economic welfare. The increase in quantity here does not arise from increased economic efficiency. Instead, it arises from a cross subsidy funded by a "tax" on consumers who use EFTPOS. The cross subsidy distorts prices and leads to increased credit card use. Thus, no necessary linkage exists between quantity and economic efficiency or economic welfare in the acquiring market for credit cards.

4.4 A significant amount of defendants' expert testimony attempts to avoid the restriction to economic effects in the acquiring market alone. For example, Prof. Klein emphasizes competition between payment systems and the value of the product to cardholders and merchants. (¶156-157). He does not limit his analysis to economic effects in the acquiring market but, rather, Prof. Klein considers effects which would only be relevant in an authorization proceeding, as I have been instructed to interpret NZ law.[14]

4.5 The defendants' experts claim that a quantity increase in a market is necessarily pro-competitive. For example, Prof. Bresnahan explains the standard supply and demand analysis under perfect competition in his Figure 1 and demonstrates that a horizontal agreement that increases price will decrease quantity.[15] (¶71-73) Of course, neither credit card issuing markets nor acquiring markets are perfectly competitive which would require many small firms all of which are price takers (like the mythical wheat farmers in Nebraska). He contrasts this outcome to the situation of quality improvement which shifts out the demand curve in Figure 2. (¶75-76). He claims the outcome is "pro-competitive because output has expanded." He never defines what he means by pro-competitive. If he means that consumers are necessarily better off because quantity has expanded, he is incorrect. Economic analysis has known since the research of Prof. Robinson in the 1930s that a quantity increase does not equate to an increase in consumer welfare.[16] A more recent paper

[13] See Hausman fn. 62, p. 20, and ¶5.7. Also see my further discussion below.
[14] See also Prof. Klein (¶ 167) where Prof. Klein discusses the reduction of rewards or increases in cardholder fees in his analysis of a "substantial lessening" of competition.
[15] Although he does not explicitly say so, Prof. Bresnahan is assuming perfect competition or a supply curve would not exist.
[16] J. Robinson, The Economics of Imperfect Competition, (London, 1933).

by Prof. Spence (a Nobel prize winner) demonstrated that when quality improves and quantity purchased increases, consumer welfare does not necessarily increase.[17]

4.6 However, even if I ignore the imperfect competition situation and the Robinson/Spence critiques, the fundamental problem with Prof. Bresnahan's approach, which claims that a quantity expansion is "pro-competitive", is that he ignores that prices in acquiring markets are distorted by the tax on EFTPOS customers which is used, in part, to subsidize the demand of credit card customers. Indeed, Prof. von Weizsäcker (e.g. ¶246) and other defendants' experts all recognize the cross subsidy exists and even discuss negative prices for credit card users because of rewards and the "free float" offered by credit cards.[18] When distorted prices exist, the equivalence between quantity increases and pro-competitive changes no longer exists.

4.7 I do not disagree that when prices are not distorted, a quantity increase may be a good approximation for an increase in social welfare.[19] However, when a price distortion exists and the distortion is created by the anti-competitive acts under analysis, quantity changes cannot be used correctly as an approximation to social welfare.[20] Here the distortion arises from the tax on EFTPOS and cash customers. Indeed, in the absence of the no surcharge and anti-steering rules the distortion would likely be eliminated in large part and the distortion in price would be eliminated or decreased to a large extent.

4.8 Prof. von Weizsäcker considers the relationship of the MIF with social welfare or consumer welfare. (¶115) He claims that the maximum consumer welfare is a function only of the sum of issuer and acquirer unit costs. (¶118) I disagree with this claim because issuers do not pass on all of their interchange to cardholders as I discuss in my initial brief and in this brief.[21] Thus, when the MIF increases, issuing banks pass on part of the increase to cardholders as increased rewards or lower fees, but issuing banks retain part of the increase in MIF as increased profits. Issuers are profit maximizing firms whose decisions will be affected by the degree of differentiation and competition among issuers and the fact that in NZ, the four large issuers are also acquirers so that issuers and acquirers are not independent actors

[17] A.M. Spence, "Monopoly, Quality, and Regulation," Bell Journal of Economics, 6, 1975.
[18] Economists refer to a "cross subsidy" when price is below incremental (marginal) cost. The RBA study finds negative prices for credit card usage in Australia – RBA "Reform of Australia's Payment System", Preliminary Conclusions of the 2007/2008 review, April 2008. See Hausman ¶4.10.
[19] See e.g. Hausman first brief of evidence, fn. 125, p. 43, where I point out in the presence of price distortion, output cannot be used to judge consumer welfare.
[20] In my initial brief I stated that in a two sided market that a quantity change could not be used as an approximation to social welfare because prices in two sided markets are typically distorted by cross subsidies.
[21] See Hausman first brief of evidence, ¶5.3.

as Prof. von Weizsäcker assumes in his explanation of four party systems. (¶104-118)

4.9 Prof. von Weizsäcker concludes that the setting of the MIF rates by MasterCard is pro-competitive because by maximizing MasterCard volume it "corresponds to maximum competitive pressure exerted by the MasterCard scheme on other payment systems." (¶221-223) As I discuss below, the empirical evidence demonstrates that MasterCard's MIF and Visa's MIF do not maximize volume within the context of Prof. von Weizsäcker's economic model. However, even if volume were maximized, I disagree with Prof. von Weizsäcker's view. MasterCard and Visa gain volume by levying a tax on EFTPOS users in acquiring markets as I discuss in my initial brief. Part of the tax revenue is used to cross subsidize (set a negative price for) credit card users. In this situation the link between quantity and "pro-competitive" outcomes no longer exists because an increase in quantity can arise from a decrease in consumer welfare. By failing to take account of the effect on the price in the final goods market where the tax is paid by consumers, Prof. von Weizsäcker has missed the effect of the tax in his definition of competition, i.e. less of the final good will be purchased because its price increases because of the tax.

4.10 Prof. Klein claims that the interchange fee is similar to a vertical arrangement implemented by manufacturers. (¶67) I agree with his statement that exclusive territories often lead to a pro-competitive outcome. However, exclusive territories operate typically in one-sided markets where a given customer decides whether to pay a higher price for a given commodity. In credit card markets a tax is levied on one set of customers (merchants) to offer cross subsidies to another set of customers (credit cardholders), thus distorting prices and consumption decisions. In this situation one cannot look only at the number of transactions and conclude anything about consumer welfare or economic efficiency.

4.11 Prof. Wright also claims a linkage between a decrease in the quantity of credit card transactions and a decrease in competition. He claims my approach is incorrect because I have focused on a one-sided analysis. I disagree. As I was instructed by counsel, the analysis should be restricted to the acquiring market with effects in other markets relevant only in the context of an authorization proceeding before the Commission.[22] As with Prof. Bresnahan, Prof. Wright fails to recognize that prices are distorted, as with a cross subsidy, the link between quantity increases and welfare increases (as well as "pro-competitive" changes) is broken. Indeed, Prof.

[22] Thus, Prof. Wright's repeated reference to increased competition in issuing (e.g. ¶9.17) might be of interest in an authorization proceeding, but my understanding is that effects in the issuing market do not enter the competitive analysis in the current proceeding.

Wright appears to make an equivalence between increases in output and a "pro-competitive" outcome, but this equivalence does not hold in general.

4.12 If one considers an increase in competition to be equivalent to be an increase in independent rivalry between market participants that is constrained by market forces, an increase in quantity need not lead to an increase in independent rivalrous conduct or be the result of an increase in rivalrous conduct. The use of cross subsidies to distort prices can lead to an increase in quantity, which does not arise from an increase in rivalrous behavior or an increase in competitive constraints. The existence of different price sensitivities (elasticities) among consumers can be used to increase quantity when competition decreases; indeed, the market becomes a monopoly where it was previously competitive. Further, as I discuss in my initial brief, a transaction quantity increase here which arises from a higher MIF would not typically increase economic welfare because of the "tax" on EFTPOS and cash customers which is used to fund the cross subsidy for credit card users.

4.13 I consider an example that demonstrates this point. Suppose that many small dairies exist in New Zealand so the market for milk is perfectly competitive.[23] I assume that the price per unit is $1.00. The outcome is economically efficient under the usual economic approach.[24] All the dairies then join together through their trade association and state to the NZ government that if the trade association can set the price of milk it will increase the quantity sold, which according to Prof. Bresnahan would be a pro-competitive outcome. Suppose that 100 units of milk are sold with 50%, or 50 units, sold in schools. The trade association increases prices in the schools to $1.50 per unit and still sells 45 units since demand in schools is not very price sensitive. The trade association earns a profit of $22.50 on these sales. The trade association simultaneously decreases the price of milk sold outside the schools to $0.90, i.e. it is cross subsidizing sales of milk outside schools.[25] Because sales of milk outside schools are more price sensitive, as soda and other drinks are available, the decrease in price to $0.90 causes demand to increase to 60 units.[26] Total units of milk sold have increased to 105 which is an increase over the initial competitive result of 100 units. While the dairy association loses $6.00 on the sale of the cross subsidized milk it makes a net profit of $16.50 which it distributes to its members. The average price of milk to consumers has increased from $1.00 per unit to $1.16 per unit. So price has increased, quantity has increased, and the dairy association returns the profits to its members. The example goes from a perfectly competitive

[23] I am not saying the actual situation in New Zealand follows this example, but I am demonstrating the effect of distorted prices.
[24] In particular, I assume that all other sectors of the economy satisfy conditions so the first fundamental theorem of welfare economics holds.
[25] I assume that no arbitrage can take place between sales of milk inside and outside schools.
[26] Note that I am not assuming the cartel sets the overall monopoly price. Cartels often do not set the monopoly price to decrease the incentive for cheating among its members.

situation to a cartel situation in which consumers are on average worse off while producers are better off.[27] I do not consider the change to be pro-competitive; indeed, the reverse has occurred yet quantity has increased. The distortion in prices breaks the link between quantity and both consumer welfare and competition.

4.14 This example demonstrates that an increase in quantity does not necessarily reflect an increase in independent rivalrous conduct with constraints arising from unilateral decisions by firms resulting in competitive behavior. Indeed, in this example the opposite effect occurs. Perfect competition has been replaced by coordination among previous competitors. Yet quantity in the market has increased. But this increase in quantity does not imply consumers are better off. Under either a consumer welfare standard or social welfare (economic efficiency) standard, formation of the cartel has led to a decrease in welfare. The distortion in prices created by the cross subsidy breaks the link between changes in quantity and changes in welfare.

4.15 The famous US legal scholar William Baxter recognized that output and economic welfare do not necessarily move in the same direction: "However, whether one assumes that antitrust law should be concerned with total social welfare or merely with consumer welfare, output and welfare do not always move in the same direction in response to an agreement of either [horizontal or vertical] type."[28]

4.16 Prof. Baxter's discussion and examples directly contradict Prof. Bresnahan's claims that there is a "consensus in antitrust economics that output expansion is the hallmark of a pro-competitive arrangement." (¶296) The paper I referred to as well as the acknowledged cross-subsidy leading to a negative price to credit card users breaks the nexus between quantity and economic welfare. Prof. Bresnahan's Figure 5 does not take into account that prices are distorted by the cross subsidy arising from the tax paid by EFTPOS users, so that his simple diagram does not give useful evidence on the effects of the cross subsidy on economic welfare.

4.17 Prof. Bresnahan recognizes that his "competitive outcome" may be undesirable in terms of a "social welfare standard rather than an antitrust standard". (¶302) Where he goes wrong is that with undistorted prices (basically perfect competition which he

[27] In this situation both consumer welfare and social welfare decrease.
[28] W. Baxter and D. Kessler, "Toward a Consistent Theory of the Welfare Analysis of Agreements", Stanford Law Review, 47, 1995, p. 617 (footnote omitted). Prof. Baxter also served as head of the US Department of Justice Antitrust Division during the 1980s. In discussing price discrimination prior to Prof. Baxter's article, Mr. Bork stated that "the impact of discrimination on output, therefore, may be taken as a proxy for its effect on consumer welfare." (R. Bork, The Antitrust Paradox, (New York, 1993), p. 395) However, this claim is incorrect as a matter of economic theory and also in its application to legal proceedings as Prof. Baxter explains. Prof. Varian demonstrated that an output expansion is a necessary, but not a sufficient condition, for an improvement in consumer welfare with third degree price discrimination. See H. Varian, "Price Discrimination", in R. Schmalensee and R Willig, Handbook of Industrial Organization, (Amsterdam, 1989).

assumes in his figures) change in social welfare and change in quantity outcomes will often coincide with each other. However, when perfect competition does not exist and prices are distorted, the link between social welfare and quantity no longer exists as Prof. Baxter and others have pointed out.

4.18 Prof. Wright states that the "rules are pro-competitive in that they help expand output (and so the volume of credit card payment services consumed by merchants)". (¶3.6) Similarly, Prof. Klein states that a "substantial lessening" of competition only occurs when market output is restricted. (¶162). These claims do not hold when cross subsidies distort prices as I discuss above and as my example demonstrates. A change in a market from effective competition to a monopoly, which all economists would agree is a "substantial" lessening of competition, can lead to increased quantity and decreased consumer welfare.

4.19 Prof. Bresnahan and other defendants' experts claim that the cross subsidy to credit card users creates an "improved product" for cardholders and merchants. (¶78) Since the MIF leads to a cross subsidy and a negative price for some credit card customers, I agree that the product is "improved" for cardholders since its price is lower than it would be if credit card users paid for the additional cost of the MSF. However, this lower price arises from the MSFs paid for by merchants and by EFTPOS users (and cash payers) who pay a higher price because of the MSF. Thus, the result is a transfer from EFTPOS users to credit card users which means the "quality increase" to credit card users is offset by the "quality decrease" to EFTPOS users. Credit card users who buy one unit of a product for $10.00 and receive, say, one unit of quality also receive free float which improves the "quality" of the product by decreasing its effective price to say $9.90. EFTPOS users also pay $10.00 and receive 1 unit of quality. However, in the absence of the tax arising from the MSF, EFTPOS users would pay say $9.85 and thus they receive a quality "decrease" compared to the situation where the price is not distorted by the cross subsidy.

4.20 However, could merchants be benefitting from the so-called "improved product"? Prof. von Weizsäcker correctly points out that the average credit transaction exceeds the average EFTPOS transaction as I found in my initial brief of evidence, $105 for credit cards and $54 for EFTPOS (Hausman ¶5.4) Prof. Klein refers to similar evidence. (¶42) Does this increased expenditure demonstrate a superior product for merchants? The answer is no because credit cards are not accepted by many shops for small transactions where EFTPOS is often accepted. Prof. von Weizsäcker has forgotten to take index number considerations into account.[29]

4.21 Let me make the distinction more stark. Suppose I consider a specific merchant, the French Café restaurant in Auckland, and I find that the average AMEX credit card transaction is higher than the average Visa transaction. Again, I cannot conclude that the AMEX credit card is a "superior product." The likely explanation is that people who use AMEX credit cards tend to have higher incomes and spend more at fancy restaurants than Visa credit card users. This example illustrates the old saying in statistics: correlation does not prove causation.[30] Indeed, AMEX transactions are on average higher than either Visa or MasterCard transactions across all expenditure. AMEX should then be the most superior product of all, yet many merchants do not accept AMEX.[31] The reason is that if a person cannot use an AMEX card [s]he will use a Visa or MasterCard, and merchants do not expect the person to spend a lower amount because [s]he is not using the AMEX card.

4.22 Prof. Klein does not disagree with my view that increased customer expenditure that arises with premium cards is not worth the higher MSFs that result from their usage for many types of stores. (Klein ¶192, Hausman ¶5.2) Instead, he claims that the premium cards will lead to increased incremental sales from cardholders. While I agree that competition among merchants may lead to acceptance of premium cards (as with credit cards overall), an individual merchant, e.g. a convenience store, is unlikely to gain incremental sales and will decide not to accept premium cards or will surcharge premium cards if the rules permit.[32] The challenged rules are not in the interests of all merchants, and it would be in the best interests of any merchant to be able to choose whether or not to accept premium cards or only to accept credit cards which are non premium and will have lower MSFs.

---

[29] Prof. von Weizsäcker states that the larger amount of sales may be due to "fewer liquidity constraints" since a credit card user can get a loan from the credit card. (¶77) He presents no evidence of the importance of liquidity effects. The evidence that AMEX charge card users had higher average transaction amounts than Visa or MasterCard transactions contradicts this hypothesis, because AMEX for many years did not offer a credit facility to its charge card customers. I also doubt that liquidity effects explain much of the variance in purchase of "everyday" items, e.g. food. Prof. von Weizsäcker also states that a merchant may prefer use of a credit card rather that EFTPOS because the sum total of purchases may be higher (¶81). Again he provides no empirical evidence and for most merchants I do not believe the claim to be accurate as I discuss in this paragraph.

[30] I tell my MIT students each year that at the end of World War II storks reappeared in Rotterdam and some months later a notable increase in births occurred. Overall, statisticians have found a correlation between the stork population and births in the Netherlands.

[31] I find that the "correlation fallacy" holds in Prof. von Weizsäcker's discussion of merchant "ex ante" and "ex post" preferences. (¶83-88) According to Prof. von Weizsäcker's analysis, all merchants should accept AMEX cards because they have the highest average transaction volume. However, the evidence in NZ is that only about 60% of merchants who accept credit cards (Visa or MasterCard) accept AMEX. Brief of evidence of Peter John McLeod, ¶68(b).

[32] In this situation I would expect issuers to offer "dual cards" with premium and non-premium features, just as some issuers now offer dual cards for AMEX and Visa.

4.23 Prof. Wright claims that greater cardholder demand to use Visa credit cards means "each merchant may be willing to pay more to accept Visa cards." (¶5.32) He does not explain why since consumers can also use other credit cards (e.g. MasterCard) or other payment means such as EFTPOS. His claim is inconsistent with merchants' repeated complaints in NZ, Australia, and elsewhere in the world that interchange fees are too high. If merchants benefitted from high interchange fees which lead to high MSFs (which merchants pay) I would not expect them to argue that interchange rates should decrease as it would not be in their economic interests.

4.24 Merchants mostly accept credit cards and pay higher MSFs than for EFTPOS because of competition among merchants as I explained in my initial brief. (Hausman fn. 97, pp. 30-31) If a merchant loses a small fraction of potential sales because it does not accept credit cards, its profits would be less. Thus, merchants are better off by accepting credit cards than by not accepting them. Prof. von Weizsäcker (¶79) similarly finds that merchant acceptance arises from competition among merchants. He also concludes that overall aggregate benefits of increased expenditure will not occur. (¶79) However, even if an individual merchant receives a net benefit because it accepts credit cards this does not demonstrate a "superior product". Every customer who purchases from a monopolist is made better off than by not purchasing from the monopolist.

4.25 The challenged Visa and MasterCard rules lead to distortions in prices because of the reduction in competition in the acquiring market. A straightforward approach to fixing this distortion is along the lines of the Commission's settlement with Visa and MasterCard, i.e. to have unilateral posting of interchange rates by issuers coupled with bilateral negotiations between issuers and acquirers, and to allow merchants to surcharge for credit card usage and steer customers to alternative payment methods (this outcome is essentially Counterfactual C). Under this settlement, individual merchants can then determine the price that each wants to charge users of credit cards. So long as consumers are told how much their credit card use will cost them, consumers can decide whether to use their credit card and receive reward points, free float, and perhaps use the revolving credit facility and pay a higher price – or use their EFTPOS card without these features, but pay a lower price. Some merchants may well decide not to surcharge or steer, but that will be the individual merchants' profit maximizing choice. The outcome of the settlement will lead to reduced MSFs as acquirers recognize their businesses will increase if they can offer merchants lower MSFs (lower prices). Thus, acquirers will have an economic incentive to negotiate decreased interchange rates with issuers. Competitive constraints on MSFs will also increase because merchants through surcharging or steering will cause decreased use of credit cards with high MSFs.

4.26 Prof. von Weizsäcker claims that differential surcharging is "discrimination" against MasterCard users. (¶321) I disagree. The term price discrimination is well understood among economists. For example, Prof. Tirole in his graduate textbook states: "Hence, we will say that there is no price discrimination if differences in prices between consumers exactly reflect differences in the costs of serving these consumers (this amounts to considering the net costs of serving a consumer.)"[33] To the extent that merchants surcharge the extra cost created by credit card use to consumers, I find that they are eliminating price discrimination that would otherwise exist since price would now include the cost of the transaction. The price distortion created by the tax on EFTPOS users would no longer exist.[34]

4.27 Thus, I conclude that in the presence of distorted prices caused by cross subsidies arising from the "tax" on EFTPOS users, it is incorrect to claim that an increase in quantity in a market demonstrates an increase in competition. Further, the cross subsidy (negative prices) for credit card usage lead to decreased consumer welfare in certain circumstances. The Commission settlement with Visa and MasterCard will increase competition in the acquiring market resulting in decreased MSFs and increased competitive constraints on MSFs.

5 Volume Maximization

5.1 Prof. Bresnahan makes the unsupported claim that the MIF is "set at the level that will maximize transaction volume within its scheme." (¶171) His claim is that a higher MIF leads to investments by issuers, which "creates a more valuable product that the acquirer can offer to merchants." (¶178) However, I believe his discussion misses an important point. The evidence demonstrates that issuers do not pass on 1-1 the MIF to cardholders.[35] The evidence also demonstrates that acquirers do pass on approximately 1-1 changes in the MIF to the MSFs. Since a significant proportion of merchants in NZ do not accept Visa or MasterCard, a decrease in the MIF leading to a decrease in MSFs will lead to more merchants accepting credit cards in NZ. Prof. Bresnahan fails to consider this effect in his discussion of volume maximization.

5.2 This fact that issuers do not pass on all of the MIF to credit card users also invalidates Prof. von Weizsäcker's approach that claims that demand for services of a payment system depend only on the total price.[36] (¶46) The degree of product

[33] J. Tirole, The Theory of Industrial Organization, (MIT Press, 1988), pp. 133-134. The Nobel Prize winner G. Stigler uses a similar definition in his textbook, The Theory of Price, (MacMillan, 4th ed., 1987).
[34] Prof. von Weizsäcker discusses the possibility of "excessive surcharging" (¶336-337). He again uses the incorrect definition of price discrimination. He also neglects to consider the fact that almost every consumer who uses a credit card also will have an EFTPOS card which can be used in place of a credit card so this strategy would not be useful, especially if the merchant would lose sales because the customer decided he was being overcharged.
[35] See Hausman ¶5.3.
[36] Perhaps, Prof. von Weizsäcker is aware of this factor and counts it as "transaction costs."

differentiation across issuers (e.g. different reward offers) and the amount of competition will affect the pass through of the MIF to credit card users.[37] Prof. von Weizsäcker also mistakenly assumes merchants are free to steer customers between payment methods or set minimum amounts for use of credit cards. (¶56, ¶57.3, ¶62, ¶64). Both practices are subject to restrictions under the Visa and MasterCard rules. Prof. von Weizsäcker's use of the "equal weight set-up" (¶62) is contrary to the actual outcome in credit card systems for this reason and because of the empirical evidence I discuss below. Prof. von Weizsäcker recognizes that without his equal weight setup, the asymmetry would affect the efficiency of the choice of payment system. (¶59) The academic literature uniformly assumes that merchants have a lower price elasticity than consumers which leads to the social inefficiency of outcomes as I discuss in my initial brief and is recognized by many of the defendants' experts (Hausman, ¶5.7).[38]

5.3 Indeed, Prof. Klein directly disagrees with Prof. von Weizsäcker's claim. Prof. Klein states: "because card use by cardholders is more sensitive to a change in price than card acceptance by merchants..." (¶123) Prof. von Weizsäcker claims to the contrary: "Thus, at the prices set by the payment systems, the price sensitivity of demand...is the same on both sides of the business." (¶267) Prof. Klein's view is consistent with my evidence, the previous academic literature (as Prof. von Weizsäcker admits) and the empirical evidence from Australia and NZ.

5.4 Prof. Wright has recently written an academic paper on credit card interchange fees with Prof. Rochet.[39] The authors allow for an advantage of credit card usage for "credit purchases" where credit is necessary. They also allow for "convenience usage" where EFTPOS or cash can be used. They state:

> "As a result, card networks which maximize profit by maximizing the number of card transactions have an incentive to encourage over-usage of credit cards by convenience users (even when these consumers do not need the credit facility) provided merchants still accept such credit card transactions. A card network does this by setting interchange fees high enough to induce issuers to offer rewards and cash back bonuses (equivalent to negative fees).... Taking into account both types of

[37] In the US the major airlines, e.g. Delta, American, and United, each have exclusive deals with individual issuers to offer reward points on the given airline. These offers have been an important competitive factor in the US.

[38] I find Prof. von Weizsäcker's explanation of examples of merchant steering (¶63ff) to be contrary to economic rationality. Suppose a person is a transactor (does not use the credit facility) and receives free float and rewards for use of a favorite credit card. A merchant "asks" the customer to use an EFTPOS card which has no free float and no rewards. Many customers will choose to use the credit card since the EFTPOS cards has no advantages, in any dimension, compared to the credit card.

[39] J. Rochet and J. Wright, "Credit card interchange fees," December 2008, mimeo. Prof. Wright did not discuss this academic paper in his brief of evidence.

transactions, the card network always sets its interchange fee too high in our setting." (pp. 2-3)[40]

They conclude: "In terms of this trade-off, we find that an unregulated card network always sets the interchange fee too high. Consumer surplus can be increased by imposing a cap on interchange fees which equals the retailers' net avoided costs from not having to provide credit themselves." (p. 19) Thus, since Prof. Wright claims Visa attempts to maximize its volume, his paper with Prof. Rochet demonstrates that the "tax" on EFTPOS users, leads to a reduction in consumer welfare because of the cross subsidy (negative fees) which arises in the context of their model.

5.5 To the contrary, Prof. von Weizsäcker concludes "I do not believe that efficiency of choice of payment scheme is a great problem." (¶67) Thus, he ignores the distortion created by the tax on EFTPOS users that I discuss in my initial brief. Prof. von Weizsäcker's primary reason for his claim is that if a merchant accepts a credit card "at the going price of the scheme [it] provides a net benefit to the merchant." I agree, but this same reasoning applies to a consumer purchase from a monopolist. The consumer only makes the purchase if a net benefit to the consumer exists, but economic analysis demonstrates that a monopolist can have large negative effects on efficiency. Thus, I disagree with Prof. von Weizsäcker's conclusion. Prof. von Weizsäcker's conclusion is also contradicted by the academic paper by Profs. Rochet and Wright that I discuss in the previous paragraph.

5.6 Profs. Rochet and Wright in their paper agree with my conclusions regarding acquiring and issuing markets (along with most of the academic literature) and disagree with Prof. von Weizsäcker. Profs. Rochet and Wright state: "For simplicity, we assume that acquiring merchants is perfectly competitive for banks...By contrast, we assume that issuers are imperfectly competitive: the cardholder fee *f* is equal to the net issuer cost *cI* plus a profit margin π assumed to be constant."[41] Perfect competition causes 1-1 pass through of MIF to MSF, which is my conclusion. Imperfect competition causes less than 1-1 pass through of the MIF to credit card users, which I discussed above. These assumptions are consistent with the empirical data from Australia and New Zealand.[42] Profs. Rochet and Wright also agree with my economic analysis which demonstrates that the MSF is passed through into retail prices. They state: "The level of the interchange fee *a* has an impact on retailer cost and thus on the retail price *p(a)*, which results from

[40] See also p. 11 Proposition 3: "If regulatory authorities aim at maximizing (short-term) consumer surplus, privately optimal interchange fees are too high." On p. 12 they find: "In either case, lowering interchange fees from the private maximum to a_T unambiguously raises consumer surplus." Consumer surplus here is equivalent to consumer welfare.
[41] Op. cit., p. 4.
[42] Thus, they disagree with Prof. von Weizsäcker's brief of evidence, ¶257-258.

competition between retailers."[43] Thus, they again disagree with Prof. von Weizsäcker who expresses doubt that MSFs are passed on in higher retail prices.[44]

5.7 Also, Visa and MasterCard compete for bank issuers to feature their cards as the primary card and offer issuers payments to adopt their cards.[45] Thus, Visa and MasterCard use their market power with respect to merchants to induce issuers to promote their cards.[46] The competition among Visa and MasterCard for banks to feature their cards as the "primary card" is an important economic consideration omitted from Prof. Bresnahan's and Prof. von Weizsäcker's discussions.

5.8 I also disagree with Prof. Klein's statement that "Visa has the incentive to set interchange fees to maximize payment system output. This is because Visa does not retain any part of interchange fees...Thus, Visa maximizes its profits by choosing interchange fees that maximize the total output of the Visa system." (¶124) Prof. Klein has missed the point that Visa makes payments to issuers apart from interchange fees to promote Visa as the issuer's primary card rather than promoting MasterCard. Under this situation, Visa no longer has an incentive to maximize system output because it will set fees at a sufficiently high level to allow it to maximize its profits after payments to issuers. Indeed, Prof. Klein does not dispute my point that the MIF does not maximize payment system output. (¶165)

5.9 In citing to Mr. Sheedy's evidence regarding volume maximization, Prof. Wright neglects to take into account payments made by Visa to banks to promote their cards that I discussed above and in my initial brief. (¶5.14) Thus, Prof. Wright fails to account for all relevant elements of Visa's revenues and costs, and does not describe their ability to maximize profits correctly.

5.10 Prof. von Weizsäcker claims that MasterCard sets the MIF to maximize the business volume of the MasterCard system. (¶34, ¶187ff) Indeed, he formulates an economic model which he claims demonstrates this proposition. (Appendix 3) The economic model has a number of special assumptions which I consider to be unrealistic. Prof. von Weizsäcker does not allow for competition among issuers who follow a differentiated products strategy. When this differentiated products competition is allowed for in the context of his model, his claimed results no longer hold.

5.11 While I do not extensively critique Prof. von Weizsäcker's discussion of his claim of business volume maximization in his Section 8 (¶172ff) since the results of his

[43] Op. cit. p. 5 and Corollary 1, p. 8.
[44] Prof. von Weizsäcker brief of evidence, ¶259-260.
[45] See e.g. ASB.172.0006, ASB.172.0007, WEST.013.033, WEST.300.030, WEST.300.032, BNZ.052.0014, BNZ.052.0017, BNZ.052.0022, BNZ.068.0033, BNZ.068.0034, BNZ.088.0016, BNZ.088.0017, and BNZ.009.0088.
[46] In addition to interchange, the card schemes also make other payments to issuers to promote either Visa or MasterCard as the bank's primary card.

economic model do not hold under reasonably general conditions as I note in the preceding paragraph, I note that his discussion is unrealistic because he essentially assumes that heterogeneity does not exist. For example, in his discussion of the "quality influencing parameter" he fails to note that different merchants will have different preferences over outcomes, as it affects their profits differentially. Some merchants will want to attract affluent customers with Visa or MasterCard premium cards without having to accept AMEX and pay a higher MSF. Other merchants selling a basic commodity, e.g. food, will gain no advantage from premium card users and indeed would prefer their customers to use EFTPOS. Since a given issuer will have many types of merchants, not only a single type, I find Prof. von Weizsäcker's discussion to be quite unrealistic. Heterogeneity is the essence of differentiated product markets and, indeed, firms look for profitable "niches" among consumers with certain types of preferences. Prof. von Weizsäcker fails to take account of heterogeneity and market niches.[47] Further, he fails to justify his claim that centrally determined MIF as now exists will be superior to unilaterally posted or bilaterally negotiated interchange fees in the presence of heterogeneity, even in the context of his model.[48] (¶214-217)

5.12 In his discussion of pass-on ratios and the influence of volume maximization, Prof. von Weizsäcker states that previous academic research assumes a pass-on ratio of 100% on the acquiring side and less pass-on on the issuing side. (¶194) Prof. von Weizsäcker states he is not convinced that the assumption is empirically correct. He states: "We should not forget that the acquiring business is much more highly concentrated than the issuing business..."[49] This statement is not correct in New Zealand, or generally in other comparable developed countries. More importantly, I went to considerable econometric effort in my initial brief and estimated approximately 100% pass through in both New Zealand and Australian acquiring markets. Prof. von Weizsäcker and the other defendants' experts raise no objections to my econometric analysis and some, e.g. Prof. Bresnahan, claim it is what they

---

[47] Given this heterogeneity we would expect different levels of the MIF for different acquirer/issuer pairs within the context of Prof. von Weizsäcker's discussion. I note that he claims a single MIF is best yet this situation eliminates his claims of overall volume maximization. For a recent academic paper that finds significant heterogeneity and consumer niches in supermarket shopping see M. Burda, , M. Harding, and J. Hausman, "A Bayesian Mixed Logit-Probit Model for Multinomial Choice, Journal of Econometrics, 147, 2008.

[48] In his sound volume in shops example (¶216) let us assume two equal sized groups of customers who shop at different clothing stores: young customers who like popular music at high volume and older customers who like no background songs at all. The average sound level of high and zero will lead to significantly less sales than individually set sound levels, each at the optimum for the customer group at issue.

[49] Prof. von Weizsäcker's discussion of pass on and market structure is incorrect. He states: "We know that a monopolist does not pass on a cost reduction fully." This statement is incorrect. We know that a monopolist passes on a minimum of 50% of a marginal cost change (for "regular" shaped demand curves) but a monopolist can pass on more than 100% of a cost change in the case of isoelastic demand curves. See e.g. J. Bulow and P Pfleiderer, "A Note on the Effect of Cost Changes on Prices," Journal of Political Economy, 91, 1983 and J. Hausman and G. Leonard, "Efficiencies from the Consumer Viewpoint," George Mason Law Review, 7, 1999.

expected. On the issuing side, we know from the Australian experience that pass through is significantly less than 100% as I discussed in my initial brief.[50]

5.13 Prof. von Weizsäcker concludes from his model that at the optimal MIF, which he calls ICF*, the pass on ratio of the issuing side and the acquiring side should be equal. (¶206-207, ¶208) If we assume that in Australia before regulation that ICF* was achieved, we would expect to observe equal pass through ratios for acquiring and issuing. But since we have observed significantly higher pass through for acquiring, an implication of Prof. von Weizsäcker's model is that the MIF observed in pre-reform Australia was not at the volume maximizing MIF, i.e. ICF*.[51] Similarly, in New Zealand I find 100% pass through on the acquiring side, but no evidence has been put forward that claims pass through on the issuing side is 100%. Thus, again New Zealand must not be at the volume maximizing MIF or Prof. von Weizsäcker's model is incorrect. Prof. von Weizsäcker has failed to confront the empirical evidence that acquirer pass through is significantly higher than issuer pass through.[52] Thus, the implications of his model are not consistent with the real world evidence, his equal weight claim is invalidated, and he has not demonstrated that MasterCard maximizes volume.

5.14 Volume maximization in the acquiring market, if it did in fact occur, is not associated with greater competition except under special circumstances which do not hold in the real world. Prof. von Weizsäcker, alone among the defendants' experts, attempts to do economic analysis that demonstrates volume maximization. However, even given his assumptions his result does not hold in a general situation. Further, his assumptions do not hold in the real world as the empirical evidence and academic literature demonstrate. Lastly, volume maximization leads to interchange rates that are "too high" in terms of overall consumer welfare in a variety of economic models.

6 The Challenged Rules

6.1 It is important to consider the cumulative effect of the challenged rules, rather than consider them individually. For example, the anti-steering rules, considered alone, might not significantly reduce competition in the acquiring market if the no surcharge rule did not exist. However, the challenged rules need to be considered together to determine if, in their absence, an increase in competition in the acquiring market would occur. In the last section of this reply I will consider the cumulative effect of

[50] Hausman ¶6.9 and fn 90, p. 29. I am unaware of any empirical findings that support 100% pass through on the issuing side in Australia, where the large changes in the MIF should allow for precise estimation of pass through amounts.
[51] I am not claiming that the RBA has found ICF* for Australia, nor is volume maximization the RBA's goal.
[52] My experience in the US is also that acquirer pass through is near 100% while issuer pass through is significantly less than 100% for Visa and MasterCard.

the challenged rules in discussing the counterfactuals. In this section, the context of the cumulative effects of the rules should be kept in mind when I discuss each rule.

Honor All Cards (HAC) and Honor all Issuers (HAI) Rules

6.2 In his discussion of the HAI rule (¶186ff) Prof. Bresnahan neglects to consider the fact that many credit card users carry more than one credit card and almost all credit card users also carry an EFTPOS card. If a given merchant decides to refuse a Visa card issued by ANZ, the consumer will either use another credit card or use EFTPOS or less likely, decide not to make a purchase.[53] Indeed, some banks offer "dual cards" which have both credit card functionality and EFTPOS functionality.[54] This situation commonly occurs now for consumers who use AMEX cards, which have a much lower acceptance rate. If a merchant does not accept AMEX, the large majority of users decide to use another credit card in place of AMEX. This reasoning extends to the Honor All Cards (HAC) rule. Prof. Bresnahan's approach leads to the conclusion that if a merchant has decided to accept credit cards offering the previous "basic" rate it will have no choice but to accept the "premium" cards, which will lead to a higher MSF for the merchant. However, if a given consumer is informed that the merchant does not accept premium cards (just as it does not accept AMEX) the consumer can use another credit card. Alternatively, I would not be surprised if issuers began to offer credit cards that had two different interchange amounts, similar to banks (Westpac) who currently issue "companion" cards for AMEX cards, e.g. Visa cards, which are used depending on whether the merchant accepts AMEX.[55]

---

[53] Prof. Klein considers the effect on consumers who wish to carry or use only one payment card, but gives no statistics on how many consumers would be affected. Given the high use of EFTPOS in New Zealand, I would not expect many consumers who carry or use a single credit card, and do not ever use EFTPOS. Indeed, Prof. Klein states that EFTPOS cards are carried "by the vast majority" of consumers. (¶177) In 2007 according to the New Zealand Bankers Association, as of 2007, there were 2.7 million credit cards on issue, and 5.1 debit cards on issue. See New Zealand Bankers Association, Annual Comparison of Payment Methods (Non-Cash) 2002 to 2007, http://www.nzba.org.nz/public.asp#paystats. The latest available data from 2006 finds 3.3 million people in New Zealand over the age of 14 years. A 2008 estimate finds an average of 1.3 credit cards per adult in NZ (assuming that each adult has an EFTPOS card). See Lafferty, "Credit Cards and Consumer Finance—New Zealand", prepared for American Express, 2008. Data from the US finds an average of 2.37 credit cards per person in 2001. 73.1% of individuals who had at least one credit card (e.g. a Visa card) had a card on least one other competing network (e.g. AMEX). Thus, the percentage of people with more than one credit card would be even higher since an individual could hold Visa cards from different issuers (e.g. Citibank and Bank of America). M. Rysman, "An Empirical Analysis of Payment Card Usage," The Journal of Industrial Economics, 55, 2007, p. 13, p. 18.

[54] Brief of Evidence of Blair Robert Vernon, pp. 15-16 and brief of evidence of Matthew Joseph Geor, p. 4.

[55] For the large supermarkets in NZ, the interchange for credit card transactions does not vary depending on whether a "basic" or premium card is used. See Brief of Evidence of Michael Henry McCormack, fn 156. The companion card strategy demonstrates that consumers do not object to carrying more than one credit card. Westpac offers a companion card strategy for AMEX in New Zealand. See http://www.westpac.co.nz/olcontent/olcontent.nsf/Content/Westpac+hotpoints+American+Express+Card The companion card strategy exists in a number of other countries including the US and Australia. See e.g. http://www.carlson.co.nz/Blogs.aspx?BlogCat=Frequent%20Flyer%20Programs which discusses Westpac Australia's companion card strategy. Companion cards offer a single monthly statement, single credit limit, and a single rewards account.

6.3 Prof. Wright makes a similar omission when comparing EFTPOS cards and credit cards and the relationship of interchange fees. (¶5.16-5.18). Consumers typically have one EFTPOS card, corresponding to their bank account, while many consumers have more than one credit card. Thus, a merchant would be very unlikely to refuse an EFTPOS card while a merchant could decide to reject a given credit card, knowing that the consumer could pay with an EFTPOS card or with another credit card.

6.4 Prof. Wright gives his view that a key reason for the Honor All Cards Rule (HAC) is "consumers do not have to worry about exactly what type of Visa credit card they hold or which financial institution they obtained it from when they shop at a merchant that accepts Visa." (¶7.3) Visa made a similar claim in the US with respect to the Visa debit card. However, Visa (and MasterCard) settled a legal case with plaintiffs in 2003 (the Walmart litigation) in which Visa agreed to drop the HAC rule for Visa debit cards which plaintiffs objected to because of its high interchange rate, compared to pin debit (EFTPOS) cards in the US.[56] While Prof. Wright is careful to limit his remarks to credit cards, he does not explain why Visa was willing to forgo acceptance of its debit cards in the US since the same "customer confusion" could arise, in principle.

6.5 Prof. von Weizsäcker makes a similar claim that potential MasterCard cardholders must be able to use their card in every shop throughout the world that exhibits the MasterCard sign.[57] (¶72, ¶345) However, in the US MasterCard also agreed with plaintiffs to drop the HAC rule for MasterCard debit cards. Thus, a customer could see a MasterCard sign on a merchant door in the US and find that the merchant did not accept MasterCard debit cards.[58]

6.6 Prof. von Weizsäcker claims that the HAC rule is necessary to allow for premium cards. (¶348) He claims a shop can expect to sell more to holders of premium cards. For certain types of shops I agree. However, as I discuss above this claim is subject to the correlation does not prove causation fallacy. The correct question is whether, for most shops, a given customer will buy more if [s]he has a premium card rather than a basic card. My economic analysis is negative as I discuss above. Thus, it is not worthwhile for the shop to accept premium cards and the tax to EFTPOS users increases with the required acceptance of premium cards.

[56] Visa also made a payment of approximately $2 billion to plaintiffs. MasterCard agreed to also dropping its HAC rule for debit cards and made a payment of $1 billion to plaintiffs. For a discussion of the effects of this policy change see my first brief of evidence, fn. 47, p. 17.

[57] Prof. von Weizsäcker claims that rejection of a given type of card may be in effect a violation of the HAI rule. (¶347) I fail to agree that an HAI rule is necessary, but a merchant will need to explain to a customer why it does not accept a given type of card so I do not see rejection of a card with a high MSF by a merchant leading to "confusion" among customers.

[58] Some large merchants did stop accepting MasterCard debit cards until MasterCard lowered the interchange rate on its debit cards for these particular merchants (e.g. Walmart).

6.7 Prof. Wright also states that a HAC rules "protects consumers from opportunistic merchants or acquirers" (¶7.5) but does not state how refusal to accept a given issuer's credit card would allow for merchant or acquirer opportunism to charge a consumer a higher price. Indeed, most consumers can use another credit card, an EFTPOS card, cash or leave the store to purchase elsewhere. Thus, I fail to see how opportunism would arise.

6.8 Lastly, Prof. Wright discusses the possibility that incumbent acquirers who are also issuers could reject transactions from a new issuer (¶7.9) or retard innovative new credit cards (¶7.10). This discussion emphasizes why Visa and MasterCard access rules are anti-competitive. If a non-affiliated acquirer competes in the market, as First Data Corporation does in the US, the acquirer would not have an economic incentive to engage in anti-competitive strategies as discussed by Prof. Wright. The access rules potentially permit this anti-competitive behavior.

6.9 Prof. von Weizsäcker claims "It does not make sense to run a four party system without that guarantee [the HAI rule] for the cardholder." (¶120) He does not analyze what "sense" means in this situation. While I find his imaginary conversation (¶121) interesting (as a rhetorical device) I do not think it sheds light on the particular issue at hand. If I go into my local Citibank the representative will attempt to sign me up for a Citibank AMEX card. Many merchants will not accept AMEX and if I point out this fact to the Citibank representative, I will be told to also sign up for a Citibank MasterCard which will be accepted. So as a consumer I will have a backup plan to take care of merchant acceptance probabilities. In New Zealand, Westpac will automatically offer me a companion card to my AMEX card as I discussed above. Thus, I do not agree with Prof. von Weizsäcker's insistence that HAI is essential to a four party payment system existing. (¶293) He fails to consider the outcome where consumers carry more than one credit card in addition to an EFTPOS card.

6.10 Prof. von Weizsäcker's prediction that a likely outcome of abolition of the HAI rule is a "winner take all" outcome (¶133) with only a single issuer remaining is an unlikely outcome when strategies of competing banks are considered. He arrives at his outcome because an issuer may offer a merchant a MSF with a substantial quantity discount. (¶130) But AMEX could attempt this strategy now by offering a large merchant a low MSF in return for the merchant exclusively accepting AMEX and not Visa and MasterCard to drive cardholders to AMEX. Indeed, AMEX (and Discover Card) used this strategy in the 1990s and in the early years of this century, but it proved to not be successful. Competing issuers improved their offers to cardholders and this strategy counteracted the AMEX strategy. Prof. von Weizsäcker in his example implicitly assumes that competing issuers will not take counter strategies into consideration.[59] I find it unclear how a single NZ issuer and one or more large merchants could cause sufficient consumer brand shifting to effect a "winner take all single issuer". The NZ issuer would face competitive responses by the other NZ banks and scheme participants to counteract this attempt.

6.11 Prof. von Weizsäcker concludes since a HAI rule is "essential" to MasterCard's existence, merchants cannot be allowed to use surcharges to circumvent the rule. (¶149, ¶151) I discuss the no surcharge rule in the next section. Here I point out that Prof. von Weizsäcker's conclusion violates his earlier consideration of consumer welfare because it leads to price distortions arising from the tax on EFTPOS customers of a merchant. Taxing one groups of customers to provide a cross subsidy (negative price) to another set of customers will not typically lead to a socially welfare maximizing outcome.

6.12 The HAC and HAI rules are not necessary for the operation of a four party credit card network. Their effect, in conjunction with the no surcharge rule, requires merchants who accept a Visa card to pay an MSF which is largely determined by the MIF. By giving a merchant the opportunity to refuse to accept cards with high interchange or to surcharge these cards, constraints on MSFs will increase in the acquiring market and competition will increase. Further, these rules do not protect consumers from opportunistic actions by merchants because consumers have alternative payment opportunities and merchants typically must protect their reputations to ensure repeat shopping at a given merchant.

No Surcharge Rule

6.13 In his discussion of the no surcharge rule, Prof. Bresnahan assumes the alternative to be a "uniform surcharge to all Visa and MasterCard transactions." I believe that alternative is not the appropriate alternative. As I state in my initial brief of evidence (¶5.2) I believe elimination of the no surcharge rule would lead to unbundled MSFs (MSFs based on "interchange plus a margin") and differential surcharges for different brands and types of cards, e.g. "premium cards." Indeed, BNZ has already unbundled MSF rates for China Union Pay transactions.[60] Increased use of premium cards at a merchant will lead to a higher MSF since the higher MIFs of premium cards will be passed through.[61] The evidence that Prof. Bresnahan references of

[59] In his scenario 2 Prof von Weizsäcker overlooks the fact that the major NZ issuers are also the acquirers and have relatively similar market shares. Thus, I find it unlikely that NZ issuers would attempt to bar each other's card acceptance at NZ merchants because of potential retaliation from one another. Prof. von Weizsäcker's Scenario 2 is contradicted by actual experience as well. If large merchants can force small issuers to give them a better deal, we should observe supermarkets achieving a lower discount rate from AMEX than the MSF from Visa and MasterCard. This outcome is contrary to the evidence in NZ as well as in the US and other countries.

[60] See Statement of Evidence of Russell James Briant, ¶62

[61] See Hausman fn. 54, p. 18, where I discuss evidence that greater use of premium cards leads to high MSFs.

surcharging in other countries is limited to uniform surcharges across the credit card brands accepted by the merchant. A more refined framework for surcharging by issuer and by the type of cards used will permit merchants to "fine tune" their strategy.

6.14 Prof. Bresnahan claims the no surcharge rule is a "consumer protection measure" which stops merchants from engaging in opportunistic behavior (¶207ff). His explanation is incorrect. First, a consumer can use an EFTPOS card and pay no surcharge. Thus, only consumers who are "out of money" (liquidity constrained) would be constrained to use a credit card. More importantly, if some consumers decided that the surcharge was "excessive" and left the store without purchasing, the incremental profit loss to the merchant would be significant as I discuss in my first brief of evidence.[62] (fn. 97, p.30) Thus, I expect the surcharge to be broadly cost-reflective, as a consequence of competition among merchants. Lastly, most merchants depend on repeat customers for a large proportion of their business. Thus, the "reputation effect" for a merchant is important and even if a given customer paid the "excessive" surcharge for one transaction, the customer would be unlikely to return to that merchant in the future.

6.15 Prof. Bresnahan also discusses "brand protection" arising from the no surcharge rule. (¶210) However, Cards NZ as well as individual issuers and acquirers in NZ asked Visa to remove the no surcharge rule as I discuss in my initial brief of evidence. (Hausman fn 45, pp. 15-16) I expect Cards NZ to have an interest in protecting the Visa brand, which Prof. Bresnahan attributes to Visa. Prof. Bresnahan does not explain why Visa International would have a better informed view than Cards NZ regarding the question of allowing surcharging, since he elsewhere attributes superior local knowledge about market conditions to Cards NZ in setting the interchange rate. I also note that both the Visa and MasterCard settlements with the Commission removed the no surcharge rule.

6.16 Prof. Wright also primarily defends the no surcharge rule to stop "merchants surcharging opportunistically", above the cost of credit card acceptance. (¶6.6-6.8) He states that he would expect this behavior by merchants who have many captive customers or have significant market power. However, merchants in these situations already can charge above the competitive price. Prof. Wright does no economic analysis to demonstrate that economic welfare would decrease if these outcomes

[62] The evidence Prof. Bresnahan references regarding "excess" surcharges in Australia is incorrect. He states that the MIF is capped at 0.50% but the average surcharge is 1%. (¶209) But merchants pay an MSF, not the MIF. In June of 2008 the RBA reports that the average MSF plus other merchant fees was 0.88%. Since large merchants, e.g. supermarkets have significantly lower MSFs, it is likely that the average merchant cost of using credit cards is near or higher than 1%, once these large merchants are removed from the average.

occurred.[63] In his further discussion of surcharging as free-riding (¶6.10), Prof. Wright neglects to take into account that many consumers carry more than one credit card which they can switch to or use their EFTPOS card. Thus, I do not find that consumers are likely to "blame" the credit card system; rather, they will "blame" the merchant or the particular credit card issuer. Indeed, I find the entire analysis of "blame" not to be helpful because informed consumers will seek out the best deal. These informed consumers are the marginal consumers that discipline prices in a competitive market. Lastly, Prof. Wright fails to explain why Cards NZ asked for an end to the no surcharge rule, not just individual acquirers who he claims might act opportunistically. (¶6.14) Nor could he explain why the Visa and MasterCard settlements accepted the end of the no surcharge rule.

6.17 Prof. Wright also attempts to justify the no surcharge rule by saying it "will likely increase the volume of Visa credit card transactions (and so the volume of Visa credit card payment services consumed by merchants.)" (¶6.22, ¶6.25) However, he does not demonstrate that outcome improves consumers' welfare or is "pro-competitive." Since the no surcharge rule helps enforce the cross subsidy to credit card users which creates distorted prices, no reason exists to believe that an increase in credit card transactions improves consumer welfare (as explained above).

6.18 Prof. Klein states that "merchant surcharging is undoing the effective discount that loyal cardholders receive in the form of rewards and other card benefits." (¶191) Here he is considering economic effects outside of the acquiring market. Further, he fails to note that the "effective discount" is funded in large part by consumers who use EFTPOS for their transactions instead of credit cards. Prof. Klein seemingly wants to stop merchants from including their marginal costs in the price of the products they sell. Prof. Klein also states that individual issuers "would be likely" to implement a no surcharge rule. (¶202) This claim is inconsistent with the request by Cards NZ to Visa international to eliminate the no surcharge rule. If this outcome were a realistic possibility, then elimination of the HAC rules would be necessary in order to enable merchants to bring competitive pressure to bear on the MIF component of MSFs.

6.19 Prof. Klein predicts that not much surcharging will occur. (¶207) Of course, the threat of surcharging will also affect the outcome of bilateral negotiations on interchange. Further, surcharging in New Zealand will take a different form than in

[63] Since prices are already distorted in these situations because of the presence of market power, a careful analysis would be needed to find whether consumer welfare increased or decreased with "opportunistic surcharging". A similar comment applies to Prof. Bresnahan's example of Qantas' surcharges (¶209) since Qantas has market power, in part from regulation by the Australian government which refuses entry on key routes by competing international airlines.

other countries. Rather than a single surcharge for all types of credit cards, the surcharge could be brand, issuer specific and even type of card specific (e.g. premium cards). Causing price to be closer to (marginal) costs typically improves economic efficiency and consumer welfare. Since most markets in which merchants compete are highly competitive, prices should reflect costs closely in those markets. Typically, the more closely prices and costs are aligned the higher is economic efficiency. Indeed, this is one of the primary outcomes that competition policy aims to achieve. In the current situation, by decreasing or eliminating the price distortion caused by the cross subsidy, prices would decrease in the acquiring market and would be closer to the underlying costs, thus increasing economic efficiency.

6.20 Prof. von Weizsäcker discusses the situation where there is an HAI rule, and concludes that a system wide MIF is required. (¶152ff., ¶297ff.) He discusses how in the absence of a MIF an issuer will increase their interchange fees, which will lead other issuers to increase their interchange fees. (¶162) He claims that the process will end up with MasterCard collapsing. (¶164). Thus, he concludes a MIF is necessary. However, his conclusion rests entirely on the presence of a no surcharge rule (which Prof. von Weizsäcker claims is necessary for the existence of an HAI rule as I discussed above). If an individual MasterCard issuer attempts to increase the interchange fee, leading to higher MSFs for merchants, will be met with a surcharge then that will discourage customer use of the issuer's credit card, and encourage consumers to seek alternative credit products. In the presence of surcharging the dynamic process described by Prof. von Weizsäcker will not occur. MasterCard will continue to exist. Thus, as I discuss in my initial brief either abolition of the HAI rule or abolition of the no surcharge rule is necessary to achieve a pro-competition outcome in Counterfactual C.[64]

6.21 Prof. von Weizsäcker claims that if customers buy more using a credit card than EFTPOS, a merchant may prefer credit card usage even though EFTPOS is lower cost. While he recognizes that consumers may not buy more goods altogether, he claims that customers who like to obtain rewards and want to take advantage of the free float will buy more at a given merchant. (¶226) I am unaware of any empirical evidence that supports this assertion. It would seem to imply irrational behavior on the part of consumers since rewards are typically less than 1% of the purchase price and the value of the free float is quite low as well.[65] Thus, I do not see how customers "may buy perhaps 20% or 30% more, if they can pay with a credit card" as they would not be acting in an economically rational manner.[66] Prof. von Weizsäcker

[64] Prof. von Weizsäcker considers alternatives to a MIF, but he does not consider the effects of allowing issuer specific surcharges. (¶168)
[65] Revolvers do not receive any free float as interest begins at the time of purchase.
[66] I disagree with Prof. von Weizsäcker's claim that without option value they would only accept MasterCard due to incremental spend. (¶233). Suppose two merchants sell an identical product. If one

admits to having no direct evidence about the level of incremental spend due to the use of credit cards. (¶231) Without a randomized experiment, results would be subject to the "correlation does not prove causation" problem that I discussed above.

6.22 Prof. von Weizsäcker claims that merchants would be unlikely to surcharge. (¶227) This claim is contrary to the evidence from Australia. But if he were correct, giving the merchants the ability to surcharge will not create a problem and will be used by merchants who will be made better off by using a surcharge. His claim that the no surcharge rule stops cardholder customers "from being the victim of such price discrimination" (¶240) is incorrect because he does not use the correct definition of price discrimination, as I discussed above. If a surcharge is set equal to the MSF then no price discrimination has occurred because the difference between customer price and cost is the same for credit card customers and for EFTPOS customers.[67] In a perfect competition world among merchants (for instance) price set equal to (marginal) cost is the social welfare optimum and leads to the greatest degree of competition, without the effect of the price distorting tax levied on EFTPOS users. Surcharges are required to set price equal to (marginal) cost.

6.23 Prof. von Weizsäcker claims that different surcharges for different MasterCard issuers would be "discriminating against certain MasterCard issuers." (¶312) As I discuss above Prof. von Weizsäcker is not using the term "discrimination" in a correct economic sense. Cost based surcharges remove discrimination because they align prices with marginal costs. Thus, I believe Prof. von Weizsäcker has reached the incorrect conclusion.

6.24 The no surcharge rule interacts with the HAC and HAI rules to permit the tax on EFTPOS users to exist, which in turn funds the cross subsidy for credit card users. The result is a distortion in prices. This distortion is created by a departure of merchant prices from the underlying variable costs. By eliminating either (or both) of the HAC/HAI rules and the no surcharge rule, merchants will have the ability to set their prices to reflect their underlying variable costs. This outcome is the outcome aimed for by competition in most economic markets.

merchant accepts credit cards and the other does not, many consumers will shop at the merchant who accepts credit cards because of the rewards and free float. Competition will thus typically cause both merchants to accept credit cards if one does which we observe empirically. However, neither merchant will gain incremental spend from credit cardholders attempting to get more rewards, which as I discussed above is unlikely to be of a significant order of magnitude to change merchant behavior. As I said in my initial brief merchants do not find surcharge and discounts to be equivalent (¶5.2, ¶6.26) so I disagree that one can draw conclusions on the amount of incremental spend from the relative absence of discounts as Prof. von Weizsäcker concludes. (¶236)

[67] To the extent Prof. von Weizsäcker attempts to justify the no surcharge rule by his "equal weight" principle (¶241-242) it has no basis since the empirical evidence on pass through demonstrates the equal weight assumption does not hold in the real world.

Access Rules

6.25 In discussing the access rules, Prof. Bresnahan claims that the acquiring market is sufficiently competitive that new entry would either not occur or, if it did occur, would have little effect on price or output. While it is difficult to make predictions with certainty that entry would occur, I disagree with the effect of entry given my experience in the US. In New Zealand all the acquirers are large banks that are also issuers. Yet in the US, the largest acquirer for the past 10 years up to November 2008 was First Data Corporation (FDC), which is neither an issuer nor a bank.[68] A number of other large US acquirers are not issuers.[69]

6.26 An acquirer who is also an issuer has conflicting economic incentives while an independent acquirer has the economic incentive to attempt to achieve minimum MSFs. For example, an acquirer negotiating interchange with an issuer will understand that a lower interchange may affect the interchange rates that its issuing department will be able to negotiate. Since issuing is considerably more profitable than acquiring, this economic consideration will affect its behavior. An independent acquirer does not have these conflicting incentives. Whether New Zealand is sufficiently large to attract this type of entry (perhaps combined with Australia) or whether large merchants will decide to become their own acquirers I cannot predict with a high degree of confidence. However, given the Visa and MasterCard settlements with the Commission the presence of acquirers who are not issuers could well lead to lower interchange rates which will then lead to lower MSFs in the acquiring market.[70] Thus, I do not agree with Prof. Klein's claim that new entry into acquiring is unlikely to have "any considerable effect" on competition in the acquiring market. (¶216)

6.27 Prof. von Weizsäcker brings up the "freedom of choice" of a supplier and claims that MasterCard should be able to choose who can join. (¶314) I disagree with his analysis because he does not take account of the conflicting economic incentives that arise for acquirers that are also issuers, which is the outcome in NZ. I agree with Prof. von Weizsäcker that criteria of financial soundness and honesty are relevant considerations (¶315), but I cannot see how these considerations would rule out a company (e.g. First Data) with a long history of successful acquiring in the US because they did not issue credit cards in NZ.[71] Indeed, First Data has acquired for

[68] FDC has once again become the largest acquirer in the US after an approximate nine month period in which FDC was the second largest.
[69] In the U.S., non-bank, non-issuer's Global Payments and Heartland are in the top 10 U.S. acquirers, ranked by acquired credit purchase volume. See Nilson Report # 922, April 2009.
[70] Prof. Bresnahan does his analysis implicitly assuming that interchange rates will not be affected by negotiation with acquirers, which I do not find plausible.
[71] Prof. von Weizsäcker states that under the MasterCard rules, acquirers must also issue cards. (¶311) He fails to note in his discussion that a member must issue a minimum number of cards in order to offer merchant acquiring services.

MasterCard and Visa for over 15 years in the US and provides acquirer and issuer processing services for thousands of banks located in the U.S., Europe, and Australia.

6.28 The presence of acquirers who are not issuers resolves the conflicting economic incentives that currently exist for New Zealand acquirers, all of whom are also issuers. I expect bank issuers to continue to exist because they can offer merchants banking relations and other products which non-bank acquirers cannot offer. However experience in the US demonstrates that non-issuing acquirers can offer services valued by merchants. Especially in the context of the removal of the no surcharge rules and the bilateral negotiation of interchange rates between issuers and acquirers, I would expect non-bank acquirers to be more aggressive in bargaining for lower interchange rates and provide additional competitive constraints in the acquiring market than acquirers who are also issuers.

7 Section 30

7.1 In his discussion of section 30 Prof. Bresnahan states that by not considering whether the interchange fee has a pro-competitive effect, the plaintiffs' experts have failed to do a proper analysis. (¶234-236) I understand this is a legal issue, which I need not address (although as discussed above, I do not agree that the challenged rules have a pro-competitive effect).

7.2 In his discussion of whether the agreement to charge a common MIF is horizontal or vertical, Prof. Bresnahan makes the claim that the schemes "would be harmed by reduced competition in the acquiring market." (¶255) I disagree with this claim. Prof. Bresnahan has missed the important point that Visa and MasterCard compete to have issuers make a given card (e.g. Visa) their primary card. Thus, by increasing the MIF, which banks only partly pass through to consumers, Visa can make its credit cards more attractive to banks. This increased MIF will lead to increased MSFs which will decrease competition in the acquiring market since the price is higher. Prof. Bresnahan nowhere in his evidence takes account of the effects on economic incentives of income pass through of MIF by issuers. I discuss these incentives in my first brief of evidence (¶5.3) which Prof. Bresnahan acknowledges (fn. 207, p. 82), but he does not consider the economic implication of these economic incentives.

7.3 Prof. Bresnahan states that economic analysis should consider the benefits accruing to merchants in the acquiring market. (¶282). He implies that if credit card transaction volumes fall for cardholders it will make merchants worse off, since credit card transactions will fall for merchants. However, he makes a fundamental economic error here. Suppose Visa and MasterCard are the only two credit schemes in New Zealand and the government decrees (similar to Australia) that the MIF will be cut in half.[72] The MSF will decrease accordingly and merchants will be made better off. Some former credit card customers will shift to EFTPOS but merchants prefer this outcome since it lowers their costs. Indeed, merchants will sell more of their products as their prices decrease with a decreased MSF and greater use of EFTPOS. Merchants would only be made worse off if, in aggregate, consumer spending decreased: which is extraordinarily unlikely. For example, Prof. von Weizsäcker recognizes that aggregate consumer spending is not affected significantly by credit card usage. Prof. Klein also recognizes that aggregate demand effects are small and do not drive merchant credit card acceptance decisions. (Klein ¶40) As I have emphasized, it is competition among merchants that causes them to accept credit cards since it is unprofitable for them to lose incremental business compared to the MSF. However, if in aggregate consumers use credit cards less and EFTPOS more, merchants are made better off.[73] Prof. Klein comes to the same conclusion. (¶40-41)

7.4 Indeed, this effect on merchants would seem to be the main reason that merchants attempt to cause interchange fees to decrease. Merchants do not benefit from higher interchange fees or they would not oppose them. Increases in marginal costs lead to decreased profits in the typical economic situation.

7.5 Prof. Klein and other defendants' experts draw an analogy between merchant decisions to accept credit cards and their decision to provide free parking. (Klein ¶39) However, if all parking lot owners in a city decided to charge the same price to merchants and merchants did not have the ability to bargain with the parking lot owners, an economist would expect a high price charged to merchants for parking. These high parking charges would then act as a tax, harming merchants.

7.6 Prof. Klein states there is "intense competition between merchants" (¶10), a proposition with which I agree. This intense competition will cause merchants to pass on the MSF in higher prices on their products. Further, the interchange "tax" will lead to lower profits for merchants. Thus, I disagree with Prof. Klein's claim that interchange fees "have the effect of increasing the value of the payment system to

---

[72] I am not taking AMEX into account in this example, but the results would be similar because AMEX would be forced to decrease its MSFs as has occurred in Australia.

[73] One should consider the effects of tourists on demand, but tourists' use of credit cards will not be affected by the rewards they receive on a particular transaction, since EFTPOS (bank debit) cards typically cannot be used. I find it implausible that a tourist would purchase more because of the approximate 1% (or less reward) the tourist receives in increased rewards. Tourists (at least from the US) typically pay a 3% fee to their issuing bank for foreign exchange transactions (with one or two exceptions. Thus, it would not be economically rational for tourists to increase their purchases to increase the rewards they receive since the cost would exceed the extra rewards. Thus, I disagree with Prof. Klein's conclusion that credit card usage leads to incremental merchant sales from tourist customers. (¶43)

both cardholders and merchants." (¶14) The relevant question is whether lower interchange fees, which would lead to lower MSFs, would decrease the value of the payment system in the acquiring market. By reducing the tax paid by merchants, where the tax is passed on to EFTPOS and cash customers, the "value" of the system would increase in the acquiring market with lower MSFs. In the acquiring market transactions would have lower prices (MSFs) for merchants and the economic "value" of the transactions would increase due to their lower price as well as the higher profits for merchants.

7.7 Prof. Wright claims that a decrease in interchange fees would decrease a merchant's willingness to pay for accepting credit cards because of lower usage. (¶9.14) I disagree with his conclusion. Merchants' attempts to cause interchange fees to decrease and the higher interchange of AMEX has not led to high acceptance, but rather lower acceptance. Merchants' actions imply they believe they would benefit from lower interchange fees.

7.8 Prof. Wright attempts to justify both the no surcharge rule and the HAC rule by stating it allows Visa "to compete on a level playing field with closed credit card payment systems which can impose an HAC rule directly on its merchants." (¶7.14) As with Prof. Wright's related discussion of "competitive neutrality" (¶5.35), Prof. Wright fails to note that AMEX would likely be required to decrease its MSF rates for competitive reasons if Visa did so. Prof. Wright also fails to note that AMEX charges the same interchange to a given merchant for all its AMEX transactions which is different than Visa with its higher premium rates depending on the type of card used.

8 Price Distortions and Cross Subsidy

8.1 In my initial brief I discussed how a tax arises on EFTPOS (and cash) customers, part of which is used to fund a cross subsidy (negative prices) to credit card users.[74] The underlying economics is straightforward. An increase in marginal cost to merchants, arising from the MSFs they pay which is turn largely determined by the MIF, leads to increased product prices. All consumers pay the higher product prices, including EFTPOS customers. Defendants' experts recognize the basic economic analysis used here and indeed Prof. Bresnahan (¶35(a)) specifically agrees with the analysis.

8.2 Cross subsidies often create distortions in economic activity because typically they lead to "too much" consumption in terms of optimal social welfare.[75] Within the acquiring market a higher MIF leads to higher MSFs and the amount of the tax

[74] Hausman ¶6.12. Banks keep part of the MIF as profit.
[75] Price set below the cost of a product means the marginal consumer values the product at less than its cost to society to produce.

increases, increasing the distortion. As I discuss above, with distorted prices one cannot consider quantity as an indicator of either competition or social welfare since a tax on one group is being used to fund a cross subsidy to another group. Indeed, in terms of final product demand, running shoes in my example, the tax leading to higher prices will lead to reduced demand for running shoes, especially if all running shoe stores accept credit cards which is the likely outcome given competition among running shoe stores.

8.3 Prof. von Weizsäcker claims that in his "equal-weight set-up" this problem does not arise so you would achieve an efficient outcome. (¶244) However, as I discuss above the empirical facts are distinctly at odds with the equal weight setup which requires equal pass through for acquirers and issuers, which is far from the actual situation. I note that Prof. von Weizsäcker recognizes that the quantity criterion used as a test for competition in one sided markets is not applicable in two sided markets if his equal weight set-up does not hold. (¶244) Thus, Prof. von Weizsäcker recognizes the difference which I discussed in my initial brief, but which Profs. Bresnahan, Wright, and Klein all seek to argue does not exist.

8.4 Prof. von Weizsäcker does disagree with my running shoes tax and subsidy example because he states I do not take account of changes in total sales of the shop due to the use of credit cards. (¶246) Prof. von Weizsäcker includes an incorrect assumption since he assumes that issuers engage in 100% pass through of interchange to credit card users, which is contrary to the empirical evidence that I discuss above. (¶246) He calculates that sufficient increased sales will occur to almost offset the MSFs so he does not find a tax. (¶248) I disagree with his example because he has confused a given store's elasticity of demand with market elasticity of demand. If (almost) all running shop stores accept credit cards, which is the actual outcome due to competition among stores, the correct price elasticity to use is the market elasticity for running shoes, which is substantially less that a given store's price elasticity.[76] Indeed, Prof. von Weizsäcker recognizes this problem in his approach if MasterCard is accepted in all shops and agrees that costs have gone up due to the credit card MSFs.[77] (¶250)

---

[76] Prof. von Weizsäcker has failed also to take account of consumers' budget constraints. His reasoning would lead to the outcome that if all stores accepted credit cards demand would expand throughout the economy because of the credit card discount he posits. Unfortunately, consumers would be unable to pay for this increased demand due to limited budgets. Thus, passing out credit cards to people would not be a replacement for Keynesian anti-recession policy.

[77] Prof. von Weizsäcker states that tourists in NZ may buy more because they can use a credit card. (¶252) The Commission is neither challenging the use of credit cards nor do the counterfactuals consider any change to MasterCard setting a MIF for use by international credit cards. But the volume increase (if it exists) cannot be large enough to have a significant effect on the size of the tax in my example. Nor do tourists buy a significant amount of the total sales in the large majority of stores where NZ credit cards are used, e.g. supermarkets.

8.5 However, he then claims the outcome is not a "tax". He draws an analogy to free parking offered by stores which is not used by customers who do not drive. (¶251) I do not want to enter a linguistic debate about the word "tax".[78] However, I note that "free parking" and the other business strategies he considers typically affect fixed costs, not marginal costs. In the current situation, the MSF affects marginal cost and so it directly affects prices under standard economic analysis. It is that sense that I consider it a tax.

8.6 Prof. von Weizsäcker considers the counterfactuals and claims that prices of other payments systems may go up. (¶254) I only consider the tax on EFTPOS (and cash) customers. My economic analysis does not find, nor does Prof. von Weizsäcker demonstrate, that the price of using EFTPOS would increase in the counterfactual. Prof. von Weizsäcker then claims (contrary to economic analysis) that merchants will not pass on the decrease in the MSF; otherwise they would not be eager to litigate. (¶255) I disagree here as well because a tax typically leads to reduced profits for a firm, even if they pass on more than 100% of a tax, because demand curves slope downward. He next draws an analogy to credit cards being similar to a "discount club." (¶256) However, he recognizes that no loyalty effect exists so he claims that perhaps credit cards increase price competition among merchants. Again, to the extent that most merchants selling a given type of good adopt credit cards due to competition, this effect would not exist. Lastly, he returns to the question of pass on of the MSF by merchants and the evidence from Australia which I discussed in my initial brief. He agrees with me that it would be difficult to give "econometric proof of pass-on." However, he does not disagree with me that uncontroversial economic analysis found in textbooks agrees that taxes which increase marginal costs lead to higher prices. In conclusion, after considering Prof. von Weizsäcker's discussion I continue to find that MSFs are a tax on EFTPOS customers and increase prices of the final product.

9 Counterfactuals

Counterfactual C

9.1 I first consider Counterfactual C, because its features of unilaterally set interchange fees, bilateral negotiation between issuers and acquirers, and elimination of the no surcharge rules, anti-steering rules, and access rules are close to the settlements between Visa and MasterCard and the Commission.[79] Counterfactual C will lead to

[78] I previously wrote an academic paper discussing the tax on long distance usage created by a US government agency, the Federal Communications Commission (FCC). A FCC representative informed me that it was not a tax but instead a "fee" since the FCC was not allowed to levy taxes. My response was - to an economist it was a tax.
[79] The main difference between the settlement and my analysis of Counterfactual C is the presence of a maximum interchange amount set by Visa.

increased competition as acquirers' and issuers' negotiation will lead to lower MSFs and the presence of surcharging and steering will increase the competitive constraints in the acquiring market as acquirers with high MSFs will be at a business disadvantage.

9.2 In his discussion of the counterfactuals Prof. Bresnahan finds it unlikely that either Visa or MasterCard would behave similar to any of the counterfactuals. (¶306) Since Visa and MasterCard have essentially adopted Counterfactual C in their settlement agreements with the Commission, with the addition of a maximum interchange rate, this issue seems to have been eliminated from further consideration.[80]

9.3 In considering bilateral bargaining in Counterfactuals B, C, and D Prof. Bresnahan states that it is difficult to easily predict the exact outcomes. (¶3.18) I agree. However, I disagree that competition would decrease if the rules were removed. For example, he claims that without the HAI rule the outcome could well be the existence of only one issuing bank and competition would decrease in issuing. He neglects to consider that AMEX would continue to exist and AMEX has agreements with banks in NZ, Australia, the US and elsewhere to issue AMEX cards. Thus, competition in issuing would continue to exist. More importantly, I find it unlikely that Visa would find an outcome with a single issuing bank to be acceptable. The single issuing bank would decrease Visa's volume and profits significantly.

9.4 Prof. Bresnahan claims that allowing surcharging is not pro-competitive. (¶329) He does not explain why. Decreasing prices in the acquiring market (which will then lead to decreases in prices to consumers) is pro-competitive and increases consumer welfare. A given merchant has the ability to charge whatever price it chooses for a given commodity so long as it informs the consumer of the actual price. Competition among merchants typically leads to an economically efficient outcome.[81] Yet, Prof. Bresnahan wants to forbid merchants deciding how much to charge for the combination of the purchased commodity and a transaction charge depending on the costs that the merchant incurs from the transaction. I find this a very strange place for Prof. Bresnahan to finish his analysis because even with perfectly competitive product markets and constant returns to scale where price would equal marginal cost and an efficient equilibrium would result, Prof. Bresnahan states it is better not to allow merchants to set their prices equal to marginal costs.

9.5 Prof. Wright claims that a merchant will be unable to threaten non-acceptance of a given issuer's credit card. (¶8.39) He fails to realize that many consumers carry

---

[80] For example Prof. Bresnahan discusses the alternative of vertical integration into acquiring (¶307), but I discussed above why economic analysis demonstrates that this outcome would be uneconomic.
[81] I am abstracting away from merchants having market power since it does not enter Prof. Bresnahan's analysis.

more than one credit card and would switch to an alternative credit card or pay with EFTPOS. This situation exists today where many merchants do not accept AMEX in New Zealand. While I realize that Prof. Wright is originally from New Zealand, I fail to see how he assumes that if either Progressive or Foodstuffs threatened not to accept a given issuers' credit card, the threat would not be credible. In my study of the proposed takeover of the Warehouse, I found that both supermarket chains had considerable economic power in New Zealand. Further, both supermarket chains are large enough to achieve an unblended acquiring rate and even to do their own acquiring if it is economically attractive.

9.6 Prof. Wright states that without the no surcharge rule and HAC rule interchange fees might become negative. (¶9.21) This outcome has not been observed in countries where the no surcharge rule has been eliminated. Further, the cost of using credit cards would increase, especially for transactors, i.e. credit card users who do not have a credit balance. Many of these credit card users would switch to EFTPOS. Thus, merchants would be in a similar position to the choice they have today to not accept credit cards. But since they do accept credit cards today their market actions demonstrate that competition would cause them to decide to continue offering the option of credit cards. Indeed, a negative interchange fee at a large merchant would be similar to a large merchant charging a high surcharge, greater than the MSF the merchant pays. I am unaware that this outcome has occurred with large merchants in Australia to any significant degree.[82]

9.7 I disagree with Prof. Wright's prediction of increased interchange rates in the counterfactual. (¶9.25-9.26). If merchants have the ability to steer or surcharge individual issuers, they will establish steering policy or set surcharges to offset an attempt by an issuer to charge higher interchange. As elsewhere in his brief, Prof. Wright fails to take into account that many people carry more than one credit card and almost all credit card users also have an EFTPOS card. Customers who do not want to pay the surcharge will switch to another credit card or use their EFTPOS card. Thus, an issuer that attempts to charge a high interchange rate will find that its transaction volume decreases compared to its credit card competitors.

9.8 Prof. Klein also predicts that because of the "hold up" problem caused by the HAC rule, interchange fees would be higher under bilaterally negotiated interchange fees than under a common MIF. (¶118) I disagree. Prof. Klein has not taken account of the effect of eliminating the anti-steering and no surcharge rules. An issuer who attempted to set high interchange fees would find that merchants would be unwilling

[82] Qantas does have a high credit card surcharge in Australia. But since online payment is practically limited to credit cards as EFTPOS cannot be used, Qantas surcharge is, in actual effect, a way to charge a higher price to all online customers.

to pay a high MSF caused by the high interchange fee. Merchants would establish steering policies and/or set a high surcharge fee on the given issuers' transactions which would cause credit card users to switch to another credit card or to use EFTPOS. Of course, another way to solve a potential hold up problem is to eliminate the HAC rule.

9.9 Prof. Klein states that "the relevant counterfactual would appear to be interchange fees that are bilaterally negotiated between issuers and acquirers." (¶126) I agree that such a counterfactual is "a" (but not the only) relevant counterfactual. However, the system rules such as the HAC rule, steering rules, and/or the no surcharge rules need to be eliminated in this counterfactual to permit competition to operate effectively to a greater degree than currently exists. Prof. Klein, to the contrary, considers Counterfactuals C and D with the HAC rules and other challenged system rules in place (¶136, ¶170),[83] which could well lead to higher interchange and MSFs as I concluded in my initial brief. (Hausman ¶6.38)

9.10 For Counterfactual C Prof. von Weizsäcker thinks the outcome would be similar to Counterfactual B. Again he finds a "winner takes all" outcome. (¶371-372) I disagree as before. He neglects to consider Counterfactual C with surcharging permitted. I do not think in this situation a "winner takes all" outcome is likely. I note that Visa and MasterCard must not believe this outcome is likely because they have agreed to the settlement with the Commission, which is a variant on Counterfactual C (an additional feature of this settlement is that it permits Visa and MasterCard to establish maximum MIFs).

Counterfactuals A and B

9.11 Prof. Bresnahan claims that Counterfactual A could well lead to unchanged MSFs because Visa and MasterCard would increase their network service fees by the exact amount of the current interchange fee. (¶310-311) Here, he ignores evidence from Australia where the interchange fees have decreased significantly, and Visa and MasterCard have not increased network service fees by anywhere near the amount of the MIF decreases. RBA data finds that MSFs have decreased from 1.40% in March 2003 to 0.81% in June 2008 but other scheme merchant fees have increased only from 0.04% to 0.07% over the same period. Thus, the total paid decreased from 1.44% to 0.88%, which demonstrates that a MIF set to zero can be expected to lead to considerably lower MSFs.

[83] Prof. Klein at ¶136 and ¶170 takes into account the effect of the presence of the other challenged rules ("Visa's merchant rules") as well as the Honor All Cards Rule in making this assessment. At ¶170 Prof. Klein refers to the assessment of Dr. Bamberger and Prof. Carlton of counterfactuals C and D with all the challenged rules in place.

9.12 In his discussion of Counterfactual A Prof. Wright also claims that in the long run credit card systems could increase network fees to acquirers and lower them to issuers to get back to their original levels. (¶8.10) However, he does not discuss why network fees have not increased in Australia to offset the decrease in interchange as I discussed in the previous paragraph.

9.13 Prof. von Weizsäcker discusses the outcome of a zero interchange rate and claims a zero MIF is not the "best" outcome. (¶185) However, my understanding of the counterfactuals is not to demonstrate that one outcome is "best", but rather to find whether they are better than the "factual" scenario with the challenged provisions. In terms of the acquiring market, I find that Counterfactual A is better than the current situation with the challenged provisions. I do not claim that it is the optimal outcome. Prof. von Weizsäcker also claims that under Counterfactual A he expects a "winner takes all" outcome in which only a single MasterCard issuer would remain. (¶362) I discuss above why I do not agree with his prediction. Prof. von Weizsäcker also concludes that a "winner takes all" outcome would arise from Counterfactual B. (¶368) I disagree for the same reasons I discuss above.

Counterfactual D

9.14 Lastly, for Counterfactual D Prof. von Weizsäcker again concludes that a "winner takes all" outcome will result. I disagree and note that Prof. von Weizsäcker has once again neglected to take account of the effects of steering and surcharges which provide a constraining effect on an issuer setting a high interchange fee.

9.15 As I stated in my initial brief, the outcome of Counterfactual D depends in a crucial manner on whether the challenged rules are eliminated. Thus, whether Counterfactual D will lead to increased competition compared to the current situation depends on the particular way in which is implemented. However, I do not expect a "winner takes all" outcome if the no surcharge rule and no steering rules are removed. In that situation, I also expect an increase in competition.

9.16 In conclusion, I expect all four counterfactuals to lead to a significant increase in competition in the acquiring market so long as the challenged rules are eliminated. The settlements between Visa and MasterCard and the Commission are quite similar to Counterfactual C. Counterfactual C will increase competition and the effect of competitive constraints on MSFs in the acquiring market.

Dated: September 2009

J. Allen Hausman

Jerry Allen Hausman