



March 14, 2011

Re: Debit Card Interchange Fee

The American Antitrust Institute is an independent Washington-based non-profit education, research, and advocacy organization whose mission is to increase the role of competition, assure that competition works in the interests of consumers, and challenge abuses of concentrated economic power in the American and world economy. One year ago, we published a report on the market failures in the electronic payments system.¹ What we found then remains true today, that interchange fees “unjustly enrich the biggest banks at the expense of U.S. consumers, merchants and market efficiency.”

The Durbin amendment to the Dodd-Frank Wall Street Reform Act and the Federal Reserve’s rule to implement it effect a sound, competitive solution to the debit interchange fee problem. It limits the amount of fees that can be charged through a price-fixing network regime and allows banks to charge unregulated fees if they simply compete on their prices rather than set them centrally. If the limits set by the Fed are low, that aids competition by giving a large incentive for banks to actually compete by lowering their fees. Banks with less than \$10 billion in assets would not have to compete, however, because they are exempt. Certainly, banks with more than \$10 billion in assets can compete in the free markets by setting their own prices rather than hiding behind the cartel process overseen by Visa or MasterCard. What the Fed is doing is to substitute competition for administered prices.

The Federal Reserve has been doing its job well. It surveyed the covered banks for their cost information and received public comments on the proposed rule. Congress should now let the Federal Reserve complete its work and permit the regulation go into effect. Once it does, we will be able to see the benefits of more competition and limits on price-fixed fees. Experience with the check system confirms this. Debit transactions are nothing more than electronic checks (though debit is less costly for banks to handle). Checks have not been allowed to have the equivalent of

¹ <http://www.antitrustinstitute.org/content/american-antitrust-institute-president-calls-new-federal-law-save-american-merchants-and-con>. This detailed paper was summarized in my op-ed published by the New York Times, http://www.nytimes.com/2010/04/21/opinion/21foer.html?_r=1.

swipe fees for almost 100 years and that policy has made banking and commerce more efficient throughout the United States.

Competition at the retail level is robust, so that a retailer's input costs are reflected in retail prices. American consumers pay these swipe fees today through inflated prices of goods and services. In fact, the fees hit low-income people harder than high-income people because of card network rules that keep the fees hidden and prevent many types of discounts merchants could provide. These actions by the card networks to hide their fees further impair the market and compound the market failure that is present with interchange fee setting.

The bottom line is that anyone who favors competition and free markets should support the Federal Reserve's rule. Stopping or delaying it simply assists price-fixing that is injurious to our economy, consumers, and businesses.

Sincerely,

A handwritten signature in black ink that reads "Bert Foer". The signature is written in a cursive, flowing style.

Albert A. Foer
President
The American Antitrust Institute