

NRF Tells Committee Interchange Practices Violate Antitrust Law

NRF this week urged Congress to address soaring credit card interchange fees, testifying before a House committee that interchange practices are a violation of federal antitrust law that will cost consumers more than \$40 billion this year. Committee members were largely receptive, sharply questioning whether the hidden fees are "harming merchants and ultimately consumers."

"The collective setting of interchange fees by Visa and MasterCard represents an on-going antitrust violation, and it costs merchants and their customers tens of billions of dollars annually," NRF Senior Vice President and General Counsel Mallory Duncan said. "This market is broken. It needs transparency and genuine competition."

"The credit card system is an important component of our economy, potentially benefiting consumers, merchants and banks alike," Duncan said. "But it has become dramatically tilted in favor of the two cartels that control the market. There are several pending lawsuits, but the courts' remedies for systemic problems are limited. Courts can deliver damages, prohibit specific conduct, or become regulatory czars. Congress has much more nuanced and flexible tools at its disposal. We urge you to study this problem and work with all of the parties to determine how best to restore a truly open and competitive market."

Duncan, who chairs the Merchants Payments Coalition -- a group of close to 30 merchant trade associations working to address interchange -- testified on behalf of the coalition at a hearing held Thursday by the House Judiciary Committee's Antitrust Task Force. The hearing was the fourth congressional session this year to examine credit card fees, and the first to focus specifically on interchange.

Duncan outlined how Visa banks and MasterCard banks agree to charge the same interchange fees for various types of credit cards regardless of which bank's name is on the card. While the two card associations use different procedures, each operates as an illegal price-fixing cartel in violation of antitrust law, he said.

Steven Smith, president and CEO of Virginia-based supermarket chain K-VA-T Food Stores Inc. and chairman of the Food Marketing Institute, called the little-known interchange fee "one of the best kept secrets of the credit card industry," and said it costs FMI member supermarkets more than \$4 billion annually.

"Interchange fees are hidden charges paid by all Americans, regardless of whether they use credit, debit, checks or cash," said U.S. Public Interest Research Group Consumer Program Director Edmund Mierzwinski, who testified on behalf of PIRG, Consumer Action and the Consumer Federation of America. "These fees impose the greatest hardship on the most vulnerable consumers."

The credit card industry was represented by former Federal Trade Commission Chairman Timothy Muris and John Buhmaster, president of First National Bank of Scotia, N.Y., who testified on behalf of the Independent Community Bankers of America.

Muris, an attorney who advises Visa on interchange and other antitrust issues, denied that interchange practices violate antitrust law, and said the fees are an essential part of a "two-sided system" that divides the cost of credit card systems between consumers and merchants much in the way that newspapers divide costs between readers and advertisers. Eliminating interchange "would lead to chaos" and "would inevitably increase card prices for consumers," he said. He claimed that retailers "just want to pay less."

"Interchange is no more a hidden cost than the cost of check processing or counting cash," Buhrmaster said. "We don't want merchants to pay high fees but it is a cost of doing business for them."

Task Force members criticized and questioned many arguments put forth by Muris and Buhrmaster.

"Without rushing to judgment, it doesn't look so good for the credit card companies," Chairman John Conyers, D-Mich., said. "I do believe the burden of proof lies with the credit card companies to reassure Congress that increasing interchange fees are not harming merchants and ultimately consumers."

Visa and MasterCard "have no good explanation of why we are seeing these dramatic increase in interchange fees," Representative Ric Keller, R-Fla., said. "I look at the merchants and they have a very good explanation."

"Why in the world should this committee permit a gag rule to be in place keeping the public from knowing what they're being charged, especially when there's more profit in a gallon of gas for the credit card companies than for a gas station?" Representative Darrell Issa, R-Calif., asked, referring to Visa's position that it will only release operating rules to merchants who sign a non-disclosure agreement.

Interchange is a fee averaging close to 2 percent that Visa and MasterCard banks charge merchants every time a credit card or signature debit card is used to pay for a transaction. Visa and MasterCard collected more than \$36 billion in interchange fees last year, up 17 percent from 2005, and the amount is expected to top \$40 billion this year. Interchange is largely unknown to consumers because Visa and MasterCard don't disclose the fee on monthly statements and prohibit merchants from disclosing it on receipts.

To read Duncan's written testimony, [click here](#). To read Duncan's oral testimony, [click here](#).