

Merchants Have Real Opportunities to Negotiate the Cost of Payment Card Acceptance, MasterCard tells House Antitrust Task Force

No Need for Price Control Legislation or an Antitrust Exemption to Lower Costs

Washington, DC – May 15, 2008 – Merchants do not need price control legislation or an antitrust exemption to lower costs for payment card acceptance, as they already have real opportunities to negotiate fees, said Joshua Peirez, Chief Payment System Integrity Officer at MasterCard Worldwide. Even though this is a basic commercial dispute, merchant lobbyists appear to be casting aside existing opportunities to negotiate in favor of congressional intervention in the form of price control legislation, he said.

Peirez said “merchants are an essential part of our system and we are deeply committed to addressing their needs.” MasterCard responded to merchant concerns about the transparency of our system by publishing its rules and all of its default U.S. interchange rates online. In July 2004, MasterCard published on its Website, without restriction, every rule that merchants and their acquirers must follow. Later, at the request of merchants, it posted the chargeback rules. Now, in response to merchant requests, MasterCard will make all of its operating rules available to merchants.

“The publication of MasterCard’s rules and default interchange rates was designed to enhance the merchants ability to negotiate prices and the terms of MasterCard acceptance,” he told the Committee, explaining that merchants are given a significant amount of valuable information that gives them the ability to negotiate with the hundreds of acquiring banks that compete for merchant business to get the best rates and terms they can. “It’s not clear why they have not used this information to their advantage,” he said.

In November 2006, MasterCard also responded to merchant concerns about rising gasoline prices by establishing a cap on interchange rates that kicks in at about \$50. “We expected gasoline retailers to use this information to negotiate lower merchant discount rates and to point to our initiative to lower fees from our competitors. We have been disappointed to learn, however, that most gasoline merchants have not taken advantage of this opportunity,” Peirez said.

With all the opportunities that exist to negotiate the cost of accepting payment cards, the antitrust exemption for industry negotiations proposed in H.R. 5546 is not necessary. Nor do we believe there is reason to allow these negotiations to occur outside the standard protections of anti-trust law, Peirez said. He pointed out that the Anti-Trust Modernization Commission, in which two of the merchant representatives participated, stated antitrust exemptions can harm the US economy and consumers.

In today’s economic environment, an artificial reduction in interchange would exacerbate the growing credit crunch, as issuers could both limit the availability of credit and raise fees on payment cards. This would have a disproportionate impact on low and moderate income consumers. In Australia, where the government mandated an artificial reduction in interchange fees, consumers are now paying significantly higher fees for their payment cards and have had benefits reduced. There is no evidence that merchants have lowered their prices to reflect the lower fees they are paying for payment card acceptance.

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Peirez also noted that the merchants are seeking legislation claiming existing antitrust law is inadequate, while they are also pursuing, simultaneously, litigation on these same issues. He noted that all parties in that litigation have agreed to mediation, which began last month. If resolution is achieved through mediation, it will resolve the litigation and all the issues raised in this bill.

Peirez also addressed the clear inaccuracies that have become part of the rhetoric generated in the debate over interchange:

- Merchant lobbyists say MasterCard makes it difficult or impossible for merchants to discount for cash. This is simply not true. MasterCard rules simply and clearly state that: “A merchant may provide a discount to its customers for cash payments.” Our rules impose no restriction on how a merchant offers a cash discount.
- Merchant lobbyists also state that they cannot disclose what they pay for payment card acceptance. MasterCard has no rule restricting any merchant from disclosing, to its customers, its merchant discount fees, or the interchange component of that fee.
- Merchant lobbyists are also claiming that MasterCard has a rule that requires a merchant that accepts MasterCard to accept it at every retail location, referring to it as a “single entity rule.” There is no such rule. A merchant that would like to accept MasterCard at one of its several locations is free to do so.

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