Senator Dick Durbin
Chair, Senate Judiciary Committee
Written Questions for Doug Kantor
November 26, 2024

1. During the Committee's November 19 hearing, there was significant discussion of the effects of swipe fee reform in other countries, including the European Union and Australia.

   Please discuss the effects of those reforms, including the impact of those reforms on consumers.

Swipe fee reform in the European Union and Australia has helped achieve increased competition, lower costs for merchants, and create meaningful consumer savings while allowing card issuers and networks to continue operating successfully.

In 2015, the European Commission established an Interchange Fee Regulation (IFR) that capped interchange fees at 0.3 percent for credit card transactions within the EU. A 2020 study by the Commission found that

> [T]he overall conclusion is that the caps on the interchange fee work as intended…The lower interchange fee has led acquirers to lower merchant costs. The lower merchant costs are over time passed-through as lower consumer prices and greater card acceptance. (p. 25)

Notably, the study also found "no systematic evidence that issuers reacted on the decline in interchange fee payments by increasing real consumer banking fees or by making changes in the issuing of cards." (p. 14)

In 2003, the Reserve Bank of Australia (RBA) regulated interchange fees according to a cost-based benchmark which caps credit card interchange fees at a current weighted average of 0.5 percent of transaction value – less than one-fourth of the average U.S. rates. As I discussed in detail on pp. 32-33 of my written testimony, the RBA has found that since this reform took effect, "Overall, consumers are benefitting from this greater competition and lower merchant costs." The RBA found that consumers without credit cards are benefitting from reform by paying lower prices for goods and services than would otherwise be the case, and that consumers with credit cards are now able to obtain cards with lower interest rates than before because reform has prompted the credit card industry to compete more vigorously for consumer business instead of just competing for issuing bank business. The RBA has also found that Australian credit card holders continue to have many credit rewards programs to choose from.

Despite claims by the U.S. credit card industry that any swipe fee reform will cause the sky to fall, the international experience shows otherwise. Further, the fact that U.S. banks such as JP Morgan Chase are eagerly seeking to conduct more credit card operations in EU nations like France shows that robust swipe fee reform has not diminished the viability or vibrancy of the

credit card industry. Reform is good for competition, good for consumers, and good for Main Street merchants.

2. During the hearing, Mr. Sheedy cited a study from the Federal Reserve Bank of Richmond to claim that the research "is not clear that putting in caps on interchange benefits consumers."

    a. **What is your takeaway from the Federal Reserve Bank of Richmond's study?**

The credit card industry often cites a 2015 Richmond Federal Reserve "Economic Brief" report to try to claim that consumers did not benefit from debit reform, but the industry conveniently fails to mention the cautionary notes that were included in the report by its authors. Those cautionary notes make clear that the report does not prove the point for which the credit card industry tries to use it. First, the report stated that it did not look at actual costs and prices after debit reform- it was an opinion survey that relied on respondents' voluntary responses rather than actual observations. Second, the authors noted that the survey sample was small and could have been biased by getting responses primarily from those dissatisfied with the way the Federal Reserve wrote its implementing regulation. Third, the report estimated that the vast majority of merchants in the survey (77.2 percent) did not change consumer prices post-regulation; given that inflation increased the wholesale cost of goods for merchants during that time, this finding that consumer prices did not go up for the vast majority of merchants indicates that merchants were using debit reform savings to keep consumer prices steady even as overall merchant costs increased. That is actual evidence of real consumer savings, which the credit card industry ignores in its effort to try to spin the report to fit the industry's own narrative.

And, that evidence of savings from the Richmond Federal Reserve survey is consistent with the actual economic numbers that I cited at pp. 29 of my written testimony. The economic data shows that cost increases for retailers, as reflected in the Producer Price Index for retail trade industries, rose 9.4 percent from the time reform went into effect in October 2011 through the end of 2016, while price increases to consumers, reflected in the Consumer Price Index, increased only 4.3 percent.[1] That is a large spread between the higher costs that merchants had to pay for the goods they sold and the prices that they charged consumers. Those numbers demonstrate clearly that merchants shielded their customers from the majority of the cost increases the merchants themselves faced. That could be because merchants' margins were compressed or it could be because merchants found operational savings, such as through debit reform, that allowed them to keep consumers' prices low – or it could be a combination of both. What the banking and card industry cannot show is that merchants increased their profit margins in response to debit reform because that simply did not happen.

[1] Producer price index figures from the St. Louis Fed can be found here: https://fred.stlouisfed.org/series/PCUARETTRARETTR and consumer price index figures from the Minneapolis Fed can be found here: https://www.minneapolisfed.org/community/teaching-aids/cpi-calculator-information/consumer-price-index-and-inflation-rates-1913.

b. Is there additional evidence we should consider regarding whether debit interchange reform has benefitted consumers?

As I summarized in Section IV of my written testimony, a large volume of research and evidence shows that high swipe fees hurt consumers by inflating retail prices, and pp. 28-31 of my testimony specifically highlighted research showing how the 2010 debit reform has benefitted consumers. One notable report found that debit reform saved consumers $5.86 billion in 2012, the first year that the reforms were in effect. However, while reform has been beneficial, the recent DOJ lawsuit against Visa highlights how that dominant debit network has systematically worked to circumvent the reform's pro-competitive benefits. Additionally, even the Federal Reserve has acknowledged in its recent proposed update to its implementing Regulation II that debit interchange rates remain far higher than they should be, particularly in light of the declining transaction costs for the debit card industry. A reduction in the regulated debit interchange rate is long overdue and such a reduction would increase the amount of savings that would be passed through to consumers.

In addition, it is worth noting that debit card usage has increased in the United States since debit reform went into effect. Banks continue to provide their customers with debit cards, which makes sense given that these were brought to market as cost-saving measures for the banks, and consumers have used those cards in increasing numbers. All of this is strong practical evidence that the reforms have been beneficial and, at the very least, have done no harm to the debit card market while allowing economy-wide efficiencies in the form of lower costs of transacting with debit cards.

3. The *Credit Card Competition Act* (CCCA) applies to any card network—including American Express and Discover—to the extent the network is setting fee rates that are received by separate card-issuing financial institutions. It is this act of network fee-fixing on behalf of other institutions that the CCCA seeks to rein in through marketplace competition between networks on each card.

   Why, from a competition standpoint, is centralized fee-fixing by card networks on behalf of financial institutions a problem?

Visa and Mastercard were established as associations of their financial institution members and have wielded the collective pricing power of those financial institutions to drive higher prices. These networks still perform that anti-competitive role. That is the central problem with credit card swipe fees today. Visa's and Mastercard's fee- and term-setting on behalf of the card-issuing banks in their networks have turned competition on its head. While competition normally causes businesses to try to keep prices low in order to attract market share, Visa and Mastercard don't have to compete for merchants' business. Instead, Visa and Mastercard only compete to attract banks to issue more of their cards. They do that by trying to push the swipe fees they set on behalf of those banks higher and higher. It is the opposite of what real competition does, and it demonstrates how the market is broken.

Any and all centralized network price-fixing on behalf of the largest banks is covered by the CCCA, regardless of which network may be engaging in such centralized price-fixing. While Visa and Mastercard like to pretend that this exempts American Express and Discover, it does not. Both of those networks have some cards issued by separate financial institutions, and whenever American Express or Discover sets fee rates on behalf of credit card issuers with over $100 billion in assets, those issuers' cards would be covered by the CCCA and would be required to carry a second network.

It is also worth recognizing the chutzpah it takes for Visa and Mastercard to make this particular claim. Both of those networks for many years enforced an "exclusionary rule" on the financial institutions in their networks. Those rules provided that financial institutions in the Visa and Mastercard networks could issue cards bearing the logos of either of those two networks, but could not issue American Express or Discover cards. Visa and Mastercard systematically barred American Express and Discover from forming pricing networks in the format that the CCCA addresses. The Department of Justice successfully sued Visa and Mastercard on the grounds that the exclusionary rule violated the antitrust laws which means that rule has been invalidated since 2004, but the practical effect of the rule (along with the large profits delivered to banks by Visa's and Mastercard's pricing cartels) has been that American Express and Discover have not developed many relationships with banks to issue their cards. Visa and Mastercard are attempting to paper over their own history of antitrust violations in raising this point.

4. During the hearing, Mr. Sheedy testified that Visa provides a "payment guarantee." In her written testimony, Ms. Kirkpatrick similarly stated that Mastercard provides "the promise of guaranteed payment to the merchant."

   Do merchants actually receive such a payment guarantee for credit and debit card transactions?

While the card industry often talks about a "payment guarantee," merchants are not guaranteed payment on credit or debit card transactions. Under Visa and Mastercard's network rules, merchants are subject to chargebacks for fraudulent transactions, and these chargebacks can happen to merchants even months after the transaction takes place. A chargeback means that the merchant not only does not receive any revenue from a sale determined to be the result of fraud but often also must pay the interchange fee on that sale. As a result of chargebacks, merchants are forced to absorb more of the overall cost of fraudulent card transactions than banks or consumers absorb. For example, in 2021, data from the Federal Reserve showed that merchants covered 47 percent of debit card fraud because of chargebacks, while banks covered 33.5 percent and consumers covered 19.5 percent.

Of course, the fraud chargebacks that merchants must pay are on top of the swipe fees they must pay. Swipe fees are characterized by the card industry essentially as a prepayment of fraud charges (and much more) to card-issuing banks, but merchants should not have to prepay for fraud and they should not have to pay when the fraud happens in addition to prepaying for it. Merchants also shouldn't have to hear about the supposed "payment guarantee" they receive on credit and debit cards when the merchants actually pay for fraud multiple times.

5. In her written testimony, Ms. Kirkpatrick claimed that enactment of the CCCA would mean, “Issuers will need to re-issue approximately 650 million new cards.”

   Is Ms. Kirkpatrick’s statement correct?

This claim is not backed up by evidence. Network routing is a back-office procedure in which banks share information regarding enabled networks with processors. Enabling card transactions to run on additional networks does not require the change of anything physical on the cards. When debit routing choice was debated, the card industry claimed they would need to reissue cards to enable multiple networks (*see e.g.*, Mastercard comment letter at p. 38, which said additional time is needed for debit reform so “cards can be reissued”), but the industry did not actually do so when the debit routing choice was implemented. Today, banks routinely change the networks that are enabled on their cards without re-issuing those cards or even providing explicit notice to the rest of the businesses in the transaction chain that they are doing so. Those cards still work seamlessly and it is only through analysis of data that merchants come to learn that the enabled networks on many cards have been changed.

Notably, some domestic credit cards – Diner’s Club, for example – have used more than one network with no re-issuance required, and overseas it has not required a massive overhaul of credit infrastructure for countries to provide for multiple networks on credit cards.

6. In her written testimony, Ms. Kirkpatrick claimed that the CCCA “will remove incentives for networks to make investments in security, which would directly harm American consumers and consumers around the world.”

   What is your response to this claim?

This statement has it backwards; by increasing network competition the CCCA enhances incentives for networks to invest in security, as merchants will choose to route transactions over the network that has less fraud. This is particularly the case because current card network rules force merchants to bear the lion’s share of liability when fraud occurs. We know that network competition and choice works effectively to incentivize network security enhancements because that is exactly what happened when regulations requiring two networks on debit cards came into effect more than a decade ago. When those regulations came into place, the Star network quickly announced that it would encrypt all debit transactions from end-to-end – a level of service that had not previously been made available. Because there was competition among networks, that led all of the other networks in the market to announce they would provide such encryption as well. Competition between networks on debit cards thus incentivized the entire market to improve security.

Ms. Kirkpatrick’s written testimony also made the claim that “The bill prohibits companies from managing credit tokenization and essentially requires them to open tokenization to all merchants and network competitors even when the transaction is routed to a competitor, allowing competitors to free ride on Mastercard’s investments.” However, Mastercard’s tokenization is

not a security cure-all; in fact, in debit Mastercard has used its proprietary tokenization technology less for security purposes and more as a means for Mastercard to stop transactions from being routed over other networks, which prompted an FTC investigation and 2022 order. The Department of Justice complaint against Visa similarly noted that Visa's only significant investment over the past decade has been in tokenization. But, as with Mastercard, tokenization has been developed and implemented by Visa as a tool of exclusion of other network providers to block competition and help Visa further cement its power in the marketplace.

The bottom line is that monopolies (or duopolies) disincentive innovation. Competition is what spurs and incentivizes innovation of all kinds, including security innovations.

7. During the hearing, Mr. Sheedy and Ms. Kirkpatrick both claimed that the CCCA would remove consumer choice in relation to credit card purchases.

   What is your response to this claim?

This claim misrepresents the relationship between consumers and card networks like Visa and Mastercard. Consumers do not actually contract with Visa or Mastercard to use their networks for credit card purchases. Rather, consumers contract with card-issuing banks which compete with one another to attract consumers by offering a package of fees, services, and terms associated with the bank's credit cards. These fees, services and terms include varying levels of interest charges, annual fees, late fees, and rewards (though, of course, the banks do not compete with each other regarding centrally-fixed interchange fees).

When it comes to debit cards, every bank currently offers consumers cards that are enabled with at least two debit networks, and consumers can choose a bank that offers an overall package of fees, services, and terms that the consumer finds most advantageous. The CCCA would set up a similar system for credit cards issued by the largest banks; under the CCCA those giant banks would issue credit cards with a pair of enabled credit networks, either of which might be used for any particular transaction. Consumers will have choices based on the banks' different offers, just as they do today. The vast majority of consumers today have no idea of the role that Visa and Mastercard play in processing transactions on their cards – just as they have no idea which processor or local bank the merchant uses to process its transactions. Consumers do not have direct relationships or contractual rights with any of those businesses other than the bank that issues their card and the merchant. However, having two networks enabled on CCCA-covered cards is particularly beneficial for consumers because it provides a back-up for situations when one network fails, is hacked, or has an outage. As my written testimony discussed on p. 13, Visa and Mastercard have outages on a surprisingly frequent basis- at least five domestic outages so far this year alone.

If the credit card industry was legitimately concerned about consumer choice in the credit card system, one would think they would provide consumers with full and transparent information about all the fees for each credit card transaction a consumer engages in. These fees inflate consumer prices, and if consumers had full and timely information about these fees, it would provide consumers with helpful information when dealing with their bank regarding the penalty

fees, interest rates, annual fees and other parts of the consumer relationship with their bank—which is probably why the industry does not want those fees to be disclosed to consumers at the point of sale or on consumers' monthly statements.

8. During the hearing, there was discussion about whether large merchants receive more favorable swipe fee rates than small merchants. Mr. Sheedy said "we have volume discounts that we offer to some merchants," and he stated that "I don't believe that it's commercially unreasonable to get an arrangement where in exchange for more volume, a merchant can qualify for lower rates."

   Can you elaborate as to how Visa and Mastercard's system of centralized fee-setting has disadvantaged small businesses?

Visa and Mastercard systematically set higher interchange fee rates for small businesses than they do for large businesses, which can be seen directly in the Visa and Mastercard rate schedules. As I discussed on p. 19 of my written testimony, for example, Visa's rates stratify supermarkets across multiple tiers based on their transaction volumes. For example, supermarkets with the fewest transactions pay about 42% more per $100 transaction than their large competitors to accept Visa Signature Preferred cards. Visa sets similar volume tiers that disadvantage small businesses for the general retail category as well. Mastercard sets volume tiers that also hurt small businesses not only for supermarkets but for general retail, convenience stores, and other categories.

Visa's and Mastercard's centralized price-setting ensures that every bank in their networks burdens small businesses with higher overall interchange fees than larger businesses pay. There is no justification for this unfair disparity and it demonstrates why legislation to reform the credit card system is needed by small businesses even more than it is needed by large businesses across the nation. Notably, NFIB, the nation's leading small business advocacy organization, has endorsed the CCCA because 92% of its small business members support having a choice of networks on credit cards. These small businesses need relief from the way the credit card industry systematically disadvantages them, and the CCCA gives them a chance in a way that today's broken system does not.

In addition, the normal justifications for volume discounts for larger businesses largely do not exist in this market. Banks are not delivering physical goods to merchants on trucks to make transactions happen. The fixed costs associated with accepting costs for hardware such as point-of-sale equipment, connections to the various card networks through processors, and the software to make these systems work are all borne by merchants. Card-issuing banks and Visa/Mastercard do not pay anything more for merchants – large or small – to connect to their systems and run transactions. From the perspective of issuers and their costs, a transaction from a small merchant has the same cost profile as a transaction from a large merchant. There simply are not economies of scale of the sort that exist with physical products. Given that, there are serious questions about whether the "volume discounts" that Mr. Sheedy points to are blatant violations of the Robinson-Patman Act.

9. During the hearing, there was discussion of the impact of credit card swipe fee reform on smaller banks. As you noted in your testimony, smaller financial institutions do not have the economies of scale that big banks have, so when Visa and Mastercard apply the same schedule of swipe fees for all of their card-issuing banks, it means smaller banks are guaranteed a lower margin every time a credit card is used. As you noted, big banks have taken advantage of the situation to dominate the credit card issuance market.

   Do you believe that the CCCA would help address the current disadvantage that Visa's and Mastercard's system has created for smaller credit card issuers? If so, how?

Yes. As this question correctly observes, centralized price-setting of credit card swipe fees puts smaller financial institutions at a disadvantage to larger card issuers, and the CCCA would help address this imbalance. More competition in the network market would help give small issuers additional freedom to try to compete with the largest banks. One analogy is what happened following debit reform. Following those reforms, the credit union group Co-op Pay negotiated among debit card networks to drive better deals for their small members (as I discussed on p. 14 of my written testimony). As I also discussed at pp. 36-38 of my written testimony, debit reform provided an opportunity that smaller banks and credit unions used to their advantage to gain market share. For example, the Philadelphia Federal Reserve published a study on the impact of debit reform on small financial institutions in February 2016. The study found that after reform, "the volume of transactions conducted with cards issued by exempt banks *grew faster* than it did for large banks."[2] And, the Credit Union Times reported that debit reform created "a powerful way for credit unions to accumulate market share" and "what some say is a huge opportunity for credit unions."[3] According to Texas Trust President and CEO Jim Minge, debit reforms created "…a huge opportunity for credit unions like the Mansfield, Texas Trust Credit Union and everybody else below the $10 billion threshold…" Debit swipe fee reform "applies only to financial institutions with more than $10 billion in assets, which has created a huge opportunity for credit unions – especially those that want to attract millennials."[4]

A similar dynamic would be in play for the CCCA.

10. During the hearing, there was discussion that the CCCA or additional competition in the credit card market negatively would impact consumers' ability to participate in robust credit card rewards programs.

    Is this a legitimate claim?

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[2] James Disalvo and Ryan Johnston, "How Dodd-Frank Affects Small Bank Costs," Economic Insights: Federal Reserve Bank of Philadelphia (Feb. 2016) available at https://www.philadelphiafed.org/-/media/frbp/assets/economy/articles/economic-insights/2016/q1/eiq116.pdf.
[3] "Credit Unions Revive Debit Rewards" (Jan. 22, 2016) available at http://www.cutimes.com/2016/01/22/credit-unions-revive-debit-rewards; "Credit Unions Pile Into Debit Rewards" (Jan. 20, 2016) available at http://www.cutimes.com/2016/01/20/credit-unions-pile-into-debit-rewards?page=1&slreturn=1453333652.
[4] "6 Winning Credit Union Payments Strategies" (Apr. 15, 2016) available at http://www.cutimes.com/2016/04/15/6-winning-credit-union-payments-strategies?slreturn=1487974414&page=2.

The evidence shows that this claim is wrong. Rewards and loyalty programs are used by card-issuing banks to compete with one another to win cardholders. Banks will still compete for cardholders under the CCCA. The numbers show that credit card issuing is wildly profitable and gives banks huge revenues to offer rewards just as they do today – even if interchange fees were entirely eliminated. Here is a sampling of those revenues:

- Banks collected $6.4 billion in total credit card annual fees in 2022[5]
- Banks collected $14.5 billion in credit card late fees in 2022[6]
- Banks also collected more than $4 billion in non-sufficient funds and other fees in 2022[7]
- Banks collected more than $100 billion in credit card interest payments in 2022[8]
- That means the total credit card revenues directly from consumers noted above was **$125 billion** (without a single dollar in swipe fees)

With total rewards earned by cardholders in 2022 amounting to $41.1 billion,[9] the result is $84 billion in gross profit margin above rewards for banks without factoring in a single dollar of swipe fees. Those numbers plainly demonstrate that banks will continue to offer robust rewards even if legislation were to outlaw all swipe fees – which CCCA does not by any stretch of the imagination do.

In fact, that extra $84 billion of margin understates how much more the card industry makes from consumers than it provides in rewards. For example, many rewards never get used. Cardholders had $33 billion in unused rewards in 2022.[10] And, rewards consistently get devalued so they are worth less than when they were given out in the first place.[11] The rewards' dollar value is as much of a myth as their revenue source.

Plus, the giant banks covered by the CCCA, which have profit margins of about 30 percent, will have the competitive incentive to continue offering rewards programs—or else they may lose business to smaller banks that are not covered by the CCCA. After all, merchants today routinely offer their customers robust loyalty and rewards programs even though the merchants have profit margins in the low single digits – a fraction of what giant banks enjoy.

As I also discussed on pp. 31-33 of my written testimony, while the United States has the highest credit card swipe fees in the industrialized world, the rest of the world still has credit card rewards. That's because competition incentivizes these rewards programs. Additionally, the one study actually quantifying rewards in other nations—and how they were impacted by much more

[5] "The Consumer Credit Card Market," Consumer Financial Protection Bureau (Oct. 2023) at 63 (available at 2023 Consumer Credit Card Market Report).
[6] *Id*. at 5
[7] *Id*. at 67
[8] *Id*. at 52
[9] *Id*. at 69
[10] *Id*. at 100
[11] "Credit Card Rewards: Issue Spotlight" Consumer Financial Protection Bureau at 3 (May 2024) (available at Credit Card Rewards Issue Spotlight).

strict reforms than the CCCA—determined that the CCCA would reduce rewards in the U.S. by less than one-tenth of one percent.

Senator Charles E. Grassley
United States Senate Committee on the Judiciary
Hearing on "Breaking the Visa-Mastercard Duopoly: Bringing Competition and Lower Fees to the Credit Card System"
November 19, 2024

Questions for Doug Kantor

1) Through Dodd Frank, Congress passed debit card competition mandates similar to those included in the Credit Card Competition Act. Recently, we've seen cases filed by both the DOJ and the Federal Trade Commission enforcing these competition requirements, however, I've also heard concerns that the caps limited benefits for consumers. How should the implementation of the original Durbin Amendment inform today's discussions about the credit card market?

The 2010 debit reform that was enacted by Congress on a bipartisan basis, which included ensuring a choice of at least two networks on debit cards, has been helpful in bringing market forces to debit swipe fee rates and providing competition among networks. The debit reform experience provides several key insights into how the CCCA would benefit the credit card market.

First, the debit reform experience shows that consumers benefit from reform, but that vigilant oversight is needed to address persistent efforts by card networks to circumvent reform provisions. As I discussed in detail in pp. 28-31 of my written testimony, debit reform promptly brought meaningful benefits for consumers, with one study finding that consumers saved nearly $6 billion in 2012, the first year the reforms were in effect. However, the recent DOJ antitrust lawsuit against Visa and the FTC's 2022 order against Mastercard highlight how the dominant debit networks engaged in methodical campaigns to circumvent and stifle the reform's pro-competitive requirements. Regulators need to provide effective oversight of the card industry's compliance with pro-competitive reforms to achieve the reforms' full benefits. Additionally, even the Federal Reserve appears to have acknowledged in its recent proposed update to its implementing Regulation II that debit interchange rates remain far higher than they should be, particularly in light of the declining transaction costs for the debit card industry. A reduction in the regulated debit interchange rate is long overdue and such a reduction would increase the amount of savings that would be passed through to consumers.

Second, the debit reform experience shows that increasing network competition on cards leads to networks improving the security of their transactions. When merchants can choose to route transactions over more than one network, they will favor networks that have less fraud (because merchants are charged for the lion's share of fraud losses). After debit reform that required each debit card to have two networks came into effect, the Star network quickly announced that it would encrypt all debit transactions from end-to-end – a level of service that had not previously been made available. Because there was competition among networks under debit reform, that led all of the other networks in the market to quickly announce they would provide such encryption as well. Competition between networks on debit cards thus incentivized the entire market to improve security, and the same would happen with credit cards under the CCCA.

Third, the experience with debit reform demonstrates the lack of merit to claims of the card industry that any pro-competitive reform will cause the sky to fall. The debit card industry today is thriving and growing even with interchange fee regulation in place, just as credit and debit card industries overseas are operating successfully in nations where credit card swipe fee rates have been restricted to levels far below U.S. rates. While the banking industry and card networks have incentive to claim that any pro-competitive reform will create a parade of horribles in order to attempt to preserve their lucrative status quo for as long as possible, the debit reform experience shows that banking and card industry claims about the impact of reform should be taken with a grain of salt.

In addition, claims that banking services for consumers were made less advantageous or more costly as a result of debit reforms are not supported by the facts. As laid out at pp. 34-36 of my written testimony, the time period following implementation of debit reform saw an increase in so-called "free checking" offerings at U.S. banks as reported by the American Bankers Association, reversing the trend that took hold during the financial crisis (and prior to debit reform) in which such services were sharply reduced. The market movements of banking services depend upon other factors such as the interest rate environment and banks' motivation to attract more deposits that those banks can put to work. As I noted in an article I authored which was published in the DC Journal in October, debit cards are simply an access device to the funds in a checking account and they provide banks with a cost effective way to allow consumers to access those funds.[1] So, banks benefit from cost savings through the use of debit cards even if there are no fees of any kind associated with them.

2) In the hearing, several questions focused on the possibility of fee negotiation between the various parties, rather than mandates from Congress. Are there obstacles that prevent such negotiation under the current system?

The biggest obstacle to meaningful fee negotiation is centralized fee-fixing by card networks on behalf of card-issuing financial institutions. Under the current system, Visa and Mastercard have organized thousands of card-issuing financial institutions into pricing cartels when it comes to the fees and terms for merchant card acceptance. Merchants have no leverage to negotiate with cartels with that degree of market power. Visa and Mastercard, which combine for around 80 percent of the credit card network market, can dictate fee rates and terms to merchants on a take-it-or-leave-it basis, and merchants who try to leave it will lose the ability to accept payment from the millions of cardholders at the thousands of banks in the Visa and Mastercard networks. Merchants are severely disadvantaged in any negotiation where one merchant tries to negotiate fees with a network company that sets fees on behalf of thousands of banks—merchants simply have to accept the fees and terms that Visa and Mastercard impose. That is the biggest obstacle to any voluntarily-negotiated resolution to the problem of excessive swipe fees and anticompetitive card industry practices.

Note that in 2008, Congress attempted bipartisan reform with the Credit Card Fair Fee Act which would have created an antitrust exemption allowing merchants to collectively negotiate through

[1] "The Backward Reasoning Behind Debit Card Fees," by Doug Kantor, DC Journal, Oct. 4, 2024 (available at The Backward Reasoning Behind Debit Card Fees – DC Journal - InsideSources).

an agent with Visa and Mastercard over fees and terms for card acceptance. This legislation aimed to create a level playing field for a fair negotiation, while establishing an arbitration proceeding at the end of the negotiation period to pressure the parties to reach a mutually-acceptable negotiated resolution. The Credit Card Fair Fee Act passed out of the House Judiciary Committee in 2008 with a majority of votes among both Republicans and Democrats on the Committee, but there was not time to move the measure to the House floor during that Congress.

The bottom line is that unless something is done to rein in the structure Visa and Mastercard have created and their collective power in the market, there is no way for merchants to have bargaining power that would allow for a negotiated outcome.