Testimony Before the United States Senate Committee on Judiciary

Mastercard President of the Americas, Linda Kirkpatrick
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Introduction

Chairman Durbin, Ranking Member Graham, and Members of the Committee. My name is Linda Kirkpatrick, and I am the President of the Americas at Mastercard. I am here today representing Mastercard and its more than 11,000 employees in the U.S.

Mastercard powers an inclusive digital economy that benefits everyone, everywhere, by making transactions safe, simple, smart, and accessible. Using secure data and networks, our innovations and solutions help consumers, merchants, financial institutions, and governments realize their greatest potential. Hundreds of millions of consumers use our products knowing that they can transact and make purchases in a safe and secure manner, and that they will be protected from fraud. Likewise, millions of merchants of all sizes accept our products because of the benefits our products deliver: guaranteed payment of every transaction—regardless of whether the shopper has money in their pocket; security through end-to-end encryption, tokenization, and authentication; and the ability to expand their customer base online. Payment cards used on our network are issued by thousands of banks and credit unions, large and small.

Mastercard invests heavily in the security of our network, continuously innovating to protect consumers, merchants, and other network participants. These efforts include our rollout of chip card technology; extending the security of chip cards to digital channels through token technology; utilizing AI to prevent fraud and cyber threats; and investing in the development of novel solutions that enable companies to grow and enter new markets. Although these innovations come at a cost to us, they produce results. For example, over the past three years, our SafetyNet technology stopped real-time fraud attacks and prevented more than $50 billion in potential fraud.

The Credit Card Competition Act ("the bill") destroys the value that electronic payments deliver to consumers, small businesses, and the economy. If passed, this legislation will harm competition in the payments industry, and, as a result, will negatively impact the consumers, merchants, and financial institutions that drive our economy.

Specifically, the bill threatens the benefits and protections that Mastercard brings to consumers, and it will almost certainly lead to detrimental effects across the payments ecosystem—reduced card choice, increased cardholder confusion, billions of dollars in sunk costs from reissuing hundreds of millions of credit cards, higher bank fees, fewer rewards, and riskier transactions on less secure networks. If passed, the bill will reduce the dynamic competition that exists between Mastercard and other payment networks including Visa, American Express, and Discover, and dozens of new players like Klarna, Affirm, and even our regulator, the Federal Reserve. The bill would also remove

incentives to invest in technology to combat fraud, which has the potential to harm consumers and their finances.

Any benefits from the bill will be regressive, limited to the largest brands that will gain regulated leverage over small businesses. Many of these larger brands have already contracted for extensive benefits through co-brand portfolios and other customized agreements with Mastercard or other networks. The bill would further benefit these larger players because of their resources to actively manage payments-related decisions while small businesses have fewer resources and less time to do the same with their service providers. A study from the University of Miami found that any savings derived from the bill would disproportionately benefit the five largest retailers in the U.S.[1]

The Value of the Mastercard Network

Mastercard is a global technology company that enables people everywhere to pay conveniently, efficiently, and securely. Whether it is to buy necessities like groceries, access healthcare, pay bills, participate in digital commerce, send money to family or friends, fund college tuition, operate a business, or travel, Mastercard is there to ensure that consumers can pay. The benefits of the Mastercard network allow us to fulfill our commitment to empower consumers, drive business, facilitate commerce, and improve the quality of life of people in the U.S. and all around the world. We connect consumers, financial institutions, merchants, governments, digital players, businesses, and other organizations worldwide by enabling electronic payments and making each transaction safe, simple, smart, and accessible.

In addition to our core functions of authorizing, clearing, and settling payment card transactions, Mastercard offers a range of products and value-added services such as automated clearing house ("ACH") transactions, security and fraud control solutions, cyber and intelligence products, information and analytics services, open banking solutions, consulting, loyalty services, and reward programs.

Core Payment Card Transactions

It is important to understand how our card network functions. In a typical transaction, a consumer uses one of our products to pay for goods or services from a merchant. The merchant has a contract with a financial institution called an acquirer, and they often work with a processor, which in turn connects with Mastercard as the network. When the card is used at the merchant terminal, the acquirer sends a message to our network. The consumer's card number identifies the bank that issued that card (the "issuer" or "issuing bank"), and the message is sent to the issuing bank to confirm whether the consumer has enough money in the account or line of credit to pay for the

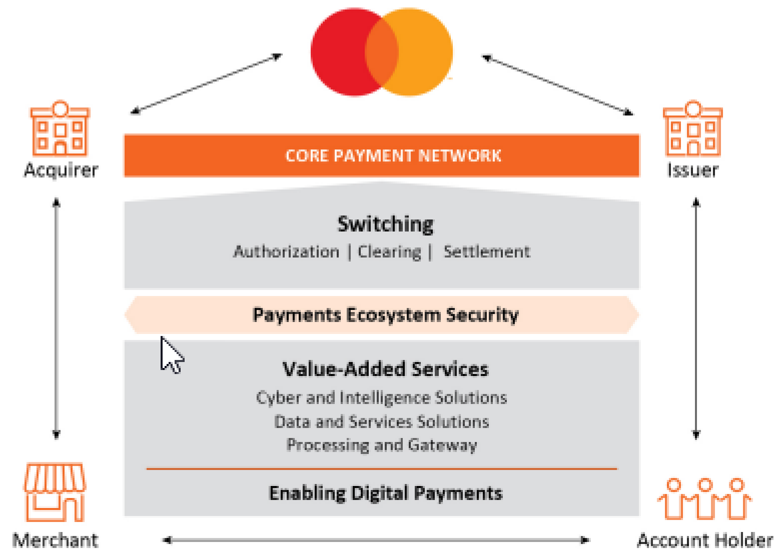
[1] Indraneel Chakraborty, Research Note: Imposing Alternative Payment Networks on Credit Cards Will Likely Hurt Low Income Households and Small Merchants (February 1, 2024). Available at SSRN: https://ssrn.com/abstract=4714752.

purchase. If they do, an authorization message is then routed back across our network to the acquirer and a "transaction approved" message appears.

Mastercard does not issue cards, extend credit, or determine or receive revenue from interest rates or other fees charged to account holders by issuers; nor does Mastercard earn money from interchange paid to the issuer by the acquirer. Mastercard also does not establish the fees merchants are charged by acquirers in connection with acceptance of our products.

In a typical transaction, after the issuer authorizes the transaction, it uses our network to pay the acquirer an amount equal to the value of the transaction, minus the interchange owed to the issuer by the acquirer. The acquirer pays the merchant the amount of the purchase, net of a discount, which is often referred to as the "merchant discount rate."

The following represents a transaction on Mastercard's core payment network:



Often, the merchant discount rate charged by acquirers is composed of interchange, network fees, and acquirer fees. The first two of those three categories may be passed on at "cost" to the merchant, and they will vary depending on the circumstances of a transaction. Other merchants – often small merchants – will pay one single blended rate for all transactions regardless of the type of credit or debit card that is used to make the payment. In addition to acquirers, merchants may also partner with processors or payment facilitators, which have contractual relationships with acquirers and which enable card acceptance for merchants. There are hundreds of merchant acquirers, processors, and payment facilitators in the U.S.

Interchange

Interchange is a fee paid by acquiring banks to issuing banks. Interchange functions as a balancing mechanism that helps to maintain an extensive and secure

payment system. By establishing "default" interchange that applies to transactions when the issuer and acquirer do not otherwise agree on compensation, Mastercard can incentivize both card issuance (including extending an unsecured line of credit) and card acceptance (including through the promise of guaranteed payment to the merchant) through a system that generates approximately $10 trillion in sales for the economy. By directing the flow of funds this way, the system has recognized that the issuer's services are critical to the operation of an efficient network. Interchange drives card issuance by thousands of banks and credit unions, and it incentivizes millions of businesses to accept cards because of the speed, safety, efficiencies, and significant incremental sales for merchants.

Benefits of the Mastercard Network to Merchants and Small Businesses

Mastercard is committed to fostering the growth of small businesses and to serving their needs. Mastercard's Digital Doors program allows entrepreneurs to grow digitally through a structured combination of educational content, offers, and exclusive tools to create marketing assets. These resources, and the popularity of payment cards with consumers, allow small businesses to compete with the nation's biggest retailers for consumers' business. Small businesses use cards to operate their businesses and gain access to credit, but they may also accept cards as a merchant for payment.

Mastercard also partners with merchants on co-brand cards and other products and services that are designed to bring purchase volume to merchants and combat fraud. For co-brand cards as an example, these products drive loyalty towards our merchant partners, increase revenue, and often result in reduced costs of acceptance. These products also deliver significant value to consumers through rewards and other benefits. Mastercard invests billions annually in its merchant partnerships, and it competes fiercely for merchant acceptance.

Today's merchants have enormous flexibility in determining payment options to offer to consumers. A merchant can offer its customers the choice to pay by cash, check, general-purpose cards (including credit cards, charge cards, and debit cards), Buy Now Pay Later ("BNPL") platforms, proprietary store-issued cards (a.k.a. "private label" cards), prepaid cards, gift cards, ACH, or real-time payments. Moreover, this choice permits a merchant to manage its costs of payment acceptance: merchants can restrict payment options in their stores, or they can offer other payment options but steer their customers to the preferred methods or provide incentives to pay with cash.

With these choices, merchants continue to offer card options – and choose to accept Mastercard because the benefits of card acceptance are far greater than the costs. These include improved sales, mitigated fraud and shielding merchants from consumer charge-offs when they do not repay their financial institutions. Not only does a merchant receive guaranteed payment, but what it pays for in acceptance is well below the costs it would incur to run its own credit program. According to the Federal Reserve, the average annual consumer credit card charge-off rate, which is the amount of credit that a bank or credit union extends that is not repaid by the borrower, is approximately 4.5%. The average credit interchange rate for Mastercard has been approximately 1.9%. Finally,

consumers and small businesses often receive rewards that approach 2% of their purchases.

Benefits of the Mastercard Network to Consumers

The benefits associated with being a Mastercard cardholder include access to credit (for credit cardholders); consistent and secure checkout experiences; consumer protections, including zero fraud liability protections and dispute resolution processes; value-added benefits and features such as rewards; avoiding the cost of cash; and the ability to transact in over 150 currencies around the world, among others. A Mastercard cardholder knows that they can go anywhere in the world, and wherever they see the Mastercard acceptance mark, they can pay for the goods and services.

Mastercard plays a critical role in expanding financial inclusion for consumers of all socioeconomic means. Mastercard further enables banks and co-brand partners to offer consumers significant tangible benefits, and Mastercard is expanding those choices through its investments in fast ACH (which decreases processing time as compared to traditional ACH transactions) and real-time payments. This proliferation of benefits is the direct result of intense competition in payments and clear consumer demand. For example, this constant competition has resulted in the elimination of annual fees for millions of credit cards. Likewise, the increase in rewards and loyalty credit cards is also a direct result of competition: more than 80% of all credit cards are rewards cards, and data from the Consumer Financial Protection Bureau demonstrate that consumers of all income levels enjoy the benefits of rewards and points.

Concerns with the Proposed Legislation

The bill threatens the value afforded to consumers and harms consumer interests in many ways:

First, the bill does not consider the two-sided nature of credit card network platforms, in which merchants sit on one side of the market and consumers sit on the other. The legislation provides the largest companies with full transaction routing discretion, giving them the ability to route any transaction to the least expensive network enabled on the card, depriving consumers of their choice. But if this mechanism is designed to lead to lower merchant acceptance costs on one side of the platform, it fails to sufficiently account for the detrimental consumer effects on the other side. Faced with diminished interchange, institutions will respond by adjusting fees or interest rates, or reducing basic access to credit or benefits, such as cardholder rewards.

Second, there is no credible evidence that payment card restrictions designed to lower costs to merchants are actually passed on to consumers in the form of lower prices. In fact, studies show that merchants tend to pass on losses to consumers in the form of higher prices, and merchants do not pass on benefits. As one study put it:

> In markets outside of credit cards, economists have long observed that reducing the costs to retailers does not necessarily result in reduced prices to consumers. For instance, most analyses have concluded that sales tax

> holidays do not reduce consumers' costs for most of the goods covered by the holiday: As consumers respond by shifting their purchases into the holiday window, retailers respond by raising prices or reducing the number of sales.[2]

Third, if enacted, the bill's structural changes will be costly to issuers and merchants. Issuers will need to re-issue approximately 650 million new cards and create the operational infrastructure to support new merchant routing of transactions. One study estimated that legislation requiring multiple networks for credit cards would trigger replacement costs of approximately $4.4 billion to implement.[3] There will be substantial additional costs associated with the need for millions of merchants and their acquirers and processors to reconfigure their credit card acceptance operations and infrastructure to accept the new cards and make routing choices. It is unrealistic to believe that these entities will not be looking to other revenue streams to make up these costs.

Competition

The Competitive Landscape

Mastercard faces competition from well-established global payments networks like Visa, American Express, Discover, China Union Pay, and JCB. The dynamic and competitive nature of the market is further exemplified by the recently announced merger between Capital One and Discover. Further, we compete with ATM and point-of-sale debit networks globally, such as Star, NYCE, and PULSE in the United States, Interac in Canada, and EFTPOS in Australia. We also compete against businesses that issue their own private label cards. Increasingly, we compete against companies that offer alternative payment systems, such as digital wallet providers, BNPL providers, mobile phone-based money transfer and microfinancing services, cryptocurrencies, and even our regulator, the Federal Reserve. The below chart reflects this range of competitors:

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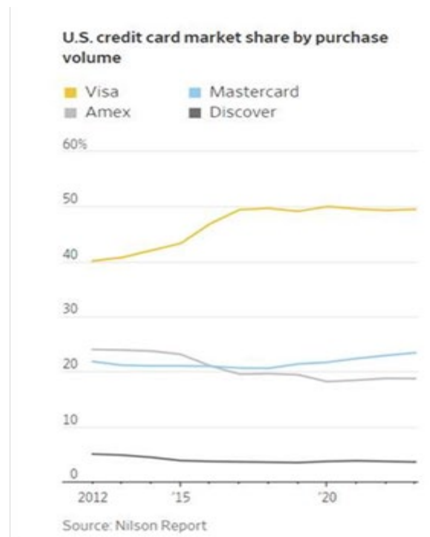
[2] *Id.* at 7.

[3] Ike Brannon and Chris Richardson, The Impact of an Interchange Fee Cap on Credit Card Transactions (May 3, 2022). Available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4099266.

Since the bill focuses on credit, it is important to understand where Mastercard falls within this competitive marketplace. Even setting aside the influence of BNPL platforms such as Klarna and Affirm, Mastercard currently and historically has never "dominated" the competition over credit. According to the data in the February 2024 Nilson Report, our share of the credit card transaction market in the United States in 2023 was 24.6%, less than half of Visa's and much closer to the share held by American Express, which has historically maintained a similar share as Mastercard, at 19.7%.

The Department of Justice's (DOJ's) recent lawsuit filed against Visa concerning its conduct in the debit market makes clear that Mastercard and Visa are two separate and distinct entities that compete against each other. Visa is our biggest and strongest competitor. The DOJ acknowledged Visa's dominance, and recognized that in the debit market, "Mastercard is a distant second [as compared to Visa], processing less than 25% of all U.S. debit transactions and card not present U.S. debit transactions." The same is true in the credit market, where Mastercard's share is also below 25%.[4] Therefore, there is no legitimate reason for the bill to discriminate against Mastercard and to favor American Express.

[4] *United States v. Visa Inc.*, Case No. 1:24-cv-7214, Dkt. 1, Complaint at ¶ 6 (S.D.N.Y.) (filed Sept. 24, 2024).



Mastercard must manage and balance both sides of a two-sided transaction platform to maximize credit transactions. It needs to provide valuable services at competitive pricing to incentivize acquirers and merchants to accept Mastercard-branded credit cards while similarly offering card issuing banks sufficient revenue and accompanying services to incentivize them to issue Mastercard-branded cards that cardholders will want to use. That two-sided platform competition, recognized by the Supreme Court,[5] leads to vigorous competition among issuing banks to offer high-value credit cards to consumers. On the merchant side, Mastercard employs incentive pricing to open new channels of credit acceptance that further benefit cardholders and merchants.

While Mastercard typically works through financial institutions to secure issuance and acceptance, the so-called three-party networks, American Express and Discover, also have worked with various financial institutions to grow their respective networks, and expand their acceptance. Those financial institutions compete for merchants. It is these fundamental competitive dynamics and associated benefits that the bill threatens to eradicate in favor of advantaging American Express, currently the second largest credit issuer on the planet and the largest network exempt from the bill, by orchestrating its status as the dominant network. Indeed, during a recent earnings call, American Express noted, "[r]evenue in the quarter reached an all-time high and earnings grew 44% year-over-year." Simply put, the bill artificially imposes a market structure that determines winners and losers. This is likely to lead to fewer choices for consumers and little pricing benefit to most small merchants.

Unintended Consequences of Prior Payment Card Regulation

The threat of harm to consumers and small businesses is not just an abstract concept, but an actual result of Congress previously intervening in this marketplace. In 2011, Regulation II was passed as part of the Dodd-Frank legislation. The amendment implemented debit interchange price controls and required that issuers allow for debit transactions to be routed over at least two unaffiliated networks. As a result, consumer

[5] *Ohio v. Am. Express Co.*, 585 U.S. 529 (2018).

fees increased, debit rewards largely disappeared, and basic checking account access became more expensive. The DOJ lawsuit against Visa shows that the regulation did not increase competition but instead stifled it.

One study found that free checking accounts at issuers subject to the Durbin Amendment fell from 63% to 27% as a result of the Durbin Amendment.[6] The average fees on checking accounts increased from $3.88 monthly to $6.50 monthly.[7] The monthly minimum balance a customer was required to maintain to avoid fees rose by 24%, and monthly fees on interest bearing checking accounts rose by 13%.[8] The Federal Reserve itself found that banks covered by the Durbin Amendment were 35% less likely to offer non-interest checking accounts without monthly fees.[9]

The debit regulation had a disproportionate impact on lower-income consumers who were forced to pay higher fees because they could not meet the minimum balance requirement. To the extent that banks would be forced to tighten credit availability, low-income consumers increasingly may get shut out from banking and credit card services. One study of the Durbin restrictions on debit estimated that over 70% of consumers in the lowest income quintile (household income of $22,500 or less) fell below the average account minimum ($1,400) required to avoid a monthly maintenance fee after the Durbin Amendment. Meanwhile only 5% of consumers in the highest income quintile (household income of $157,000 or more) are subject to those fees.[10]

Further, Regulation II directly led to large-scale extinction of cardholder rewards on debit cards, a harbinger of the likely effects of the bill on credit rewards. For example, the Federal Reserve's own data show the rapid disappearance of debit rewards, with covered issuers expending less than one basis point.[11]

Finally on debit, the DOJ highlighted how the impacts of original debit regulation resulted in a static debit market. They wrote, "The interchange cap has a no-evasion rule, which limits a network's ability to provide incentives to issuers by paying them more than the cap. These limits on incentives made it even more challenging for Mastercard or other networks to win front-of-card placement where Visa was the incumbent network because they often could not fully compensate the issuer for its switching costs."[12] Price

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[6] Vladimir Mukharlyamov and Natasha Sarin, "Price Regulation in Two-Sided Markets: Empirical Evidence from Debit Cards" (October 11, 2024). Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3328579.

[7] *Id.*

[8] *Id.*

[9] Mark D. Manuszak and Krzysztof Wozniak, "The Impact of Price Controls in Two-sided Markets: Evidence from US Debit Card Interchange Fee Regulation," Finance and Economics Discussion Series, 2017-074 (Washington, D.C. 2017). Available at https://www.federalreserve.gov/econres/feds/files/2017074pap.pdf.

[10] Vladimir Mukharlyamov and Natasha Sarin, "The Impact of the Durbin Amendment on Banks, Merchants, and Consumers" (2019). Faculty Scholarship at Penn Carey Law. 2046. Available at https://scholarship.law.upenn.edu/faculty_scholarship/2046/.

[11] Federal Reserve, 2021 Interchange Fee Revenue, Covered Issuer Costs, and Covered Issuer and Merchant Fraud Losses Related to Debit Card Transactions. Available at https://www.federalreserve.gov/paymentsystems/2021-Interchange-Fee.htm.

[12] *United States v. Visa Inc.*, Complaint at ¶ 52 (S.D.N.Y.) (filed Sept. 24, 2024).

controls, routing mandates, and other regulations led to a static debit market that deprived consumers of rewards and basic access to financial services. We should expect similar results if we mirror these rules for credit.

The impact of legislatively restricted interchange for credit arguably will be greater, because the overall value of credit card payments is much larger than in debit,[13] and credit products today are usually associated with rewards benefits. This is not surprising. Banks issue rewards cards because Americans benefit from and rely on payment card rewards in credit. Discount and cashback promotions are essential to families, consumers, and small businesses across the U.S. Issuers offer rewards cards because consumers demand them.

The bill's likely negative impact on rewards may center on the co-brand cards that consumers find attractive, particularly because of rewards programs that generate airline miles, hotel points, and discounts. According to a 2023 report from the Consumer Financial Protection Bureau, almost 74 million consumers accrue rewards by using co-branded credit cards.[14] Reduction in revenue streams that fund rewards on co-brand credit cards have the effect of raising effective prices on card usage, thereby hurting consumers.

Under the bill, merchant co-brand partners (which typically share interchange revenue with their co-brand card issuers) will be faced with a revenue shortfall that likely will require them to recoup revenue from other sources. For example, airlines have noted that the bill could have a negative impact on consumer use of co-branded airline credit cards because the legislation will increase annual fees associated with the cards or otherwise reduce the airlines' ability to provide benefits for consumer loyalty.[15]

Security

Mastercard keeps billions of electronic payments safe through end-to-end encryption, tokenization, and authentication. We spot anomalous activity and identify fraud before it occurs, and our technology ensures that genuine transactions are not declined. Mastercard has invested more than $8 billion in technologies and innovations to protect consumer information since 2018. An estimated $50 billion in fraud was prevented over the past three years because of one of Mastercard's products: SafetyNet. Mastercard works with financial institutions and small businesses to protect the ecosystem by employing a combination of machine learning, behavior and device

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[13] Todd J. Zywicki, Geoffrey A. Manne & Julian Morris, *Unreasonable and Disproportionate: How the Durbin Amendment Harms Poorer Americans and Small Businesses*, International Center for Law & Economics 1, 17-18 (Apr. 25, 2017). Available at https://laweconcenter.org/images/articles/icle-durbin_update_2017_final.pdf.

[14] Consumer Financial Protection Bureau, The Consumer Credit Card Market (October 2023). Available at https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2023.pdf.

[15] Caroline Tanner and Nick Ewen, *Explaining the Credit Card Competition Act and what it means for your credit card rewards*, The Points Guy (Dec. 4, 2023), https://thepointsguy.com/news/credit-card-competition-act/.

intelligence, as well as analysis of billions of data points to distinguish between a real person and a fraudster with over 99% accuracy.

The bill will remove incentives for networks to make investments in security, which would directly harm American consumers and consumers around the world. As one example, the development of tokenization technology has been key to ensuring that when a transaction is processed, sensitive consumer information is anonymized and unable to be stored, which greatly reduces the risk of fraud-related incidents. 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.

This would reduce incentives for Mastercard (and other networks) to continually innovate and invest in these technologies. Disincentivizing this innovation puts consumer information directly at risk. As one paper put it, "since the CCCA would shift the choice of network from the issuer to the merchant and/or acquirer, and since those parties generally have weaker incentives to route transactions over more secure networks with better fraud detection, the likeliest effect is that the CCCA will reduce investments in fraud prevention . . ." [16] Because fraud prevention benefits consumers, they would lose.

Conclusion

The payments industry operates efficiently, safely, and cost-effectively for consumers, merchants, and financial institutions large and small. We have never seen consumers and small businesses have more ways to pay. The bill is a misguided overreach that will have detrimental effects on marketplace competition and consumer and merchant welfare. There is no legitimate legislative rationale for creating artificial hurdles to competition and predetermining winners and losers. In sum, the bill will harm card security for hundreds of millions of Americans, diminish their rewards, and cut millions more off from access to basic credit.

We at Mastercard recognize that competition is a critical issue, and that our nation's laws should be designed to drive competition and innovation. Mastercard welcomes that competition and the opportunity to continue to innovate to meet the needs of consumers and merchants. We appreciate the opportunity to testify today, and I am happy to answer any questions from the Committee.

[16] Julian Morris, *The Credit Card Competition Act's Potential Effects on Airline Co-Branded Cards, Airlines, and Consumers*, International Center for Law & Economics (Nov. 17, 2023). Available athttps://laweconcenter.org/resources/the-credit-card-competition-acts-potential-effects-on-airline-co-branded-cards-airlines-and-consumers/.