

## Antitrust Exemptions for Merchants' Empty Promises? Shawn Miles, MasterCard Group Head, Global Public Policy

The recently enacted Credit CARD Act fundamentally alters the way card issuers in the United States will do business, and the consequences of the changes mandated by the bill are still unknown. We're working closely with our customers to protect the wide ranges of choices American consumers have come to expect from their credit cards, while maintaining access to credit and ensuring payment cards are available for those who need them.

It's important to remember that electronic payments provide extraordinary value to consumers, merchants and the economy. Particularly in today's challenging economic times, electronic payments give families the flexibility they need to manage their finances. But many observers believe that by limiting credit card issuers' ability to price according to risk, the Credit CARD Act may result in less credit availability and higher prices for the very consumers who need credit most.

That's why we urge Congress to wait until the impact of the CARD Act ripples through a struggling economy, before considering another set of regulations that could further reduce credit availability and would, no doubt, move costs from merchants to already strapped consumers. This time the bills are being driven by big box merchants, who've run a well-financed lobbying campaign to convince Congress to reduce their costs for accepting debit and credit cards. These costs, which include a fee known as interchange, are simply a cost of doing business.

Interchange is a small fee typically paid by a merchant's bank to a card issuer for a card purchase transaction. It partially reimburses issuers for activities they perform, enabling transactions and delivering major benefits to merchants and consumers. Merchants benefit through higher sales, guaranteed payment, and protection from fraud and credit risk, and the ability to offer their customers a safe, secure and convenient way to pay. If merchants succeed in cutting their share of acceptance costs, the other beneficiary – consumers – will foot the bill, including through less credit availability, higher costs, and reduced choice.

In a now-familiar refrain, the National Retail Federation pronounced that legislation introduced in the House and the Senate, giving merchants exemptions allowing them to evade the antitrust laws in order to collectively negotiate lower costs to accept credit cards, will be a huge win for consumers. That's an empty promise. How do I know? Because we know what happened in Australia, where the government mandated lower interchange fees, and merchants pocketed the savings. We know for sure that consumers there are now paying much higher fees to use their cards, and receiving fewer benefits, while there is no evidence merchants reduced any prices.

The merchants' promise that antitrust exemptions when dealing with payment networks will lead to lower retail prices is as bold as it is hollow. They simply want to pocket any savings achieved from regulating their costs of accepting credit cards.

No matter how loudly the big box merchants claim the mantle of “Protector of Consumer Interests,” granting big box merchants a collusionary antitrust exemption will have the opposite effect: less credit availability, higher prices, and reduced choice for consumers. That’s not surprising; the reason we have antitrust laws is to protect consumers, not large retailers.

The Department of Justice said as much when it wrote that an antitrust exemption “would appear to be the type of naked collusion that the antitrust laws condemn as per se unlawful because such conduct lacks plausible benefits to competition.” The Federal Trade Commission joined the Justice Department in its concerns on the same grounds of its immunity from antitrust laws.

Beyond the fact that the Congress shouldn’t be in the position of arbitrating a business dispute, interfering with competitive pricing is dangerous and will result in consumers paying more to use their preferred choice of payment at the register. In fact, the only winners will be merchants who avoid paying their fair share for the valuable benefits they receive from accepting payment cards.

We welcome the dialogue on the issue of interchange and the benefits our business model bring to consumers and the global economies. We believe further light will be shed on the issue, when the Government Accountability Office (GAO) concludes a study on the effects of interchange on consumers and merchants. The GAO report was mandated as part of the Credit CARD Act, though the GAO has visited this issue in the past. In a report released last year, the GAO found that by accepting credit card payments, federal agencies realized some significant benefits despite paying fees. Among the benefits are fewer bad checks and cash thefts.

Electronic payments systems are a beneficial and efficient way to increase sales and consumer satisfaction. Our nation’s antitrust laws are designed to protect consumer from the very collusion the bills introduced by Representatives John Conyers and Bill Shuster and Senator Dick Durbin, would allow. Congress should act in the best interests of consumers by rejecting it.