# TESTIMONY OF

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**Before the United States House of Representatives**
**Committee on the Judiciary**
**Antitrust Task Force**

## HEARING ON

## "CREDIT CARD INTERCHANGE FEES"

**Thursday, July 19, 2007**

**2:00 p.m.**

**2141 Rayburn House Office Building**

## INTRODUCTION

Chairman Conyers, Ranking Member Chabot, and Members of the Task Force, thank you for allowing me to discuss the subject of electronic payments. For the last forty years, innovation in the payment industry has delivered substantial benefits to more than 100 million U.S. consumers, nearly 7 million merchants, thousands of financial institutions, and the U.S. economy as a whole, and I am pleased to be here today to discuss these issues with you.

My name is Timothy J. Muris. I am George Mason University Foundation Professor of Law and was Chairman of the Federal Trade Commission from 2001-2004. Although I advise Visa on antitrust law, including issues relating to the setting of interchange fees, the views that I express today are my own.

In testifying here today about interchange, I do not anticipate breaking new ground. This is the third Congressional hearing devoted to the subject in the last few years. In that time, three regional Federal Reserve banks, two law schools, and the AEI/Brookings Joint Center for Regulatory Studies have hosted conferences on interchange. Reflecting the prominence of electronic payment systems in our economy, numerous academics and scholars also have examined the issues we are discussing today.[1]

I want to make one overarching point. The electronic payment system in the United States links more merchants and more cardholders than any other payment system in the world. Proof that the system delivers value to both merchants and cardholders can be found in the fact that a large number of new merchants and new cardholders join the system each year. Last year,

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[1] There is a voluminous literature on payment cards and the underlying economics, to which I've contributed. *See* Timothy J. Muris, *Payment Card Regulation and the (Mis)Application of the Economics of Two-Sided Markets,* 2005 COLUM. BUS. L. REV. 515 (2005).

Visa and MasterCard reported 600,000 new merchant outlets on their networks. Discover added more than 1 million new merchant locations in 2004. Meanwhile, cards in force grew by approximately 28 million on the Visa network and 34 million on the MasterCard network.[2] In addition, emerging players such as Pay-by-Touch, Tempo Payments, and OboPay, and new platforms such as mobile payments, demonstrate a healthy marketplace with new entry and competition.

The debate over interchange poses a real threat to these systems and the many consumers, merchants, and financial systems that value them. Critics, including the merchants pursuing class action litigation over interchange in federal court in Brooklyn, want the federal government to impose price controls. I have been through this exercise before, and I strongly suspect that the merchant representatives testifying here today will disclaim any desire for price controls. Nevertheless, the protracted struggle over interchange is simply a fight about whether the federal government should set the rates that merchants pay to accept electronic payments.

With that said, I would like to make five points:

1. Electronic payments deliver extraordinary value to consumers, merchants, and society as a whole.
2. Visa and MasterCard use interchange to deliver an attractive product to cardholders and merchants.
3. Interchange drives innovation in the system.
4. Interchange does not violate the antitrust laws.
5. If the federal government caps interchange, consumers will be hurt.

[2] Nilson Report, *General Purpose Cards—2006* 8 (Feb. 2007).

## I. Extraordinary Value of Electronic Payments

The plastic payment cards that we carry in our wallets reflect a global electronic payment system. In 2006 in the United States alone, the four major payment card networks—Visa, MasterCard, American Express, and Discover—processed more than 38 billion transactions. All general purpose-type credit, debit, and stored value cards issued in the United States generated $2.733 trillion in spending. This payment system was one of the great innovations of the 20th century, and it continues to evolve in tandem with other innovations such as the Internet and wireless technology. Although we take it for granted now, it has changed people's lives as profoundly as cell phones, personal computers, and microprocessors.

### A. Consumers Benefit From Electronic Payments

As consumers, we are all quite familiar with the benefits that payment cards and electronic payments provide. Payment cards enable us to get instant access to deposit accounts and bank-supplied credit virtually anywhere in the world at any time. Using payment cards, we can buy from merchants we have never met, located in places we have never visited. Payment cards offer consumers reduced risk of theft, better management of expenses, improved recordkeeping, float for those who do not revolve balances, and reward programs. Payment cards provide consumers with flexibility in how to pay for purchases. Using a payment card, a consumer can draw on a line of credit, access ready funds in a demand deposit account, or pay with funds set aside in advance of a particular transaction.

This last category of cards is known as "stored value cards." They constitute one of the fastest growing products in the entire financial services industry, and reflect the continued innovation of the industry. Stored value cards give lower-income households, which generally do not have access to traditional banking products, a more efficient and safer way to pay for purchases.  Employers such as Sears have begun to give employees the option of receiving their paychecks through stored value cards.  Such cards enable employees to access their funds without paying the high fees charged by check cashing stores.  Federal, state, and local governments also have begun to study stored value cards as an alternative way to distribute government benefits.

Payment cards frequently offer consumers access to better credit terms than they can get elsewhere.  Those who scoff at this use of plastic frequently do not need credit or are wealthier individuals with better credit options than many Americans.  But for consumers who do not own a home or have sufficient equity in their home, credit cards typically offer the best credit terms available.  Credit cards are clearly superior to and less expensive than traditional forms of credit such as pawnshops, payday lenders, and borrowing money from family and friends. In the first quarter of 2007, the average annual percentage rate on a credit card account was 13.41 percent.[3] Personal-finance company loans typically have higher rates and larger up-front fees than the credit lines associated with payment cards.

The argument that credit-card debt is overused is simply misplaced. The use of revolving credit reflects almost entirely an offsetting decline in installment credit, such as from personal-finance companies and retail stores.  From 1970-1995, installment credit fell steadily, offsetting the rise in revolving credit.  Since 1995, revolving credit as a percentage of disposable personal income has been largely constant.

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[3] U.S. Federal Reserve, *Consumer Credit* (July 2007) (available at http://www.federalreserve.gov/releases/g19/current/default.htm) (last accessed July 12, 2007).

### B. Merchants, Businesses, Governments, and Financial Institutions Also Benefit from Electronic Payments

The benefits of electronic payments are not limited to consumers. Although their protestations might indicate otherwise, merchants benefit as well. Electronic payment systems move funds more quickly, reliably, and efficiently than paper-based systems. By accepting Visa, MasterCard, American Express, and/or Discover, a boutique clothing store in downtown Dearborn can offer its customers access to the same payment terms available when they shop at a Target or a Wal-Mart. Payment cards speed checkout lines and offer record keeping features for merchants that paper-based systems like cash and checks simply cannot match. New merchants are added to the system almost daily, and the networks are constantly innovating to address the needs of entire merchant segments. Walk into a McDonald's or Subway now and you can swipe your payment card to purchase a meal. Just a few years ago, few if any quick service restaurants accepted cards. They were not coerced into accepting, and they clearly were having no difficulty accepting just cash. They began accepting cards because the payment systems offered a valuable service, efficiency and convenience, for a price they were willing to pay.

Payment cards and the electronic payment system that they represent have made it possible for whole new forms of commerce to emerge. The symbiotic relationship between the Internet and electronic payments is the most obvious example. According to the Census Bureau, Internet sales topped $108 billion in 2006.[4] Payment cards accounted for more than 90 percent of those purchases. Automatic fuel dispensers and self-check out lines at grocery stores provide still other examples of the growing benefits we receive from payment cards.

Commercial enterprises and governments also benefit from the use of electronic payment cards in place of paper-based payment alternatives. Companies and government agencies, of course, accept payment cards and enjoy the substantial benefits associated with card acceptance. They have also begun to use payment cards to reduce the costs of managing purchases and other expenses. Such programs are known as commercial card programs. These programs offer companies and government agencies tools to monitor and control purchases and expenses. They facilitate compliance with audit requirements, enable more efficient transmission of transaction data, and can be integrated into electronic accounting systems.

The U.S. General Services Administration runs the largest government commercial card program. GSA has contracted with five financial institutions to provide corporate card services to 350 agencies in the federal government. In 2004, GSA-sponsored corporate cards generated 26.5 million transactions. GSA estimates that each commercial card transaction saved the government $53.77 in administrative expenses. According to GSA, its commercial card program saved U.S. taxpayers $1.4 billion in 2004 alone.[5]

Financial institutions benefit from electronic payment systems as well. Electronic payment systems allow small banks to compete with larger, more established banks. Every retail financial institution in the United States, from local credit unions to community banks to Citibank, has access to the major payment systems. Literally thousands of financial institutions depend on payment cards to provide their customers' access to ATMs, checking accounts, and lines of credit. By signing on to systems such as Visa and MasterCard, a credit union or community bank can provide its customers access to services just as sophisticated as those offered by the most sophisticated financial institutions in the country.

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[4] U.S. Census Bureau, *Quarterly Retail E-Commerce Sales 4th Quarter 2006* (February 2007) (available at http://www.census.gov/mrts/www/data/html/06Q4.html) (last accessed July 3, 2007).

[5] U.S. Government Services Administration, *Executive Summary for GSA SmartPay Program* (available at http://www.gsa.gov/Portal/gsa/ep/programView.do?pageTypeId=8199&ooid=11490&programPage=%2Fep%2Fprogram%2FgsaDocument.jsp&programId=10137&channelId=-13503) (last accessed July 12, 2007).

These benefits are not mere conveniences. The advantages of electronic payment systems relative to cash and check may seem small if assessed for one transaction, but they quickly add up when multiplied by the billions and billions of transactions that make up the national economy. The enormous societal benefits of payment cards are built on an extremely sophisticated and complex technological infrastructure that ensures rapid, secure, and reliable processing of electronic transactions worldwide. This efficient system of settling transactions is possible only because of the investment of billions of dollars made by electronic payment providers such as Visa, MasterCard, American Express, Discover, First Data, and Metavante in developing and improving electronic payment offerings.

## II. PAYMENT SYSTEMS MUST APPEAL TO CONSUMERS AND MERCHANTS

While no one seriously disputes the many advantages to society of electronic payments, some merchants believe that they pay too much to accept electronic transactions. They focus their criticism on the mechanism known as interchange. They claim that interchange is a "price fix," and they want the federal government to assume responsibility for setting interchange rates. This criticism is fundamentally flawed and completely mischaracterizes the role that electronic payment systems play in facilitating transactions between merchants and cardholders.

Payment card systems are a leading example of what economists and antitrust lawyers call two-sided products. A basic understanding of the economics of two-sided products illustrates why the attack on the setting of interchange is flawed, not just as a matter of antitrust law and policy, but of broader public policy as well. The challenge for the operator of any two-sided product is bringing both sides on board. As an article in the Harvard Business Review observed last fall,[6] many of the products and services that define modern life face this same problem. PC Operating Systems, Yellow Pages, advertiser sponsored media (*e.g.*, newspapers, magazines, broadcast radio), shopping malls, financial exchanges, and payment cards are all examples of two-sided products.

The pricing strategy employed by many newspapers illustrates how two-sided products actually set their respective prices. Newspapers and other advertiser-sponsored media bring together two distinct groups of customers, readers and advertisers. Readers of newspapers pay little or nothing to enjoy the benefits. Instead, publishers collect the vast bulk of their revenue from advertisers. If a newspaper charged readers a price based solely on the direct marginal costs of supplying readers with each edition, it would likely lose readers who, after all, have many other options. Without enough readers, there will not be enough advertisers. The two sides need to be managed in balance, and enterprises who do so effectively will attract more customers on both sides.

For payment card systems, the two groups of customers are cardholders, who want access to the financial resources to make purchases anywhere at any time, and merchants, who want to supply those cardholders with goods and services. A successful payment card system needs to attract enough cardholders to make the system appealing to merchants and, simultaneously, attract enough merchants to make the system appealing to cardholders.

As it turns out, bringing both merchants and consumers on board is no easy feat. The first payment card system, a three-party system operated by Diner's Club, solved this problem by giving cards to consumers and by persuading restaurants to accept guaranteed transactions from its cardholder base in exchange for a small fee on the transactions. Today, American Express

[6] Thomas Eisenmann, Geoffrey Parker, & Marshall Van Alstyne, *Strategies for Two-Sided Markets*, HARV. BUS. REV. (Oct. 2006).

and Discover continue to follow this model. These networks offer considerable benefits to cardholders at low or even negative prices when considering the benefits of float and reward programs, and they charge merchants a fee on each transaction.

Although the effect on consumers is identical, Visa and MasterCard's interchange mechanism operates somewhat differently. The differences are a direct legacy of Visa's very different origins as a payment system. Bank of America launched the predecessor to the Visa system in Fresno, California in 1958. At the time, federal law prohibited Bank of America from operating across state lines. To create a national system to rival American Express and Diner's Club, Bank of America needed other financial institutions to participate. When a cardholder of one financial institution—called an issuer—uses a card at a merchant signed by another financial institution—called an acquirer—matters are more complicated than in the three-party systems like American Express. The issuer has the right to collect from the cardholder but has no relationship with the merchant. The acquirer has the obligation to pay the merchant but no right to collect from the cardholder. For a four-party payment card system to work, the issuer needs to pay the acquirer for the obligation incurred by the issuer's cardholder.

Originally, Bank of America mimicked the mechanism used by American Express and Diner's Club. Bank of America promised the financial institution that issued the card the entire amount of the discount fee collected from the merchant on the other side of that transaction. In the mid-1970s, the newly formed Visa replaced Bank of America's rule with a fee paid by the merchant bank to the card issuing bank. This fee was known as the Interchange Reimbursement Fee or just "interchange." The fee was designed to compensate both issuers and merchant banks for their role in making the system work. Merchant banks kept the discount fee that they charged their customers, less the new interchange fee they paid to issuers.

As a practical matter, the Visa and MasterCard systems would not work without some kind of interchange mechanism. Each of the two systems has approximately 6,000 card issuers and several hundred merchant banks. To replicate the existing interchange systems through individual contracts, participants in the two systems would need to negotiate more than 1 million contracts. With a standardized set of default interchange rates, Visa and MasterCard can eliminate the transaction costs of negotiating separate interchange fees between acquirers and issuers.

Moreover, for Visa and MasterCard to succeed as "brands," merchants need to honor cards from each of the thousands of issuers. Otherwise, consumers would not be guaranteed their "Visa" or "MasterCard" would be accepted widely. Knowing that all cards must be honored, individual issuers could insist on very high fees for their payment cards. Merchants would then be subject to those high fees and would be less willing to accept the cards. A default interchange avoids this problem. Without this interchange fee, issuers and acquirers would have no practical way to exchange transactions.

For payment card systems, at least at present, the consumer is king. Although merchants decide which payment forms to accept, consumers typically decide the payment form to use on a particular transaction. Payment card systems continue to face competition from two historically dominant forms of payment, cash and check, that the federal government subsidizes and that generally carry a low marginal cost to use. To compete, payment card systems have settled on a pricing strategy that directs substantial value to cardholders (e.g., cash-back, rewards, a grace period, and low revolving rates) at no explicit price per transaction. Merchants are charged on all sales transactions.

The role of interchange in providing benefits to consumers is crucial to understand. When interchange increases, cardholders benefit. Because of intense competition between the many banks that issue payment cards to consumers, "higher" interchange revenues to issuing banks result in increased benefits for users of payment cards, such as increased rewards and lower fees. These benefits come not only in the form of airline miles on high-end credit cards. They include the rebates that the federal government enjoys on the purchasing cards used by the GSA, as well as the rebates that corporations receive from corporate card usage, the low or no fee demand deposit accounts offered by many financial institutions, and the relatively favorable terms on which card issuers currently extend credit to millions of consumers.

Visa and MasterCard set interchange mindful of the need to attract merchants as well as cardholders. If interchange fees move too high relative to the value provided to merchants, merchants will stop accepting the cards or otherwise discourage consumers from using them. If merchants reject the cards or discourage their use, consumers will experience fewer payment options. Likewise, if interchange fees fall too low, financial institutions will turn to other payment systems that provide more revenue per transaction, and consumers will pay more for the cards, receive fewer benefits, and suffer from decreased card availability. As the number and attractiveness of these payment cards fall, merchants will stop accepting the cards. Either way, volume drops, and consumers would lose.

The industry has followed this pricing model from its very inception, before ***anyone*** could credibly argue that ***any*** payment card system had ***any*** conceivable market power. When Frank McNamara kicked off the payment card revolution in 1948 with the introduction of the Diner's Club card, he set the merchant discount on that three-party system at 7% of each transaction. The evolution of the industry from a travel-and-entertainment card carried by businessmen and accepted at exclusive restaurants and hotels has pushed fees ever lower. Today, the average merchant discount fee on the American Express system is approximately 2.5%, while the system-wide merchant discount on the Visa and MasterCard systems is about 2.1%. Discover has the lowest discount, about 1.5%. The fact that the larger system, Visa, as measured by everything from merchants to cardholders to volume, has a lower discount than American Express also should cast grave doubt on whether so-called market power explains the pricing in this industry.

## III. INTERCHANGE DRIVES INNOVATION IN ELECTRONIC PAYMENTS

Visa and MasterCard use interchange to make their systems more attractive than other forms of payment to consumers and merchants. Two recent initiatives related to security and acceptance show how useful interchange can be in driving innovation:

- **Security—**Payment cards have long used interchange to reduce the risk of fraud on the systems. In the 1970s, Visa created a new interchange rate to encourage merchants to install electronic payment equipment at the point of sale. Those first electronic terminals sped up the authorization process, captured more information at the point of sale, and ultimately reduced fraud. Continuing in this tradition, last fall Visa announced that merchants eligible for lower, tiered interchange would need to comply with the standards set by the PCI Security Standards Council, to continue to enjoy the best available rates on their tiered volume. Among other things, the PCI standards preclude merchants from storing unencrypted data read from the back of payment cards. Adherence to this PCI standard would reduce security breaches.
- **Acceptance—**Electronic payment systems did not achieve nearly ubiquitous acceptance overnight. American Express and Diner’s Club started by attracting restaurants, hotels,

and airlines. Visa and MasterCard appealed to boutique retailers and other local stores. Over time, their systems grew to include department stores, pharmacies, and grocery stores. Both companies often use rates specific to particular types of retailers to make the system more attractive. This effort began in earnest with department stores in the late 1970s and continued with supermarkets and drug stores in the 1980s and 1990s. Of late, the systems have worked with high-volume, low-ticket size merchants such as fast food restaurants to make their cards attractive to such merchants. They have structured rates and adapted rules for these merchants, and as a result, payment card acceptance in quick-service restaurants has started to climb, and has grown to include other venues such as mass transit, vending machines, and contactless technologies. Increasing use of payment cards at McDonald's, Taco Bell, and In-and-Out Burger is a testament to the value that payment cards provide cardholders and merchants alike.

## IV. INTERCHANGE FEES DO NOT VIOLATE THE ANTITRUST LAWS

Interchange is at the heart of what is now the largest antitrust litigation in the hundred-plus year history of the Sherman Act. Various merchants have filed fifty or so cases challenging the interchange fees of the Visa and MasterCard payment systems. They claim that the practice of setting interchange fees on their respective systems violates Section One of the Sherman Act.

Section One concerns itself with agreements that restrain competition to the detriment of consumers. Since the enactment of the Sherman Act in 1890, the price fixing cartel has provided the paradigmatic case for Section One enforcement. Although merchants attempt to analogize interchange to a cartel fixing prices, they are wrong.

After decades of antitrust enforcement, cartel pricing has become relatively easy to spot. A group of otherwise competing firms simply agrees to fix a price for their otherwise competing products. Basic economic theory explains why such agreements are pernicious. When firms collude to fix the price of a particular product, they deprive consumers of the benefits of competition. Assuming a sufficient number of firms participate, a price fix allows them to raise the price of the product above the level that would otherwise prevail. If a price fix sticks, it may deprive some consumers of the product altogether, which results in a net loss to society as a whole, and transfers wealth from those consumers who still purchase the product to the cartel members.

The setting of interchange in a four-party payment card system shares nothing with this cartel behavior. As discussed above, payment card systems are organized differently. Although American Express, Discover, MasterCard, and Visa are essentially equivalents for consumers, the systems operate differently. American Express and Discover are three-party systems.[7] As discussed above, a single corporate entity issues cards to cardholders, signs merchants to accept those cards, and receives payment for its services. Consequently, when a three-party payment card is used, the rights and responsibilities all stay within a single corporate family. The entity that issued the card pays the merchants the face value of the transaction, less whatever fee the system charges the merchants—known as the merchant discount. That same corporate entity then collects from the cardholder according to whatever agreement has been struck.

In contrast, as previously noted Visa and MasterCard are four-party systems. Here, the payment system itself does not issue cards or sign merchants to accept those cards—the job of issuing cards and signing merchants falls to participating banks, credit unions, and thrifts. Thousands of issuing and acquiring financial institutions collect from their respective cardholders and pay the merchants with whom they have relationships.

It should now be clear why setting interchange rates in a four-party payment card system does not raise the cartel issues the merchants claim. Unlike the cartel described above, the end of the four-party systems clearly would significantly harm consumers. As discussed above, a four-party payment card system simply cannot exist without interchange. Thus, the difference between a cartel and Visa or MasterCard is stark. With cartel pricing, an end to the cartel leads to lower prices, higher output, and greater innovation. The end of interchange instead would lead to chaos, a decrease in available credit, a decline in the number of outlets that accept payment cards, and less innovation.

The merchants understand the facts. They do not want an end to interchange. They simply want interchange rates to be lowered. But this is not an antitrust remedy. If he were to follow antitrust principles, a federal judge could not mandate a new price fix (albeit at a lower level) as a remedy to a price fixing claim. One of the fundamental maxims of antitrust law is that the market, not the government, should set prices. Indeed, "reasonableness" is *never* a defense to a price fixing claim. To set interchange at a reduced rate, however it was ultimately justified, would run directly counter to these core principles of antitrust.

The merchants may also argue that I have omitted a critical fact—that Visa and MasterCard are actually cartels of member financial institutions. Visa and MasterCard are indeed four-party systems. But all payment card systems use merchant discounts in an identical fashion to balance the needs of merchants and card holders. The three party systems, American Express and Discover, are organized differently than the four party systems.

Profound changes to the ownership and governance structures of companies in the payments industry are underway. In May 2006, MasterCard ceased to be a membership

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[7] Within the last couple of years, some third party banks have begun issuing American Express and, to a lesser extent, Discover cards; in addition, both American Express and Discover have allowed other merchant banks to sign

association and became a publicly traded company. The financial institutions that had owned MasterCard sold a controlling interest to public investors. Visa will soon be public as well, having recently announced a two-stage reorganization. It will first convert from a non-stock membership corporation into a shareholder owned company. After the merger of Visa Canada, Visa USA, and Visa International, Visa Incorporated will go public, simultaneously divesting its current members of a majority of the stock in the company and corporate control.

## V. INTERCHANGE REGULATION (*I.E.*, PRICE CONTROLS) WILL HURT CONSUMERS

To date, the United States has allowed the marketplace to operate and has refused the invitation extended by some merchants to dictate the price of electronic transactions. Although the federal government has facilitated discussion of the topic, it has not intervened. Other nations have not exercised similar restraint, and the consequences are instructive.

Australia reveals what happens when a government assumes responsibility for setting interchange rates. In October 2003, the Reserve Bank of Australia capped interchange rates for Visa and MasterCard at 55 basis points. The effects of the RBA's intervention in the payment card markets will play out for many years, but the regulatory intervention has had one unambiguous effect: consumers have been hurt.[8]

Since the imposition of the rate caps, credit card fees have increased substantially. In a recent study of Australia's rate regulation, economists estimated that Australian cardholders had seen their annual fees and finance charges increase by between AU$148 million and AU$197 million.[9] The value of rewards to cardholders on credit cards has fallen by nearly 20 percent.[10]

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merchants for acceptance. As a result, these networks now also deal with "interchange," or its economic equivalent.

[8] Howard H. Chang, et. al., *An Assessment of the Reserve Bank of Australia's Interchange Fee Regulation*, The Federal Reserve Bank of New York Conference: Antitrust Activity in Card-Based Payment Systems: Causes and Consequences (Sept. 15-16, 2005).

[9] *Id.*

This takes me to my final point.  The attack that some merchants are waging against Visa and MasterCard poses a direct threat to the American consumer.  The current system of interchange fees is a necessary part of an industry that provides enormous benefits to consumers. I have witnessed the full fury of the aroused American consumer.  While Chairman of the FTC, I led the agency in riding the wave of public resentment to create the National Do Not Call Registry.  I suspect that many Americans feel as strongly about their plastic as they do about their dinner hour.

If the current interchange cases are actually litigated on the merits, the plaintiffs should lose.  Nevertheless, the plaintiffs' lawyers and their merchant clients probably assume that they will never have to litigate these cases on the merits.  Instead, they probably assume that they will be able to extort a settlement because, by the time of trial, the plaintiffs' stated damage theory could approach $1 trillion after trebling.  They will argue for a "pragmatic" solution to the problem, and they are betting that some arm of the federal government will provide the help that they need to succeed.  Because the American consumer will be the primary victim of any such solution, I continue to hope that this Task Force and the rest of the federal government has the courage and conviction to continue to reject the merchants' requests for price controls.

If merchants in the United States ultimately persuade Congress, state legislatures or a federal court to do here what was done in Australia, we can expect a similar outcome.  The price of access to electronic payments likely will increase.  Interest rates and fees on payment cards of all types—*i.e.*, debit cards, stored value cards and credit cards—will rise.  Benefits to consumers will drop.

[10] Reserve Bank of Australia, *Annual Report 2006 of Payment Systems Board* 12 (2006).

## CONCLUSION

Payment systems have helped change the way that people live their lives, benefiting millions of consumers and merchants. Even Visa and MasterCard's critics do not dispute the indisputable. They concede the value of electronic payments. They do not, at the end of the day, even object to interchange. They recognize that without some way of setting interchange, the electronic payment system would not work. The merchants that have encouraged this Task Force to hold this hearing and that are driving the class action litigation in Brooklyn have a more transparent motive. They want the federal government to lower the price that they pay for electronic transactions. I understand the objective, but it is not a legitimate basis for government intervention.

Mr. Chairman, thank you again for the opportunity to share my thoughts on this subject. I would be glad to answer any questions that you might have.