

CHIEF DEPUTY WHIP

COMMITTEE ON AGRICULTURE

COMMITTEE ON
OVERSIGHT AND GOVERNMENT
REFORM

Congress of the United States
House of Representatives
Washington, DC 20515-4501

DISTRICT:
30 MAIN STREET
3RD FLOOR, SUITE 350
BURLINGTON, VT 05401
(802) 652-2450
(888) 605-7270

October 13, 2011

The Honorable Eric Holder
United States Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Holder:

We urge you to immediately open an investigation to determine whether banking trade associations and/or individual banks have violated antitrust laws. Specifically, we are concerned that communications between banks and bank associations that may amount to price signaling or collusion have occurred in the wake of Congressional action to reform debit card swipe fees.

As you are well aware, Visa and MasterCard are the two dominant card networks that set pricing for thousands of banks across the country. The result is that banks which normally compete agree not to do so when it comes to swipe fee prices and instead accept fees centrally determined by Visa and MasterCard.

This collective pricing activity is harmful to competition, raises serious legal questions, and has led to consumers and merchants in the United States earning the dubious honor of paying the highest credit card swipe fees in the world. American businesses of every size have seen swipe fees rise faster than any other expense in the last decade – growing faster even than health care costs.

It appears that banks are seeking to justify fee increases after Congress and the Federal Reserve Board recently limited banks' ability to collude with networks to set debit interchange fees. Statements made by individual banks and their trade associations raise questions about whether some price increases that have occurred this year have actually been coordinated.

The statements that caught our attention include:

- “‘What do we do to offset the loss of revenue?’ Wells Fargo CEO John G. Stumpf asked colleagues in London on Monday. ‘Unfortunately, the consumer will pay.’ According to the American Banker, Wells Fargo may increase minimum balances, charge money for debit cards and dump free checking so it can recoup about \$1.3 billion in losses stemming from Mr. Durbin’s needless meddling.” The Washington Times, May 26, 2011 (available at <http://www.washingtontimes.com/news/2011/may/26/washington-declares-war-on-your-debit-card/>)

- “Wells Fargo (NYSE: WFC) will consider adding fees and increasing current fees in the event that the Durbin Amendment goes into law as scheduled, according to Wells Fargo Chairman and CEO John Stumpf during the Barclays Capital Americas Select Conference in London.” MyBankTracker, May 26, 2011 (available at <http://www.mybanktracker.com/bank-news/2011/05/26/wells-fargo-nodurbin-delay-means-fees/>)
- “‘The only options left will be to shift these costs to consumers or cease providing debit cards,’ said ABA President Frank Keating.” Center for Public Integrity, May 4, 2011 (available at <http://www.minyanville.com/businessmarkets/articles/credit-card-companies-debit-cards-interchange/5/4/2011/id/34339>)
- “‘Free checking is going to be gone,’ said Independent Community Bankers Association President Jerry C. Walker. ‘You can kiss that away. If you want a debit card, there are going to be (extra) fees.’” TMCNet, May 8, 2011 (available at <http://business-video.tmcnet.com/news/2011/05/08/5494967.htm>)
- “Now, the industry must regroup and each and every one of you must decide how you are going to pay for the use of debit cards. It may be through a monthly fee; it may be by using a “prepaid” card as opposed to a debit card; it may be that there is a way to not offer retailers instant credit for the transactions, limiting the amounts that can be charged, etc. I would also think you will be considering not paying for debit card fraud like many of you have been for a long time.” Email from Texas Bankers Association to its Members in response to U.S. Senate vote to defeat the Tester-Corker Amendment, June 8, 2011 (attached for your reference).

These statements are just a sampling of the statements made by bankers this year. Bank officials made similar statements during Congressional consideration of the Credit CARD Act and when bank overdraft fees were regulated. There is clearly no problem with banks making independent business decisions based upon the landscape as they see it. Antitrust issues are raised, however, if they are attempting to facilitate group decisions on their prices, terms and conditions.

Actions taken by Bank of America (BOA) earlier this week highlight our concern and demonstrate that immediate scrutiny of additional anticompetitive pricing practices by banks is in order. Specifically, BOA announced it will begin charging customers a \$5.00 monthly fee to use their debit cards. We are concerned that BOA’s announcement may be a reaction to, and participation in, price signaling or collusion that has occurred among and between banks and bank associations.

Again, General Holder, We urge you to immediately open an investigation into this matter and look forward to your prompt response.

Sincerely,



PETER WELCH
Member of Congress




JOHN CONYERS
Member of Congress



MICHAEL HONDA
Member of Congress



RAUL GRIJALVA
Member of Congress



KEITH ELLISON
Member of Congress

cc: Jon Leibowitz, Chairman, Federal Trade Commission

Attachment: Quotation sources

QUOTATION SOURCES

MURDOCK: Washington declares war on your debit card

Washington Times: May 26, 2011

<http://www.washingtontimes.com/news/2011/may/26/washington-declares-war-on-your-debit-card/>

“What do we do to offset the loss of revenue?” Wells Fargo CEO John G. Stumpf asked colleagues in London on Monday. “Unfortunately, the consumer will pay.” According to the American Banker, Wells Fargo may increase minimum balances, charge money for debit cards and dump free checking so it can recoup about \$1.3 billion in losses stemming from Mr. Durbin’s needless meddling.

Regulatory Brawl Over Debit Cards Sidesteps the Real Fee-Setters: Card Companies

Center For Public Integrity: May 4, 2011

<http://www.minyanville.com/businessmarkets/articles/credit-card-companies-debit-cards-interchange/5/4/2011/id/34339>

The American Bankers Association said last week that the Fed’s proposed 70 percent cut in debit processing fees means banks will lose money on every transaction. “The only options left will be to shift these costs to consumers or cease providing debit cards,” said ABA President Frank Keating.

Small Banks, Credit Unions Oppose Cap

TMCNet: May 8, 2011

<http://business-video.tmcnet.com/news/2011/05/08/5494967.htm>

"Free checking is going to be gone," said state Independent Community Bankers Association President Jerry C. Walker. "You can kiss that away. If you want a debit card, there are going to be (extra) fees."

What impact will users feel from plan to cut debit card fees?

USAToday: May 16, 2011

http://www.usatoday.com/money/perfi/credit/2011-05-13-lower-swipe-fees_n.htm

In a letter to customers, SunTrust stated that the Fed proposal "will impact the economics of the industry's check card programs. As a result, SunTrust will no longer offer the SunTrust Rewards Program for any SunTrust-issued check card."

Wells Fargo: No Durbin Delay Means More Fees

MyBankTracker.com: May 26, 2011

<http://www.mybanktracker.com/bank-news/2011/05/26/wells-fargo-nodurbin-delay-means-fees/>

Wells Fargo (NYSE: WFC) will consider adding fees and increasing current fees in the event that the Durbin Amendment goes into law as scheduled, according to Wells Fargo Chairman and CEO John Stumpf during the Barclays Capital Americas Select Conference in London.

Banks say new rules could kill free checking, rewards

Nelson County Times: May 19, 2011

<http://www2.nelsoncountytimes.com/business/2011/may/19/banks-say-new-rules-could-kill-free-checking-rewar-ar-1051453/>

In response to the Dodd-Frank bill, Wachovia has stopped enrolling customers in its debit card rewards program, although customers already in the program still accrue points, said spokeswoman Kristy Marshall. When local Wachovia branches take the Wells Fargo brand in August, new checking account customers would have to pay a monthly fee or have the fee waived by using direct deposit or maintaining a \$1,500 balance. Current customers with free checking could keep it, Marshall said.

SunTrust has canceled its rewards program, and customers have until Jan. 1 to use what rewards points they have already earned, said Hugh Suhr, of SunTrust Corporate Communications. The bank has not changed its checking account offerings, he said.

EMAIL:

June 8, 2011

Breaking news: Tester-Corker Amendment fails by vote of 54 to 45; now it's time for the industry to regroup

Today the industry's efforts to delay the Durbin Amendment regarding interchange fees failed by a vote of 54 to 45 (we needed 60 votes to pass the Tester language that would have amended the interchange date and required a complete study). As you will remember the Durbin Amendment was added at the last minute to the DF Act without any open debate.

Both Senator Hutchison and Cornyn voted for the Tester amendment and we need to publicly thank them for their vote. The effort expended by various elements of the industry was very unified and as strong as I have seen in awhile.

Now, the industry must regroup and each and every one of you must decide how you are going to pay for the use of debit cards, It may be through a monthly fee; it may be by using a "prepaid" card as opposed to a debit card; it may be that there is a way to not offer retailers instant credit for the transactions, limiting the amounts that can be charged, etc. I would also think you will be considering not paying for debit card fraud like many of you have been for a long time.

What will occur as a result of the enactment of the Durbin amendment, is that ultimately YOUR CUSTOMERS will be negatively impacted.

We will be working with all parties to find ways to resolve this issue so that the financial services industry is not negatively impacted by what just occurred this afternoon.

I also want to thank you for taking the time to help us communicate our thoughts to our Senators. While the industry may have lost this battle, both of our Senators understood how important this is to you and supported us.

--Eric Sandberg, TBA President and CEO

Texas

<<http://texasbankers.informz.net/z/cjUucD9taT0xMTg2NzA0JnA9MSZ1PTc1NjE3MDIwMiZsaT01MTU3NTYz/index.html>> Bankers Association | 203 W 10th St. | Austin, TX 78701
phone: 512-472-8388 | fax: 512-473-2560 | Feedback <<mailto:info@texasbankers.com>>