

House Judiciary Committee

Antitrust Task Force

Hearing on Interchange Credit Card Fees

Thursday, July 19, 2007 2:00 p.m.

00:01:05

Chairman John Conyers: Good afternoon. The hearing of the Antitrust Task Force will come to order. We're delighted to have a--this stellar group of [inaudible] witnesses.

The issue that brings us together today is about a fee that affects the American consumer. Most people are unaware it even exists and how much of it they're paying. And so, we're going to learn today some of the truths about the hidden interchange fee.

You see, every time you use a payment card at the mall, at the grocery store, on the Internet, the merchant is charged a fee, which gets divided up three ways - between the merchant's bank, the consumer's bank and the credit card company. It covers processing fees, fraud protection, billing statements and other costs.

Almost 90 percent of this fee is a so-called interchange fee, which is the payment made by the merchant's bank to the consumer's bank. The percentage of this amount is set by the credit card companies, generally Visa or Master Card, and averages 1.75 percent of the total purchase.

Last year, these fees totaled \$36 billion, an increase of 117 percent since the year 2001. These fees are ultimately passed on to consumers in the form of higher prices for goods and services whether they purchase these items by credit card, check or cash.

Merchants are increasingly concerned about these fees because, as the rates rise and credit cards become more and more ubiquitous--and they cite the lack of public awareness about interchange fees among consumers, inconsistent charging practices, and the possibility that Visa and Master Card may be setting the interchange fees, dare I say it, collusively instead of allowing competition to work.

Now, the payment card industry defends these fees, arguing that the credit card companies don't prohibit disclosure of interchange fees to consumers. The fees are a result of healthy competition and are vital to the entire system of payment cards.

In this regard, we're trying to clear up a couple questions. Are interchange fees imposing unfair costs on the consumer? Are interchange fees increasing at too rapid a rate, and why? And finally, are our friendly credit card companies engaged in anti-competitive behavior?

Now, I come to this hearing with as open a mind as I can, but I think the proof is on the credit card companies to give us some reassurance. And so, I look forward to a frank discussion with all of you here today.

I'm happy to recognize now my friend, Steve Chabot, the Ranking Member.

00:05:55

Representative Steve Chabot: Thank you, Mr. Chairman. I want to thank the Chairman, the distinguished gentleman from Michigan, for holding this important hearing today examining the role that credit card interchange fees play in our economy. We have an expert panel of witnesses with us today, and I look forward to hearing their perspectives on this issue.

This hearing is yet another example of how technology has changed the way that we live, the way we work, we do business and we travel. Credit cards have brought consumers and merchants together in ways never thought possible.

Coupled with the increased use of Internet, buying and selling has never been easier, and recent statistics prove it. There are more than 14,000 card issuers in the United States today, with one billion cards in use. Think of that. We have about 300 million people in this country, yet we have a billion credit cards in use.

In 2002 consumers bought more than \$43 billion worth of goods on the Internet. That figure rose to \$100 billion in 2004. Experts predict that, by 2009, U.S. consumers will spend more than \$5 trillion using electronic payment systems.

Today's hearing is about the cost of doing business with credit cards. In our market economy, supply and demand set the prices of goods and services, and the Sherman Act was enacted to protect consumers from anti-competitive behavior.

Recently, concern has been expressed that the interchange payment system is anti-competitive. Yet, it's no secret, especially with the statistics that I just read, that the number of Americans buying on credit has increased. Consumers continue to obtain and use credit and debit cards for their convenience, ease and, in certain instances, their rewards programs.

However, this increase in consumer use has brought with it increased concern that merchants are paying disproportionately high transaction costs associated with credit and debit electronic payments.

Businesses large and small want a more competitive and transparent system. In my district, I've received a number of letters from retailers and grocery stores and other merchants expressing concern about the impact that these fees have on businesses and their ability to provide goods and services.

I look forward to hearing from our witnesses today and to gaining a better understanding of the market for credit cards, the origins of the interchange fees, the role that these fees play in facilitating transactions, and learning whether government intervention is appropriate.

I said in the last three antitrust hearings that we've had in this particular committee that we've held that government intervention is not always the best remedy, and we must be careful not to do more harm than good. Of course, sometimes government action is appropriate, and it's for us to determine, and this is one of those hearings that will help us to decide that particular issue. But, I think most of us are trying to keep an open mind on this.

This hearing is a necessary first step in fulfilling our oversight responsibilities, and I again want to thank the Chairman for holding this hearing. And I want to also thank each of the members of the panel here for their attendance this afternoon. And we're hoping to learn a great deal.

I yield back.

00:09:27 **Chairman John Conyers:** Thank you very much, Steve Chabot. We'll incorporate all other opening statements in the record.

And I yield now to the distinguished gentleman from Virginia, Rick Boucher, to introduce one of our witnesses.

00:09:48 **Representative Rick Boucher:** Well, thank you very much, Mr. Chairman, and I commend you also for organizing today's hearing. Unfortunately, after this introduction, I'm going to need to depart, but I

look forward to receiving the benefit of testimony provided here today and learning more about this very important matter.

I have the privilege this afternoon of introducing to the committee a person who is not only a constituent of mine, but also a personal friend. His name is Steve Smith. He is the Chairman of the Food Marketing Institute, which includes 1,500 member companies, both food retailers and also food wholesalers.

He's also the President and Chief Executive Officer of K-VA-T Food Stores, which operates more than 90 Food City grocery stores, 67 pharmacies and 46 refueling stations in Virginia, Kentucky and Tennessee.

Of particular interest to me is the focus that Steve Smith, through his various stores, has placed on the need to acquire, from local farms in our region, locally grown produce and also locally produced meats. He has worked with my office to foster the market in our region for Katahdin sheep and value-added beef farming, as well as fruits and vegetables purchased from local farms, benefiting our economy and also providing very fresh local produce for the benefit of my constituents.

So, it is a privilege to welcome today one of our region's most successful businessmen, who I know will have enlightening testimony for the committee, and I'm pleased to introduce to the committee Mr. Steve Smith.

And thank you very much, Mr. Chairman, for allowing this time.

00:11:38

Chairman John Conyers: Mr. Smith, you've been introduced by one of our stars in the Congress, so I won't add anything to it but--except to tell you you've got a heavy burden to prove here. We welcome you, though. Nevertheless, please feel free to proceed.

00:12:02

Mr. Steve Smith: Well, thank you very much, Congressman Boucher, for that kind introduction. And Chairman Conyers and members of the committee, I'm honored to appear before you today and present information of great concern to my company, to members of the Food Marketing Institute, and to the American consumers.

I'm here today to shed light on the best-kept secret, I think, of the credit card industry, and that is the hidden tax that has been thrust upon consumers due to the ever-increasing interchange fees that credit card companies charge retailers as a result of the collective pricing setting by Visa and MasterCard and their respective card-issuing banks.

This collective price setting does not incur in isolation. Rather, it is part and parcel of a system that imposes collectively set rules that effectively require merchants to keep the cost of accepting cards secret from their customers. The rules also prevent merchants from refusing to accept particular types of credit and debit cards that impose higher fees, including premium and corporate cards.

Further, we cannot make brand preference based on card or payment type. Thus, the card systems can, and do, increase their collectively set interchange fees without any fear of resistance by the cardholders who remain unaware of the increased cost that they are imposing and incurring.

The grocery industry is comprised of a variety of retailers, from big-box retailers, nationally known, to small mom-and-pop retailers on the corner. Our industry serves probably the broadest cross-section of the retailist [sp] industry--retail industry that I can think of, and each of our consumers enjoy a very competitive marketplace that exemplifies what most Americans believe the free enterprise system to be.

Because of this healthy competition, the profit margin in the grocery industry is generally in the 1 percent range. Now, I don't know of any other industry that operates in such a competitive low-margin environment.

And when we first started accepting credit cards, our interchange rate was around 1 percent, about the same as our profit margin. The initial volume of card payments was low and, quite frankly, our industry expected the rate charges would fall as transaction volume increased. This would be consistent with basic economic theory and our experience with various other aspects of our business.

However, the exact opposite proved true. As credit card usage has become more prevalent and interchange fee rates have climbed, our costs have increased exponentially, resulting in a 700 percent rise in total interchange fees over the last 10 years. Today's high rate of credit card usage, combined with the fact that credit card companies are allowed to collectively set interchange rates, leaves retailers faced with the "Take it or leave it" system. The retailer's only practical option is to pay up and pass this uncontrollable expense on to our consumers.

Because of these factors, the grocery industry now faces credit card interchange fees that can be over 2 percent of a sale, nearly double our industry's profit margin of 1 percent. As FMI chairman, I represent over 26,000 retail food stores with combined annual volume of over \$340 billion. These retailers have been put in the position of having to pass along to consumers over \$4 billion annual in interchange fees.

In the grocery industry, we're--our very survival depends on customer attraction and retention amidst an intently competitive marketplace. Every entity of the retail world is faced with some form of competition, and this competition serves as a safeguard to ensure that our practices and prices remain in check.

Yet, the reverse is true for the credit card companies. Visa and MasterCard, accounting for over 80 percent of the industry transaction volume, each work collectively with their members to drive rates upward rather than maintaining a healthy balance.

In their non-competitive market, normal pressures do not apply. Visa regularly increases its collectively set interchange fee to encourage the issuance of cards, and MasterCard does the same. Meanwhile, the unsuspecting consumer is the conduit for the rising fees, thanks in part to those collectively set rules that prevent merchants from responding competitively to the increased cost of particular cards.

Fair and rigorous competition is the foundation of our industry. We're not lobbying to deny credit card companies their reasonable profits. We only ask that we not be faced with costs imposed on us that have been set collectively by card systems and their member banks in an environment that is deliberately designed to deprive Americans' merchants of any freedom of competitive action.

Given Visa and MasterCard's market share, we simply don't have the ability to say no to the card system's all-or-nothing proposition. The conventional wisdom tells us that, as volume grows, prices should fall. But, instead, credit card companies have created much greater volume, and raised fees and cost substantially.

This is contrary to the basic concepts of the American free enterprise system, and the situation is the result of card systems controlling 80 percent of an industry, collectively setting prices in violation of the antitrust laws.

And the great shame of it, my friends, is that the consumer bears the cost, and this fact has been effectively hidden from them. I don't know of any other industry which is allowed to blatantly abuse both the consumer and the retailer. Credit card companies should be required to operate in the same competitive environment as any other facet of business throughout our nation.

Thank you very much, and I'd be happy to answer questions at the appropriate time.

00:17:58

Chairman John Conyers: Thank you very much, Mr. Steven Smith.

Our next witness is the Chairman of the Payment and Technology Committee of the Independent Community Bankers of America, known as ICBA. Mr. John Buhrmaster is the Chairman of this ICBA, the only national trade association that exclusively represents community banks.

He's the President also of the First National Bank in Nova Scotia, New York, and has been recently appointed to the ICBA Bank as a Director. He also served on the association's Hurricane Katrina Disaster Task Force, and we welcome you to this hearing.

00:19:03

Mr. John Buhrmaster: Thank you Chairman Conyers and Ranking Member Chabot, members of the Task Force. My name is John Buhrmaster, and I'm President of First National Bank of Scotia, a \$270 million community bank in--located in Scotia, New York, upstate New

York. I'm pleased to be here today on behalf of the Independent Community Bankers of America and its nearly 5,000 member banks just like myself.

Today I would like to focus on two key aspects of the interchange debate - how interchange affects consumers in the market, and the impact of interchange on competition.

It's important to realize that, for a community bank like mine, which is engaged in credit and debit card activities, both as an acquiring bank and a card issuer, our customers are both the consumers who trust us with their personal banking needs, and our many local merchants. This might not seem obvious but, as consumers can shop around for a bank that best meets their financial needs, merchants setting up a credit card acceptance process can also shop around for level of service, customer support and a range of fees that best suits their business plan.

If a merchant opts to sign with First National, it's getting a tremendous value because of the interchange system. Small business in around my community can set up a deal with my bank where they're paying competitive fees, can accept plastic, and are assured a consistent payment experience, backed by sophisticated fraud detection systems. This acceptance is very important to the economic base of my community.

The payment system in our country is not free. It did not materialize overnight, and should not--should be paid for by those choosing to take advantage of it. We don't want our merchants to pay high fees, but interchange is a cost of doing business for them, and is a cost of the--to the acquiring side of my bank's business.

My aunt runs a winery in the Finger Lakes of New York. In setting up her business, she made the choice to accept credit cards. She told me that interchange is a good value for her business because credit cards allow people to buy who might otherwise not. Sometimes they even purchase more if it's on a card, rather than if they were paying with cash. She views the interchange as a part of her overhead, and it helps her reach more consumers.

Contrary to popular belief, for many community banks, the services we're able to provide, thanks to the existence of a negotiated interchange fee system, are not huge profit centers. For me and many community bankers, the variety of products and the high level of personal service we're able to provide consumers is what makes the system most valuable, not the profit opportunity.

Some have also stated that the interchange system is not transparent, and that these rates should be printed on payment card receipts. I have no problem telling the merchants the costs they incur to accept debit and credit cards. But, printing interchange rates on customer receipts, beside

adding an additional expense, would be the equivalent of my aunt telling her customers how much it cost the vineyard to pick the grapes.

The interchange system enhances competition and functions so well that thousands of small community banks are able to stand toe-to-toe with--on both the issuing and acquiring side of the business, and offer services to consumers in direct competition to banks like Citigroup and Bank of America, while providing the type of consumer experience that only a community banker can give.

Our bank was founded in 1923, and I'm the fourth generation of my family to serve as President. If we were forced to compete in an environment without the card networks negotiating interchange against the mega-banks with national footprints, our relatively small size would put at us--put us at a competitive disadvantage that would be difficult to overcome.

I also want to point out that the interchange rates we currently receive as an issuer and pay as an acquirer are on a level playing field with the largest banks in our country. Consumers and merchants are not always better served by something just because it's big, and that's where community bank plays a vital role.

I believe that aspect is often overlooked in this debate, because it's so easy to focus on the largest issuers and acquirers. I also believe it's inaccurate and misleading to characterize interchange as a hidden tax on

consumers. It is no more a hidden tax than is the cost of check processing or the cost of counting cash, or the cost of making change.

And if anything, interchange is more transparent than the cost of other services. Interchange is a fee for a valuable service provided to the merchant. It is a fee that allows a bank like mine to support local businesses and give those businesses the ability to accept and to attract more customers with additional payment choices, and allows those customers the flexibility of paying on credit.

That's the benefit of a balanced market that works the way it's supposed to, with an intermediary like Visa or MasterCard standing in for us, successfully bringing together and meeting the payment needs of banks, merchants and consumers alike.

Again, thank you, Chairman Conyers and Ranking Member Chabot for the opportunity to testify on behalf of ICBA and community banks in this country. I look forward to your questions.

00:24:02

Chairman John Conyers: Thank you very much.

We now have the consumer advocate with the National Association of State Public Interest Research Groups, Ed Mierzwinski. He's been before the Congress, state legislatures. He's written extensively on consumer issues. He's frequently quoted. You may have seen him on TV, even,

read about him in the New York Times. And now, we have him before us today. We welcome you, sir.

00:24:44

Mr. Ed Mierzwinski: Thank you very much, Mr. Chairman, and we appreciate all your leadership on consumer issues over the years, as well.

I am Ed Mierzwinski, and I'm Consumer Program Director with U.S. PIRG. My testimony today is also on behalf of the Consumer Federation of America and Consumer Action, two leading consumer groups. After I submitted my testimony, Consumer's Union also endorsed it. So, some of the leading consumer groups all agree that interchange is a significant problem for the Congress to consider.

A prime purpose of our organizations is to advocate for a fair and competitive marketplace. And quite frankly, we believe that the financial services markets work best when there is vigorous competition and consumers are protected from anti-competitive practices. The work of your committee is very important in this regard.

I have one simple message today. The deceptive and anti-competitive practices of the Visa and MasterCard payment networks have injured both consumers and merchants for many years.

Interchange fees are, in fact, hidden taxes or charges paid by all Americans whether they use credit cards, whether they use debit cards,

whether they use checks, or whether they pay with cash. There may be some modest benefits to those cardholders who use cards and get some rewards, but I think those benefits are offset dramatically by the costs that all consumers pay because, again, interchange is paid by all of us because of the way that the system works.

The consumers who don't use credit cards basically subsidize credit card usage by paying inflated prices, prices inflated by the \$36 billion of dollars of anti-competitive interchange fees paid each year.

We present six main points. Again, all consumers, even those who pay with cash, pay more at the store and more at the pump because these interchange fees are passed along in the cost of higher costs of goods and services.

The significant increases in interchange fees signal a broken marketplace. Visa and MasterCard have tremendous market power. Merchants have no choice but to accept their cards on their terms. It is not surprising that interchange fees have increased significantly, even though costs have gone down, and are much higher in the U.S. than in any other country due to these anti-competitive practices. In a competitive market, prices would fall when costs fall.

Third, the Card Association's rules prevent merchants from informing consumers about the costs of payment and limit the ability of merchants

to direct consumers to the safest, lowest cost and most efficient forms of payment.

I never use a debit card myself. I use an ATM card, but not a debit card. Debit cards are risky when you use them in a signature-based transaction. The rules that protect you are not as good as the rules when they're--use a credit card, but merchants would prefer you to use an online transaction, the PIN-based debit, but the Visa and MasterCard rules prohibit them from doing so. There are a variety of unfair and deceptive practices that they use to drive you to the higher cost payment, and rewards is simply one of them.

Fourth, neither the card issuance or the card network markets are competitive. Because of the lax merger policy of the government regulators, the card issuance market is essentially an oligopoly. Interchange and consumer fees have increased as concentration has increased to enormous levels.

And finally, I want to point out that interchange is only one problem of this oligopoly of the card networks. The issuing banks have become so concentrated that they're able to engage in a number of unfair practices to consumers. Owning a credit card company, issuing credit cards, is essentially a license to steal.

The top 10 companies now control 90 percent of the market. Their contracts with consumers allow them to change the rules at any time for

any reason, including no reason, and consumers are subjected to unfair mandatory arbitration if they want to change or dispute anything on their contract.

You might ask why would I be talking to you about these practices at the Antitrust Task Force. Well, there are three reasons.

First, the industry will suggest the limitless benefits of credit cards. I submit to you that the story of the benefits is far more ambiguous, and I submit to you that the purpose of rewards, for example, is simply to get either merchants to pay more in merchant interchange fees, or to get consumers to rack up high-cost credit card debt. And the concentration of the market facilitates these deceptive and onerous practices. The ability of the dominant card issuers to maintain this tight oligopoly is contributed to by these unfair practices.

We urge the committee to examine closely the competition issues that allow this oligopoly to treat customers so unfairly. In particular, we ask you to question whether DoJ, in approving virtually every recent credit card company merger with no conditions, has adequately reviewed the competition implications of the mergers.

And finally, we believe these deceptive and anti-consumer practices demonstrate the lack of competition in the card network market. Visa and MasterCard have the ability to prevent many of these unfair practices. They choose not to. About the only rule we know of that they've

enforced, and enforced in a bad way, as you will hear from the merchants, is preventing merchants from offering discounts for cash.

So, we think that there's a lot of serious problems before the committee. We're very pleased we had the opportunity to testify on behalf of consumers today. We look forward to your questions.

00:30:46 **Chairman John Conyers:** Thank you very much.

Our next witness is counsel for O'Melveny & Meyers, Mr. Timothy Muris, Esquire. He's had a lot of experience here defending these companies, and he's the former Chairman of the Federal Trade Commission, and he served also on the advisory panel on federal tax reform. So, we welcome you to our committee hearings and invite you to proceed, sir.

00:31:28 **Mr. Timothy Muris:** Thank you much, Mr. Chairman. May I submit for the record my written testimony and a law review article I recently wrote?

00:31:36 **Chairman John Conyers:** Yes. All the testimony is incorporated in the record, including your law review article.

00:31:42 **Mr. Timothy Muris:** Thank you, sir.

I personally advise Visa on antitrust and consumer protection, but the views that I express today are my own.

Let me make four points. First, payment cards benefit both consumers and merchants. Cards rank with the cell phone, microchip and personal computer as one of the last century's great inventions.

The simplicity of pulling a card from your wallet or purse, however, belies an extraordinarily complex technological infrastructure that supports these transactions. It costs billions of dollars to create and allow the transactions to occur securely, reliably and efficiently.

Second, payment cards are an example of a two-sided product connecting two groups of consumers. The challenge for any two-sided product is bringing both groups on board. Newspapers illustrate how most two-sided products set prices.

This is today's Washington Post. Now, in a business sense, this is a vehicle to connect readers and advertisers. The readers, in fact, pay very little. The publishers get their money from the advertisers.

If newspapers charged readers the direct cost of supply, they would lose many of them. Without enough readers, there wouldn't be enough advertisers. Without both sides of the market working, not as many consumers would enjoy their newspaper, and advertisers would lose benefits of this medium.

Now, the economics of attracting the two distinct groups drives the pricing. The value of the two-sided product to one group is determined by

its attractiveness to the other. The group with the low-cost substitutes, in this case it's readers, who can go a lot of other places for their news and information, gets the better deal.

For payment cards--this is my Visa card--the consumer is king. Now, to compete with the two historically dominant forms of payment, cash and check, the payment cards are priced to provide value to the cardholders. The industry has followed this model from its inception.

Originally, the merchant discount, the amount that the merchants paid, was 7 percent. Today, the average discount on American Express is about 2.5 percent, while Visa and MasterCard, larger companies, charge about 2.1 percent. Discover charges about a percent and a half.

Consumers and merchants clearly benefit. Walk into a McDonald's, and you can now swipe your card to purchase a meal. Nobody made McDonald's take the payment cards but, instead, it found that the cards offered value for a price it was willing to pay.

My third point is that merchants are wrong to analogize interchange to Cartel price fixing. Unlike a Cartel, a four-party payment card system cannot exist without interchange. A default rate reduces the cost of negotiating separate fees between the thousands of acquirers and issuers.

Moreover, for MasterCard and Visa to succeed, merchants need to honor cards from each of the thousands of issuers. Knowing that all cards must be honored, an individual issuer could then insist on very high fees. Merchants would then be subject to higher costs and would be less willing to accept the network. A default interchange rate, which the payment networks set, avoids this problem.

The difference between the payment card systems and a Cartel is stark. With Cartel pricing, an end to the Cartel lowers prices, raises output and increases innovation. The end of interchange produces the opposite results, and would lead to chaos.

The merchants understand this. They don't want interchange to end. Instead, they just want to pay less. While they argue against the card system setting their respective interchange rates, this is exactly what they want the federal government to do. This is not an antitrust remedy.

One of the fundamental maxims of antitrust is that the market, not the government, should set prices. Indeed, reasonableness is never a defense to price fixing.

Interchange began with Visa decades ago. Bank of America started a three-party payment system in California. Because banks could then not cross state lines, the bank tried to franchise its system outside of California, with no takers. It spun off the system, renamed it Visa, and

Visa then began interchange long before Visa had any significant market share.

My final point is that we are here primarily because merchants want to cap the rates they pay for payment cards. Such caps would inevitably increase card prices to consumers just as if you reduced the amount advertisers paid for newspapers. The merchant's effort to regulate prices, therefore, poses a direct threat.

Despite what you've heard, most consumers know that merchants pay when consumers use their cards. If consumers understood the threats that the merchant's campaign poses to their wallets--the cards in their wallets, I suspect that we'd see nothing less than a consumer revolt.

I understand the full fury of the aroused American consumer. While Chairman of the FTC, we created the National Do Not Call registry. I suspect that many Americans feel as strongly about their plastic as they do about their dinner hour.

Thank you very much, and I'd be happy to respond to questions.

00:37:18

Chairman John Conyers: Very interesting.

Our last witness is Senior Vice President, General Counsel for the National Retail Federation, Mr. Mallory Duncan. His job is to coordinate strategic legislative and regulatory initiatives involving customer data,

privacy, bankruptcy, fair credit reporting and truth in lending. Boy, you've got a big job there, my friend.

He's been on a lot of boards of nonprofit organizations throughout his legal career, including the National Hospice Foundation. And we welcome you to this hearing.

00:38:10

Mr. Mallory Duncan: Thank you very much. Thank you very much, Mr. Chairman. Thank you very much.

I am General Counsel to National Retail Federation, and I am also Chairman of the Merchants Payment Coalition. I want to thank the Chairman and the Ranking Member for inviting me here today to speak on behalf of those two organizations.

The MPC represents virtually every type of retail operation, from corner stores to the nation's largest retail chains. We want the committee to appreciate what's going on here. This market is broken, and it needs to be fixed.

The card industry has told you the market is functioning fine, and that this is so complicated, four-sided markets, that it would be best if you just ignored it and moved on. But, in truth, this is a very simple scheme, privately regulated not by the market, but by a set of card company rules that they won't make available to this or to any other committee.

The banks are members of--that are members of Visa and MasterCard will tell you that the card business is competitive. On one side, that's true. The banks compete for customers. Each tries to get consumers to carry their brand of card, and the piles of credit card offers in your mailboxes attest to that.

But, on the merchant side, the opposite is true. For example, Visa and its banks get together and decide how much they're going to charge to process card payments. All issuing banks agree to charge the same fees regardless of which bank's name is on the card. These otherwise competing banks, under Visa and MasterCard's banner, insist that merchants accept their cards, fees and rules on a "Take it or leave it" basis, with no opportunity to negotiate.

And even though the fees are outrageous and the rules harsh, no merchant can stand up against that kind of power. We believe the two card associations each operate as an illegal price-fixing Cartel in clear violation of federal antitrust laws.

Who are the banks among these Cartels? Well, there's Citi, Chase and B of A, to name three. Their card divisions are each nearly the size of American Express. What business do these three banks have being in a price fixing arrangement with each other, not to mention with thousands of other banks?

If Kroger, Safeway and Publix agreed with every other grocer to set the price of milk at \$10 a gallon, would anyone here believe that--this to be a fine, functioning market, delivering value to consumers?

The banks also fix the rules, rules designed to support the Cartel and hide its operation from the consumers, who ultimately pay for these fees.

Let me give you just one example. Retailers are very competitive. The average net profit after wages, taxes, rent and goods is about 2 percent. For grocery stores, it's just about 1 percent.

The card company rules say that the regular price we offer to the public must be the credit card price, but a 1 or 2 percent profit margin isn't large enough to absorb 2 percent in interchange fees. So, a shopping cart of back-to-school clothes that we would willing sell for \$99 cash has to be priced at \$101 because of their rules.

But, look what's happened. A hundred and one dollars has become the regular price for \$99 worth of cash merchandise. And regardless of whether you pay with cash, check or food stamps, we all end up paying the credit card company price.

Now, by the way, merchants are not allowed to show the interchange fee on the receipts the way we would show a sales tax, for example, which essentially is what interchange is. Now, as you can see here, interchange fees are growing at about 17 percent a year, and we expect

them to hit \$40 billion in 2007. That's more than annual fees, cash advance fees, late fees and overlimit fees combined. It amounts to more than \$300 in hidden fees per household each year.

Now, what does interchange pay for? Last year, Diamond Consulting independently studied interchange and discovered that only 13 percent goes to pay for processing transactions. Most of the remainder taxes customer prices to provide profits for the Cartel and rewards for a relative few.

Now, although we may disagree with--on the benefits, in his written testimony, Mr. Buhrmaster accurately describes what's happening here. He essentially said the big banks set the rules, and they set them high, so high that even small or inefficient banks can make a profit while the big banks make a killing. This is not the workings of a competitive market.

Now, if you look at this chart, you'll see that the blue line is the rise in the retail sales over the last several years, and the red line is the rising interchange. These rising fees have other consequences on other businesses.

And Balliet's, a highly regarded \$7 million a year women's clothing store in Oklahoma, interest--interchange fees rose to more than \$80,000 last year, topping the \$60,000 the owner spent on health insurance for his employees. In order to pay the card companies, this year he was forced to reduce the company health insurance contribution from 70 percent to

50 percent minimum required by his carrier. He tells us that, next year, Balliet's may actually be forced to stop offering health coverage to its employees if interchange fees continue to rise.

In conclusion, the collective setting of interchange fees represents an ongoing antitrust violation, and it's costing merchants and their consumers tens of billions of dollars annually. Competition authorities in the rest of the world have realized this and begun to address it, and the rates in those countries are lower, the U.S. rates on the far right side of this chart, the other industrialized countries are to the left.

The credit card system is an important component of our economy, potentially benefiting consumers, merchants and banks alike. But, it has become dramatically tilted in favor of the two Cartels that control the market.

There are several pending lawsuits, but the courts' remedies are limited. Courts can deliver damages, prohibit specific conduct, or become regulatory czars. Congress has much more nuanced and flexible tools at its disposal. We urge you to study this problem and work with all the parties on a solution to this anticompetitive market.

Thank you.

00:44:54

Chairman John Conyers: Thank you, Attorney Duncan, and I thank all the witnesses.

00:44:58 **Mr. Mallory Duncan:** Mr. Chairman, I also have comments from other members of the MPC I would like to submit for the record, if I may.

00:45:04 **Chairman John Conyers:** I'd be happy to receive them.

00:45:05 **Mr. Mallory Duncan:** Thank you.

00:45:08 **Chairman John Conyers:** Well, men, we've heard the preliminary opening statements in this case. And without rushing to any judgment, it doesn't look so good for the credit card companies. So, let's see if we can find out a little bit more.

Now, Mr. Buhrmaster, with all respect to your aunt's winery business, she has not been found guilty of committing fraud in the federal court system and holding back information like the credit card companies. So, I would distinguish her conduct and her activities very much from the credit card companies.

00:46:09 **Mr. John Buhrmaster:** Not to my knowledge she hasn't.

00:46:12 **Chairman John Conyers:** Well, that's good enough for me, and we'll check the--kind of the quality of her products, too, while we're at it.

00:46:26 **Mr. John Buhrmaster:** It's very good, I assure you.

00:46:27 **Chairman John Conyers:** Oh, okay.

00:46:29 **Mr. John Buhrmaster:** She's--are you--would you like me to respond?

00:46:35 **Chairman John Conyers:** No. No.

With regard to--this is a statement that this--could be the subject of another hearing that's quite separate from--the market, not the government, should set prices. That's--that always grabs me by the collar, coming from a former Chairman of the Trade Commission.

First of all, we find out the market isn't setting the prices here but, even if they were, it wouldn't make me feel better. I mean, markets sometimes go really crazy, and we have to bring in the government. That's what all these agencies are trying to do, is rein down prices. Market--following the market could get you into very big trouble. But, we're not even using the market, as it turns out.

So, let me get to the main point of all this, is what are we to do?

Congressman Johnson, a member of this Judiciary Committee, has introduced a bill which is supposed to--he's got some legislation that would--it's called the Arbitration Fairness Act with respect to unfair use of mandatory arbitration, which is another little problem where you can't go in and sue on your own, but you're caught. And of course, that's always in the fine print for--in many instances.

So, let's get to the solution part of it. Mr. Mierzwinski, after we investigate thoroughly, complain to the high heavens, tons of mail, constituents raising Sam, so what do we do?

00:49:00

Mr. Ed Mierzwinski: Well, Mr. Chairman, first I want to thank you for bringing up Congressman Johnson's bill, which all the consumer groups support. Arbitration, of course, is a separate issue, but it's related to the problem consumers face with their credit card companies, all their unfair issuer practices. You can't do anything about them, and the Arbitration Fairness Act would solve that problem.

By the way, the only people that Congress has ever protected from arbitration are car dealers. They said we're very small compared to car manufacturers, and so Congress did exempt them from mandatory arbitration. We think consumers deserve the same.

But, on this particular issue, I think you're doing the exact right thing. The first step should be sunlight is the best disinfectant, and the committee is conducting its oversight role. I think there are some real questions about all of the mergers that have gone on in the issuer marketplace that have been just simply rubber-stamped over at Justice.

And the issue here is being litigated with all the retailer lawsuits, but I think it's important that Congress takes a look at it. That would be the first step to solve this problem of unfair interchange fees, and try to dig into further some of these problems with non-transparency that the card

issuer--I'm sorry, that the associations have where nobody knows what their rules are, nobody can look at their rules unless they sign an NDA, etc., etc.

00:50:32

Chairman John Conyers: Well, the credit card companies are being sued all over the place, but they've settled one antitrust suit case for \$336 million, where they were accused of fixing credit card foreign currency and exchange rates. But, there are other lawsuits going on, and that's why they declined to come here today to be present at the hearings.

Steve Chabot?

00:51:04

Representative Steve Chabot: Thank you, Mr. Chairman.

My first question, and it's kind of a series of questions, I would invite perhaps one representative from the credit card companies and one representative from the retail folks, or consumer folks, to respond. And we've only got five minutes, so it's kind of hard to do this.

But, the first question will be this. If I'm a business owner, retailer and I want to be successful, how important is it to accept payments electronically? And what are my options for payment within the credit card industry? And would I negotiate these options with my bank or with the individual credit card companies?

And what are my options if I choose to accept payments only in some form other than credit cards, like cash or check? And does acceptance of credit or debit cards impact my chances of success? And I've--whichever one wants to take it, either side is fine with me.

00:52:01 **Mr. John Buhrmaster:** I'd be happy to answer that question.

00:52:03 **Representative Steve Chabot:** Okay.

00:52:04 **Mr. John Buhrmaster:** I am an acquirer, and I have merchant customers. We have about 160 merchant customers. And these customers have made a choice to accept payments, they--accept electronic payments, payment cards. They don't have to, but they've made a business decision because it makes sense for what they do.

When they make that decision, they will come to us, and they'll probably go to another bank and maybe another payment processing company, and ask us how much it's going to cost. They want to know what it's going to involve, you know, what are the risks, what are the costs, and so forth.

We can sit down, if they can tell us what their average volume is and how many customers they expect, the average ticket size (that's the average charge that's made), and we can come pretty close to giving them an estimate of what it's going to cost them to run this operation for themselves and what it'll mean to their bottom line.

Those businesses that come to me and ask for payment services, they understand this is a cost of operating their business. They want to attract those customers that want to pay by card.

Today's society, people want things now. Everybody wants it now, and the best way to have that is through electronic payments, you know? That's how they can get things now, either on--excuse me--on credit, or using their debit card.

00:53:16

Representative Steve Chabot: Okay, thank you. And have you decided which one of the other three would like to--?

Chairman John Conyers: --Mr. Smith.

Representative Steve Chabot: Mr. Smith?

Mr. Steve Smith: Well, let me just address the first part. There is no negotiating with the credit card companies. It's a "Take it or leave it" proposition.

They're--you don't negotiate your fees. If you choose not to take credit cards, which we are free to do, we're turning our back on about 60-plus percent of transactions. And again, that's not something that is very inviting for the retailers to tell their consumers no.

I don't think any of us in the retail industry mind taking a credit card. What we want is a fair fee to be able to be charged to our retailers. We want them to compete for our business just as we compete for our consumer's business.

You, Mr. Muris, made the analogy to cell phones and computers and credit cards being some of the greatest inventions. Look at what the cost of cell phones has done as volume has gone up. Look at the cost of computers as volume has gone up. But, look at the analogy of credit cards. As volume has gone up, the fees have gone up, as well, when they--in our opinion, they should be going down because of the additional usage.

So, it--it's just not a free market enterprise system, and that's what we'd like for it to be.

00:54:30 **Representative Steve Chabot:** Mr. Buhrmaster, did you want to follow up? And I would invite either one of the other folks--.

00:54:33 **Mr. Timothy Muris:** --Did you want--?

00:54:33 **Representative Steve Chabot:** --If you'd like to.

00:54:35 **Mr. Timothy Muris:** Can I?

00:54:36 **Mr. John Buhrmaster:** Please.

00:54:37

Mr. Timothy Muris: Look, the--merchants can do lots of things. Believe it or not, there are prominent merchants that don't accept certain kind of credit cards. Costco, one of the most successful merchants in the world, in Mr. Smith's line of business, I can't use my Visa or MasterCard or Discover Card there. I can't use Visa at Sam's Club. On the other end, if you go to Nieman Marcus, you can only use American Express. Lots of small restaurants I go to don't take the cards.

Merchants can offer cash discounts. We heard a lot of things, and I will-- if someone gives me the chance, I'll--I would correct them for the record later about restrictions on merchants. Merchants are allowed to discount for cash. They can advertise it. They can post big signs in the stores that they discount for cash.

Merchants can steer customers, and many of them do, especially in the grocery business, to debit, which is cheaper. Discover is significantly cheaper. There are lots of options for merchants. And in fact, it's--the contracts are not take it or leave it. Supermarkets have negotiated a better deal in terms of interchange fees than almost any other major group of merchants.

00:55:49

Representative Steve Chabot: I'm just about out of time, so let me go back to retailers.

Mr. Duncan?

00:55:52

Mr. Mallory Duncan: Thank you. I--just a couple points.

First of all, in terms of retailer--in terms of supermarkets negotiating a better deal, what happened there actually was they gave the supermarket industry--this is monopolous [sp]--what does a monopolous do? They segment the market.

They went to supermarkets and said, "We'll give you 1 percent," and cards came in at 1 percent. And then, they began introducing new cards with extra-high rates, but they weren't part of the deal. So, suddenly, supermarkets are paying 2 percent for some of their transactions. This is not fair dealing. They change the terms on merchants the same way they change the terms on consumers.

00:56:28

Representative Steve Chabot: Thank you very much, Mr. Chairman. I see I'm out of time. I yield back my time.

00:56:31

Chairman John Conyers: Okay.

Mr. Howard Berman? No questions.

May I gain the attention of my friends at the other end? Do either of you have any questions that you would like to pose to the witnesses?

00:56:50

Representative Bill Delahunt: [Inaudible] think of something.

00:56:51 **Chairman John Conyers:** Okay. You can think of some. Well, that's the way Bill Delahunt works, very extemporaneous guy.

00:57:02 **Representative Bill Delahunt:** Spontaneous is the word, Mr. Chairman. And I thought Mr. Berman would--but, if you care, he's listening.

What would be the problem, in terms of--for the sake of transparency, to--on some document, the sales slip, etc., list the exchange fee? What's the problem with that?

00:57:37 **Mr. Timothy Muris:** There is nothing now that prevents merchants from doing that. Consumers aren't interested but, if merchants want to go ahead and do that, they can. Merchants know what they pay, which is the merchant discount.

00:57:47 **Representative Bill Delahunt:** No, I'm--.

00:57:48 **Mr. Timothy Muris:** --Consumers know the price.

00:57:48 **Representative Bill Delahunt:** I'm talking about the credit card.

00:57:51 **Mr. Timothy Muris:** No, that's what I'm saying. I'm saying--.

00:57:53 **Representative Bill Delahunt:** I'm talking about--or the issuer you're talking about.

00:57:56 **Mr. Timothy Muris:** The issuer.

00:57:56 **Representative Bill Delahunt:** Yeah.

00:57:57 **Mr. Timothy Muris:** I'm sorry. The issuer--the--.

00:58:00 **Representative Bill Delahunt:** --I'm talking about the credit card.

00:58:01 **Mr. Timothy Muris:** Yeah. The issuer has a relationship with the consumer and discloses the fees that it pays to the consumer, if that's--.

00:58:07 **Representative Bill Delahunt:** --But, would the issuer have a problem, given the dimensions of the customer base, to--and having the wherewithal in terms of the software, just for sake of transparency, put down what the exchange fee was in that particular transaction?

00:58:28 **Mr. Timothy Muris:** But, the issuer--the transaction is between the consumer and the merchant, not the issuer.

00:58:33 **Representative Bill Delahunt:** I understand that, sir.

00:58:35 **Mr. Timothy Muris:** Well, so, the issuer--I'm sorry. The issuer can't do what you're asking.

00:58:40 **Representative Bill Delahunt:** Can he, Mr. Duncan?

00:58:42 **Mr. Mallory Duncan:** Surely. Certainly they could. I mean, they--look, they're the ones who have these prices, and they're ones who develop these prices. If they want to disclose it, it'd be very simple thing for them to do.

Frankly, be a lot easier for them to disclose it than for us to disclose it because we don't know how much a transaction's going to cost us until--.

00:58:58 **Representative Bill Delahunt:** --Well, that was the--.

00:58:59 **Mr. Mallory Duncan:** --After you sell the card.

00:59:00 **Representative Bill Delahunt:** That was the rationale opposing it. What's the problem?

00:59:02 **Mr. Timothy Muris:** Well, in fact, the interchange fees are disclosed, and they're available on the Visa and MasterCard website, if that's your question.

00:59:10 **Representative Bill Delahunt:** Please. Please.

00:59:11 **Mr. Mallory Duncan:** Well, they're 92 pages long. Come on.

00:59:12 **Representative Bill Delahunt:** Mr. Muris, you know, on the website? I mean, some of us don't know how to access a website, let alone asking the consumer to do that. I mean, in the real world, people get a slip. It

would be very convenient for them, for the consumer, to understand what the exchange fee was. And what's the big--what's the problem for the issuer to do that?

00:59:36 **Mr. Timothy Muris:** There is nothing that prevents, when consumers engage in a transaction, the merchant from disclosing that. I believe consumers aren't interested in that information. Consumers are interested in the prices that they pay.

00:59:49 **Representative Bill Delahunt:** But, the consumer, I dare say, would like to know, you know, if they're paying 1 percent or 2 percent or 3 percent more, what it was. Why not, just for the sake of--?

00:59:58 **Mr. Timothy Muris:** --But, consumers know what they pay to the credit card company. They know what they pay to the merchant. If the merchant, for whatever reason, wants to break it out--.

01:00:04 **Representative Bill Delahunt:** --They don't know what they--.

01:00:06 **Mr. Timothy Muris:** --The merchant can do that.

01:00:06 **Representative Bill Delahunt:** Please.

01:00:07 **Mr. Timothy Muris:** Sure, they know.

01:00:08 **Representative Bill Delahunt:** They know? They don't know what the fees are.

01:00:11 **Representative Howard Berman:** Would the gentleman yield?

01:00:13 **Representative Bill Delahunt:** Yeah, of course I yield.

01:00:13 **Representative Howard Berman:** I thought I heard one of you, I don't know if it was Mr. Duncan or Mr. Mierzwinski, say that, under the contract between the merchant and the issuer, that they weren't--the merchant wasn't allowed.

01:00:28 **Mr. Mallory Duncan:** We have to advertise everything as the credit card price. There is--.

01:00:33 **Representative Howard Berman:** --Right.

01:00:34 **Mr. Mallory Duncan:** That--so, the price to the consumer, we have to tell the consumer, is the credit card price.

01:00:38 **Mr. Timothy Muris:** Mr. Duncan is--Mr. Duncan said that the companies, Visa and MasterCard, prevent the disclosure that you're asking for, and they don't. And second, if the merchants want, they can offer a discount for cash, and they can advertise it. There's nothing that prevents them from doing that. In fact, some merchants do.

01:00:56

Mr. Mallory Duncan: May I mention, this discount for cash, I mean, that's thrown around as if it were a panacea.

In fact, what--they have a series of rules that they disclose to us through the merchant banks as to how you can offer a discount for cash. Most merchants understand those rules to say that you can offer a discount for cash as long as the credit card price is the most prominent price, and the discount for cash is the smaller price. And it has to be separately listed in each instance.

So, that means where do you see it? You won't see it in the Sears, with 100,000 different items. They're not going to put 200,000 prices on their merchandise. You'll see it at a gas station, because they only have three products, Regular, Mid-Level and Premium. And so, there it's conceivable you could put a lower price.

But, even when you have that option, they are trying to stop us from doing it in gas stations. Just this last couple of months, Visa told--went to a gas station in San Francisco, no less, that was offering a 10-cent a gallon discount for cash. He had a sign up that said, "Credit Price, Cash Price." And Visa said, "No way," no can do, because it looks like the credit price is not the regular price. You've got to call that regular.

01:02:08

Representative Bill Delahunt: Reclaiming my time. I think that's easy to corroborate. I mean, you know--.

01:02:12 **Mr. Mallory Duncan:** --Sure.

01:02:13 **Representative Bill Delahunt:** I mean--and you're saying, or it's been said, that, you know, we're trying to--that the retail industry wants to do--wants government to do what the marketplace should be doing. I mean, clearly, there's an appropriate role for government in certain circumstances. We have usury laws, you know?

01:02:34 **Representative Chris Cannon:** Mr. Chairman?

01:02:35 **Representative Bill Delahunt:** You know, I mean, the reality is we've got, you know, in some states there are caps in terms of interest rates. Otherwise, you know, we could follow the rule, you know, let it go. I mean, the Mafia would be in good shape. It wouldn't be interest--It'd be called the Vig [sp] under those circumstances, but maybe we are talking about the Vig. And I yield back.

01:03:01 **Representative Chris Cannon:** Mr. Chairman, I ask unanimous consent that the gentleman be granted an additional two minutes, because I'm actually interested in hearing from Mr. Muris how it's obvious to the consumer, and--because it doesn't seem to me to be obvious.

01:03:13 **Representative Bill Delahunt:** I yield to the gentleman if I get an extra two minutes.

01:03:15 **Representative Chris Cannon:** Then, Mr. Muris, you're insisting that it's obvious to the consumer. How is it obvious?

01:03:17 **Mr. Timothy Muris:** I'm saying what's obvious to the consumer is what the consumer cares about, which is the price that they pay. If Sears wanted to, however, Sears could post a gigantic sign that says, "Minus X percent to"--pick two--pick minus 2 percent for cash. They don't have to post it on every individual item.

Most Americans, sir--most Americans know, you know, that merchants have to pay for credit cards. There have been surveys that show that, and merchants are--I mean, you know, consumers understand that. Consumers also understand that they get a good deal from the payment card companies. There's enormous competition, despite what we've heard today, among issuers.

01:03:55 **Representative Chris Cannon:** Pardon me, but have there been any studies that--where you've asked consumers what they think they're paying for their credit card fees?

01:04:03 **Mr. Timothy Muris:** Yes. Credit card fees are disclosed, okay? We're talking about two different things here.

01:04:08 **Representative Chris Cannon:** Right.

01:04:08 **Mr. Timothy Muris:** Consumers visit a merchant, and they--.

01:04:10 **Representative Chris Cannon:** --Well, we only want to talk about one thing, that is what percentage of the final price that a consumer pays in a store does he think he's paying for the store, and what does he think he's paying for you? Have there been any studies where you've asked consumers what they think the appropriate interchange fee that the merchant pays should be?

01:04:26 **Mr. Timothy Muris:** When consumers--yes. When consumers are asked do they know about that the merchant's paying, they say, "Yes." And when they're asked are they okay with the arrangement with--at various price ranges--.

01:04:38 **Representative Chris Cannon:** --Do you ever ask how much they think they're paying?

01:04:40 **Mr. Timothy Muris:** Most Americans are okay with that.

01:04:46 **Representative Chris Cannon:** Do you ever ask what Americans think they're paying when they--when you ask those other questions? In other words, do we have any studies that indicate that Americans know what the fee actually is?

01:04:57 **Mr. Timothy Muris:** Americans--the fees that people pay for credit cards are disclosed. The prices that they pay in stores are disclosed. If the stores wanted to, as I've said--.

01:05:06 **Representative Chris Cannon:** --Pardon me. I asked--.

01:05:07 **Mr. Timothy Muris:** --The stores could disclose--.

01:05:08 **Representative Chris Cannon:** --Pardon me, as--since I guess it's my time, haven't had it yielded, I'm asking a really simple question.

I think most people know they pay a fee, but I don't think they know that it's anywhere near what it actually is. And I'm just wondering if you've done any studies that you can show us where you've asked people what they think an appropriate fee to pay for a credit card transaction would be.

01:05:25 **Mr. Timothy Muris:** I--there are studies that address that issue. I'd be glad to submit them for the record.

But, there's a more important point here, which is, if Mr. Smith or Mr. Duncan, who worked with me at the FTC years ago, if they feel that consumers want to pay cash, they can tell consumers that you'll get a discount, and they can say it's 2 percent or whatever--you know, whatever it is they want, paying for cash. Why isn't that a solution to the problem?

01:05:50 **Representative Chris Cannon:** Well, you're here telling me what you think the most important issue is, and not really answering the question.

I'm looking forward to the report to see what people think they're paying. I was actually quite startled. Now, in--.

01:06:01 **Representative Ric Keller:** --Mr. Chairman--.

01:06:01 **Representative Chris Cannon:** --Yielding back--let me yield back--.

01:06:05 **Representative Ric Keller:** --Yeah, I assume I go in my regular order here--.

01:06:05 **Representative Chris Cannon:** --To the gentleman from [inaudible].

01:06:06 **Representative Ric Keller:** All right.

01:06:08 **Chairman John Conyers:** The Chair is conflicted, because Mr. Smith was very agitated about trying to get in the conversation. So, if we grant one minute more to Mr. Delahunt's time, maybe he can get in his two cents.

01:06:30 **Representative Chris Cannon:** I yield to--.

01:06:33 **Chairman John Conyers:** --Smith.

01:06:35 **Representative Chris Cannon:** Smith.

01:06:36 **Mr. Steve Smith:** Well, Mr. Chairman, it won't take that long.

We as a retailer do focus groups with our consumers on a periodic basis. And one of the questions we've asked our customers, do you know what you pay, or what we pay, in credit card fees, or debit card fees.

And I cannot--we've never hit double digits with people that even have an idea of what they pay. Most people think it's free. They think they get their credit card. They pay fees through the credit card, in a lot of cases, and they don't have an idea that the retailer pays a fee.

Now, some will say, yes, I'm sure you pay some fee. The vast majority of customers, when we do our focus groups, have not a clue that they're paying extra for their product because of credit card fees.

01:07:22

Chairman John Conyers: Thank you very much.

The Chair recognizes the very patient gentleman from Florida, Mr. Ric Keller.

01:07:30

Representative Ric Keller: Well, thank you, Mr. Chairman, and I have 23, 24 questions, and no way we're going to be able to get to it in my five minutes or before a vote. So, let me just give a brief opening statement to kind of--to lay out what my concerns are and try to get to as many questions as I can.

I remain very open-minded about this issue. On the one hand, I think the electronic payment system dominated by Visa and MasterCard and their participating banks has provided a very positive convenience to consumers and merchants over the past 10 years.

On the other hand, I am quite concerned that, despite the dramatic increase in the volume of interchange fee business, we have seen that interchange fee rates have not fallen, as we might expect, but instead have increased, along with the volume of business. And these costs have been passed on to consumers.

Now, earlier today I went down to the Congressional Liquor Store on Capitol Hill to check out something. I feel I could use it now. But, I saw that a six-pack of Coke is only \$3.65, and that's the exact same price as a six-pack of Pepsi. I saw that a six-pack of Bud Light is only \$5.29. It's the same price as Miller Light, exactly. Pepsi keeps Coke honest. Miller Light keeps Bud Light honest.

Why the heck isn't MasterCard keeping Visa honest? Why doesn't MasterCard say to the retailers and merchants, "Hey, they may charge you 2 percent fees, but we're going to have 1 percent."

Why don't we see that competition? Is there collusion going on between MasterCard, Visa and the participating banks? Or could it just be that the cost of business for these organizations has gone up, and they have to incur costs associated with fraud and other expenses?

The \$64,000 question for me is can we find a way to hold down the increase in interchange fees without resorting to price controls? And I haven't heard the answer to that yet. And I'm just going to be honest with you. Both sides have very strong points and very weak points, and let me just tell you what I think they are, as I see it as a neutral observer.

In terms of the banks and the credit cards, they have made a strong point in saying that they have provided a valuable service with the electronic payment system, offering convenience, and a strong point in pointing out we shouldn't have price controls. That's not our way.

On the other hand, they have no good explanation that I've heard for why we have seen these dramatic increases in interchange fees. On the other hand, I look at the merchants and retailers, and they have a very good explanation of the problem. And the unfairness of having these fees jacked up dramatically over the past 10 years.

And in light of the fact that 60 percent of their customers are using MasterCard and Visa, they have you by the shirt. And on the other hand, the weakness here, you have not given us any good solutions at all. And so, I'd love to hear what the solutions are outside of price controls.

Let me begin with you, Mr. Smith, and make sure I'm walking through this process properly, at least Food City. I go to your store, and I buy \$100 worth of groceries at Food City with a Visa card issued by my bank.

It's my understanding that Food City, in terms of the allocation money, would pay approximately \$2.10 to its bank, called a merchant discount rate. Its bank would then keep a processing fee of about 35 cents, and then Food City's bank would pay an interchange fee of approximately \$1.75 to my bank, the issuing bank, and then my bank would pay approximately 9.5 cents to Visa or MasterCard, so for a grand total of about \$2.10. Is that roughly how it works?

01:11:28 **Mr. Steve Smith:** Mr. Keller, I'm not sure I can tell you exactly how the transactions work. I can tell you that my bill's going to be over 2 percent of that--.

01:11:34 **Representative Ric Keller:** --Over 2 percent--.

01:11:35 **Mr. Steve Smith:** --Two percent of my transaction.

01:11:37 **Representative Ric Keller:** All right. And I know you're concerned about that, because it used to be 1 percent about a decade ago, right?

01:11:40 **Mr. Steve Smith:** Yes, sir.

01:11:42 **Representative Ric Keller:** Now, let me ask you this. If you take that same \$100 grocery example, and your customer, instead of uses the credit card uses a debit card, and it puts in PIN number, isn't it true that

Food City would only have to pay about 25 cent rather than the \$2.00 in fees associated with a credit card?

01:11:58 **Mr. Steve Smith:** That's correct. It would be much, much less than a credit card.

01:12:01 **Representative Ric Keller:** Why don't you just put up a sign encouraging customers, "Please use your Visa debit card and put in your PIN number instead of using your Visa credit card?"

01:12:10 **Mr. Steve Smith:** We do encourage customers to use a PIN-based debit card, and a lot of our customers choose to do so.

But, by the same token, a lot of our customers choose to use a credit card for many different reasons. Maybe they don't have the money in the bank at that particular time. Maybe it's rewards or points that they have been enticed with to be able to use that credit card.

01:12:32 **Representative Ric Keller:** Do you offer a discount to those customers who use their Visa debit card with PIN numbers or who pay in cash?

01:12:38 **Mr. Steve Smith:** We do not.

01:12:39 **Representative Ric Keller:** Are you legally allowed to if you wanted to?

01:12:41

Mr. Steve Smith: It's my understanding that if we--that we--we're not allowed to do that now. I heard Mr. Muris say that we are allowed to. Maybe we'll look into that.

I stopped by, and I just--I know nobody can see this, but I stopped by my local Commissioner of Revenue. I live in the Commonwealth of Virginia, and this is a property tax payment form that's put out by the county.

And they surcharge. If you use a Visa or a MasterCard to pay your property taxes, which I didn't realize people did, but they do, they actually allow them to surcharge, and it's surcharges up to 3 percent.

But, we can't surcharge. We cannot surcharge. If we can discount, that's news to me. But, other entities such as governments--I think the IRS does the same thing--surcharge consumers for using those credit cards.

01:13:26

Representative Ric Keller: Thank you. I have a ton more questions but, Mr. Chairman, my time has expired.

01:13:30

Chairman John Conyers: All right. You can put them in the record or send them to the witnesses to submit their responses, if you'd like, Mr. Keller.

The very distinguished gentlelady from California, Maxine Waters.

01:13:44 **Representative Maxine Waters:** Thank you very much, Mr. Chairman. Before I move forward with my question, I think we should make sure the record reflects that the Congress of the United States does not own a liquor store, that--I can just see us bombarded with our citizens saying, "Aha, there you go. You got a gym and a liquor store." So, let the record reflect that that's some retail store that's adopted the name "Congressional Liquor Store."

01:14:13 **Chairman John Conyers:** So reflected.

01:14:14 **Representative Maxine Waters:** Thank you.

Secondly, for the study that Mr. Muris referred to, he wasn't very exact about the time of the study, what the study entailed. He said he would submit it to us, and I would like the Chair to ask that that be submitted by a time certain, within the next 10 days or so.

01:14:35 **Chairman John Conyers:** Is that all right with you?

01:14:36 **Mr. Timothy Muris:** Yes, sir.

01:14:37 **Representative Maxine Waters:** All right. Thank you very much. Now, to Mr. Duncan. I'd like to explore with you this business about the interchange fees and how they have increased, and how they do this.

As a consumer, I know that credit card companies have the teaser rates that they get you in with, and then they increase over a period of time. I also know that, once you become a customer, if you're late paying, they have a way of increasing your interest rate. They have a way of generating fees.

And then, I've discovered that fee generation is a whole business, that there are companies who do nothing but teach banks and financial institutions how to create more fees. And I think something I read some time ago indicated that some of our businesses are getting more money, more profit in fees, than they are on the actual services.

So, we know as consumers and customers how we have gotten caught up in the fee game, and the fees that we've--explain to me how--why do you think these fees have increased over a period of time when everybody concedes that they should have been reduced? And what other ways and what other techniques are being used in order to get more money out of the merchants?

01:16:07

Mr. Mallory Duncan: Congresswoman, the--there's a number of answers to that question. I guess the simplest one is to say that a monopolous will do what a monopolous does. And Visa and MasterCard are essentially a duopoly. And so, they will try to find ways of profit maximizing.

And not surprisingly, many of the same techniques they will use with consumers, such as teaser rates, they will also use with the merchant community. As I mentioned a moment ago, they introduce a new category at a low rate, and then flood the market with higher rate cards, which essentially drives that up.

They also have rules, and we haven't really focused on the rules today. But, there are rules, which the Executive Vice President of Visa says are the size of a New York City phone book. That's 1,900 pages, roughly. They will only disclose a fraction of that, and yet we're expected to abide by them. And the fraction they expose, in the case of one company, you have to sign a gag order. NRF could go on the line and look at those rules, but then I couldn't talk to you about them, and we couldn't solve this problem.

So, they have a number of techniques, such as rate increases that are governed by those rules, that cause prices to go up. I think the--talking about the number of options, it's beyond the scope of the time we have here. But, needless to say, it's a profit-maximizing endeavor.

If I may, may I just respond to one thing that Mr. Keller raised in terms of the pricing? You saw similar pricing between Visa and MasterCard. This market is broken. It needs transparency and genuine competition.

But, currently, Visa and MasterCard don't battle for merchants. They battle to get banks to issue their brand of cards. So, this is the only

market in which the competitors compete by raising prices rather than lowering them.

01:18:11

Representative Maxine Waters: Wow. I had another question, and I'm so taken away, what--oh, I want to ask this. This Congress, and most public policymakers, wax eloquently about support for small business. As a matter of fact, if you poll the members of Congress about their feelings and support for small business, that would rank very high in those public policy considerations that they work with, they deal with.

I want to know the impact of these interchange fees on small businesses. Are our small businesses being hurt? Are they being ripped off? Are they being caused to go out of business, not to be able to have the inventory that they need because they're being gouged? Yes, sir?

01:19:08

Mr. John Buhrmaster: Yes, thank you. I'd like to respond to that.

I deal with small businesses every day. My bank was the number one small business lender in New York State for a bank our size.

Small businesses have a variety of costs of doing business. They have insurance. They have lawyers. They have accountants. They have waste removal. When I look at a financial statement for a typical small business, you know, that has--that accepts credit cards, what I'm finding is, on average, insurance is more. It costs more for insurance. Waste

removal is fairly equivalent to the cost of your interchange fees. And legal and accounting is less.

So, it's a cost of doing business. It's built into their pricing structure overall. I don't believe they're being gouged. I think they're getting a good service for it, you know? These are people that have to--these are merchants that have to reach the people.

And right now, the most popular means of making payments is through credit cards. And if you take a look at the national savings rates, it was negative for the first time. It's because people are getting used to putting things on their credit cards, and I don't think it's anything that's on Visa or MasterCard's advertisements that's doing it. I think it's people's desire for now.

01:20:25 **Representative Maxine Waters:** Aside from the convenience--.

01:20:28 **Mr. John Buhrmaster:** --Yes--.

01:20:28 **Representative Maxine Waters:** --For the customer and the merchant, what else does a merchant get--.

01:20:32 **Mr. John Buhrmaster:** --The merchant--.

01:20:33 **Representative Maxine Waters:** --For this fee?

01:20:34 **Mr. John Buhrmaster:** For his fee?

01:20:35 **Representative Maxine Waters:** For this interchange fee they pay.

01:20:36 **Mr. John Buhrmaster:** Well, first of all, the merchant has that--the fraud detection system, which is built into the system, that if someone comes in with a fraudulent card, if they don't have that system there, they might accept that for payment and end up taking the loss later.

However, by running it through the system properly, if they do everything properly, they're covered. And that is a valuable thing. You can't have that with a check. With cash, of course. Cash is king.

But, not everybody carries cash anymore. I mean, I--if you poll everyone in this room, how much--how many people really have a lot of cash in their wallets? Most of us rely on those cards that are in our wallet to go to McDonald's, or to go to the beverage store.

01:21:15 **Representative Maxine Waters:** Well, that's why the merchants are at the mercy of the issuers, because most people do rely on credit cards. I wish we did not have to, but you can't travel in this country. You can't get lodging in this country. You can't do anything without a credit card. So, we are at the mercy of the credit card companies.

Yes, sir?

01:21:35 **Mr. Steve Smith:** Congresswoman, if you assume this is a cost of doing business, which I wouldn't disagree with, it's an uncontrollable cost of doing business. It's one we can't negotiate.

I can negotiate with the folks that are going to pick up my trash, and I can find the one that gives the best service and the best price. I can negotiate with a bank. If he's going to take my checks, I can negotiate prices on check processing. I can negotiate every one of my costs of doing business, but I cannot negotiate the cost of taking credit cards.

01:22:04 **Representative Maxine Waters:** How would you recommend we could help you?

01:22:06 **Mr. Steve Smith:** Well, you know, I wish I had a simple solution, because it is somewhat of a complex thing. I think that, when people compete, just as we compete in the retail grocery business, the consumer benefits. And that's what I hope that this group, along with Food Marketing Institute and some other members--participants in the Merchant's Payment Coalition can get together and come up with some very good solutions.

01:22:31 **Representative Maxine Waters:** Yes, sir?

01:22:32 **Mr. Ed Mierzwinski:** Representative, if I could just add one quick point. The market power of the two card associations forces merchants to

accept their product on the terms that are offered. And the terms that are offered are very, very complex, as you've heard.

And I spoke to one small businesswoman, a doctor, actually, a solo practitioner, and she cannot find out until she gets her bills back from her third-party processor that some of the cards that she's accepted are these rewards cards with the much higher fees that she pays that look like Visa cards to her, and they go through her machine just like Visa cards. They're all the same. But, these new types of cards that are being offered are these rewards cards, these signature cards.

And I would submit that the fraud detection and everything else is a cost of the company's are doing for any of the cards, and that you're not getting better fraud detection. You're simply paying for more rewards, but you don't have any idea what you're paying. You have no choice in the matter because of the market power of the company.

01:23:37 **Mr. Timothy Muris:** If--.

01:23:38 **Representative Maxine Waters:** --Okay. Yes, sir?

01:23:39 **Mr. Timothy Muris:** Ma'am, could I just make two points in response? One, I'd like to submit for the record a letter from the Small Business and Entrepreneurship Council, which opposes what the merchants want to do, if I could submit that for the record.

01:23:49 **Chairman John Conyers:** Without objection.

01:23:50 **Representative Maxine Waters:** What--but, before you--are you going to accept that for the record?

01:23:54 **Chairman John Conyers:** Yeah, I did.

01:23:57 **Representative Maxine Waters:** Well, I wish I had--.

01:23:57 **Chairman John Conyers:** --You don't want to do it--?

01:23:57 **Representative Maxine Waters:** --Been able to object to that.

01:23:58 **Chairman John Conyers:** You didn't want to accept?

01:23:59 **Representative Maxine Waters:** Well, I want to see it.

01:24:00 **Chairman John Conyers:** --Oh, you want to see it first?

01:24:01 **Representative Maxine Waters:** Because I can't imagine merchants sending a letter up here saying, "Don't help us."

01:24:05 **Chairman John Conyers:** Well, we've accepted it for the record, so you can examine it now.

01:24:08 **Representative Maxine Waters:** All right.

01:24:09 **Mr. Timothy Muris:** And my second point is, in terms of small merchants, this Visa and MasterCard are some of the greatest things that ever happened for the small merchants in America.

01:24:18 **Representative Maxine Waters:** My time is up.

01:24:19 **Mr. Timothy Muris:** Because--.

01:24:20 **Representative Maxine Waters:** --Thank you. I give up.

01:24:22 **Mr. Timothy Muris:** If you don't want to hear the answer, that's fine.

01:24:24 **Representative Maxine Waters:** No. No, no, no. I don't.

01:24:26 **Chairman John Conyers:** Well, I was afraid to tell her her time was up. So, now that she acknowledges it herself, I mean, what--?

01:24:33 **Mr. Timothy Muris:** --What can we do?

01:24:36 **Chairman John Conyers:** The Chair is pleased to recognize the Ranking Member of the full committee, from Texas, Lamar Smith.

01:24:42 **Chairman Lamar Smith:** Thank you, Mr. Chairman. And Mr. Chairman, I assume that the gentlewoman from California has, in fact, set the precedent and the standard for time allotted for questions.

01:24:50 **Chairman John Conyers:** You may not make that assumption.

01:24:55 **Chairman Lamar Smith:** Mr. Chairman, first of all, I'd like to ask unanimous consent to have an opening statement made a part of the record.

01:25:00 **Chairman John Conyers:** Without objection.

01:25:00 **Chairman Lamar Smith:** And I'd like to also say that I apologize to our witnesses for being slightly late today. I was over at a--participating in a conference committee over on the Senate side on the 9/11 bill, and that was the first meeting, and somewhat mandatory. And unfortunately, I've got to return, as soon as I finish my questions, to that conference committee.

Mr. Muris, let me address my first couple of questions to you. And some of these questions are really follow-ups to questions related that you've been asked already. But, how does Visa and MasterCard actually set their interchange rates? What factors go into those specific rates?

01:25:41 **Mr. Timothy Muris:** Well, they recognize that this is a two-sided market, and it's a two-sided market where the consumer is king. The consumers get tremendous value. They get the rewards cards and the--.

01:25:53 **Chairman Lamar Smith:** --But, how their actual rate's set. Say it's roughly 2 percent.

01:25:57 **Mr. Timothy Muris:** Well, the rates have been set in part by competition. One of the--in fact, we've heard a lot of talk about rates going up. The rates--the merchant discount rates in fact haven't gone up since the late '90s, and they did go up. And one of the reasons Mr. Keller asked what happens, one of the reasons was--.

01:26:13 **Chairman Lamar Smith:** --Well, actually, let me go back to my question. What factors do you consider in setting those rates?

01:26:17 **Mr. Timothy Muris:** Well, that's what I'm saying, is that competition between Visa and MasterCard to get banks to dedicate themselves to them was one of the factors that caused the increase in rates in the late '90s. Since--.

01:26:30 **Chairman Lamar Smith:** --Is there an overhead factor? Is there an expense factor?

01:26:33 **Mr. Timothy Muris:** Well--but, in a two-sided market, it's frequent that one side gets subsidized. If I go on eBay, the seller pays it all and the buyer pays nothing. I mentioned newspapers when you weren't here. In newspapers, the readers pay--the readers are subsidized by the advertisers. In payment cards, the cardholder gets a very good deal, and

the merchants are--bear most of the costs, and that happens throughout in these so-called two-sided markets.

01:27:05

Chairman Lamar Smith: Okay. Now, you've gotten some criticism today about anti-competitive behavior. How do you--if the fees are so similar, if you talk about an individual going into a store and buying the same merchandise with two--with the Visa and the MasterCard, the fees are going to be pretty similar. Why isn't that anti-competitive behavior?

01:27:27

Mr. Timothy Muris: Well, as Mr. Keller mentioned, in competitive markets, it's quite frequent that the prices are similar, or even identical. But here, prices in fact are different. American Express, which is a smaller company, has a higher merchant discount of 2.5 percent. Discover has a lower merchant discount.

The merchant discount, a lot of that has to do with the type of the card and with what happened when they--of the need to attract merchants as compared to consumers. There are antitrust cases going on. Those cases do not involve American Express and Discover because they are single entities.

Through historical accident, because Bank of America could not have multi-state banking, we ended up with the system that we have now. MasterCard and Visa have in fact moved to a system that now will look much more like American Express and Discover.

01:28:19 **Chairman Lamar Smith:** Mr. Duncan, why do you think the interchange fees are too high? And you've been asked several times today about a solution, but I heard one about arbitration, and that a bill has been introduced to, I gather, compel arbitration. I assume you're opposed to price controls. But, what other answers are there out there if in fact you can show that the fees are too high?

01:28:43 **Mr. Mallory Duncan:** Sure. Let me start with just suggesting to you how fees are fixed.

As Mr. Buhrmaster said in his testimony, and I think I referenced in my oral testimony, what happens is a group of big banks and Visa get together, and they set the fee. They then take it back to the Visa, and Visa blesses it, and all of the banks then charge that fee.

01:29:04 **Chairman Lamar Smith:** Okay.

01:29:05 **Mr. Mallory Duncan:** Now--.

01:29:06 **Chairman Lamar Smith:** --Just because they've gotten together doesn't necessarily prove the fee is too high. Why is the fee too high?

01:29:10 **Mr. Mallory Duncan:** The fee is too high because it is set the way a fee would be set by a monopolous. In any other market, as we see growth, as we see computerization, as we see improvements, prices go down.

After all, this was originally a fee for processing a transaction. And now, we see that only 13 percent of it goes to processing.

01:29:32 **Chairman Lamar Smith:** Okay. And what would you propose as an alternative?

01:29:34 **Mr. Mallory Duncan:** Well, there's a couple of parts to that. First of all, because this system is governed by a privately regulated set of rules, the first thing we have to have is some transparency. We have to be able to see the rules of the game to know how you're going to fix this thing.

But then, let's look back. A few years ago, we had Ma Bell, and you could get any phone you wanted as long as it was black, white or ivory, and you paid \$2.00 a minute for long-distance calls. The courts got involved, and there was tumult.

Finally, Congress came around and said, "You know, this is a problem that we have to fix. We have to look at it, study it, and come up with a solution."

We have an analogous situation here. The courts are involved, but only Congress can come up with a nuanced response to make this work. It may be as simple, for example, as looking at the honor-all-cards rule, the rule that says, if I sign up to take those 1 percent traditional cards, I've got to take this 3 percent business rewards cards, and allow your merchant to

say, "No, I don't want to take these business rewards cards, or these high flying extra cards."

01:30:40 **Chairman Lamar Smith:** Okay. Mr. Chairman, I'd like to have an additional minute, and I'm--and if granted, I'm going to yield it to the gentleman from Florida, Mr. Keller.

01:30:50 **Chairman John Conyers:** Very good.

01:30:51 **Chairman Lamar Smith:** Thank you.

01:30:54 **Representative Ric Keller:** Thank you.

Mr. Duncan, what is to keep Visa and MasterCard, since they have an 80 percent market share, from determining, "You know, instead of having 2 percent interchange fees, we're going to have 3 percent, or 4 percent?"

01:31:09 **Mr. Mallory Duncan:** Frankly, the only thing I think that stops that from happening is because they are monopolous, and monopolous will price maximize, as you--it's been a long year--number of years since economics, but there is a market-clearing competitive price, and there is a much higher price the monopolous charge, because they can profit-maximize.

01:31:26 **Representative Ric Keller:** Mr. Muris, would that be a good thing if the interchange fees went up to 3 percent?

01:31:30 **Mr. Timothy Muris:** Well, if they had the power that Mr. Duncan says they have, obviously the fees wouldn't be where they are now. But, it's important to understand that--.

01:31:41 **Representative Ric Keller:** --But, isn't your position, "When interchange fees increases, cardholders benefit?"

01:31:45 **Mr. Timothy Muris:** Yes, but interchange fees are set in this process, this--you know, this balancing process. It's clear that one of the thing--most--.

01:31:53 **Representative Ric Keller:** --But--so, if the ATM fees go up, that's good for me?

01:31:58 **Mr. Timothy Muris:** What happens with interchange is that cardholders are better cards. Most of us have four or five cards in our wallets, believe it or not. If interchange went down, like it's happened in Australia, what happens is annual fees come in. With annual fees, people would carry far fewer cards.

Now, you might believe that people are wrong to carry four or five cards. I personally don't. But, there's a direct relation between the size of the interchange fees and the quality of the cards.

01:32:29 **Representative Ric Keller:** Thank you. I think my time's expired. Yield back.

01:32:31 **Mr. Ed Mierzwinski:** Mr. Chairman, can I just add one quick comment on the Australia? I mean, the consumer groups would be happy to submit for the record that we disagree with the Card Association's interpretation of the Australia experience. And we think that actually, overall, consumers are paying lower fees, and there are more entrants in the market, and it's a much more competitive system.

01:32:50 **Chairman John Conyers:** We'd be pleased to accept any information in that regard.

Chair recognizes Chris Cannon.

01:32:58 **Representative Chris Cannon:** Thank you, Mr. Chairman. I appreciate that.

And let me pick up from where I was, with Mr. Smith. You were talking about some focus groups you had done. Do you have anything that you could share with us, any written reports on those focus groups or anything that would indicate something we could look at as a committee?

01:33:16 **Mr. Steve Smith:** No. No, sir, I don't have that with me today. I could provide that with you in the future.

01:33:20 **Representative Chris Cannon:** Well, if you have some written--if something's done already, I'd appreciate that. That'd be interesting.

01:33:23 **Mr. Steve Smith:** Yes, sir.

01:33:24 **Representative Chris Cannon:** In that process, did you ask people what they thought fees currently are?

01:33:32 **Mr. Steve Smith:** Well--and I don't recall exactly the exact line of questioning because, obviously, I wasn't doing the questioning. But, the questions had to do with payment methods, which payment methods do you prefer, which--you know, if it's debit, credit, check, etc.

And it kind of weaved back around to the question, you know, what fees do you think are associated? Do you think any fees are associated with these cards? And that's where we got--ascertained the information, that most consumers do not think there are fees associated with cards.

01:34:00 **Representative Chris Cannon:** So, did you then take it beyond that to say, globally, how much profit is built into the--those transaction fees for banks?

01:34:07 **Mr. Steve Smith:** No, sir, because we were very careful not to disclose things we're not supposed to, according to the rules.

01:34:14 **Representative Chris Cannon:** Can you tell me about the rate you pay, or the rates? For instance, is it a one-size-fit-all, or are there multiple rates that you end up paying as a merchant?

01:34:22 **Mr. Steve Smith:** Well, actually, I have a rate sheet right in front of me here. We pay 64 different rates to credit card companies. I'd be happy to share this. It's just point I'm probably not allowed to, because--.

01:34:33 **Representative Chris Cannon:** --Well, I ask unanimous consent that that be included in the record.

01:34:36 **Chairman John Conyers:** Without objection.

01:34:37 **Representative Chris Cannon:** Thank you.

01:34:38 **Mr. Steve Smith:** Well, I'm not sure that I can do that in accordance and not be in violation of my Visa and MasterCard--.

01:34:43 **Representative Chris Cannon:** Well, I think actually--.

01:34:44 **Mr. Timothy Muris:** --It's public information, so--.

01:34:47 **Representative Chris Cannon:** --Well, that's okay. Great.

01:34:47 **Mr. Steve Smith:** Okay. I'll be happy to supply that with you. But, there's 64 different rates that are on this sheet. If you look at

MasterCard's rate sheet, as I understand it, now this is not just for our industry. This is for our stores. But, theirs was 106 pages long for all the industries that they do business with.

01:35:04 **Representative Chris Cannon:** But, this sheet reflects your fees?

01:35:07 **Mr. Steve Smith:** Sixty-four different, right.

01:35:08 **Representative Chris Cannon:** And they're different rates and, therefore, presumably, some ability to push people to use rates that are higher. Do you find that banks are--in other words, we talked a lot about different kinds of cards, and some cards have extra fees because they're specialty cards, and a merchant ends up paying more.

But, do you find that there's a pressure--there's pressure by banks in the system to encourage people to use cards that result in higher fees for you?

01:35:35 **Mr. Steve Smith:** There's not any question of that sir. Yes.

01:35:37 **Representative Chris Cannon:** Do you push back on that at all?

01:35:38 **Mr. Steve Smith:** There's no way we have the ability to push back. We have to take all cards. We can't discriminate on any type cards. And even if we could, with 64 different payment structures, I don't know how that'd be possible in a retail environment.

01:35:52

Representative Chris Cannon: Given this [unintelligible], I appreciate that.

I--there's one other--I have many questions, but one that I want to direct to Mr. Muris. You talked at--about the benefit of the system and how--some of the robustness of it, and how merchants have a choice. I think you mentioned Costco doesn't take some cards. Costco I think is a little bit unique.

But, however you consider the market for merchants today, what--how do you deal with the online environment? What does a merchant do who is online, where a customer has a different set of choices? Is it not more important for someone online to have the ability to process a credit card than it is, say, a store down the street?

01:36:38

Mr. Timothy Muris: Well, absolutely, and I would submit that, without payment cards, we wouldn't have the vibrant online economy that we have. And the key to the functioning of payment cards has been their ability to balance these two sides of the market.

Now, interchange rates could be higher online because the fraud possibilities are higher. But, I think the Internet makes the case for payment cards, not the opposite.

01:37:04

Representative Chris Cannon: Well, so, my point here is that--is not that it's enhanced. I mean, I believe that it has. Mr. Duncan earlier talked about profit, and I think actually profit's a wonderful motive. It gets people to do things they might never have thought of doing, like getting out and working.

So, I mean, I'm not--there's nothing critical in this question. But, the question more to that I'm asking is is there a disproportionate bargaining position on the part of the credit card companies when they're dealing with people online?

01:37:35

Mr. Timothy Muris: You know, in many ways, I don't think so. There are--PayPal and other people are trying to come up with different kinds of payment systems. Again, we have--you know, we have a variety of credit--of--we have four credit card payment systems. It's quite frequent. I don't know how much you purchase online. But, when I purchase online, most of them seem to take all the major systems.

So, although there've been a tremendous benefit, there is competition in this business, and I think that competition acts like it acts otherwise, to protect the consumer.

01:38:05

Representative Chris Cannon: I only buy things online in D.C. where I don't have to--I don't think I have to pay sales tax on them. You have to remember, everything you buy in Utah and declare that on your sales tax in the end.

Another issue for one of the subcommittees or this full committee to deal with at another point in time.

Mr. Chairman, I recognize my time has expired, and thank you, and yield back.

01:38:23 **Chairman John Conyers:** Thank you very much.

Mr. Darrell Issa?

01:38:30 **Representative Darrell Issa:** Boy, it's hard to know where to begin.

We're not the courts, and I--Mr. Chairman, I respect the fact that we have certain limited jurisdiction. So, let's assume for a moment that it's a court's job to decide if you're a trust, if in fact Visa, MasterCard are operating as monopolies.

But, Mr. Muris, I guess since you're the apologist for the credit card companies here today, to use a technical term I think we use from time to time here at the dais, why in the world within our powers shouldn't we have a piece of legislation that says that, from a contractual standpoint, since it's very clear that credit cards have monopolistic power as a group, that--why is it that wouldn't be appropriate for us to sponsor legislation on a bipartisan basis that would simply allow those taxes to be added, 64 different--by the way, Mr. Smith, I'm assuming you'll answer affirmatively

that your stores could have a computer that would add the exact amount of those 64 different rates so that, whatever card I chose, I got the effective tax rate back to me as a pass-through, no profit, just the pass-through.

Why in the world shouldn't we sponsor legislation that says that? And then, secondly, and probably even more importantly, why in the world should this committee allow a gag rule to be in place that prevents the public from knowing what is being added to the cost of the product, particularly when a gallon of gasoline has more profit in it for your companies than it does--than it has for any of the people they're buying from?

01:40:12 **Mr. Timothy Muris:** Well, first off--first of all, I'm speaking--although I've done work for Visa, I'm speaking as I always do in front of Congress, for myself. I decided 40 years ago that I wanted to be in public policy issues and speak my mind, and that's what I'm doing today.

01:40:27 **Representative Darrell Issa:** Oh, okay. So, when your firm advertises as a lobbyist organization, that you're the premiere on in Washington, that it has nothing to do with that? Doing this on your own dime for free [inaudible]?

01:40:40 **Mr. Timothy Muris:** No. What I'm saying is is that I only speak in public, and I only take representations that--this is not my full-time job. I'm a college professor as well, and I'm doing a lot of other things. I only speak

in public, and I only take people in whose cases I believe. In fact, Discover came to me in 1990 in a case against Visa, and wanted to pay me money to work for them. And I said Visa was right.

01:41:02 **Representative Darrell Issa:** Okay. Well, if--in that case, I think I'll switch to Mr. Buhrmaster.

01:41:05 **Mr. Timothy Muris:** So, if you want an answer to your question--.

01:41:06 **Representative Darrell Issa:** --As a small banker--I'll ask you the question--why in the world do you believe that you only have essentially two people you can deal with, and both of them, Visa/MasterCard, guarantee you a profit even though your various banks are on the back end, the smaller end, but they set the price high enough that the smallest of banks still make a profit on it? Why do you think that occurs?

01:41:34 **Mr. John Buhrmaster:** Well, I don't believe they set the price. I do believe that the price is set by the marketplace, that when a merchant comes and sits down at my desk and says I'm interested in this product, chances are they spoke to someone else. And I disagree with Mr. Smith when he says there's no competition here. There's no negotiating.

01:41:53 **Representative Darrell Issa:** Well, let me switch. I'll switch. But, I want you--I--just double-check. I want you to have your banker's hat on, okay?

01:42:01 **Mr. John Buhrmaster:** Certainly.

01:42:03 **Representative Darrell Issa:** If I came to you tomorrow with a product that cost 25 cents per \$100, .25 percent as a transaction fee, and that's all you had to pay, and then you could price your amount on top of that for a merchant, let's say another .25 or another .5, so that for .75 instead of 2 or 2.5, you could provide a merchant with this transaction. No frills.

Would you, for a minute, not take that .25, add your .25 or .50, and undercut the existing competitors of Visa and MasterCard? If that was available today, is there any reason you wouldn't take that?

01:42:47 **Mr. John Buhmaster:** When I look at a product I'm buying, and I--that's one of my jobs at the bank, I examine new products--I want to know the same thing my customers ask when they walk in here. Where am I going to get the best service and the best price? If I made my decision solely based on the best price, I'd probably not be in business, because I've gotten some great deals thrown in front of me that turn out pretty bad. Now, with that said--.

01:43:10 **Representative Darrell Issa:** --Okay. Well, let me rephrase that. What if--.

01:43:11 **Mr. John Buhmaster:** --But--no, I know what you're saying.

01:43:12 **Representative Darrell Issa:** Let me re-ask the question one more time, because the time's limited, and I think we have to get to the basic question of is there an absence of an ala carte for a reason?

If Visa or MasterCard offered you the transaction separate from all the other things that go in it, the .25 rate, which would be about the--what I guess is the 13 percent of the fees that are going on, just my arithmetic, if they offered that, would there be any reason in the world that you would not use that, at least with merchants who wanted it, as a competitive advantage?

01:43:46 **Mr. John Buhmaster:** I want the best deal I can get for my bank and my customers. So, if someone's offering me a better rate and I'm used to their service, and I can verify their service and I can make sure I'm getting the value for my price, I would take it.

01:43:58 **Representative Darrell Issa:** Okay. Mr. Smith--.

01:43:59 **Mr. John Buhmaster:** --Now, that said--.

01:43:59 **Representative Darrell Issa:** --I'm assuming that, if that were offered by Mr. Buhmaster, that you would take that rate of about half what you're paying and put the rest of it either into savings or perhaps eking out a profit. Is that roughly correct?

01:44:10 **Mr. Steve Smith:** Well, I think that would be fair to say. We would enjoy having a lower rate and competition to get there.

01:44:18 **Representative Darrell Issa:** So, it's the absence of competition and the absence of disclosure that we're dealing with here today within our jurisdiction.

01:44:23 **Mr. John Buhrmaster:** I have to disagree with that. That's been said a number of times here, and we're talking about an absence of competition. There is not an absence of competition. As a merchant acquirer, there is not.

I have people coming into my office, out of my 160 merchants, we have people that come in and say, "I had a guy come in, and they show me a business card. On the back of it, it says I can give you this rate." Well, yeah. I say, all right, what services are they offering? There is competition. Every day there are people in my merchant's shops trying to offer them a better rate.

I price the way I feel I can make a profit and I can deliver good service. I don't want to do both. I don't make a big profit on this. I deliver good service.

01:45:01 **Representative Darrell Issa:** Well, Mr. Buhrmaster--and my time is up, and I don't want to take too much of the indulgence of the Chairman.

But, since I'm, oddly enough, the only member of a public company's board, and my company does about \$40 million of transactions a year, and I'm the former CEO, with all due respect, I've been at the negotiation table on behalf of my company with the various banks, and it simply isn't true. Yes, you can negotiate over .02 or so. You cannot negotiate beyond that.

We're dealing here today, with the Chairman's leadership, on the portion that is, in fact, the price fixing portion. And I would hope that, in the future, that the kinds of hearings we have continue to expose the fact that there is an absence of competition and a gag rule in place in America today. And Mr. Smith, thank you for your leadership, and the rest of you that help flesh this out.

Thank you, Mr. Chairman, for your leadership. I yield back.

01:45:56 **Chairman John Conyers:** I thank you so much.

Mr. Chabot?

01:46:01 **Representative Steve Chabot:** Okay. Thank you, Mr. Chairman. I just have one final question that I'd like to put to both sides. To the banks, credit card folks, obviously you've been on the receiving end of the more probing questions, and my question to you is have--are there any mis- impressions that you heard there that the committee may have received?

Is there anything that you would like to clear up? Is there any of the criticism that you've heard that you think is unwarranted? I'd like to give you both a last shot to make your best case to us.

And then, to the retailers, if you could comment as to why--oftentimes a lot of us believe that you don't necessarily want Congress getting involved in something that marketplaces can kind of take care of things. But, that's not always the case and, sometimes, we do need to step in, and regulation is appropriate.

Would you tell us why this is an area that ought to be probed further, and that we ought to look into, and how we could be involved to the extent that we can be helpful and not screw up the marketplace out there, as government is sometimes apt to do?

And I don't care who goes first. We can just go down the line, however you want to do it. Why don't we go with Smith--Mr. Smith, if you'd like to, and we'll just go down--right down the line. And if you could keep your comment to perhaps a minute or so, because I've only got five minutes, and that's--.

01:47:38

Mr. Steve Smith: Well, thank you, Mr. Chabot. I think that the thing that we look at in our business is we are the purchasing agent for our consumers. It's our responsibility to make sure that we can bring food to the table of our consumers as inexpensively as we can with quality merchandise.

The problem we've got, when you see a 2 percent fee for credit cards and a 1 percent profit margin, you must understand that there is a pass-through to the consumer.

Our concern is, as it has gone up 117 percent, we don't know where the end is. We have credit card fees that are going up faster than our healthcare, faster than any other expense that we have in our business.

I don't know that I have a solution for you here today. I wish I did. But, what I do think works, and what I have experience with is being in a free market enterprise system, one where competition is readily available, and folks vie for your business each and every day. And I hope that's what we can work with this committee to come up with.

01:48:42

Representative Steve Chabot: Thank you.

Mr. Buhrmaster?

01:48:44

Mr. John Buhrmaster: Well, I enjoy the probing questions, and I wish you'd asked me more. I mean, I came here, and I enjoy answering the questions for you folks.

I feel that we've missed something here. There is competition in this business. From where I sit, I sit at a desk in a small bank in a small town

in a small community. And I have my merchant customers bombarded with people coming in and offering them better deals.

There is competition out there. The base price may be set, but that is what allows a bank like ourselves to be in the business, you know? We can compete with the Bank of Americas. We may add on what our cost is so that we can be competitive. But, it's so important to note, there is competition out there. And I do lose customers, and I gain customers.

Second is just don't forget the small banks in this equation. You can't forget that we're driving the economy of this country, and that this is an important part of our driving the economy. We have to have these payment options for our people, for our consumers, and for our merchants and our small businesses. It's important.

And if legislation is put forth that restricts our ability to compete with the large banks, you will lose the small banks in the payment acceptance arena, and it will be dominated by large players that traditionally have not looked out for the consumers the way small banks do.

01:50:04

Representative Steve Chabot: Thank you.

Mr. Mierzwinski?

01:50:06

Mr. Ed Mierzwinski: Thank you, Mr. Chabot.

The first thing I'd like to say is simply that the consumer groups care about all consumers, not only cardholders. And if cardholders represent 50 percent of the business of a store and the cost is 2 percent added on across all 100 percent of the store's customers because of unfair interchange rates, well, then everybody is paying 1 percent more regardless of how we pay, with a card or without a card. So, that's the first issue out there.

Second, in terms of the unfair practices, one thing that we haven't pointed out is that the cheapest form of interchange is actually PIN debit. There are statistics out there, and there are facts out there that show that many banks are now starting to impose a PIN debit fee on consumers to drive them to signature debit, which is the higher cost debit.

And that is why you have all these rewards programs. They put the rewards programs on the signature debit only, just like on credit cards, because they want to drive you to that because they make more money from the merchants. Rewards, by the way, we think are overrated, particularly on credit cards. Most people don't redeem them. And if this is what we're paying for, it's a ridiculous system.

Then, finally, you asked what else should you be looking into. The final point of my testimony was that, in addition to this system of interchange being broken, we believe that the issuer system is an oligopoly, and that there are bad practices that companies engage in because of those anti-

competitive practices at the issuer level. And we'd encourage a second hearing just on issuer competition.

01:51:45

Representative Steve Chabot: Thank you.

Mr. Muris?

01:51:46

Mr. Timothy Muris: Thank you very much. And let me submit for the record, I've heard a lot of facts, but--many more than I could talk about now that I thought were wrong.

Just let me make a few points. First of all, regarding rewards cards, I like my rewards. I don't think it's the job of government to tell people what kind of products they should take.

Second, fees are not out of control, and let me submit for the record data I got from Visa involving supermarkets, which show that the increase in volume has explained virtually percentage point for percentage point the increase in interchange that supermarkets have paid to Visa in the last seven years.

Next is, despite what we've heard, merchants can discount for cash. They can disclose all this information. They can steer. They can have people use debit. They can have people use Discover. There are lots of things they can do.

Next, I think--and what we heard from both Mr. Smith and Mr. Duncan when they were asked for remedies, if this was really an antitrust case, they wouldn't be here, because an antitrust case would simply end the price fix. By asking for a complicated ATT breakup kind of remedy, that's clearly an implicated [sp] mission. This is not the Cartel case they claim.

Finally, consumers do know that merchants pay. In fact, two-thirds of them know that merchants pay to use the cards.

Thank you.

01:53:02 **Representative Steve Chabot:** Thank you. If we could get some follow-up on that, because there've been some discrepancy, you know, this afternoon--.

01:53:08 **Mr. Timothy Muris:** --Yes--.

01:53:08 **Representative Steve Chabot:** --From both sides. And I'd--we'd like to get, I think--I'm sure we all would, just to verify it one way or the other. Thank you.

Mr. Duncan?

01:53:14 **Mr. Mallory Duncan:** Yes. First, I guess what I would like to say is that what we have here is a market failure. We don't have a market. We have prices that are regulated privately and supported by a secrets set of

rules. So, that's not the function. That's not a functioning market. That's not the definition of a market.

Now, the courts, as Tim points out, the courts can--are very good at deciding liability, and they can determine damages. But, if we're talking about fixing this, we're talking about perspective remedy, that's not something a court's very good at. So, it's really the prerogative of Congress to come up with the kind of nuanced solutions we need to help correct an anti-competitive market. I would suggest that one of the first places we look is at these rules.

01:54:07

Representative Steve Chabot: Okay. Thank you very much.

Mr. Chairman, I want to thank you for having this hearing, and just say that I think both--the witnesses on both sides here were very, very good, and I think did great presentations, handled the questions very well on both sides. So, thank you to the panel.

01:54:23

Chairman John Conyers: But, there's a lot of conflicting testimony here, sir. Somebody is less correct than somebody else, which is our job to determine.

Ric Keller?

01:54:38

Representative Ric Keller: Thank you, Mr. Chairman. And I want both sides to know that I have read everything you had to say. I have listened

to every word you had to say, taken notes on everything you had to say, and really, hopefully have given you a fair shake, both sides. And we'll continue to do that.

Following up on what Chairman Conyers said, I'm going to try to create order out of chaos just a little bit. I have found six factual inconsistencies between you. One side said one [inaudible] to the other, and one area of agreement. And I'll go through that and see if we can get--at least get the agreement.

The retailers say we just want to be able to see these Visa and MasterCard operating rules, and they're kept secret from us and the public. Mr. Muris and, on behalf of the credit card companies' banks, "No, we don't keep them secret. They're right there on the website. Anybody can see it."

Retailers said, "We can't advertise or offer cash discounts or debit card discounts. In fact, Visa threatened some California gas station for offering lower cash prices." Mr. Muris said, "Not true. You can offer lower prices, cash discounts, offer debit card discounts, advertise it if you want."

The retailers said, "We don't have the bargaining power to deal with these credit card companies. It's take it or leave it, and we have to take it since they've got 80 percent market share, companies like MasterCard and Visa." Mr. Muris says, "Not so. Costco cut a deal with American Express using their bargaining power, and American Express typically had a

higher merchant rate, 2.5 percent, more than MasterCard and Visa, so just cut your deal."

Retailers say that, when interchange fees increase, it hurts consumers and cardholders. Mr. Muris says, "When interchange fee increases, cardholders benefit. Higher interchange fee revenues to issuing banks result in increased benefits to users of payment cards, such as increased rewards and lower fees. These benefits come not only in the form of air miles, they also include rebates."

Retailers say, "We don't want price controls. We want competition." Mr. Muris says, "Critics, including the merchants, want the federal government to impose price controls." Mr. Smith, on behalf of the retailers, who's the CEO of Food City and the President of Food Marketing, says the supermarkets are hurting. Mr. Muris pulls out a letter, says supermarkets are doing great. They're not hurting.

Well, here's my one area of agreement that I've seen. It seems that people at least agree, pursuant to these operating agreements that Visa and MasterCard issue, if there is a company such as Mr. Smith's company, Food City, and they agree to accept Visa, and someone comes along with one of these Visa premium cards with lots of bells and whistles like airline miles and rewards and rebates, and it has a much higher interchange rate, you've got to take it, just like the more basic one. And Mr. Muris hasn't disputed that.

And one of the solutions, in fact the only solution I've heard today that Mr. Duncan has offered, is maybe that should be changed. Maybe you should have the freedom to turn down some of these big-ticket premium reward cards that are charging you very high interest rates. Is that essentially your idea, Mr. Duncan?

01:57:52 **Mr. Mallory Duncan:** That would be a first step.

01:57:54 **Representative Ric Keller:** Mr. Muris, have I accurately laid this out, or am I mistaken?

01:57:55 **Mr. Timothy Muris:** Well, what you--yeah. What you've done is destroy the value of Visa and MasterCard as a brand, because what that means--
.

01:58:03 **Representative Ric Keller:** --I didn't know I was that powerful.

01:58:06 **Mr. Timothy Muris:** Well, that's what your remedy would do, because what that means is the value to me is I can take my Visa card and it'd be honored anywhere. And what you're saying is no, it depend--you know, the merchant can pick and choose. So, you really would hurt the value of the [unintelligible].

01:58:18 **Representative Ric Keller:** But, you would agree with the statement-- and I don't want to quarrel with you. I just want to make sure I'm getting my facts right--that, if someone enters into a Visa agreement, such as

Food City, and you agreed to take the Visa cards, you've got to take all the Visa cards, the premium ones and the basics. Is that fair?

01:58:32 **Mr. Timothy Muris:** Absolutely not. I think you're doing a superb job of summarizing.

01:58:33 **Representative Ric Keller:** Okay.

01:58:34 **Mr. Timothy Muris:** I was just saying the implication of what you want there would--.

01:58:36 **Representative Ric Keller:** --All right--.

01:58:36 **Mr. Timothy Muris:** --Disastrous consequences.

01:58:38 **Representative Ric Keller:** Thank you, Mr. Chairman, and I will yield back the balance of my time.

01:58:41 **Chairman John Conyers:** Yes, my commendations to you, because that's precisely what we're going to have to do after this hearing, is what you've already initiated. I thank you very much, Ric.

Steve Cohen, were you just passing through the Rayburn Building and wandered in here, or do you have a purpose?

01:59:01

Representative Steve Cohen: Mr. Chairman, I was going through the pay phone return coin places to try to get some money to pay my credit card bill, and I hadn't come up with enough yet. But, I did stop by.

Thank you, Mr. Chairman. I am interested in this issue, and I've had an interest in consumer issues for some long time. And I'm afraid I'm not as maybe up to speed as Mr. Keller and some of the others, having listened to the testimony.

But, one of the things that, you know, it's just shocking to see that these rates have continually gone up, and the United States appearing to be the only country in which credit card interchange fees are increasing, and there's far higher fees than almost any other industrialized country. And I guess that's--is--whose testimony is that from, or is that just the Gospel? Or--so, it's--.

01:59:48

Mr. Mallory Duncan: That is the Gospel.

01:59:49

Mr. Timothy Muris: Well, it's not true but, you know, it's another fact I'll dispute. But, we can--and I'll--.

01:59:54

Representative Steve Cohen: --Is it the Gospel according to Ed?

01:59:57

Mr. Ed Mierzwinski: The statistics we've seen, Representative Cohen, are that the U.S. has the highest rates. The retailers and the consumer groups agree on that.

02:00:06 **Representative Steve Cohen:** And Mr. Muris, which countries have higher rates?

02:00:08 **Mr. Timothy Muris:** Well, I'll submit for the record two pieces of evidence, one from ITAY [sp], which shows that what merchants pay is lower in the United States in most places, another from the European Union that shows what merchants pay in the United States for Visa is right in the middle of other countries. So--.

02:00:24 **Representative Steve Cohen:** --But, Visa's different. We may be talking about MasterCard.

02:00:27 **Mr. Timothy Muris:** Well, no. I believe Visa and MasterCard are very similar.

02:00:30 **Representative Steve Cohen:** They're very similar. Is--Mr. Chairman, may I ask a question? I may be confused. Wasn't this about antitrust?

02:00:38 **Chairman John Conyers:** Well, this is the Antitrust Task Force of Judiciary Committee, yes.

02:00:42 **Representative Steve Cohen:** So, is this an admission that Visa and MasterCard are kind of have--doing something together?

02:00:46 **Chairman John Conyers:** Well, no. Wait a minute. We haven't gone that far yet.

02:00:49 **Representative Steve Cohen:** Okay. I'm sorry. Missed out at the--.

02:00:51 **Representative Steve Chabot:** Would the gentleman yield?

02:00:52 **Representative Steve Cohen:** Yes, sir.

02:00:52 **Representative Steve Chabot:** I thank the gentleman for yielding.

Mr. Muris, if you have evidence to the contrary, or there are studies out there, I'd like to have that material. I think we all would, again, you know? Otherwise, if there isn't something, then I would tend to accept that, you know? If there is something that's inconsistent, then I'd like to see it.

02:01:08 **Mr. Timothy Muris:** No, no. I will submit for the record. But, the truth is, in competitive markets, firms tend to--and I believe it was Mr. Keller who pointed that out--when you walk in the stores, close competitors have similar price. That's what often happens in competition.

02:01:22 **Chairman John Conyers:** Well, that's also possible of price fixing, too.

02:01:25 **Mr. Timothy Muris:** Sure. It's a possibility of price fixing, monopoly, or competition.

02:01:30 **Representative Steve Chabot:** And I'm talking specifically about whether the United States have the highest rates--.

02:01:33 **Mr. Timothy Muris:** --Oh, oh, yes.

02:01:35 **Representative Steve Chabot:** That's what I was talking about.

02:01:35 **Mr. Timothy Muris:** Yes. And I have--and I'll submit two different pieces of data for reference.

02:01:39 **Representative Steve Chabot:** Yeah. I mean, I'd be very interested in seeing it. But, I haven't seen it other than what Mr. Cohen has referred to, so I'm assuming that that's the case, unless I see something different, and then I'd look at the source of that and--.

02:01:50 **Representative Steve Cohen:** --Sure. That's on page--.

02:01:51 **Representative Steve Chabot:** --Thank you--.

02:01:52 **Representative Steve Cohen:** --Page three here of the consumer group testimony on credit card [inaudible].

But, let me ask this question. Mr. Muris, are you with a credit card company?

02:02:00 **Mr. Timothy Muris:** I am testifying today, as I always do. We had a little exchange about that. I'm--everything--.

02:02:06 **Representative Steve Cohen:** --I think I heard that one. You're a citizen, and you only come out for folks you like. I heard that. Well, listen, between telephone-book places, I did hear a little bit.

02:02:14 **Mr. Timothy Muris:** Well, I've spent 40 years doing this. I've had six jobs in the federal government. I've had a lot of other jobs. I only speak and work on people whose--in whose cause I believe, and I'm proud of that, sir.

02:02:23 **Representative Steve Cohen:** Do you have any reason to know why the credit card companies continually send out all these requests for people to get credit cards?

I live in a house for 19 years, and they're still soliciting the people who died before I moved in and saying, because of their good credit rating, they're entitled to get this card. They've been dead for a long time.

02:02:41 **Mr. Timothy Muris:** Sure, and that's--it's one of the--.

02:02:43 **Representative Steve Cohen:** --They are debt free--.

02:02:44 **Mr. Timothy Muris:** --It's one of the ways that people get credit cards. One of the things that I'm--that I suspect you helped us with, when I was

chairman of the Federal Trade Commission, we made it easier for people to opt out of those solicitations. It was not like--we did the National Do Not Call Registry when I was Chairman, and Americans overwhelmingly signed up for that. Americans overwhelmingly don't--.

02:03:02 **Representative Steve Cohen:** --But, these people are dead. They can't--.

02:03:04 **Mr. Timothy Muris:** --Well, but I'm saying that, if you wanted to, sir, you can opt out. But, like me, you probably don't because most people, it's very easy to sift through their mail.

And in fact, I have accepted--I've purchased credit cards based on the mail solicitations. But, if I wanted to, I could opt out. And thanks to you and the other members of Congress a few years ago, you made it easier for people to opt out. And I thought that was a good thing.

02:03:17 **Representative Steve Cohen:** But, the cost of sending that letter to make you opt out, and then to make you opt out cost all this money that we've then charge in fees and had to make money. We have to charge more money, even.

02:03:25 **Mr. Timothy Muris:** Sure. Advertising and market--.

02:03:28 **Representative Steve Cohen:** --So, why can't you be more selective in who you pick, who really is somebody that deserves and has good credit?

Isn't there some way to--because it bothers me as a consumer, and it bothers me as somebody who invests that it's such wasteful spending.

02:03:42 **Mr. Timothy Muris:** Well, I would be glad--again, I would be glad to help you exercise your right to opt out--.

02:03:47 **Representative Steve Cohen:** --I think we have a volunteer here. But, end of my five minutes, please? Yes, sir?

02:03:52 **Mr. John Buhrmaster:** As a credit card issuer, you know, everybody has a different way they do business, and I'm speaking as a small bank. But, there are other large banks that their way of doing business and getting credit cards into the hands of consumers is the mass mail to my grandmother who passed away several years ago. We still get mailings for her.

But, that's the way they choose to pick their customers. Other banks, other issuers, choose other ways. It's just in the business model. It has nothing to do with the interchange debate. It's--it has--it probably has more to do with the shrinking margins that the banks are experiencing because of the rate environment. They're looking for ways to find more ways to lend to people. The money they're making off of people with bad credit come from these interest rates that are high. So--.

02:04:37 **Representative Steve Cohen:** --Right. And apparently, according to this information, there are nine billion unsolicited credit card offers sent

just this last year, nine billion. That's--even in China, that's a lot of people.

02:04:50 **Mr. John Buhrmaster:** But, I get more requests for charitable donations than I do for credit cards, you know?

02:04:55 **Representative Steve Cohen:** That's different. No. But--.

02:04:56 **Mr. John Buhrmaster:** --It is different.

02:04:57 **Representative Steve Cohen:** Right.

02:04:58 **Mr. John Buhrmaster:** It is different. But, it's what comes in--.

02:05:00 **Representative Steve Cohen:** --And you're apparently quite wealthy, and probably it's a good hit.

02:05:03 **Mr. John Buhrmaster:** I wish I were.

02:05:06 **Representative Steve Cohen:** Thank you, sir.

02:05:07 **Mr. John Buhrmaster:** Thank you.

02:05:08 **Representative Steve Cohen:** Thank you, Mr. Chairman.

02:05:10

Chairman John Conyers: Well, this has been a very conflicted set of testimonies we've received. But then, that's what we're here for, isn't it? I thank all of the witnesses. I know you'll be submitting, if you keep your promises, we'll be getting more statements to build up into this record than we usually normally receive. And we have five days for--you may get questions from us, and you--we'll get answers back from you. And then, we will have concluded the first hearing.

What is important is what are we going to do in the second hearing, or maybe even the third? It has not escaped my notice, Mr. Keller, that solutions to this problem are pretty few and far between, so that's going to test the skills and competency of this Judiciary Committee a great deal. But, you've got us started, and you've opened up this testimony in a very fine way. We thank you very much. And the hearing is now adjourned.