**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF NEW YORK**

| | |
|---|---|
| UNITED STATES OF AMERICA, *et al.*<br><br>Plaintiffs,<br><br>v.<br><br>AMERICAN EXPRESS COMPANY, AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC., MASTERCARD INTERNATIONAL INCORPORATED, and VISA INC.,<br><br>Defendants. | Civil Action No.<br>10-CV-4496 (NGG) (RER) |

**RESPONSE OF PLAINTIFF UNITED STATES TO**
**PUBLIC COMMENTS ON THE PROPOSED FINAL JUDGMENT**

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) ("APPA" or "Tunney Act"), the United States hereby files the public comments concerning the proposed Final Judgment in this case and the United States' response to those comments. Most of the comments applaud the settlement for lessening the restraints on competition in the General Purpose Card industry. None of the comments contends that the proposed Final Judgment is contrary to the public interest or should not be approved by the Court. The United States has carefully considered the various questions and suggestions contained in the comments and continues to believe that the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violations alleged in the Amended Complaint against Defendants MasterCard International Incorporated ("MasterCard") and Visa Inc. ("Visa"). The United States will therefore move the Court for entry of the proposed Final

Judgment after the public comments and this Response have been published in the *Federal Register*.[1]

## I. Procedural History

The United States and seven Plaintiff States filed the Complaint in this case on October 4, 2010. Simultaneously, the Plaintiffs filed a proposed Final Judgment as to Defendants MasterCard and Visa and a Stipulation consenting to entry of the proposed Final Judgment after compliance with the Tunney Act. Defendants American Express Company and American Express Travel Related Services Company, Inc., are not parties to the proposed settlement and the litigation against them will continue. On December 21, 2010, the United States filed an Amended Complaint adding eleven additional States as Plaintiffs and an Amended Stipulation including those States in the proposed settlement.[2]

As required by the Tunney Act, the United States (1) filed on October 4, 2010, a Competitive Impact Statement ("CIS") explaining the settlement with MasterCard and Visa; (2) caused the proposed Final Judgment and CIS to be published in the *Federal Register* on October 13, 2010 (75 Fed. Reg. 62858); and (3) published summaries of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written public comments, in *The Washington Post* and *The New York Post* for seven days beginning on October 11, 2010 and ending on October 17, 2010. The 60-day period for public comments ended on December 16,

---

[1] The United States will shortly be filing a motion, pursuant to 15 U.S.C. § 16(d), to excuse its obligation to publish certain voluminous exhibits in the *Federal Register*. The United States will arrange for publication of the comments and this Response once the Court has ruled on that motion.

[2] On April 8, 2011, the State of Hawaii withdrew as a Plaintiff.

2010. The United States received six comments, which are described below in Section IV, and attached as exhibits hereto.

## II. The Amended Complaint and the Proposed Final Judgment

The Amended Complaint challenges certain of Defendants' rules, policies, and practices that impede merchants from providing discounts or benefits to promote the use of a competing credit card that costs the merchant less to accept ("Merchant Restraints").[3] These Merchant Restraints have the effect of suppressing interbrand price and non-price competition in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

The Visa Merchant Restraints challenged in the Amended Complaint prohibit a merchant from offering a discount at the point of sale to a customer who chooses to use a competitor's General Purpose credit or charge Card ("General Purpose Card") instead of a Visa General Purpose Card. Visa's rules do not allow discounts for other General Purpose Cards, unless such discounts are equally available for Visa transactions. *See* Amended Complaint ¶ 26 (citing Visa International Operating Regulations at 445 (April 1, 2010) (Discount Offer U.S. Region 5.2.D.2)). The MasterCard Merchant Restraints challenged in the Complaint prohibit a merchant from "engag[ing] in any acceptance practice that discriminates against or discourages the use of a [MasterCard] Card in favor of any other acceptance brand." *See* Amended Complaint ¶ 27

---

[3] Pursuant to the Stipulation filed with the Court on October 4, 2010, both Visa and MasterCard have agreed that they "shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, . . . and shall . . . comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court." Stipulation ¶ 3. Accordingly, Visa and MasterCard have ceased enforcing the Merchant Restraints. The language of their merchant rules described in this section, however, will not be changed until the Court enters the Final Judgment. *See* proposed Final Judgment §§ V.A-D.

(quoting MasterCard Rule 5.11.1). This means that merchants cannot offer discounts or other benefits to persuade customers to use a Discover, American Express, or Visa General Purpose Card instead of a MasterCard General Purpose Card. *Id.* MasterCard does not allow merchants to favor competing card brands. *Id.*

The Merchant Restraints at issue deter or obstruct merchants from freely promoting interbrand competition among networks by offering discounts, other benefits, or information to encourage customers to use a less-expensive General Purpose Card brand or other payment method. The Merchant Restraints block merchants from taking steps to influence customers and foster competition among networks at the point of sale, such as: promoting a less-expensive General Purpose Card brand more actively than any other brand; offering customers a discount or other benefit for using a particular General Purpose Card that costs the merchant less; posting a sign expressing a preference for another General Purpose Card brand; prompting customers at the point of sale to use another General Purpose Card brand in their wallets; posting the signs or logos of General Purpose Card brands that cost less to the merchant more prominently than signs or logos of more costly brands; or posting truthful information comparing the relative costs of different General Purpose Card brands.

The Amended Complaint alleges that the Merchant Restraints allow Defendants to maintain high prices for network services with confidence that no competitor will take away significant transaction volume through competition in the form of merchant discounts or benefits to customers to use lower-cost payment options. Defendants' prices for network services to merchants are therefore higher than they would be without the Merchant Restraints.

Absent the Merchant Restraints, merchants would be free to use various methods, such as discounts or non-price benefits, to encourage customers to use the brands of General Purpose Cards that impose lower costs on the merchants. In order to retain merchant business, the networks would need to respond to merchant preferences by competing more vigorously on price and service terms. The increased competition among networks would lead to lower merchant fees and better service terms.

Because the Merchant Restraints result in higher merchant costs, and merchants generally pass costs on to consumers, retail prices are higher for consumers. Customers who pay with lower-cost methods of payment pay more than they would if Defendants did not prevent merchants from encouraging network competition at the point of sale. For example, because credit cards that offer rewards tend to be held by more affluent buyers, less affluent purchasers using less expensive payment forms such as debit cards, cash, and checks effectively subsidize expensive premium card benefits and rewards enjoyed by premium cardholders.

The Amended Complaint also alleges that the Merchant Restraints have produced a number of other anticompetitive effects, including reducing output of lower-cost payment methods, stifling innovation in network services and card offerings, and denying information to customers about the relative costs of General Purpose Cards that would cause more customers to choose lower-cost payment methods. Defendants' Merchant Restraints also have heightened the already high barriers to entry and expansion in the network services market. Merchants' inability to encourage their customers to use less-costly General Purpose Card networks makes it more difficult for existing or potential competitors to challenge Defendants' market power.

As more fully explained in the Competitive Impact Statement, the proposed Final Judgment prohibits Visa and MasterCard from adopting, maintaining, or enforcing any rule, or entering into or enforcing any agreement, that prevents any merchant from: (1) offering the customer a price discount, rebate, free or discounted product or service, or other benefit if the customer uses a particular brand or type of General Purpose Card or particular form of payment; (2) expressing a preference for the use of a particular brand or type of General Purpose Card or particular form of payment; (3) promoting a particular brand or type of General Purpose Card or particular form of payment through posted information; through the size, prominence, or sequencing of payment choices; or through other communications to the customer; or (4) communicating to customers the reasonably estimated or actual costs incurred by the merchant when a customer pays with a particular brand or type of General Purpose Card. Proposed Final Judgment § IV.

The purpose of the proposed Final Judgment is to free merchants to provide customers helpful information, discounts, benefits, and choices at the point of sale to influence the method of payment customers use. Merchants will be able to encourage customers, using the methods described in Section IV.A of the proposed Final Judgment, to use, for example, a Discover General Purpose Card instead of a Visa General Purpose Card. Merchants will also be able to encourage the use of any other payment form, such as cash, checks, or debit cards, by using the methods described in Section IV.A.

To facilitate merchants' ability to encourage customers to use particular General Purpose Cards, the proposed Final Judgment prevents Visa and MasterCard from blocking their acquiring

banks from supplying merchants with information that might assist merchants' identification of the less costly General Purpose Cards.

The proposed Final Judgment requires Visa and MasterCard, within five days of entry of the Judgment, to "delete, discontinue, and cease to enforce" any rule that would be prohibited by Section IV of the Final Judgment and to implement specific changes to their existing rules and regulations governing merchant conduct. Visa and MasterCard, through their acquiring banks, must notify merchants of the rules changes mandated by the Final Judgment, and of the fact that merchants are now permitted to encourage customers to use a particular General Purpose Card or form of payment. Visa and MasterCard must also provide notice to the Plaintiffs of certain future rule changes.

The prohibitions and required conduct in the proposed Final Judgment achieve all the relief sought from Visa and MasterCard in the Complaint, and thus fully resolve the competitive concerns raised by those Defendants' Merchant Restraints challenged in this lawsuit.

## III. Standard of Judicial Review

The Tunney Act requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. § 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the

adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the United States is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *accord United States v. Alex Brown & Sons, Inc.,* 963 F. Supp. 235, 238 (S.D.N.Y. 1997) (noting that the court's role in the public interest determination is "limited" to "ensur[ing] that the resulting settlement is 'within the reaches of the public interest'") (quoting *Microsoft*, 56 F.3d at 1460), *aff'd sub nom. United States v. Bleznak*, 153 F.3d 16 (2d Cir. 1998); *United States v. KeySpan Corp.,* No. 10 Civ. 1415(WHP), 2011 WL 338037, at *3 (S.D.N.Y. Feb. 2, 2011) (same); *United States v. SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States v. InBev N.V./S.A.*, 2009-2 Trade Cas. (CCH) ¶76,736, 2009 U.S. Dist. LEXIS 84787, No. 08-1965 (JR), at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.").

As the United States Court of Appeals for the District of Columbia Circuit has held, a court considers under the APPA, among other things, the relationship between the remedy secured and the specific allegations set forth in the United States' complaint, whether the decree

is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft*, 56 F.3d at 1458-62. With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460-62; *Alex Brown,* 963 F. Supp. at 238; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest*." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

*Bechtel*, 648 F.2d at 666 (emphasis added) (citations omitted).[4] In determining whether a proposed settlement is in the public interest, a district court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns*, 489 F. Supp. 2d at 17; *see also Microsoft*, 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *Alex Brown*, 963 F. Supp. at 239 (stating

---

[4] *Cf. BNS*, 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"); *see generally Microsoft*, 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'").

that the court should give "due deference to the Government's evaluation of the case and the remedies available to it"); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' "prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case").

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983); *see also United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns*, 489 F. Supp. 2d at 17; a*ccord KeySpan*, 2011 WL 338037, at *3.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459; *see also InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 ("the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged"). Because the

"court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459-60. As the United States District Court for the District of Columbia recently confirmed in *SBC Communications*, courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." *SBC Commc'ns*, 489 F. Supp. 2d at 15.

In its 2004 amendments,[5] Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. § 16(e)(2). This language effectuates what Congress intended when it enacted the Tunney Act in 1974. As Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court,

[5] The 2004 amendments substituted "shall" for "may" in directing relevant factors for the court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns*, 489 F. Supp. 2d at 11.[6]

## IV. Summary of Public Comments and the United States' Response

During the 60-day comment period, the United States received six public comments. While the comments raise a variety of issues, no commenter contends that the proposed Final Judgment is contrary to the public interest or that it should not be entered by the Court. Some of the comments seek clarifications or explanations, and these are provided below. Some of the comments contain suggestions for modifying the terms of the proposed Final Judgment. For the reasons explained below, the United States has concluded that these proposed changes are either outside the scope of the Amended Complaint; unnecessary, in light of market facts, to achieve sufficient relief; or unnecessary due to the existing provisions of the proposed Final Judgment. Accordingly, the United States believes that the Court should enter the proposed Final Judgment as originally submitted.

### A. Comment from Merchant Class Plaintiffs in *In re American Express Anti-Steering Rules Antitrust Litigation*

Counsel for merchant class plaintiffs in *In re American Express Anti-Steering Rules Antitrust Litigation,* 06-CV-2974 (S.D.N.Y.), asserts that "it would provide helpful clarity to

---

[6] *See United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States v. Mid-Am. Dairymen, Inc.*, 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) ("Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."); S. Rep. No. 93-298, 93d Cong., 1st Sess., at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").

merchants and other participants in the payment card industry to receive an answer" to this question:

> If the Antitrust Division is successful in its action seeking to force American Express to rescind its "anti-steering rules" (as described in the Complaint in the above titled action), would the Proposed Final Judgment prevent the Antitrust Division at that point from seeking to compel Visa and MasterCard to rescind their no-surcharge rules?

The answer to this question is "no." Nothing in the proposed Final Judgment would prevent the Antitrust Division from challenging any rule of Visa or MasterCard under the antitrust laws in the future. In fact, Section VIII of the proposed Final Judgment specifically provides that nothing in the Final Judgment "shall limit the right of the United States or of the Plaintiff States to investigate and bring actions to prevent or restrain violations of the antitrust laws concerning any Rule of MasterCard or Visa, including any current Rule and any Rule adopted in the future."

**B. Comment from Individual Merchant Non-Class Plaintiffs**

Counsel for the "Individual Plaintiffs in direct action (*i.e.,* non-class) antitrust claims" against Visa and MasterCard in *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, MDL 1720 (E.D.N.Y.), and against American Express in *Walgreen Co. v. American Express Co., et al.,* No. 08-cv-2317 (E.D.N.Y.), and other related cases, "urge[s] the Court to approve the proposed Final Judgments because we believe that they are pro-competitive and in the public interest." The comment explains that the rules challenged in the Complaint "restrain network price competition for merchant acceptance" and the proposed Final Judgment will "eliminate those anti-competitive rules and further promote competition."

While the comment supports entry of the proposed Final Judgment, it observes that the proposed Final Judgment does not remove other Visa and MasterCard restraints, including their prohibitions on merchants imposing a fee (surcharge) on consumers to cover merchants' costs of accepting Visa and MasterCard General Purpose Cards. The comment acknowledges that the United States made clear in the CIS that "the Government is not challenging the networks' no-surcharge rules or other network restraints '[a]t this time,' and has left open the possibility that it could do so in the future." To the extent the comment can be construed as suggesting that the United States should have challenged the Defendants' no-surcharge rules as well, this consideration is not relevant to the Court's Tunney Act analysis. In its Tunney Act review, the Court may consider only those claims that the United States, in the exercise of its prosecutorial discretion, asserted in its Complaint. *United States v. Microsoft Corp.*, 56 F.3d 1448, 1459-60 (D.C. Cir. 1995); *United States v. Archer-Daniels-Midland*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) ("the court is not to review allegations and issues that were not contained in the government's complaint"). As the United States made clear in its CIS, and as the comment acknowledges, this Complaint does not challenge Visa's and MasterCard's prohibitions on surcharging. CIS at 16 n.3. Accordingly, that issue is not part of the Tunney Act proceeding. We reiterate, however, as noted above, that nothing in the proposed Final Judgment would prevent the Antitrust Division from challenging any rule of Visa or MasterCard under the antitrust laws in the future.

### C. Comment from Consumer World

Consumer World states that it "is a leading public service consumer education website." It is concerned that the discounts that merchants are permitted to offer under the proposed Final Judgment might turn into surcharges. In Consumer World's view, merchants might choose to

advertise "cash only" prices, and those who choose not to pay with cash "might be asked to pay a higher price a surcharge if choosing to use plastic." To prevent this, Consumer World suggests that "the settlement should specifically ban surcharges." Relatedly, Consumer World is also concerned that, unless the proposed Final Judgment imposes a requirement that merchants fully disclose to consumers that prices may vary depending on the payment method used, consumers might perceive that they are paying a higher price for using credit and charge cards. Consumer World suggests that the decree create rules about how merchants disclose prices in advertisements, in-store displays, and online. Consumer World believes these rules should be implemented through Visa's and MasterCard's merchant agreements.

With respect to Consumer World's suggestion that the proposed Final Judgment "should specifically ban surcharges," the United States notes that the Amended Complaint in this case does not challenge the Defendants' prohibitions on surcharges. *See* CIS at 16 n.3. Accordingly, the proposed Final Judgment does not prohibit Visa and MasterCard from retaining their existing policies against surcharging, to the extent those policies do not conflict with the requirements of the proposed Final Judgment. A number of states also restrict surcharges by statute; those restrictions are similarly unaffected by this settlement. Thus, Consumer World's concern that the decree might free merchants to begin surcharging General Purpose Card users is unfounded.[7]

---

[7] The United States further believes that modifying the proposed Final Judgment to ban surcharging is not appropriate because, as noted above in Section IV.A of this Response, the United States retains the power to determine that the Defendants' no-surcharge rules are anticompetitive and to challenge them as violations of the antitrust laws. The Final Judgment should not foreclose the United States from taking such future enforcement action. The United States also notes that the question of Visa's and MasterCard's rules against surcharging is at issue in other litigation in this District. *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, MDL 1720 (E.D.N.Y.).

Consumer World's suggestion that the proposed Final Judgment should impose restraints on merchant behavior is not appropriate for several reasons. First, merchants are not parties to this case and cannot be bound by the proposed Final Judgment. The Amended Complaint challenges only the Defendants' rules and does not allege that any merchants are violating the antitrust laws. Moreover, because merchant practices concerning price labeling and product advertising are not challenged in the Amended Complaint, relief directed at those practices would not be justified. *See Microsoft*, 56 F.3d at 1460 ("And since the claim is not made, a remedy directed to that claim is hardly appropriate").

Consumer World's suggestion that the decree should require Visa and MasterCard to incorporate restrictions on merchant pricing and advertising practices is inconsistent with the primary goal of the decree, which is to remove Visa and MasterCard restrictions on merchant competitive practices that may encourage, or steer, customers to choose a less-expensive payment choice over a more-expensive one. Finally, to the extent Consumer World is concerned about merchants engaging in misleading "bait advertising" or similar deceptive practices that would result in consumers paying higher prices, the United States notes that the decree does not displace any existing state and federal consumer protection statutes that address these practices. For these reasons, Consumer World's proposals should not be adopted.

**D. Comment from Retail Industry Leaders Association**

The Retail Industry Leaders Association ("RILA") "welcomes the settlement reached by Plaintiffs and MasterCard International Incorporated and Visa Inc. as it could help facilitate competition in the General Purpose Card market, particularly price competition that could benefit merchants and consumers." RILA advocates certain additional relief and requests clarification of

two provisions in the proposed Final Judgment. The United States responds to each of these points separately below, accepting the two clarifications and noting that the requested additional relief is addressed in part by an electronic service Visa offers and MasterCard will soon offer.

**1. Steering Among Card Types**

The proposed Final Judgment removes restrictions on three kinds of merchant competitive behavior: (a) steering among General Purpose Card brands, or networks (*e.g.*, from Visa to Discover); (b) steering among payment methods (*e.g.*, from a MasterCard General Purpose Card to PayPal or a debit card); and (c) steering among card types (*e.g.*, from an expensive Visa rewards General Purpose Card to a cheaper non-rewards Visa or MasterCard General Purpose Card). The Amended Complaint focuses primarily on the first two types of steering. RILA's comment addresses the third type of steering.[8]

RILA observes that, to effectively steer consumers "from expensive Visa and MasterCard credit cards to cheaper forms of payments . . . merchants need to know which type of cards they are receiving at the point of sale." RILA expresses concern that merchants cannot always distinguish a General Purpose Card with a high interchange fee from one with a lower interchange fee. The issue RILA raises is an important one. If a merchant cannot distinguish, for

[8] More specifically, RILA's first point relates to only one form of steering protected by the proposed Final Judgment, *i.e.,* steering by card type. The card "type" refers to the categories of General Purpose Cards established by the Defendants for example, rewards cards, non-rewards cards, or premium cards like the MasterCard World card or Visa Signature card. *See* Proposed Final Judgment § II.16 (defining "Type"). The intrabrand steering that would be exercised if a merchant encourages a consumer to use a standard Visa General Purpose Card rather than a high-cost Visa rewards General Purpose Card is not the major focus of the Amended Complaint. But steering by card type can implicate the type of interbrand competition that is the principal focus of the Amended Complaint when merchants encourage consumers, for instance, to use a low-cost standard Visa General Purpose Card rather than a high-cost rewards MasterCard General Purpose Card.

instance, a Visa rewards card carrying a high interchange fee from a lower-cost card (issued by either Visa or another network) or another less-costly form of payment, the merchant would be limited in its ability to steer consumers to, for example, the lower-cost General Purpose Card.[9]

In response to RILA's comment, the United States explored with Visa and MasterCard how to address the concern that merchants' ability to distinguish among types of General Purpose Cards is limited. RILA sought an "electronic means to identify the Types of Visa and MasterCard General Purpose Cards that qualify for distinct interchange tiers, based on the Type of Card." RILA Comment at 15. The United States learned that Visa offers, and MasterCard will soon offer, such an electronic means to differentiate among card types.[10] These electronic services address the concern raised by RILA for many merchants.

The United States recognizes that these services are not a complete solution for merchants as some may require additional terminal programming and coordination with the merchants' Acquiring Banks,[11] and the services will not be available during periods when

---

[9] The most significant form of steering protected by the proposed Final Judgment among General Purpose Card networks can be implemented without any new identification measures because the brand (Discover, American Express, Visa, MasterCard, etc.) is almost always clearly indicated on the face of a card. Another important form of steering protected by the proposed Final Judgment from General Purpose Cards to another form of payment is also easily implemented by merchants. Most of these alternative forms of payment, such as debit cards, checks, and cash, are clearly distinguishable from credit and charge cards.

[10] RILA preferred that the electronic identification of the card "Type" be encoded on the magnetic stripe of each card. The electronic inquiry service, described below, while a different system, does enable a merchant to "identify the Types of Visa and MasterCard General Purpose Cards that qualify for distinct interchange tiers, based on the Type of Card."

[11] Acquiring Banks are entities "authorized by MasterCard or Visa to enter into agreements with Merchants to accept MasterCard's or Visa's General Purpose Cards as payment for goods or services." Proposed Final Judgment § II.1. They are sometimes referred to in the industry as acquirers. An Acquiring Bank "manages the merchant's relationship with Visa and

electronic communications among the merchant, the Acquiring Bank, and Visa or MasterCard are not working. It is possible that if an additional component of RILA's proposed relief were imposed (*i.e.*, if there were a mandatory unique visual identifier for each type of card subject to a different interchange fee tier), it would be easier for merchants to identify for consumers the lower-cost cards for which a discount or other inducement might be available.[12] On balance, however, the United States concludes that the proposed Final Judgment is a sufficient and appropriate remedy for the restrictions on competition that were alleged as violations in the Complaint. The United States will continue to give attention to other matters affecting competition in this important industry, which has been the subject, recently, of not only the current enforcement action but also of other antitrust enforcement actions, private litigation,

---

MasterCard" (Amended Complaint ¶ 15) and is responsible for paying the merchant for purchases made with Visa and MasterCard General Purpose Cards and distributing the portions of the card acceptance fees owed to the issuing banks and the networks. *See* CIS at 3. Merchants choose which Acquiring Bank they want to use, and Acquiring Banks compete with each other to sign up merchants. There are a substantial number of Acquiring Banks in competition for merchant business.

[12] The decree does not require Visa and MasterCard to add particular visual identifiers to their products. Each network's most expensive cards (Visa's "Signature" cards and MasterCard's "World" and "World Elite" cards) are already, in many circumstances, visually identifiable. Also, imposing this requirement on Visa or MasterCard (or, more specifically, on their issuing banks) would come with some disadvantages, and the United States determined that these disadvantages likely exceeded the benefits of such an approach at this point in time. Visa and its issuing banks, for example, have developed 33 product types and may well develop new products in the future. A requirement that General Purpose Card issuers restrict their offerings to a workably small number of card types or tiers could impede their incentives and abilities to continue to develop products as they seek to appeal to consumers. In this context, any additional benefit of imposing detailed requirements (*e.g.*, concerning the appearance or other attributes of General Purpose Cards or specifically defining or limiting interchange fee tiers) for General Purpose Cards on Visa, MasterCard, and their card issuers did not appear to be great enough to justify the disadvantages of such requirements, particularly in light of continuing change in the industry.

legislation, and regulatory actions. The proposed Final Judgment ensures that Visa and MasterCard will not continue the challenged restrictions on competitive steering by merchants, and the elimination of those restrictions will benefit the public interest as this industry continues to evolve.

**a. Visa's and MasterCard's inquiry services**

Merchants are able to determine the type of Visa card presented at the point of sale using an electronic inquiry currently available through the Visa network. Visa has many different types of General Purpose Cards. Declaration of Judson Reed ¶ 3 (attached as Exhibit 14). A merchant wishing to identify the type of a Visa General Purpose Card presented by a customer would be able to initiate an inquiry to the Visa network using Visa's "Product Eligibility Inquiry Service." *Id.* ¶ 4. Visa's electronic response would contain the product identification code that indicates the card type. *Id.* Merchants can make the product eligibility inquiry without having to initiate a sales transaction authorization request to Visa. *Id.* As described below, merchants can use this product code to determine the interchange and other fees associated with that card type.

MasterCard will soon have a similar electronic inquiry system. MasterCard assigns unique product identification codes and account category indicators to its various card types. Declaration of Brad Tomchek ¶ 4 (attached as Exhibit 16). MasterCard has represented to the United States that, in August 2011, it will introduce an electronic inquiry service, called the "Product Validation Service." *Id.* ¶ 7. As with Visa's service, MasterCard's new service will allow merchants to receive a message from the MasterCard network that indicates the customer's card type, without having to initiate any transaction authorization request. *Id.* ¶¶ 9-10.

**b. Using the Inquiry Services to Determine the Cost Associated with a General Purpose Card**

Merchants or their Acquiring Banks can use the product type information supplied by each network's service to determine the interchange fees associated with the credit card swiped by the consumer. *See* Tomchek Decl. ¶ 11; Reed Decl. ¶ 5. Visa and MasterCard are prohibited, under Section IV.D of the proposed Final Judgment, from blocking Acquiring Banks from providing this pricing information to merchants. Competition among Acquiring Banks will give them incentives to find new and innovative ways to meet merchant demand for information and technology that will allow them to implement their desired steering methods. Acquiring Banks that find efficient and useful ways to meet merchants' new-found demand will win more merchant business.

**c. Visa and MasterCard Will Not Charge a Fee for the Inquiry Services**

Both Visa and MasterCard have represented to the United States that they are not charging a fee, either to merchants or to Acquiring Banks, for their electronic inquiries.[13] Reed Decl. ¶ 9; Tomchek Decl. ¶ 8. If Visa or MasterCard impose or increase fees associated with these services and, as a result, prevent or restrain merchants from engaging in protected steering activities, they face consequences under the proposed Final Judgment. Section IV.A provides that neither Visa nor MasterCard may adopt or maintain any policy or practice (both of which are encompassed within the term "Rule" defined in Section II.15 of the proposed Final Judgment)

[13] Although Visa and MasterCard are not assessing a fee, it is possible that a merchant's Acquiring Bank may decide to charge a fee for this service. The proposed Final Judgment does not govern the conduct of Acquiring Banks, which are not parties to this proceeding. Competition among Acquiring Banks should aid in keeping any such fees in check.

that "directly or indirectly prohibits, prevents, or restrains" merchants from engaging in the steering methods described in IV.A.1 8. If Visa or MasterCard were to discontinue its service or increase its fees, its new practice might prevent or restrain merchants from steering from high-cost Visa or MasterCard rewards cards to other card types or other payment forms conduct which merchants are permitted to engage in under Section IV.A of the proposed Final Judgment. Visa and MasterCard have each acknowledged in writing that, if the United States presents facts demonstrating that the discontinuation of their electronic inquiry services, or fees charged for them, prevented or restrained merchants from engaging in protected steering practices, they would be in violation of the proposed Final Judgment. *See* Exhibits 15, 17.

**2. RILA's requests for clarification of the proposed Final Judgment**

RILA seeks clarification on two other portions of the proposed Final Judgment. As explained below, the United States concurs in the interpretations RILA seeks.

First, RILA requests clarification that Section IV.D of the proposed Final Judgment "would prohibit Visa and MasterCard from preventing, in any way, merchant access to electronic information or data that can be used to identify Types of General Purpose Cards, including the Types of General Purpose Cards that qualify for distinct interchange tiers." RILA Comment at 15 n.12.

The proposed Final Judgment does prohibit the conduct that RILA identifies. As discussed above, Section IV.D of the proposed Final Judgment prohibits Visa and MasterCard from preventing Acquiring Banks from providing to merchants "information regarding the costs or fees the Merchant would incur in accepting a General Purpose Card, including a particular Type of General Purpose Card, presented by the Customer as payment for the Customer's

transaction." This prohibition would cover any information or data that is reasonably necessary for a merchant to determine its costs or fees for acceptance of a General Purpose Card or of particular Type of General Purpose Card, including the "electronic information or data" to which RILA's comment refers. Visa and MasterCard may not prohibit Acquiring Banks from sharing such information with merchants. In addition, the language in Section IV.A that restrains Visa and MasterCard from "directly or indirectly" blocking merchants from engaging in certain conduct to encourage consumers to use a particular General Purpose Card would prevent Visa and MasterCard from interfering with merchants' ability to obtain and use information or data reasonably necessary to engage in that conduct.

Second, RILA seeks confirmation that "Section [IV.B.4] will not be interpreted to enable Visa and MasterCard to maintain rules that would prevent merchants from steering consumers from more expensive Visa or MasterCard rewards credit cards issued by one bank to a less expensive Visa or MasterCard credit card issued by another bank." RILA believes "it would be helpful to clarify that the Section [IV.B.4] will not derogate from the rights merchants are to be provided under Section IV.A of the Final Judgment."

RILA is correct that Section IV.B.4 does not derogate from the rights provided in Section IV.A. Section IV.B.4 is intended to allow Visa and MasterCard to maintain network rules that prohibit merchants from engaging in steering based on the identity of the issuing bank (as the Amended Complaint does not challenge such rules). The proposed Final Judgment allows Visa and MasterCard to block merchants from discriminating against the cards of one issuing bank over another issuing bank, based on the identity of the bank. Section IV.B.4, however, does not limit the ability of merchants to steer on the basis of card brand or type. Therefore, in RILA's

hypothetical example, Visa or MasterCard could not prohibit a merchant from steering from Bank A's rewards Visa card to Bank B's non-rewards Visa card on the basis of card type (rewards vs. non-rewards), even though the two cards were issued by different banks. Similarly, a merchant would be permitted to steer from Bank A's Visa to Bank B's MasterCard on the basis of brand (Visa vs. MasterCard). Section IV.B.4, however, does allow Visa and MasterCard to have rules prohibiting merchants from distinguishing between Bank A's and Bank B's General Purpose Cards based solely on the identities of the banks. Thus, Section IV.B.4 is not in conflict with the rights conferred by Section IV.A.

### E. Comment from Sears Holdings Corporation

Sears Holdings Corporation, "the nation's fourth-largest broad line retailer," states that it "supports the DOJ's and participating Attorneys General efforts to remove anti-competitive network rules that do not foster competition." Sears proposes that Section IV.A.8 of the proposed Final Judgment "be interpreted to require that the networks and issuing banks clearly identify what type of account is being presented to the merchant so that the merchant could readily determine if a discount was warranted." Sears believes this step is needed because "[u]nder current practices, the merchant cannot know from the face of the card which type of card is being presented." The United States understands Sears' comment to be substantively identical to the comment submitted by RILA, to which the United States responded above.

Sears also comments that "[a]nother practice that has the effect of subverting the Proposed Final Judgment and Stipulation is the lack of standards for identifying commercial debit cards." It explains that commercial debit cards "are assessed a much higher merchant

discount fee" than consumer debit cards. The "lack of standards precludes the merchant from discerning which [debit] cards would qualify for the discount versus those that do not."

Whatever the merits of this point, it is beyond the scope of this case. The Amended Complaint alleges violations relating only to the General Purpose Card product market, a market that does not include debit cards. Therefore, relief related to the labeling of debit cards is outside the scope of the Amended Complaint and is not part of the Court's review under the Tunney Act. *See Microsoft*, 56 F.3d at 1460 ("And since the claim is not made, a remedy directed to that claim is hardly appropriate.").

### F. Comment from MDL 1720 Proposed Class of Merchants

The proposed class of merchants in *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, MDL 1720 (E.D.N.Y.) submitted a comment stating that "the Proposed Final Judgment is procompetitive and furthers the public interest as required by the Tunney Act." The comment goes on to observe that (1) the United States "can enhance the effectiveness of the proposed relief by interpreting the Proposed Final Judgment" to allow two particular merchant practices; (2) the ultimate effectiveness of the proposed Final Judgment turns on various future events; and (3) the court should impose additional reporting requirements on the parties. The United States addresses each point in turn.

#### 1. The proposed Final Judgment permits a broad variety of merchant steering practices

The comment states that the proposed Final Judgment would be more effective if it were interpreted to allow two particular hypothetical practices. We will address each separately.

The comment describes the first practice as follows: "if merchants could display separate prices at the point of sale for purchases made on various methods of payment, the merchant could inform the consumer of the relative prices of payment methods without placing a 'surcharge' on the transaction amount."

Based on this description, it appears that this practice would be permitted by the proposed Final Judgment. In general, the proposed Final Judgment effectively removes restraints on a wide variety of merchant practices to encourage consumers to use a different payment option. With respect to this hypothetical practice the display of "separate prices at the point of sale for purchases made on various methods of payment" the United States notes that provisions of the proposed Final Judgment generally would not allow Visa or MasterCard to block this practice. First, the proposed Final Judgment permits merchants, without interference from Visa or MasterCard:

> to "communicat[e] to a Customer the . . . costs incurred by the Merchant when a Customer uses a particular [payment method] or the relative costs of using different [payment methods]" (§ IV.A.7);
>
> to "promot[e] a particular [payment method] through posted information, through the size, prominence, or sequencing of payment choices, or through other communications" (§ IV.A.6); and
>
> to "express a preference for" and encourage customers to use particular payment methods (§§ IV.A.4-A.5).

Merchants may also engage in "practices substantially equivalent" to these practices (§ IV.A.8). Thus, the proposed Final Judgment prevents Visa or MasterCard from prohibiting a merchant from displaying a list of various price options for an item depending on payment method.[14]

[14] Section IV.A of the proposed Final Judgment protects the conduct of a merchant who is "offering the Customer a discount or rebate." Visa or MasterCard may not restrain such a

The second hypothetical practice is described as follows: "if a consumer had a payment device that could process a transaction over multiple networks, a merchant could obtain a similar result by programming its POS device to offer the consumer the option of paying with the cheapest network first." The same provisions of the proposed Final Judgment discussed in the preceding paragraph would also be relevant to this second practice. It is not clear from the comment what type of consumer "payment device" is envisioned, or what information the merchant's point-of-sale device would convey. However, Visa and MasterCard cannot prevent a merchant from promoting "a particular Brand or Type of General Purpose Card or a particular Form or Forms of Payment through . . . sequencing of payment choices . . . ." (§ IV.A.6). This provision allows merchants to prompt a customer at the point of sale to use one or more preferred means of payment.

---

"discount or rebate." By contrast, the proposed Final Judgment does not prohibit Visa or MasterCard from maintaining their "no surcharge" rules. If merchants implement any price difference as a "discount or rebate," rather than a surcharge, then their conduct is protected by the proposed Final Judgment. Courts can distinguish between a discount and a surcharge. *See Thrifty Oil Co. v. Superior Court*, 111 Cal. Rptr.2d 253 (Cal. Ct. App. 2001) (a gas station that posted separate prices for payment by cash or by credit card was offering a statutorily-permitted discount for the use of cash and was not imposing a surcharge on credit card users, a practice that is illegal under state statute; *see also* Cal. Civ. Code § 1748.1(a) (expressly permitting discounts but prohibiting credit card surcharges). If a merchant adopts a steering practice to encourage consumers to use lower-cost payment forms that is protected by Section IV.A of the proposed Final Judgment (such as a "discount or rebate"), then Visa and MasterCard cannot prohibit or restrain that practice even if they try to argue that the practice involves the imposition of a surcharge in violation of their rules. By contrast, if a merchant adopts a steering practice that involves a surcharge (*e.g.*, if a merchant levies a discrete fee at the point of sale on a consumer who presents a credit card), then Visa or MasterCard could enforce its "no surcharge" rule without violating the proposed Final Judgment.

**2. The facts in the record today support entry of the proposed Final Judgment**

The comment states that the Court's Tunney Act review "requires assessments of the future" that take into account not only the Proposed Final Judgment, but also events that have not yet come to pass, including "recently-enacted (but not yet implemented) legislation, the outcome of MDL 1720, the outcome of merchant litigation against American Express and future technological changes that may affect the relevant markets." Comment at 3.

The comment makes the observation, which is applicable to all settlements, that there is some uncertainty about the future impact and effectiveness of any proposed relief. Markets can change over time to enhance or diminish the impact of a consent decree. Nevertheless, under the Act, the Court must base its decision on the facts in the record today. The United States' predictions about how the proposed Final Judgment will stimulate competition among General Purpose Card networks and benefit consumers, *see, e.g.*, CIS at 9-10 & 14, are entitled to deference in this proceeding. *Microsoft,* 56 F.3d at 1461; *Republic Services*, 723 F. Supp.2d at 161; *Enova*, 107 F. Supp. 2d at 18; *Archer-Daniels-Midland Co*, 272 F. Supp. 2d at 6; *Alex Brown*, 963 F. Supp. at 238-39.

The proposed Final Judgment is not measured by how it resolves all of the concerns about the General Purpose Card industry raised by the comment concerns which, in most cases, are not mentioned in the Amended Complaint. The issue before the Court is whether the relief resolves the violation identified in the Amended Complaint in a manner that is within the reaches of the public interest. Although the case or the relief may be narrower than the commenter may prefer, the comment acknowledges that the asserted "narrowness of the Proposed Final Judgment

does not by itself stand in the way of approval." Comment at 14. The United States will continue to monitor the General Purpose Card industry and expressly retains the power to bring other enforcement actions where appropriate.

**3. No additional reporting requirements are necessary**

Lastly, the comment states that "this Court should consider in its retention of jurisdiction requiring periodic reports from the Department of Justice, Visa and MasterCard providing information and data regarding levels of interchange fees and the price discrimination by which Visa, MasterCard and their member banks have exercised their substantial market power."[15] The United States does not believe that such reports are necessary for the effective enforcement of this decree. In contrast to the plaintiffs in MDL 1720, the United States' Amended Complaint does not challenge the existence of interchange fees or the process by which they are set. The proposed Final Judgment does not mandate any particular level of interchange fees. The relief here is simple, straightforward, and easily implemented the decree removes the rules that the United States has challenged as anticompetitive and restrains Visa and MasterCard from prohibiting the merchant conduct protected by the decree. Once Visa and MasterCard have taken the steps required by Section V, which will largely be complete within days after entry of the Final Judgment, the relief will have been fully implemented and no further reporting to this Court is needed to ensure compliance. If there are any future concerns about compliance with the Final Judgment, the United States has broad powers pursuant to Section VI to obtain the appropriate "books, ledgers, accounts, records, data and documents," interview employees, solicit written

[15] The comment incorrectly states that the proposed Final Judgment has a "five year term." In fact, the term is ten years. Proposed Final Judgment, Section IX.

reports and written interrogatory responses from Visa and MasterCard, and initiate appropriate proceedings to enforce the Final Judgment.

## V. Conclusion

After careful consideration of the public comments, the United States concludes that entry of the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violations alleged in the Amended Complaint and is therefore in the public interest. Accordingly, after the comments and this Response are published, the United States will move this Court to enter the proposed Final Judgment.

Respectfully submitted,

s/Craig W. Conrath
Craig W. Conrath

s/Bennett J. Matelson
Bennett J. Matelson

Attorneys for the United States
United States Department of Justice
Antitrust Division
Litigation III
450 Fifth Street, NW, Suite 4000
Washington, DC 20530
Phone: (202) 532-4560
Email: craig.conrath@usdoj.gov

Dated: June 14, 2011

**CERTIFICATE OF SERVICE**

I hereby certify that on June 14, 2011, I caused the Response of Plaintiff United States to Public Comments on the Proposed Final Judgment to be filed via the Court's CM/ECF system, which will electronically serve a copy upon the following:

Jonathan Gleklen
Arnold & Porter LLP
555 Eleventh Street, NW
Washington, DC 20004

Robert C. Mason
Arnold & Porter LLP
399 Park Avenue
New York, NY 10022-4690

*Counsel for Defendant Visa Inc.*

Kenneth E. Gallo
Paul, Weiss, Rifkind, Wharton & Garrison LLP
2001 K Street, NW
Washington, DC 20006

Andrew C. Finch
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019

Keila D. Ravelo
Matthew Freimuth
Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, NY 10019

*Counsel for Defendant MasterCard International Incorporated*

Philip C. Korologos
Eric Brenner
Boies, Schiller & Flexner LLP
575 Lexington Avenue
7th Floor
New York, NY 10022

Evan R. Chesler
Kevin J. Orsini
Cravath, Swaine & Moore LLP
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019

*Counsel for Defendants American Express Company and American Express Travel Related Services Company, Inc.*

Rachel O. Davis
Assistant Attorney General
55 Elm Street P.O. Box 120
Hartford, CT 06141-0120

*Counsel for Plaintiff State of Connecticut*

Layne M. Lindeback
Iowa Attorney General's Office
1305 E. Walnut Street
Des Moines, IA 50319

*Counsel for Plaintiff State of Iowa*

Gary Honick
Assistant Attorney General
Office of the Attorney General
200 St. Paul Place
Baltimore, MD 21202

*Counsel for Plaintiff State of Maryland*

D.J. Pascoe
Michigan Department of Attorney General
Corporate Oversight Division
P.O. Box 30755
Lansing, MI 48911

*Counsel for Plaintiff State of Michigan*

Anne E. Schneider
Assistant Attorney General
Attorney General of Missouri

P.O. Box 899
Jefferson City, MO 65102

*Counsel for Plaintiff State of Missouri*

Patrick E. O'Shaughnessy
Mitchell L. Gentile
Antitrust Section
Office of the Ohio Attorney General
150 E. Gay Street, 23rd Floor
Columbus, OH 43215

*Counsel for Plaintiff State of Ohio*

Kim Van Winkle
Bret Fulkerson
Office of the Attorney General
P.O. Box 12548
Austin, TX 78711-2548

*Counsel for Plaintiff State of Texas*

Nancy M. Bonnell
Antitrust Unit Chief
Consumer Protection and Advocacy Section
Office of the Arizona Attorney General
1275 West Washington
Phoenix, Arizona 85007

*Counsel for Plaintiff State of Arizona*

Brett T. DeLange
Stephanie N. Guyon
Office of the Attorney General
Consumer Protection Division
954 W. Jefferson St., 2nd Floor
P.O. Box 83720
Boise, Idaho 83720-0010

*Counsel for Plaintiff State of Idaho*

Robert W. Pratt
Chief, Antitrust Bureau

Chadwick O. Brooker
Office of the Illinois Attorney General
100 W. Randolph Street
Chicago, Illinois 60601

*Counsel for Plaintiff State of Illinois*

Chuck Munson
Assistant Attorney General
Office of the Montana Attorney General
215 N. Sanders
Helena, MT 59601

*Counsel for Plaintiff State of Montana*

Leslie C. Levy
Chief, Consumer Protection/Antitrust Division
Office of the Nebraska Attorney General
2115 State Capitol Building
Lincoln NE 68509

*Counsel for Plaintiff State of Nebraska*

David A. Rienzo
Assistant Attorney General, Consumer Protection and Antitrust Bureau
New Hampshire Department of Justice
33 Capitol Street
Concord, New Hampshire 03301

*Counsel for Plaintiff State of New Hampshire*

Edmund F. Murray, Jr.
Special Assistant Attorney General
Rhode Island Department of Attorney General
150 South Main Street
Providence, Rhode Island 02906

*Counsel for Plaintiff State of Rhode Island*

Victor J. Domen, Jr.
Senior Counsel
Office of the Tennessee Attorney General
425 Fifth Avenue North

Nashville, Tennessee 37202

*Counsel for Plaintiff State of Tennessee*

Ronald J. Ockey
David N. Sonnenreich
Assistant Attorney General
Office of the Attorney General of Utah
160 East 300 South, Fifth Floor
Salt Lake City, Utah 84111
*Counsel for Plaintiff State of Utah*

Sarah E.B. London
Assistant Attorney General
Public Protection Division
Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609-1001

*Counsel for Plaintiff State of Vermont*

Tracey L. Kitzman
Friedman Law Group LLP
155 Spring Street
New York, NY 10012

*Counsel for MDL 2221 Merchant Class Plaintiffs*

William Blechman
Kenny Nachwalter, P.A.
201 S. Biscayne Boulevard, Suite 1100
Miami, FL 33131

*Counsel for MDL 2221 Individual Merchant Plaintiffs*

s/Bennett J. Matelson
Bennett J. Matelson