

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,)
)
)
 Plaintiff,)
)
 v.)
)
 VISA U.S.A. INC.,)
 VISA INTERNATIONAL CORP., AND)
 MASTERCARD INTERNATIONAL)
 INCORPORATED,)
)
 Defendants.)

98 Civ. No. 7076 (BSJ)

**PROPOSED
FINAL
JUDGMENT**

Plaintiff, United States of America, having filed its complaint herein on October 7, 1998; Defendants Visa U.S.A. Inc., Visa International Service Association, and MasterCard International Incorporated, having appeared and filed their answers to the complaint; the Court having jurisdiction of the parties hereto and of the subject matter hereof and having conducted a trial thereon; and the Court having determined that defendants have violated § 1 of the Sherman Act, 15 U.S.C. § 1,

Upon the record at trial and all prior and subsequent proceedings herein, it is this ____ day of _____, 2000, hereby:

ORDERED, ADJUDGED, AND DECREED as follows:

I. DEFINITIONS

As used in this Final Judgment:

A. “By-law 2.10(e)” means Visa U.S.A. By-law 2.10(e), adopted by the consent of the Visa U.S.A. Board of Directors on March 15, 1991.

B. “Competitive Programs Policy” means the MasterCard Competitive Programs Policy, adopted by the U.S. Region Board of Directors on June 28, 1996.

C. “Debit card” means a card issued pursuant to the rules of a general purpose card network that enables consumers to make purchases from unrelated merchants by accessing funds in deposit accounts that are available at the time of purchase.

D. “Defendants” means Visa U.S.A. Inc; Visa International Service Association; and MasterCard International Incorporated.

E. “General purpose card” means a card issued pursuant to the rules of a general purpose card network that enables consumers to make purchases from unrelated merchants without accessing or reserving funds, regardless of any other functions the card may have.

F. “General purpose card network” means any of the general purpose card networks operated by Visa International Service Association and Visa U.S.A. Inc.; MasterCard International Incorporated; American Express Company; and Morgan Stanley Dean Witter & Co., as of the date of entry of this Final Judgment.

G. “Governing Committee” means any formal or informal committee that has the authority to make binding decisions on behalf of a Defendant or that has access to proprietary competitively sensitive information about a Defendant.

H. “Issuer” means a person that is authorized to issue cards on a general purpose card network, that person’s subsidiaries and affiliates, and any of their officers, employees, or agents, including agent banks.

I. “Issuing volume” means the annual dollar volume of all general purpose card purchases, cash advances, and balance transfers on cards issued by an issuer, except that the following may be excluded: any purchases, cash advances, or balance transfers associated with (1) a card portfolio acquired by an issuer within the preceding two years or (2) cards issued pursuant to a co-branding or affinity agreement that mandates issuance of a particular brand and that was entered into prior to the date of entry of this Final Judgment.

J. “New general purpose card” means a card that creates a new account relationship between an issuer and cardholder. It does not include a reissued card on an existing account, for example, a replacement for a lost or expired card.

K. “Person” means any natural person or any business, legal or governmental entity or association.

II. APPLICABILITY

A. This Final Judgment shall apply to the Defendants and each of their affiliates, subsidiaries, officers, directors, agents, employees, successors, and assigns; to any successor to any substantial part of the business; and to all persons acting in concert with any Defendant and having actual notice of this Final Judgment.

B. Each Defendant shall require, as a condition of the sale or other disposition of all or substantially all of its assets, shares, or other indicia of ownership, that any purchaser agree to be bound by the provisions of this Final Judgment and that such agreement be filed with the

Court.

III. PROHIBITED AND REQUIRED CONDUCT

A. Each Defendant is enjoined from permitting any issuer to serve on any of its Boards of Directors or Governing Committees unless

(1) that issuer has agreed that it will issue new general purpose cards and debit cards exclusively on that Defendant's network, and

(2) beginning in the year 2003, for the 12-month period preceding the issuer's election or appointment to the Board or Committee, 80% or more of the issuer's total issuing volume in the United States and 80% or more of the issuer's total issuing volume worldwide was transacted on that Defendant's network.

B. Each Defendant shall adopt and enforce by-laws and rules to prevent the disclosure to its competitors of competitively sensitive information.

C. Defendant Visa U.S.A. Inc. shall repeal By-law 2.10(e).

D. Defendant MasterCard International Incorporated shall repeal the Competitive Programs Policy.

E. Each Defendant is enjoined from enacting, maintaining, or enforcing any by-law, rule, policy or practice that prohibits its issuers from issuing general purpose or debit cards in the United States on any other general purpose card network.

F. For a period of two years from the date of entry of this Final Judgment, each Defendant shall permit any issuer to terminate, without penalty, any agreement it entered into with that Defendant prior to the date of entry of this Final Judgment, pursuant to which the issuer committed to maintain a certain percentage of its general purpose card volume, new card

issuance, or total number of cards in force in the United States on that Defendant's network.

G. Defendants Visa U.S.A. Inc. and Visa International Service Association are enjoined from enacting, maintaining, or enforcing any by-law, rule, policy or practice that treats American Express or Discover differently than it treats MasterCard International Incorporated.

H. Defendant MasterCard International Incorporated is enjoined from enacting, maintaining, or enforcing any by-law, rule, policy or practice that treats American Express or Discover differently than it treats Visa U.S.A. Inc. or Visa International Service Association.

IV. LIMITATIONS

A. Notwithstanding the prohibitions in Section III(A) of this Final Judgment, a Defendant may elect or appoint any person to any Board of Directors or Governing Committee if that Board's or Committee's responsibilities relate solely to the Defendant's activities outside of the United States.

B. Except as provided in Section III(F) of this Final Judgment, nothing in this Final Judgment prohibits a Defendant from entering into an agreement with any individual issuer pursuant to which a Defendant gives consideration to an issuer in exchange for the issuer maintaining a certain percentage of its general purpose card volume, new card issuance, or total number of cards in force on that Defendant's network.

V. COMPLIANCE PROGRAM

A. Each Defendant is ordered to establish and maintain an antitrust compliance program that shall include designating, within thirty (30) days after this Final Judgment becomes

effective, an Antitrust Compliance Officer with responsibility for implementing the antitrust compliance program and achieving full compliance with this Final Judgment.

B. The Antitrust Compliance Officer shall:

1. within sixty (60) days after this Final Judgment becomes effective, furnish a copy of this Final Judgment to each of Defendant's directors, officers, employees, and members;

2. distribute in a timely manner a copy of this Final Judgment to any person who succeeds to or subsequently holds a position described in Section V(B)(1);

3. within sixty (60) days after this Final Judgment becomes effective, develop and implement procedures to enforce the by-laws and rules required by Section III(B), including procedures for imposing sanctions.

VI. CERTIFICATION

A. Within seventy five (75) days of the entry of this Final Judgment, each Defendant shall certify to Plaintiff whether such Defendant has: (1) designated an Antitrust Compliance Officer; (2) distributed the Final Judgment in accordance with Sections V(B)(1); and (3) developed and implemented procedures to enforce the by-laws and rules required by Section III(B).

B. For ten years after the entry of this Final Judgment, on or before its anniversary date, each Defendant shall file with the Plaintiff an annual statement as to the fact and manner of its compliance with the provisions of Sections III and V.

C. If an Antitrust Compliance Officer learns of any violation of any of the terms and conditions contained in this Final Judgment, Defendant shall immediately notify the Plaintiff and

forthwith take appropriate action to terminate or correct the activity so as to comply with this Final Judgment.

VII. INSPECTION AND COMPLIANCE

A. For purposes of determining or securing compliance with the Final Judgment or determining whether the Final Judgment should be modified or terminated, and subject to any legally recognized privilege, from time to time:

1. Duly authorized representatives of the Plaintiff, upon the written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to a Defendant made to its principal offices, shall be permitted:

a. Access during office hours of that Defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of that Defendant, who may have counsel present, relating to this Final Judgment; and

b. Subject to the reasonable convenience of that Defendant and without restraint or interference from it, to interview, either informally or on the record, its officers, employees, and agents, who may have counsel present, regarding any such matters.

2. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, made to a Defendant's principal offices, that Defendant shall submit written reports, under oath if requested, with respect to any matter relating to this Final Judgment, subject to any legally recognized privilege.

B. No information or documents obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

C. If at the time information or documents are furnished by a Defendant to Plaintiff, the Defendant represents and identifies in writing the material in any such information or documents to which a claim of confidentiality protection is asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days' notice shall be given by Plaintiff to Defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding), so that Defendant shall have an opportunity to apply to this Court for protection pursuant to Rule 26(c)(7) of the Federal Rules of Civil Procedure.

D. Nothing set forth in this Final Judgment shall prevent the Antitrust Division from utilizing other investigative alternatives, such as Civil Investigative Demand process provided by 15 U.S.C. §§ 1311-1314 or a federal grand jury, to determine if a Defendant has complied with this Final Judgment, or to investigate any matter within its jurisdiction.

VIII. FURTHER ELEMENTS OF THE FINAL JUDGMENT

- A. This Final Judgment shall take effect 90 days after the date on which it is entered.
- B. This Final Judgment shall expire ten years from the date of entry.
- C. Jurisdiction is retained by the Court for the purpose of enabling any of the parties

to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of its provisions, for its enforcement or compliance, and for the punishment of any violation of its provisions.

Dated: _____

BARBARA S. JONES
UNITED STATES DISTRICT JUDGE