STATEMENT FOR THE RECORD

FMI – THE FOOD INDUSTRY ASSOCIATION

Senate Judiciary Committee Hearing

"Breaking the Visa-Mastercard Duopoly: Bringing Competition and Lower Fees to the Credit Card System"

November 19, 2024

FMI – The Food Industry Association appreciates the Senate Judiciary Committee for holding the hearing titled "Breaking the Visa-Mastercard Duopoly: Bringing Competition and Lower Fees to the Credit Card System," and welcomes the opportunity to provide input on how processing fees for accepting credit cards in our stores are impacting business operations and consumer prices.

As the food industry association, FMI works with and on behalf of the entire food industry to advance a safer, healthier, and more efficient consumer food supply chain. FMI brings together a wide range of members across the value chain – from retailers that sell to consumers, to producers that supply food and other products, as well as a variety of companies providing critical services – to amplify the collective work of the industry.

Food retailing is a very diverse industry and brings a unique set of challenges when considering the numerous daily functions that a single store provides to its customers and communities. Grocery stores are the hub for everyday food and consumer goods, operate pharmacies that dispense life-depending medications, vaccines, and flu shots, and serve those who rely on critical food assistance programs like the Supplemental Nutrition Assistance Program (SNAP) and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

Our member companies, which range from independent operators to regional and large national and international businesses and brands, operate roughly 33,000 grocery stores and 12,000 supermarket pharmacies. FMI members produce and supply the more than 30,000 different food and consumer good products found on store shelves, and ultimately touch the lives of more than 100 million U.S. households per week.

The grocery industry is among the most competitive sectors in our economy. Grocers negotiate prices with vendors on every product they sell and every service they use and operate on very slim profit margins – about 1.6% annually on average. Grocers are doing everything possible to avoid passing inflationary costs onto shoppers. Competition in the grocery sector is fierce, and the battle for market share helps keep prices down for shoppers.

Conversely, the credit card market today is among the least competitive sectors in our economy. While banks compete for the share of credit cards issued, there is no competition on how credit card transactions are routed and how the fees for these transactions are set and levied on merchants. Consumers and merchants, including grocers in every community in the country, are on the losing end of Visa-Mastercard duopoly.

Visa and Mastercard control over 80% of the card market in the U.S. Visa and Mastercard do not issue credit cards. A credit card is issued by a bank and is branded with one of these networks. Visa and Mastercard are only the networks that route a transaction, like a telecom company routing communications. Visa and Mastercard set both the network fee paid to them by the merchant and the interchange fee paid to the issuing bank by the merchant, despite these parties being separate corporations. Visa and Mastercard also set the contract terms and conditions for the issuing banks that are placed on merchants and do not negotiate with merchants on any aspect – fees, terms, conditions. In grocery terms, it would be anticompetitive and illegal for a wholesaler (whose function is to supply goods to a store) to tell the peanut butter manufacturer (whose function is to produce the product) what the manufacturer price is for a jar of peanut butter. In the grocery supply chain, the manufacturer sets its own price, the wholesaler sets its own price, and the store sets its own price. American Express and Discover differ in that they are both their own networks and banks – these companies set all their own fees levied on a merchant because they are the owners of both functions.

In addition, a merchant is mandated by Visa and Mastercard to accept all cards without knowing the swipe fee associated with the exact card used for a purchase. When a customer swipes, dips, taps, or enters her card number, retailers are required to accept the card but do not know how much they will be charged a swipe fee for accepting the card. Card swipe fees vary depending on the type of credit card used – for example, a credit card that offers high airline rewards miles comes with a higher swipe fee than a card not offering rewards. Retailers are required to "honor all cards" – a policy that leaves no choice for the retailer. Visa and Mastercard also charge higher swipe fees for online purchases than they do for in-person purchases, even for the same merchandise at the same retailer using the same card for the transaction. "Card not present" has been a growing segment of grocery transactions with the increased use of curbside pickup and third party and on demand shopping and delivery services.

Grocers are committed to serving all customers, regardless of how they pay. However, the expensive swipe fees that retailers must pay to accept credit and debit cards as payments negatively impact U.S. consumers. In 2023, merchants' credit and debit card fees totaled $172.05 billion, an increase of 7.1% from the previous year; of this total, $100.7 billion in fees were assessed on merchants to accept Visa and Mastercard-branded credit cards, according to the Nilson Report. The billions of dollars in swipe fees artificially drive up the price consumers pay for goods and services. Retailers are forced to incorporate these fees in their pricing decisions and sell items at the "credit card" price to cover costs.

Every time a credit card is used for a purchase, a merchant is charged on average 2-4% of the purchase price by the credit card networks and nation's largest banks for swipe fees. With the average margin in the grocery industry hovering around 1.6% this means that the card networks and banks issuing cards make more of a profit off a grocery purchase than the store does. Grocers have no ability to negotiate with Visa and Mastercard on contract terms and how much it costs to accept this form of payment from our customers. Swipe fees are most grocers' highest operating cost after labor and rent.

These hidden fees amount to an average cost of over $1,100 per American household, according to the Merchants Payments Coalition, regardless of whether a purchase is made using cash or a credit card. In just two and a half years since the Committee's last hearing on swipe fees, merchants' total swipe fees increased by $34.25 billion, up from $137.8 billion in 2021 according to the Nilson Report, and the impact per American household increased by nearly 60% from over $700 then to over $1,100 today. The impact disproportionately hurts lower income Americans, those who rely on cash, and those who do not have access to high credit card rewards. Routing competition from additional networks, aside from just Visa and Mastercard, can help mitigate these swipe fees.

FMI and our members strongly support the enactment of the bipartisan Credit Card Competition Act to bring commonsense competition to our credit card system. Under the legislation, the nation's largest banks that issue credit cards are simply required to enable a second, secure network on which to route transactions. Requiring more than one network will foster competition and security – bringing down the cost of swipe fees, increasing transparency of terms, and encouraging innovative services and fraud protection. Card networks would compete for merchants' business on fees and terms – just as merchants must compete for our customers' business.

The mechanics of routing competition under the Credit Card Competition Act are simple. Routing networks would have to compete for the issuing bank's business to be designated as the second network enabled on a credit card. Simultaneously, these routing networks would compete to be a merchant's preferred provider. When a customer uses her card for a purchase, the merchant would then have a preference of networks on which to route the transaction. No consumer credit cards would have to be issued – this is all done behind the scenes electronically. For more than a decade under Dodd-Frank, banks and credit unions that issue debit cards have been required to enable a second network, unaffiliated to Visa and Mastercard, on which to route debit transactions. The Credit Card Competition Act would extend this dual routing requirement to credit cards.

Specifically on security, the Credit Card Competition Act protects consumers and our nation's financial and economic systems from potentially harmful actions in several ways. First, the legislation prohibits foreign-owned companies and entities from entering the U.S. credit card market. Currently, there is no prohibition on allowing China UnionPay, a Chinese communist government-owned financial services entity, in our financial market. China UnionPay works directly with Visa and Mastercard and sits on the security governing board Payments Card Industry Security Standards Council. With authority given under the Credit Card Competition Act, the Federal Reserve can block any network from entering the U.S. market if it threatens security.

Second, requiring every credit card to be enabled with a second network on which to route a transaction will ensure much needed redundancy and security for commerce and our economy. When there are outages to the Visa and Mastercard networks it means that for the duration of the outage no transactions can be completed using a Visa or a Mastercard credit card. Because federal law requires every debit card to be enabled with two separate networks, there are no disruptions to debit card transactions when an outage occurs. A serious, longer-term outage or cybersecurity attack on the Visa or Mastercard network, without the enablement of a second network on a credit card, could bring commerce to a halt.

Third, the second network enabled on a credit card will be chosen by the bank or credit union that issues the credit card, and these networks are secure and federally regulated. The Federal Reserve has stated that the unaffiliated networks enabled on debit cards today have better fraud prevention rates than Visa and Mastercard. These are all federally regulated, secure networks that route hundreds of thousands of debit transactions every day, including the financial data of Senators and congressional staff who bank at the U.S. Senate Federal Credit Union, and likewise at the Congressional Federal Credit Union. These networks are held to extremely high standards under federal law and are chosen by financial institutions – banks and credit unions like the Senate and Congressional Credit Unions. The Credit Card Competition Act exempts any bank and credit union with less than $100 billion in assets which means that the dual routing requirement would apply to only about 29 banks and one credit union. Community and small banks and all credit unions, except for Navy Federal Credit Union, are exempt under the Credit Card Competition Act.

In conclusion, the Visa-Mastercard duopoly is anticompetitive, broken, and harms consumers and merchants. Through the Credit Card Competition Act, grocers and other merchants are simply asking for the federal government to establish parameters that would foster competition and transparency so that card networks would have to compete for our business on fees and terms – just as we must compete for our customers' business. The bill does not cap credit card fees or set prices. There is no heavy hand of government or price fixing in the Credit Card Competition Act, just the simplest of competition – requiring two networks to coexist on credit cards just like they have been on debit cards for more than a decade. Enacting the Credit Card Competition Act is not about picking winners or losers, it is about bringing competition, transparency, and fairness to that credit card system that currently has none.