



February 13, 2023

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Washington, D.C. 20580
Attn: Christina Brown

RE: Mastercard Incorporated; File No. 201 0011

Dear Ms. Brown:

FMI – The Food Industry Association welcomes the opportunity to comment on the proposed consent order between the Federal Trade Commission (FTC) and Mastercard Incorporated. FMI appreciates the FTC for investigating Mastercard’s business practices and efforts to bring them into compliance with federal law.

As the food industry association, FMI works with and on behalf of the entire 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 the wide variety of companies providing critical services — to amplify the collective work of the industry. Our food retailers, which range from independent operators to large national and international players, operate roughly 33,000 grocery stores and 12,000 pharmacies, ultimately touching the lives of more than 100 million U.S. households per week and an industry that employs over 6 million individuals.

The 2010 debit law known as the Durbin Amendment recognized the lack of competition in the market. The purpose of the law is to inject much needed debit network competition to help correct the broken market through its requirement that a merchant have a choice between service providers, networks in this case, on which to route a debit transaction to the issuing bank. The resulting competition from the Durbin Amendment benefits grocery customers and food retailers alike. This competition has helped to reign in costs, driven innovation, and improved security.

By entering the consent order, the FTC is taking an important step to protect merchant routing rights. Merchants have had to seek enforcement by the FTC against the two dominant global network brands to protect these rights. As the FTC and the Federal Reserve Board of Governor’s noted, a tokenized debit transaction must not inhibit merchant routing rights. However, the vigilance must continue, and further actions will likely be required.

Tokenization replaces a consumer’s card data with a token to help protect it. Merchants take protecting customer’s data very seriously and are committed to doing so. While protecting customers' data is essential, it should not require a merchant to forfeit their routing rights under the law. Unfortunately, the way the global brands have implemented network tokenization, and other technologies aimed at protecting data, it often requires a forfeiture of such a choice.





In a network tokenized transaction, the network, Mastercard in this case, issues the token which replaces the actual card data and serves as the token vault. The result in a debit transaction is that if a merchant chooses to use the unaffiliated competitive network, the merchant must perform what is termed a call out to the global network to have the data de-tokenized. The payment card data must be detokenized before being sent to the issuing bank for approval.

While the above outlined debit transaction flow is far from ideal, and should be investigated as inhibiting merchant routing rights, it is preferable to what has been Mastercard's business practice for ecommerce transactions. Prior to the proposed consent order, Mastercard refused to detokenize payment card data in the ecommerce space. This practice clearly prevented merchant routing rights because the merchant could not send the transaction to an unaffiliated network. The FTC is correct to take enforcement actions against Mastercard to require the immediate change of its operating rules to allow merchants access to a second network for ecommerce tokenized transactions.

The proposed consent order is an important step to protect merchant routing rights, but the work must not stop there. FMI and our members are concerned about other business practices and network tokenization rules that may be blocking a merchant's right to choose among the networks. Today, the network tokenization practice injects the global card brand into a transaction it would otherwise never see. This scenario allows the global network a peak behind the curtain of its competitors' debit business and exposure to consumer transactions at a merchant it would otherwise never receive.

Even more concerning is Visa's current business practice, and what we have heard will soon be Mastercard's, of not sending the full payment card information out for authorization. This can result in a greater likelihood that the bank will reject the transaction seeing it as suspicious or higher risk. The network token contains more data than just the card numbers. The token includes the data on the card cryptogram and domain verification, expiry date and other relevant information. Today, Visa, and soon Mastercard, only sends the primary account number, and no additional data out for the unaffiliated network to send to the bank. Therefore, the bank receives less rich transaction data than if the global card brand, Visa or Mastercard, sent it for authorization. FMI strongly encourages the FTC to continue its investigation into the global card network's rules and business practices and how they may be removing merchant choice, all in the false name of security.

FMI and our members greatly appreciate the FTC's action against Mastercard and work to protect our federally ensured debit routing rights. We look forward to working with you on additional enforcement actions on network tokenization and any other threats to these rights.

Sincerely,

A handwritten signature in black ink that reads 'Christine Pollack'.

Christine Pollack
Vice President, Government Relations

