

July 15, 2008

The Honorable John Conyers, Jr.  
Chairman  
House Committee on Judiciary  
2138 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Conyers:

Thank you for your leadership on the important question of competition in the market for merchants' acceptance of payment cards. We appreciate your calling attention to, and efforts toward, improving what you see as dysfunction in that marketplace. We commend you on your efforts.

We remain concerned about the specific proposed legislative solution to this issue embodied in H.R. 5546. We appreciate your willingness to hear the concerns of a variety of views, including ours, and look forward to continuing to work with you on an approach that more closely addresses the problems on which we can agree. For the reasons below, however, we ask that we have additional time before the Judiciary Committee considers H.R. 5546.

Our primary substantive concern is that the issue deserving of our focus--whether consumers are best served by the status quo--is not addressed appropriately in the legislation. For example, although the antitrust exemption may provide benefits to some merchants, there is no component of this legislation which ensures, or even attempts to ensure, that the putative merchant benefits would be passed on to consumers in the form of lower prices. That is, assuming the bargaining in the absence of antitrust protections works as you envision, and some costs of payment card acceptance are reduced for merchants, how do we become comfortable that the merchants' benefits will be passed on to consumers? How do we know that an oil company will not pocket any cost savings without reducing the price at the pump, for example?

Relatedly, we are concerned, and have heard quite explicitly, that the impact of any disruption on the current system of default interchange rates will prove disproportionately harmful for smaller banks and credit unions. We understand that a so-called "carve-out" would not be an adequate remedy in that it will limit the competitiveness of these institutions in other ways. We recognize that these are unintended consequences and hope that we can continue to explore ways in which consumers can benefit without straining our small financial institutions.

Last, on process, we understand that the same industry parties debating this legislation are in fact not only in court over related class-actions, but recently agreed to court approved mediation regarding issues related to the legislation. This process began in April. Would it not be helpful to see what the mediation produces, in terms of changes to the market if any, or a finding that none are necessary? Either resolution might well be

helpful in our consideration of how to regulate this market. We ask that we have the opportunity to learn from the results of the mediation that is already underway before we attempt to engineer a new negotiation paradigm for these two industries.

Thank you for your consideration of our views and our request. We look forward to full and thorough discussion of these important issues.

Sincerely,

Arthur Davis

Rick Runkel

Debbie Wasserman Schultz

Rahm A. Iman

Paul W. Miller