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Dear Republican Colleague:

On Thursday, the House Judiciary Committee's Antitrust Task Force will hold a hearing on H.R. 5546, the "Credit Card Fair Fee Act," legislation which is anathema to conservative free market principles. In short, our conference should not support legislation that substitutes market regulation through government imposed prices over the effective operation of the competition laws already on the books. I urge you to oppose this legislation.

H.R. 5546 has two purposes. First, it allows merchants, through an exemption from the antitrust laws, to engage in collusion and group boycotts in order to negotiate a more advantageous interchange fee (the fees retailers pay for accepting credit cards). Second, in the event retailers and banks are unable to agree on the interchange fee, three executive branch employees, appointed by the Antitrust Division of the Department of Justice and the Bureau of Competition at the Federal Trade Commission, must "establish rates and terms that most closely represent the rates and terms that would be negotiated in a hypothetical perfectly competitive market for access to an electronic payment system between a willing buyer with no market power and a willing seller with no market power." Yes, you read that last sentence correctly!

I respectfully suggest that any market must be severely dysfunctional before Congress considers supplanting our antitrust laws with onerous and unjustified antitrust exemptions and price controls. The bipartisan Antitrust Modernization Commission shares this view. The Commission concluded that "statutory immunity from the antitrust laws should be disfavored. Immunities should rarely (if ever) be granted and then only on the basis of compelling evidence that either (1) competition cannot achieve important societal goals that trump consumer welfare, or (2) a market failure clearly requires government regulation in place of competition." Furthermore, it is ironic and a bit cynical to involve our antitrust agencies in a scheme to fix prices and permit group boycotts by merchants. Even if this classic two-sided market is not perfectly efficient, I strongly believe the market will price the value of the interchange fee better than three employees of the executive branch.

Electronic payments are a vital part of the 21st century economy; nearly 2/3 of American families routinely use electronic payments. Consumers and businesses alike appreciate the convenience, security, and reliability of electronic payments. In most cases, consumers have zero liability if their credit or debit card is used fraudulently. Retailers see more sales at the register, receive greater fraud protections and faster payment when customers use electronic payments.

The fact is that competition in the industry is alive and well and competition among issuers has rewarded consumers with greater access, lower costs, and more choices while expanding business opportunities for retailers. Our constituents are the beneficiaries of airline miles, low or no credit card fees, and a month long grace period of the funds used to make a purchase. Continued competition among payment card companies and issuing financial institutions will spur more innovations in convenience and security, protecting the interests of retailers and consumers.

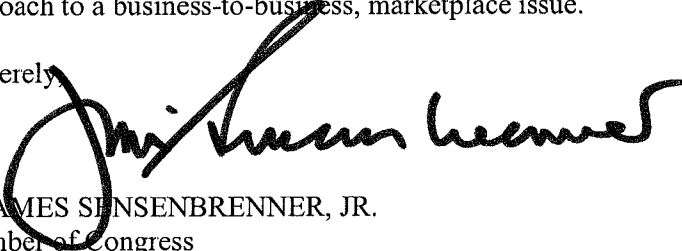
We must all also remember, the purposes of antitrust laws were enacted for the benefit of consumers by ensuring lower prices and new and better products. Collusion resulting in price fixing or market allocation hurts consumers by artificially increasing prices or resulting in substandard products or services. Firms that engage in such behavior are subject to current antitrust laws and should be held to account. However, we also know that price controls do not work and are a profoundly misguided public policy approach, particularly when there is no evidence of a market failure. And in Australia where price controls on interchange were imposed, there is no evidence demonstrating that retailers have passed their savings onto consumers in the form of lower prices while there is clear evidence that costs to consumers have risen in the form of higher annual fees and fewer benefits on their payment cards.

It is also important to note that interchange is critically important to thousands of community banks and credit unions nationwide and allows them to provide their unique services and to compete with larger institutions. Intervening in a functioning market will only harm the merchants and consumers currently benefiting from an efficient process.

Finally, no less than the 9th Circuit Court of Appeals recently dismissed a complaint related to interchange fees and explained interchange in the following way: "The [bank] consortiums indirectly establish the merchant discount fee, much as the cost of eggs sets a floor price of an omelette on a menu. Just like the restaurateur, the banks charge the merchant a higher price than their cost of business to make a profit. This behavior suggests a rational business decision, not a conspiracy."

As this issue and legislation are examined further, I urge you to oppose this ill-conceived government approach to a business-to-business, marketplace issue.

Sincerely,

A handwritten signature in black ink, appearing to read "F. James Sensenbrenner, Jr.", written over a large, stylized circular flourish.

F. JAMES SENSENBRENNER, JR.
Member of Congress