February 16, 2024

The Honorable Jerome H. Powell, Chair
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Comments on Docket No. R-1818. RIN 7100-AG67: Debit Card Interchange Fees and Routing

Dear Chair Powell:

My name is Dan Mitchell, and I am an economist specializing in fiscal policy. Prior to working for public policy organizations, I served as an economist for Senator Bob Packwood of Oregon and the Senate Finance Committee. For over three decades, I've observed and written about the disastrous impact of price controls wherever and whenever they have been tried. The government control of interchange fees for debit card transactions is not an exception to the rule.

Competition is integral to the functioning of a prosperous market economy. It drives innovation, efficiency, and responsiveness to consumer needs. Politicians and regulators need to pay more attention to their role in the process. Too often, they attempt to dictate the terms of competition from on high rather than simply providing the best legal environment from which competition can emerge and then letting the market work.

That's how the Durbin Amendment came to fruition. Large retailers decided to use their lobbying power to rig the game to their benefit. They pushed for a lower government-imposed price cap on "swipe fees," promising to lower consumer prices. The Federal Reserve has acknowledged that most retailers never reduced prices, and many increased them anyway.

Professor J.W. Verret of George Mason University Law School looked at price controls on payment processing.

> In 2011, the Federal Reserve adopted rules implementing fee caps on debit card transactions, pursuant to the Dodd-Frank Act of 2010. These rules have led to diminished access to credit products for consumers and have failed in their promise to lower consumer debit fees. The last eight years have shown this to be a failed experiment. The amendment's direct price control has gotten most of the attention and well-deserved criticism, having resulted in the same consequences as all price controls. Every college student taking Economics 101 learns that keeping prices at an artificially low level results in an undersupply of vital goods or services. …Supporters of the Durbin amendment's price controls and exclusivity ban argued that the provision would pass cost savings on to consumers. That alone was not a legitimate argument in the first place, as it would merely reflect use of government power to take property rights from innovators and redistribute them to politically sympathetic beneficiaries. Even if one were willing to accept that as a legitimate policy goal, the fact is it didn't happen. Studies by the Federal Reserve Bank of Richmond demonstrate that the Durbin amendment didn't even fulfill its intended purpose. Retailers simply kept the cost savings. Thus, the Durbin Act merely reflected a very successful act of lobbying by retailers.

Lowering the existing price controls moves policy in the wrong direction and adds to the Durbin Amendment's suffocating level of red tape. Mercatus Center experts, Patrick McLaughlin and Oliver Sherouse, show that regulators were among the biggest beneficiaries of the law:

> The statute, which itself was 848 pages long, directed dozens of regulatory agencies to revise or create new regulations addressing the financial system in the United States. Those agencies responded with hundreds of new rules that will govern financial markets, on a scale that vastly exceeds any previous regulation of financial markets, and dwarfs the regulations that accompanied all other legislation enacted during the Obama administration. …Dodd-Frank…is associated with more than five times as many new restrictions as any other law passed since January 2009, for a total of nearly 28,000 new restrictions. In fact, it is associated with more new restrictions than all other laws passed during the Obama administration put together.

Peter Wallison of the American Enterprise Institute has a must-read study on how Dodd-Frank imposes disproportionately heavy costs on small banks and small businesses, a problem which the current proposal threatens to compound.

> …the reason for the slow recovery is the Dodd-Frank Act, enacted in 2010, which placed heavy regulatory costs and new restrictive lending standards on small banks. This in turn reduced the ability of these banks to finance small businesses, particularly the start-up businesses which are the engine of employment and economic growth. Large businesses have not been subject to the same restrictions because they have access to the capital markets, and their growth has been in line with prior recoveries. …recoveries after financial crises tend to be sharper than other recoveries, not slower as some have suggested. It is likely that, without the repeal or substantial reform of Dodd-Frank, the U.S. economy will continue to grow only slowly into the future. ……whatever regulatory costs are imposed on banking organizations— whether they be $2 trillion banks like JPMorgan Chase, $50 billion banks or $50 million banks— the larger the bank the more easily it will be able to adjust to these costs.

Regulation is no replacement for market discipline. The Federal Reserve needs to recognize the failure of interchange controls and dispense with the effort to extend and strengthen price controls that have already demonstrated failure for over a decade.

Sincerely,

Daniel J. Mitchell
Economist