Durbin And Welch To Fed: Excessive Debit Swipe Fees Are Hurting Merchants During Pandemic

July 28 2020 9:33 AM

WASHINGTON – U.S. Senator Dick Durbin (D-IL) and U.S. Representative Peter Welch (D-VT) sent a letter to Federal Reserve Chairman Jerome Powell expressing concern over troubling debit card industry practices that are diminishing competition and costing American merchants potentially billions in excessive swipe fees. Under current law, enacted as part of the 2010 “Durbin Amendment,” banks that issue debit cards must enable at least two unaffiliated debit networks to be available for each debit card transaction so merchants can have a choice of competitive options. This requirement enables lower-cost debit networks to compete for business with the dominant Visa and Mastercard duopoly. However, as Americans are increasingly making online card payments during the COVID-19 pandemic, Durbin and Welch urged the Fed to investigate reports that card-issuing banks are failing to enable their debit cards to be used by at least two debit card networks for online transactions. The members called on the Fed to ensure that such anticompetitive practices in the debit card industry are identified and addressed.

“U.S. retailers and restaurants cannot afford to pay unnecessarily high fees for debit card transactions at a time when they have been hit hard by the pandemic and its economic effects,” wrote Durbin and Welch. “The Federal Reserve should consider appropriate enforcement action and policy responses to correct any such anticompetitive incentives and regulatory violations.”

Full text of the letter is available here and below:

July 24, 2020

Dear Chairman Powell:

As our nation responds to the public health and economic crises caused by the COVID-19 pandemic, we appreciate all that you and the Federal Reserve are doing to sustain and support our economy during these challenging times. We write today to alert you to a troubling development that is diminishing competition in the online electronic payments marketplace and costing American merchants potentially billions in excessive fees.

As you know, the electronic payments industry is dominated by the card network duopoly Visa and Mastercard. However, small debit network competitors vigorously compete for a portion of the debit card marketplace, and we have long supported steps to encourage this competition in order to help lower transaction costs and incentivize efficiencies and security enhancements.

In 2011, Federal Reserve Regulation II required that issuers of debit cards must enable at least two unaffiliated debit networks on which debit transactions may be processed and must give merchants the ability to direct the routing of a debit transaction over any network that the issuer has enabled to process it. This regulation has helped preserve competition in the debit network industry. However, Regulation II has been undermined periodically by the dominant networks' efforts to circumvent and limit routing choice, requiring regulators to step in to ensure that competition is preserved.

Such intervention may become necessary again to prevent what appears to be the anticompetitive practice of major debit card issuers refusing to enable PINless debit functionality on their cards. Numerous small debit networks which have traditionally conducted transactions using PIN authentication are also able to process online, or "card-not-present," debit transactions without a PIN. However, for a "card-not-present" transaction to be routed over a PINless debit network, the card-issuing bank must enable the card's Bank Identification Number (BIN) so that the PINless functionality will work. Issuers that do not enable PINless routing appear to be violating Regulation II because they do not have more than one network option for these online debit transactions.

According to the payments industry analysis company CMSPI, currently "a merchant is unlikely to be able to use PINless more than 50% of the time" due to issuers' refusal to enable their cards to use PINless functionality. Because PINless debit transactions over smaller debit networks often carry lower merchant transaction fees than transactions routed over Visa and Mastercard, CMSPI estimates that U.S. merchants could save at least $2 billion per year in debit fees if PINless functionality were made fully available.

Because the volume of online "card-not-present" transactions has increased dramatically during the COVID-19 pandemic, the need to address obstacles to PINless debit competition has grown more urgent. U.S. retailers and restaurants cannot afford to pay unnecessarily high fees for debit card transactions at a time when they have been hit hard by the pandemic and its economic effects. While other regulators, including the

FTC, OCC, FDIC, and NCUA, share jurisdiction in ensuring that payments industry participants are following the law and Regulation II when it comes to debit routing, the Federal Reserve can play a coordinating role across agencies in ensuring that anticompetitive market practices are identified and addressed. We urge you to play such a role when it comes to potential anticompetitive practices involving PINless debit routing. This effort should include examining whether large debit card issuers and the dominant card networks may have mutual incentives to stifle PINless debit competition from smaller debit networks and whether they have violated Regulation II. The Federal Reserve should consider appropriate enforcement action and policy responses to correct any such anticompetitive incentives and regulatory violations.

Thank you for your attention to this important matter, and we request that your staff follow up with our staffs to discuss next steps.

Sincerely,