



May 4, 2022

The Honorable Dick Durbin
Chairman
Committee on the Judiciary
United States Senate
711 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Re: Senate Judiciary Committee Hearing, “Excessive Swipe Fees and Barriers to Competition in the Credit and Debit Card Systems”

Dear Chairman Durbin and Ranking Member Grassley:

On behalf of the National Restaurant Association, we thank you for the opportunity to submit our views regarding the anticompetitive practices perpetuated by the dominant payment card networks and their respective card-issuing banks within our nation’s electronic payment ecosystem. We ask that this letter be entered into the record of the hearing, “Excessive Swipe Fees and Barriers to Competition in the Credit and Debit Card Systems,” on May 4, 2022.

Founded in 1919, the National Restaurant Association (“The Association”) is the leading business association for the restaurant and foodservice industry, representing national and small restaurant businesses. As the nation’s second-largest private sector employer, with nearly one million locations across the country, the restaurant industry is a vital driver of the U.S. economy.

As you are aware, our industry was completely upended due to the COVID-19 pandemic. More than 8 million restaurant employees were laid off or furloughed, and the industry collectively lost \$290 billion in sales due to mandated closures and capacity limits during the pandemic. Even as the pandemic begins to subside, restaurants still have an incredibly long road to recovery as they continue to face labor shortages, supply chain disruptions, and rising food costs, all while the U.S. economy is experiencing its highest inflationary rate in decades.

Despite these challenges and our industry’s ability to innovate by shifting business models to accommodate remote and online orders, restaurants and other merchants continue to be hamstrung by exorbitant interchange fees paid to the credit card industry. For restaurant owners and operators, accepting a form of payment that is not “cash only” is an absolute imperative to best serve their customers, and ultimately, to stay in business. However, facilitating card payments is often one of the highest costs borne by our industry, only behind labor and food. And in the current economic environment, restaurants are juggling a 17% increase on food costs and more than 13% increase in payroll expenses on top of these extremely costly interchange fees.

Furthering this issue is the fact that restaurants and other merchants have no ability to negotiate the credit card rates that the two dominant card companies impose, nor in practicality are they able to seek out

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alternative payment processing options. These two card brands have leveraged their market power to effectively ban such alternatives, wiping away competition that could stem these exponentially rising fees and together controlling upwards of 80 percent of the U.S. credit market. This duopolistic behavior continues to cause significant harm to the restaurant community and paints a strikingly different picture when compared to our highly competitive and low-margin industry.

Credit card processing fees have more than doubled over the last decade despite improvements in payment technology that have driven down overall processing costs. According to the Nilson Report, the two prevailing card networks (along with their respective card-issuing banks) charged U.S. merchants a total of \$137.8 billion in total card processing fees just last year.¹ When comparing these numbers to a typical restaurant that makes an average of just 3-5% pre-tax margin, it is easy to see how these two card brands' swipe fees averaging 2.22% the amount of each transaction can hamper restaurants' and other small businesses' ability to succeed.²

While there is still work to be done with respect to the enforcement of these requirements in the card-not-present space, thankfully, the Durbin Amendment has saved consumers billions of dollars over the last decade. Now, alternatives are readily available for debit card processing and our restaurants are empowered to make rational business decisions between competing service providers. This type of healthy competition should be injected into the credit card market as well.

The Association appreciates the leadership on this issue demonstrated by Chair Durbin, Sen. Roger Marshall, Reps. Peter Welch, and Beth Van Duyne in their [recent letter to these two dominant card companies](#) requesting that they withdraw the \$1.2 billion in credit card swipe fee increases set to take effect at the end of April. We agree with the argument that “these fees... are ultimately borne by consumers in the form of higher prices for goods and services” and that further increasing these rates will only add to the “already high costs consumers are facing” today.³ Unfortunately, the two dominant networks chose to move forward with their newest set of interchange fee hikes during a time when American consumers and merchants alike are facing the highest rate of inflation in decades. And we were further disheartened to learn that one of these card companies has recently promoted that it lowered swipe fees for small businesses across the United States, but in reality, most small restaurants do not qualify for these fee decreases.

In sum, the Association once again applauds the Committee for holding this important hearing as a first step toward reeling in the egregiously anticompetitive practices maintained by the credit card industry and the big banks on Wall Street. Restaurants stand ready to work with Members of this Committee to establish a healthier level of competition within the nation's payment ecosystem.

Sincerely,



Brennan Duckett
Director, Technology and Innovation Policy

¹ *The Nilson Report*, Issue 1216, March 2022

² *The Nilson Report*, Issue 1216, March 2022

³ <https://www.durbin.senate.gov/imo/media/doc/Letter%20to%20Mr.%20Kelly%20and%20Mr.%20Miebach%20-%20April%2015,%202022.pdf>