Congress of the United States  
Washington, DC 20510  

July 26, 2013

The Honorable Ben S. Bernanke  
Chairman  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue NW  
Washington, DC 20551

Dear Chairman Bernanke:

We write to request that the Federal Reserve Board carefully review the interchange fee regulation proposal announced this week by the European Commission, and we urge the Board to incorporate the Commission’s analysis and recommendations, including its recommended 0.2% debit interchange cap, into the Board’s standards for assessing the reasonableness of debit interchange fees charged within the United States.

Earlier this week, the European Commission proposed to carefully regulate the debit and credit card interchange fees that Visa and MasterCard require merchants to pay to card-issuing banks. After conducting a thorough multi-year investigation, the Commission concluded that interchange fees are unjustifiably high, that they are impeding innovation and market competition, and that they result in higher retail prices that harm consumers. The Commission ultimately determined that debit and credit interchange fee rates in the European Union should be regulated and capped at 0.2% and 0.3% respectively. The Commission pointed out that Visa and MasterCard have already voluntarily adopted these rate caps for many transactions within the EU.

For years, we have sounded the alarm about unregulated interchange fees and the harms they pose to consumers and the American economy. Our nation is undergoing a transition from a cash and check-based currency system to a system where American dollars are primarily transacted electronically. While this transition has brought many benefits, it has also resulted in the delegation of control over our sovereign currency to private entities. The electronic payments marketplace is dominated by a few giant card networks and banks, and these companies have a history of using their market power to increase their fee revenue whenever they can. The interchange system was designed by the banks and card networks to skim a fee out of every electronic transaction while avoiding transparency and competition. These ever-rising fees generate tens of billions of dollars per year for the banks, and consumers ultimately pay the price. Central banks and antitrust regulators throughout the world have taken proactive steps to ensure competition, transparency and fairness during this shift from paper to electronic currency, but regulators in the United States have been slow to act and have fallen behind the global curve. We believe regulators in our country must act affirmatively to rein in abusive fees and practices in the electronic payments system, and we hope that the European Commission’s announcement serves as a wake-up call to action.
As the primary Senate and House proponents of Section 1075 of the Dodd-Frank Act, commonly known as the Durbin Amendment, we note with particular interest that the Commission’s recommended debit interchange cap of 0.2% aligns with the 7 cent debit interchange “safe harbor” cap initially recommended by the Board in its proposed Regulation II rulemaking. (The Board found that the average debit transaction amount is $38.03). We have previously made clear our disappointment that the Board significantly weakened its proposed rulemaking and contravened the language of the statute by establishing a cap of approximately 24 cents in its final rule. In setting this unreasonably high 24-cent cap, the Board gave its regulatory blessing for MasterCard and Visa to dramatically increase interchange fees charged on small dollar debit transactions. The card networks promptly did so, to the detriment of consumers, simply because their market power enabled them to get away with it. The Commission’s recommendation of an EU-wide 0.2% debit cap is compelling evidence that the Board formulated reasonable debit interchange limits consistent with the law in its proposed rulemaking and failed to do so in its final rulemaking. We urge the Board to adjust its regulations to reflect the Commission’s proposal, particularly as applied to small dollar debit transactions.

We recognize that the multi-trillion dollar financial industry is fiercely resistant to any interchange reform that might reduce their lucrative revenue stream. We are quite familiar with the aggressive lobbying and scare tactics employed by the financial industry when it comes to interchange. But we are encouraged by the strength that the European Commission has demonstrated in the face of this industry pressure. For example, European Union Commissioner Michel Barnier has called out MasterCard for waging an “insane” lobbying campaign against the Commission’s proposal that included “biased information, solicited interviews, false information” and other problematic tactics. Similarly, Joaquin Almunia, Vice President of the European Commission responsible for Competition Policy, said on Wednesday that

I am aware that there are vested interests which have been fighting the idea of limiting interchange fees, trying to scare consumers that the impact of the regulation would be higher cardholder fees and no decrease in retail prices. However, there is every reason to believe that consumers will benefit from the disappearance of a hidden cost on their bills, since retailers compete on transparent retail prices. By contrast, there is absolutely no reason why lower interchange fees should translate into higher cardholder fees, because while interchange fees are hidden, banks compete on transparent cardholder fees.

We hope the Commission’s strong stand in favor of transparency and competition, and its refreshing resistance to financial industry spin, will be emulated by the Board and by other regulators as you oversee the American electronic payments system. American consumers and our overall economy will benefit as a result.

Thank you for your consideration.

Sincerely,

Richard J. Durbin
United States Senator

Peter Welch
Member of Congress