

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

EXXON MOBIL CORPORATION

Plaintiff

v.

VISA INC., VISA U.S.A INC.,
VISA INTERNATIONAL SERVICE
ASSOCIATION, MASTERCARD
INCORPORATED, and MASTERCARD
INTERNATIONAL INCORPORATED

Defendants

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CASE NO. _____

PLAINTIFF’S ORIGINAL COMPLAINT

Plaintiff Exxon Mobil Corporation (“Plaintiff”) complains of Visa Inc., Visa U.S.A. Inc., Visa International Service Association (collectively, “Visa”), MasterCard Incorporated and MasterCard International Incorporated (collectively, “MasterCard”) (Visa and MasterCard collectively referred to as the “Networks” or “Defendants”) as follows:

INTRODUCTION AND NATURE OF THE ACTION

1. The Defendants have conspired, combined, and made agreements to restrain trade. Visa and MasterCard manage, coordinate, and govern a combination with member banks, including BA Merchant Services LLC (f/k/a National Processing, Inc.), Bank of America Corporation, Barclays Bank of Delaware, Capital One, N.A., Capital One Bank (USA), N.A., Capital One Financial Corporation, Chase Bank USA, N.A., JPMorgan Chase Bank, N.A., JPMorgan Chase & Co., Citibank N.A., Citigroup, Inc., Fifth Third Bancorp, First National Bank of Omaha, HSBC Finance Corporation, HSBC North America Holdings, Inc., PNC Financial Services Group, Inc., SunTrust Banks, Inc., SunTrust Bank, Texas Independent Bancshares, Inc., Wells Fargo & Company, and Wells Fargo Merchant Services, LLC (collectively, the “Banks”),

in restraint of trade within the meaning of the Sherman Antitrust Act. The Banks are (and their predecessors were) members of both the Visa and MasterCard networks, and as such issue both Visa-branded and MasterCard-branded credit and debit cards. The Banks are independently owned and managed banks and financial institutions that issue credit and debit cards to consumers, but they have agreed to abide by the rules of Visa and MasterCard that forbid the Banks' competing for merchant acceptance of the credit and debit cards they issue.

2. The Banks issue two main categories of payment cards: credit cards and debit cards. Credit cards are payment cards that allow consumers to make purchases on credit and include charge cards that the full balance to be paid upon receipt of the billing statement. Debit cards, on the other hand, function more like checks and either draw quickly from a consumer's demand account or are prepaid.

3. The Banks earn income on credit cards through fees and charges to the cardholder, interest charges on the amount of credit being extended, and from fees and penalties for late payment on card balances. Banks earn income on debit cards through the opportunity to use the funds on deposit in the related accounts and on various fees associated with those accounts. The Banks also earn income on credit and debit cards through the interchange fees paid by merchants. Interchange fees are imposed on merchants by Visa and MasterCard for the privilege of accepting a credit or debit card as a means of payment, and such fees are paid directly by merchants to the bank that issued the card used as a form of payment. The profitability to issuing banks of credit and debit cards directly increases with the size and frequency of transactions in which the cards they have issued are used.

4. The Banks compete with one another to issue cards to consumers (sometimes referred to hereafter as "cardholders") who use those cards to purchase goods and services from

merchants. For example, issuing banks offer cards with various combinations of interest rates, annual fees, cash back rewards, points, and other features to compete for cardholders and to induce cardholders to use their cards. The member banks, including the Banks, do not, however, compete with each other for preferential acceptance by merchants at the point of sale as they should. Competition for such preferential treatment would have resulted in lower prices for both merchants and cardholders, including by giving discounts or other benefits to preferred cardholders at the point of sale. Such competition would also enhance the value of these cards to cardholders by stimulating innovation and providing more choices.

5. Visa and MasterCard have adopted nearly identical rules, which are agreed to by their member banks, including the Banks, and which are imposed on merchants that accept cards issued by those banks. These rules, or Competitive Restraints, eliminate competition among the member issuing banks for merchant acceptance of credit and debit cards. Nearly all card issuers in the United States are members of Visa and MasterCard, and as a consequence of their agreeing to rules that preclude them from independently competing for merchant acceptance, Visa and MasterCard and their members have obtained and maintained market power in the markets for merchant acceptance of credit and debit cards in the United States, and alternatively, in the markets for merchant acceptance and cardholder issuance of credit and debit cards in the United States. The exercise of this market power has enabled the Defendants to force merchants to pay excessive interchange and network fees. In this manner, the Defendants have unlawfully restrained and continue to unlawfully restrain competition in the credit card and debit card markets.

6. The principal rules that constitute the Competitive Restraints are the Honor All Cards Rules, the All Outlets Rules, the No Discount Rules, and the No Surcharge Rules. These

rules, individually and in combination, have (a) denied merchants the benefits of competition as to the terms, including a fee (if any), for the acceptance of cards of particular issuing banks and (b) preclude card issuers from competing for merchant acceptance of their cards. As a consequence, the setting of “default” interchange fees effectively fixes the price of acceptance at artificially high levels. Plaintiff has paid and continues to pay significantly higher costs to accept Visa-branded and MasterCard-branded credit and debit cards in payment for their sales than they would if the banks issuing such cards competed for merchant acceptance.

7. Because of their participation in the Competitive Restraints through their membership in Visa and MasterCard, the Banks do not compete for transaction volume by independently competing for merchant acceptance of the cards they issue.

8. While Visa and MasterCard nominally refer to their interchange fee schedules as setting “default” amounts, suggesting it is possible for issuing banks and merchants to bargain for different interchange rates, the Competitive Restraints prevent such bargained agreements. By setting and enforcing artificially high interchange fees applicable to all merchants that accept cards issued by their members, Visa and MasterCard act as agents of the Banks for the purposes of exercising the market power gained by their combinations.

9. If freed of the imposition of “default” interchange fees and the Competitive Restraints, issuing banks and merchants would operate in competitive markets, and merchants would benefit from such competition through lower interchange fees. Collectively set interchange fees do not protect merchants such as Plaintiff or cardholders, but rather allow issuing banks, such as the Banks, to charge interchange fees far in excess of their costs. In competitive markets, interchange fees would move to competitive levels, and the interchange fees paid by Plaintiff would be substantially below the amounts it has paid since January 1, 2004

if the fee would have been charged at all. And if merchants had the ability to use competitive strategies with respect to their acceptance of the cards of individual issuers, they would induce competition among issuing banks that would lead to far lower interchange fees. The resulting lack of competition for preferential treatment by merchants at the point of sale also increases costs, stifles innovation, limits choices, and reduces value for cardholders. The Competitive Restraints have thus harmed both merchants, who pay supracompetitive interchange fees, and cardholders, who both pay higher prices and receive card services of diminished quality and choice.

10. The Visa Defendants' and MasterCard Defendants' agreements not to compete and price-fixing schemes are naked restraints of trade and *per se* violations of the Sherman Antitrust Act.

11. Even if the Visa Defendants' and MasterCard Defendants' conduct is analyzed under the rule of reason, the substantial harm to competition caused by the cartels violates the Sherman Antitrust Act as an unreasonable restraint of trade. None of Defendants' anticompetitive rules and practices is reasonably necessary for the functioning of the credit and debit card networks. Any benefits that Defendants claim are achieved by these restraints of trade can be accomplished by means that are less destructive and harmful to competition. Even if Defendants' restraints have any procompetitive benefit, their anticompetitive effects—massive overcharges to merchants and their customers, higher prices and card services of diminished quality and choice for cardholders, and maintenance of substantial market power—vastly outweigh any such benefit.

12. The anticompetitive harm to merchants and consumers from Defendants' price fixing and other anticompetitive conduct has been staggering. During the Damages Period,

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