



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

May 30, 2023

American Bankers Association
1333 New Hampshire Ave. NW
Washington, D.C. 20036

Re: *In the Matter of Mastercard Incorporated*, FTC Docket No. C-4795

To whom it may concern:

Thank you for your comment regarding the Commission's complaint and proposed consent order in the above-titled proceeding against Mastercard Incorporated ("Mastercard"). The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration. As you know, in this matter, the Commission addressed conduct by Mastercard that has inhibited merchants' ability to route electronic debit transactions to competing payment card networks, in violation of the Durbin Amendment, 15 U.S.C. § 1693o-2(b)(1)(B), and its implementing regulation, Regulation II, 12 C.F.R. § 235.7(b). Specifically, the complaint alleges that Mastercard's policy with respect to payment tokens used in ecommerce illegally inhibited merchants from being able to route to competing payment card networks debit transactions made using an ewallet online or through an application on a mobile device.

We understand from your comment that you are concerned about consumer data security, innovation in the payments system and in payment products, and potential policy confusion regarding tokenization. As your comment recognizes, the Commission appreciates the importance of innovation and data security with regard to payment technologies.¹ The Commission is also tasked with enforcing the Durbin Amendment and Regulation II. Their routing provisions prohibit firms from inhibiting merchant routing choice and reflect a determination that these prohibitions will not stifle innovation.² The proposed order should not be read to discourage debit card tokenization or the use of similar technologies. Moreover, the proposed order expressly contemplates that detokenized account numbers be shared only with authorized entities that have undergone necessary testing. These entities routinely have access to and are responsible for safeguarding account numbers and similar data in the ordinary course of their businesses.

¹ See ABA Comment at 2-3.

² See 76 Fed. Reg. 43393, 43456 (July 20, 2011) (rejecting argument that applying Regulation II's routing provisions to emerging payment systems would stifle innovation, noting that the Durbin Amendment is intended "to provide merchants with enhanced routing choice . . . [and] more, not fewer, networks would be desirable."); *id.* at 43418 (rejecting an argument that "networks, issuers, and other processors would be less likely to innovate if they must share new technology with at least one other network").

Your comment also expresses concern that the proposed order does not account for competitive dynamics in the debit industry and potential competitive harm, including to community banks.³ As explained in the Analysis to Aid Public Comment, violations of the Electronic Funds Transfer Act (“EFTA”) provisions, like the Durbin Amendment, are strict liability offenses. As such, a showing of actual harm or anticompetitive effects is not necessary to establish a violation.⁴ Moreover, the proposed order imposes obligations only on Mastercard, not on the banks or credit unions that issue debit cards; thus, there should be no harm to banks or credit unions. Moreover, as noted above, the proposed order should not be read to discourage tokenization or the use of similar technologies to prevent fraud.

After review of all comments and careful consideration of the issues raised, the Commission has determined that the public interest is served by issuing the proposed consent order in final form. A copy of the final Decision and Order and other relevant materials are available from the Commission’s website at: <http://www.ftc.gov>.

It assists the Commission’s analysis to hear from a variety of sources in its law enforcement work. Thank you for your interest in this matter.

By direction of the Commission.

April J. Tabor
Secretary

³ See ABA Comment at 3-7.

⁴ Analysis to Aid Public Comment at 3 & nn. 5-6.



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

May 30, 2023

Kim Ford
Senior Vice President, Government Relations
Fiserv, Inc.
255 Fiserv Drive,
Brookfield, WI 53045

Re: *In the Matter of Mastercard Incorporated*, FTC Docket No. C-4795

Dear Ms. Ford:

Thank you for your comment regarding the Commission's complaint and proposed consent order in the above-titled proceeding against Mastercard Incorporated ("Mastercard"). The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration. As you know, in this matter, the Commission addressed conduct by Mastercard that has inhibited merchants' ability to route electronic debit transactions to competing payment card networks, in violation of the Durbin Amendment, 15 U.S.C. § 1693o-2(b)(1)(B), and its implementing regulation, Regulation II, 12 C.F.R. § 235.7(b). Specifically, the complaint alleges that Mastercard's policy with respect to payment tokens used in ecommerce illegally inhibited merchants from being able to route to competing payment card networks debit transactions made using an ewallet online or through an application on a mobile device.

Your comment states that Fiserv and others across the payments industry welcome the Commission's interest in remedying violations of Regulation II.¹ Your comment also recommends that the Commission modify the proposed order to require that Mastercard inform a competing network whether cryptogram validation was successful and whether a transaction complies with domain restriction controls, or whether a transaction failed either test, when detokenizing to provide a primary account number ("PAN") for routing.² Your comment expresses concern that, if Mastercard does not provide this information, "the most likely result is that [i]ssuers would reject those transactions outright," or that "the transaction will still have a lower chance of approval than an identical transaction sent over the Mastercard network."³

Mastercard's policy of refusing to detokenize for card-not-present (ecommerce) debit transactions, including those using an ewallet, has made it impossible for merchants to route such transactions to competing networks. The proposed order will advance merchant routing choice

¹ Fiserv Comment at 1.

² Fiserv Comment at 11-12.

³ Fiserv Comment at 7-8.

by putting an end to that policy. The proposed order should not be construed as an approval or endorsement of any policy or practice that the order does not specifically address, including the withholding of cryptogram or domain control validation or data other than the PAN.

Other public comments on the proposed order have noted that there is a lack of data about merchants' real-world experience with decline rates when routing to competing networks in the card-not-present context.⁴ We anticipate that following the Federal Reserve Board's recent rulemaking clarifying Regulation II, which confirms that card-not-present transactions are a type of transaction subject to Regulation II's exclusivity prohibition,⁵ competing networks will increasingly be enabled to process card-not-present transactions—thereby giving merchants more experience with routing card-not-present transactions to competing networks. The Commission will remain attentive to any conduct that inhibits merchant routing choice. If, in the future, you have information concerning your or other merchants' ability to route tokenized card-not-present transactions to competing networks, we encourage you to provide it to Commission staff.

After review of all comments and careful consideration of the issues raised, the Commission has determined that the public interest is served by issuing the proposed consent order in final form. A copy of the final Decision and Order and other relevant materials are available from the Commission's website at: <http://www.ftc.gov>.

It assists the Commission's analysis to hear from a variety of sources in its law enforcement work. Thank you for your interest in this matter.

By direction of the Commission.

April J. Tabor
Secretary

⁴ Merchant Advisory Group (MAG) Comment at 6, available at <https://www.regulations.gov/comment/FTC-2023-0010-0009>.

⁵ 87 Fed. Reg. 61217 (Oct. 11, 2022) (specifying that “the requirement that each debit card transaction must be able to be processed on at least two unaffiliated payment card networks applies to card-not-present transactions”).



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

May 30, 2023

Christine Pollack
Vice President, Government Relations
FMI – The Food Industry Association
2345 Crystal Drive, Suite 800
Arlington, VA 22202

Re: *In the Matter of Mastercard Incorporated*, FTC Docket No. C-4795

Dear Ms. Pollack:

Thank you for your comment regarding the Commission's complaint and proposed consent order in the above-titled proceeding against Mastercard Incorporated ("Mastercard"). The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration. As you know, in this matter, the Commission addressed conduct by Mastercard that has inhibited merchants' ability to route electronic debit transactions to competing payment card networks, in violation of the Durbin Amendment, 15 U.S.C. § 1693o-2(b)(1)(B), and its implementing regulation, Regulation II, 12 C.F.R. § 235.7(b). Specifically, the complaint alleges that Mastercard's policy with respect to payment tokens used in ecommerce illegally inhibited merchants from being able to route to competing payment card networks debit transactions made using an ewallet online or through an application on a mobile device.

Your comment states that the Commission "is taking an important step to protect merchant routing rights," and that it is "correct to take enforcement actions against Mastercard to require the immediate change of its operating rules to allow merchants access to a second network for ecommerce tokenized transactions."¹ Your comment also expresses concern regarding what FMI has "heard will soon be Mastercard's [practice]" of not sending data such as cryptogram and domain control verification when detokenizing to provide a primary account number ("PAN") for routing.² Your comment suggests that "[t]his can result in a greater likelihood that the bank will reject the transaction seeing it as suspicious or higher risk," and you encourage the Commission to continue its investigation into this issue.³

Mastercard's policy of refusing to detokenize for card-not-present (ecommerce) debit transactions, including those using an ewallet, has made it impossible for merchants to route such transactions to competing networks. The proposed order will advance merchant routing choice

¹ FMI Comment at 1-2.

² FMI Comment at 2.

³ FMI Comment at 2.

by putting an end to that policy. The proposed order should not be construed as an approval or endorsement of any policy or practice that the order does not specifically address, including the withholding of cryptogram or domain control validation or data other than the PAN.

Other public comments on the proposed order have noted that there is a lack of data about merchants' real-world experience with decline rates when routing to competing networks in the card-not-present context.⁴ We anticipate that following the Federal Reserve Board's recent rulemaking clarifying Regulation II, which confirms that card-not-present transactions are a type of transaction subject to Regulation II's exclusivity prohibition,⁵ competing networks will increasingly be enabled to process card-not-present transactions—thereby giving merchants more experience with routing card-not-present transactions to competing networks. The Commission will remain attentive to any conduct that inhibits merchant routing choice. If, in the future, you have information concerning your or other merchants' ability to route tokenized card-not-present transactions to competing networks, we encourage you to provide it to Commission staff.

After review of all comments and careful consideration of the issues raised, the Commission has determined that the public interest is served by issuing the proposed consent order in final form. A copy of the final Decision and Order and other relevant materials are available from the Commission's website at: <http://www.ftc.gov>.

It assists the Commission's analysis to hear from a variety of sources in its law enforcement work. Thank you for your interest in this matter.

By direction of the Commission.

April J. Tabor
Secretary

⁴ Merchant Advisory Group (MAG) Comment at 6, available at <https://www.regulations.gov/comment/FTC-2023-0010-0009>.

⁵ 87 Fed. Reg. 61217 (Oct. 11, 2022) (specifying that “the requirement that each debit card transaction must be able to be processed on at least two unaffiliated payment card networks applies to card-not-present transactions”).



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

May 30, 2023

David Hicks
Asheville, NC 28804

Re: *In the Matter of Mastercard Incorporated*, FTC Docket No. C-4795

Dear Mr. Hicks:

Thank you for your comment regarding the Commission's complaint and proposed consent order in the above-titled proceeding against Mastercard Incorporated ("Mastercard"). The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration. As you know, in this matter, the Commission addressed conduct by Mastercard that has inhibited merchants' ability to route electronic debit transactions to competing payment card networks, in violation of the Durbin Amendment, 15 U.S.C. § 1693o-2(b)(1)(B), and its implementing regulation, Regulation II, 12 C.F.R. § 235.7(b). Specifically, the complaint alleges that Mastercard's policy with respect to payment tokens used in ecommerce illegally inhibited merchants from being able to route to competing payment card networks debit transactions made using an ewallet online or through an application on a mobile device.

We appreciate your support of the proposed order's analysis and proposed remedy, as well as your suggestions. With respect to your suggestion and question regarding the ten-year term of the proposed order, all consent orders issued by the Commission include a date on which the order will terminate. A ten-year term is not uncommon and is appropriate in this matter, including because of the nature of the relevant industry.

Regarding your suggestion that the proposed order apply to credit card processors, the provisions of the Durbin Amendment and Regulation II that Mastercard is alleged to have violated apply specifically to debit transactions, and not to credit card transactions. *See* 15 U.S.C. § 1693o-2(b)(1)(B); 12 C.F.R. § 235.7(b).

Finally, as you note, debit transaction routing is complex, and the Commission will remain attentive to any conduct that inhibits merchant routing choice.

After review of all comments and careful consideration of the issues raised, the Commission has determined that the public interest is served by issuing the proposed consent order in final form. A copy of the final Decision and Order and other relevant materials are available from the Commission's website at: <http://www.ftc.gov>.

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April J. Tabor
Secretary



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WASHINGTON, D.C. 20580

Office of the Secretary

May 30, 2023

Julian Morris, Senior Scholar
International Center for Law & Economics
1104 NW 15th Ave., Suite 300
Portland, OR 97209

Re: *In the Matter of Mastercard Incorporated*, FTC Docket No. C-4795

Dear Mr. Morris:

Thank you for your comment regarding the Commission's complaint and proposed consent order in the above-titled proceeding against Mastercard Incorporated ("Mastercard"). The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration. As you know, in this matter, the Commission addressed conduct by Mastercard that has inhibited merchants' ability to route electronic debit transactions to competing payment card networks, in violation of the Durbin Amendment, 15 U.S.C. § 1693o-2(b)(1)(B), and its implementing regulation, Regulation II, 12 C.F.R. § 235.7(b). Specifically, the complaint alleges that Mastercard's policy with respect to payment tokens used in ecommerce illegally inhibited merchants from being able to route to competing payment card networks debit transactions made using an ewallet online or through an application on a mobile device.

We understand from your comment that you are concerned about the security of single-message payments, as well as the future development of innovative payment systems that may reduce fraud and theft.¹ The Commission appreciates the importance of innovation and data security with regard to payment technologies. The Commission is also tasked with enforcing the Durbin Amendment and Regulation II. Their routing provisions prohibit firms from inhibiting merchant routing choice and reflect a determination that these prohibitions will not stifle innovation.² Moreover, the proposed order expressly contemplates that detokenized account numbers be shared only with authorized entities that have undergone necessary testing. These entities routinely have access to and are responsible for safeguarding account numbers and similar data in the ordinary course of their businesses.

¹ See ICLE Comment at 1.

² See 76 Fed. Reg. 43393, 43456 (July 20, 2011) (rejecting argument that applying Regulation II's routing provisions to emerging payment systems would stifle innovation, noting that the Durbin Amendment is intended "to provide merchants with enhanced routing choice . . . [and] more, not fewer, networks would be desirable."); *id.* at 43418 (rejecting an argument that "networks, issuers, and other processors would be less likely to innovate if they must share new technology with at least one other network").

After review of all comments and careful consideration of the issues raised, the Commission has determined that the public interest is served by issuing the proposed consent order in final form. A copy of the final Decision and Order and other relevant materials are available from the Commission's website at: <http://www.ftc.gov>.

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April J. Tabor
Secretary



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Office of the Secretary

May 30, 2023

John Drechny, CEO
The Merchant Advisory Group
4248 Park Glen Road
Minneapolis, MN 55416

Re: *In the Matter of Mastercard Incorporated*, FTC Docket No. C-4795

Dear Mr. Drechny:

Thank you for your comment regarding the Commission's complaint and proposed consent order in the above-titled proceeding against Mastercard Incorporated ("Mastercard"). The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration. As you know, in this matter, the Commission addressed conduct by Mastercard that has inhibited merchants' ability to route electronic debit transactions to competing payment card networks, in violation of the Durbin Amendment, 15 U.S.C. § 1693o-2(b)(1)(B), and its implementing regulation, Regulation II, 12 C.F.R. § 235.7(b). Specifically, the complaint alleges that Mastercard's policy with respect to payment tokens used in ecommerce illegally inhibited merchants from being able to route to competing payment card networks debit transactions made using an ewallet online or through an application on a mobile device.

Your comment states that the Merchant Advisory Group ("MAG") applauds the Commission's work and strongly supports the proposed order.¹ Your comment also recommends that the Commission modify the proposed order to "require specifically that Mastercard not withhold the results of its cryptogram and domain control validation process" when detokenizing to provide a primary account number ("PAN") for routing.²

Mastercard's policy of refusing to detokenize for card-not-present (ecommerce) debit transactions, including those using an ewallet, has made it impossible for merchants to route such transactions to competing networks. The proposed order will advance merchant routing choice by putting an end to that policy. The proposed order should not be construed as an approval or endorsement of any policy or practice that the order does not specifically address, including the withholding of cryptogram or domain control validation or data other than the PAN.

Your comment notes that there is a "paucity of data about merchants' real-world experience with decline rates when routing to unaffiliated [*i.e.*, competing] networks in the card-

¹ MAG Comment at 1.

² MAG Comment at 5.

not-present context.”³ We anticipate that following the Federal Reserve Board’s recent rulemaking clarifying Regulation II, which confirms that card-not-present transactions are a type of transaction subject to Regulation II’s exclusivity prohibition,⁴ competing networks will increasingly be enabled to process card-not-present transactions—thereby giving merchants more experience with routing card-not-present transactions to competing networks. The Commission will remain attentive to any conduct that inhibits merchant routing choice. If, in the future, you have information concerning your or other merchants’ ability to route tokenized card-not-present transactions to competing networks, we encourage you to provide it to Commission staff.

Your comment also requests clarification of the proposed order’s definition of “Authorized.”⁵ The proposed order defines “Authorized” as a “bona fide participant in the transaction flow of an Electronic Debit Transaction that has successfully completed any necessary testing with Mastercard and does not include actors attempting fraudulent Electronic Debit Transactions.”⁶ As specified in the proposed order, Mastercard is required to furnish PANs to Authorized Persons. Given the sensitive nature of this information, this requirement does not apply to any actor attempting to defraud a consumer account. Your comment expresses concern that Mastercard could use the reference to “testing” to circumvent the proposed order’s requirements. Testing with a token service provider like Mastercard is standard industry practice and necessary for successful completion of the PAN provisioning contemplated by the proposed order. Unreasonable testing requirements designed to thwart merchant routing choice would be inconsistent with Paragraph II.C, which requires Mastercard to comply with the requirements of 12 C.F.R. § 235.7(b).

Regarding the definition of “Mastercard Token” in the proposed order, your comment expresses concern that Mastercard may contract with a third-party token service provider to erect barriers to merchant routing choice.⁷ The proposed order defines “Mastercard Token” as “a Payment Token generated by a Token Service Provider owned by, operated by, or affiliated with Mastercard.”⁸ Individual banks and credit unions select the token service provider for the debit cards that they issue. If an issuer contracts with Mastercard to serve as its token service provider, and Mastercard then subcontracts with a separate entity to fulfill that contract, such subcontractor may reasonably be understood to be “affiliated” with Mastercard under the definition of “Mastercard Token.”

Regarding the definition of “PAN” in the proposed order, your comment suggests that the order include additional language to address a possibility that the industry may evolve away from PANs as the primary means of accessing underlying accounts.⁹ The proposed order defines

³ MAG Comment at 6.

⁴ 87 Fed. Reg. 61217 (Oct. 11, 2022) (specifying that “the requirement that each debit card transaction must be able to be processed on at least two unaffiliated payment card networks applies to card-not-present transactions”).

⁵ MAG Comment at 6.

⁶ Proposed Order ¶ I.C.

⁷ MAG Comment at 6-7.

⁸ Proposed Order ¶ I.I.

⁹ MAG Comment at 7.

“PAN” as “the primary account number associated with a Debit Card holder’s account.”¹⁰ When tokens are used in debit transactions, it is the primary account number that is tokenized, and it is the primary account number that is detokenized. The definition, therefore, is appropriately tied to the PAN. As noted above, however, the Commission will remain attentive to any conduct that inhibits merchant routing choice, including through the use of new technology. Your comment also expresses concern that the PAN associated with a given account may be replaced, and that Mastercard might deliver the outdated PAN. However, an outdated account number would not meet the definition of PAN under the proposed order; such outdated number is no longer “the primary account number associated with a Debit Card holder’s account.”

Finally, your comment suggests that the prior notice requirement contained in Section IV of the proposed order could be misread to imply that debit products that require routing to Mastercard may be compliant with Regulation II.¹¹ Your comment correctly notes, however, that the prior notice requirement should not be read to imply any judgment about the legality of any debit product. This provision is designed to enhance the Commission’s ability to monitor Mastercard’s compliance with the proposed order as Mastercard introduces new products. The prior notice requirement does not expand or restrict Mastercard’s other obligations under the proposed order and Regulation II. Indeed, Paragraph II.C of the proposed order requires Mastercard to comply with the requirements of 12 C.F.R. § 235.7(b).

After review of all comments and careful consideration of the issues raised, the Commission has determined that the public interest is served by issuing the proposed consent order in final form. A copy of the final Decision and Order and other relevant materials are available from the Commission’s website at: <http://www.ftc.gov>.

It assists the Commission’s analysis to hear from a variety of sources in its law enforcement work. Thank you for your interest in this matter.

By direction of the Commission.

April J. Tabor
Secretary

¹⁰ Proposed Order at ¶ I.L.

¹¹ MAG Comment at 7.



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

May 30, 2023

Merchants Payments Coalition
325 7th St NW #1100
Washington, D.C. 20004

Re: *In the Matter of Mastercard Incorporated*, FTC Docket No. C-4795

Dear Sir or Madam:

Thank you for your comment regarding the Commission's complaint and proposed consent order in the above-titled proceeding against Mastercard Incorporated ("Mastercard"). The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration. As you know, in this matter, the Commission addressed conduct by Mastercard that has inhibited merchants' ability to route electronic debit transactions to competing payment card networks, in violation of the Durbin Amendment, 15 U.S.C. § 1693o-2(b)(1)(B), and its implementing regulation, Regulation II, 12 C.F.R. § 235.7(b). Specifically, the complaint alleges that Mastercard's policy with respect to payment tokens used in ecommerce illegally inhibited merchants from being able to route to competing payment card networks debit transactions made using an ewallet online or through an application on a mobile device.

Your comment states that the Merchants Payments Coalition ("MPC") appreciates the Commission's work to investigate these issues and seek reform of Mastercard's practices.¹ Your comment also recommends that the Commission broaden the proposed order to require Mastercard to confirm whether the cryptogram is authentic and the transaction complies with domain restrictions when detokenizing to provide a primary account number ("PAN") for routing.² Your comment expresses concern that, if Mastercard does not do so, "it will lower the transaction's fraud score and the odds of it being approved."³

Mastercard's policy of refusing to detokenize for card-not-present (ecommerce) debit transactions, including those using an ewallet, has made it impossible for merchants to route such transactions to competing networks. The proposed order will advance merchant routing choice by putting an end to that policy. The proposed order should not be construed as an approval or endorsement of any policy or practice that the order does not specifically address, including the withholding of cryptogram or domain control validation or data other than the PAN.

¹ MPC Comment at 1.

² MPC Comment at 10.

³ MPC Comment at 6.

Other public comments on the proposed order have noted that there is a lack of data about merchants' real-world experience with decline rates when routing to competing networks in the card-not-present context.⁴ We anticipate that following the Federal Reserve Board's recent rulemaking clarifying Regulation II, which confirms that card-not-present transactions are a type of transaction subject to Regulation II's exclusivity prohibition,⁵ competing networks will increasingly be enabled to process card-not-present transactions—thereby giving merchants more experience with routing card-not-present transactions to competing networks. The Commission will remain attentive to any conduct that inhibits merchant routing choice. If, in the future, you have information concerning your or other merchants' ability to route tokenized card-not-present transactions to competing networks, we encourage you to provide it to Commission staff.

After review of all comments and careful consideration of the issues raised, the Commission has determined that the public interest is served by issuing the proposed consent order in final form. A copy of the final Decision and Order and other relevant materials are available from the Commission's website at: <http://www.ftc.gov>.

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April J. Tabor
Secretary

⁴ Merchant Advisory Group (MAG) Comment at 6, available at <https://www.regulations.gov/comment/FTC-2023-0010-0009>.

⁵ 87 Fed. Reg. 61217 (Oct. 11, 2022) (specifying that “the requirement that each debit card transaction must be able to be processed on at least two unaffiliated payment card networks applies to card-not-present transactions”).



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WASHINGTON, D.C. 20580

Office of the Secretary

May 30, 2023

Karla Ahlert, Chief Financial Officer
RaceTrac, Inc.
200 Galleria Parkway SE, Suite 900
Atlanta, GA 30339

Re: *In the Matter of Mastercard Incorporated*, FTC Docket No. C-4795

Dear Ms. Ahlert:

Thank you for your comment regarding the Commission's complaint and proposed consent order in the above-titled proceeding against Mastercard Incorporated ("Mastercard"). The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration. As you know, in this matter, the Commission addressed conduct by Mastercard that has inhibited merchants' ability to route electronic debit transactions to competing payment card networks, in violation of the Durbin Amendment, 15 U.S.C. § 1693o-2(b)(1)(B), and its implementing regulation, Regulation II, 12 C.F.R. § 235.7(b). Specifically, the complaint alleges that Mastercard's policy with respect to payment tokens used in ecommerce illegally inhibited merchants from being able to route to competing payment card networks debit transactions made using an ewallet online or through an application on a mobile device.

Your comment states that RaceTrac, Inc. applauds and appreciates the Commission's efforts to enforce Regulation II.¹ Your comment also suggests that, while the Commission's investigation is "an important and positive development," the proposed consent order should be expanded.² Specifically, your comment recommends that Mastercard be required to respond to detokenization requests by providing the card number (known as the funding primary account number, "FPAN," or simply the primary account number, "PAN"), the digital card number ("DPAN"), the device name, and confirmation that the token was decrypted properly.³ Your comment expresses concern that the absence of confirmation that the token has passed either the cryptogram or domain control validation may cause a transaction to be declined.⁴

Mastercard's policy of refusing to detokenize for card-not-present (ecommerce) debit transactions, including those using an ewallet, has made it impossible for merchants to route such transactions to competing networks. The proposed order will advance merchant routing choice

¹ RaceTrac comment at 1.

² RaceTrac comment at 3.

³ RaceTrac comment at 4.

⁴ RaceTrac comment at 2 n.2, 4.

by putting an end to that policy. The proposed order should not be construed as an approval or endorsement of any policy or practice that the order does not specifically address, including the withholding of confirmation that the token has passed either the cryptogram or domain control validation or data other than the PAN.

Other public comments on the proposed order have noted that there is a lack of data about merchants' real-world experience with decline rates when routing to competing networks in the card-not-present context.⁵ We anticipate that following the Federal Reserve Board's recent rulemaking clarifying Regulation II, which confirms that card-not-present transactions are a type of transaction subject to Regulation II's exclusivity prohibition,⁶ competing networks will increasingly be enabled to process card-not-present transactions—thereby giving merchants more experience with routing card-not-present transactions to competing networks. The Commission will remain attentive to any conduct that inhibits merchant routing choice. If, in the future, you have information concerning your or other merchants' ability to route tokenized card-not-present transactions to competing networks, we encourage you to provide it to Commission staff.

After review of all comments and careful consideration of the issues raised, the Commission has determined that the public interest is served by issuing the proposed consent order in final form. A copy of the final Decision and Order and other relevant materials are available from the Commission's website at: <http://www.ftc.gov>.

It assists the Commission's analysis to hear from a variety of sources in its law enforcement work. Thank you for your interest in this matter.

By direction of the Commission.

April J. Tabor
Secretary

⁵ Merchant Advisory Group (MAG) Comment at 6, available at <https://www.regulations.gov/comment/FTC-2023-0010-0009>.

⁶ 87 Fed. Reg. 61217 (Oct. 11, 2022) (specifying that “the requirement that each debit card transaction must be able to be processed on at least two unaffiliated payment card networks applies to card-not-present transactions”).



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WASHINGTON, D.C. 20580

Office of the Secretary

May 30, 2023

Brian A. Dodge, President
Retail Industry Leaders Association
900 M Street SE, Suite 700
Washington, D.C. 20003

Re: *In the Matter of Mastercard Incorporated*, FTC Docket No. C-4795

Dear Mr. Dodge:

Thank you for your comment regarding the Commission's complaint and proposed consent order in the above-titled proceeding against Mastercard Incorporated ("Mastercard"). The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration. As you know, in this matter, the Commission addressed conduct by Mastercard that has inhibited merchants' ability to route electronic debit transactions to competing payment card networks, in violation of the Durbin Amendment, 15 U.S.C. § 1693o-2(b)(1)(B), and its implementing regulation, Regulation II, 12 C.F.R. § 235.7(b). Specifically, the complaint alleges that Mastercard's policy with respect to payment tokens used in ecommerce illegally inhibited merchants from being able to route to competing payment card networks debit transactions made using an ewallet online or through an application on a mobile device.

Your comment states that the Retail Industry Leaders Association ("RILA") applauds the Commission's efforts to identify and pursue Mastercard's Durbin Amendment violations insofar as the proposed order will put a stop to one such violation.¹ Your comment also addresses several specific provisions in the proposed order and suggests that the Commission broaden these provisions.

First, your comment addresses the prior notice requirement contained in Section IV of the proposed order. This provision is designed to enhance the Commission's ability to monitor Mastercard's compliance with the proposed order as Mastercard introduces new products. While noting that the requirement is a "very good idea," your comment suggests that it could be misread to imply that debit products that require routing to Mastercard may be compliant with Regulation II.² The prior notice requirement should not be read to imply any judgment about the legality of any debit product, and it does not expand or restrict Mastercard's other obligations under the proposed order and Regulation II. Indeed, Paragraph II.C of the proposed order requires Mastercard to comply with the requirements of 12 C.F.R. § 235.7(b).

¹ RILA Comment at 1.

² RILA Comment at 4-5.

Relatedly, your comment expresses concern that defining “New Debit Product” as one for which “Mastercard must inform Acquirers and Issuers of the new product or service to ensure the completion of Electronic Debit Transactions using that product or service” may allow Mastercard to circumvent the prior notice requirement.³ Informing acquirers and issuers of new products and services is, however, standard industry practice in advance of the launch of such products and services. Finally, your comment suggests that the prior notice requirement should be extended to ten years.⁴ As noted above, the prior notice requirement does nothing to expand or restrict Mastercard’s other obligations under the proposed order and Regulation II. Considering this, the requirement has an appropriate scope and length, and the Commission will not hesitate to address any violation of the order or of Regulation II after the term of the prior notice requirement expires.

Second, your comment expresses concern that Paragraph II.C of the proposed order provides little protection for merchants because it “does no more than incorporate one of Mastercard’s current regulatory obligations.”⁵ Your comment suggests that a violation of Paragraph II.C should “involve some serious penalty,” something “beyond the extension of the same Consent Order.”⁶

Paragraph II.C of the proposed order establishes significant protections for merchants and potential penalties for Mastercard. The proposed order’s incorporation of 12 C.F.R. § 235.7(b) and its official commentary is not merely a redundant provision carrying with it nothing more than the status quo. Rather, with this obligation incorporated into the proposed order—including its use of the word “any,” as your comment urges⁷—Mastercard could incur liability under 15 U.S.C. § 45(l) separately for each violation of 12 C.F.R. § 235.7(b).⁸ Any such violation could result in significant civil penalties.⁹

Third, your comment recommends that the proposed order be modified to require Mastercard “to respond to a detokenization request with all the same information that it provides to issuers when routing a detokenized transaction over its own network.”¹⁰ Your comment references other public comments addressing this issue and suggests that “there is a greater than normal chance that the issuer’s system will decline” transactions accompanied by the primary

³ RILA Comment at 5-6; Proposed Order at ¶ I.K.

⁴ RILA Comment at 2.

⁵ RILA Comment at 6.

⁶ RILA Comment at 7.

⁷ Proposed Order at ¶ II.C. (“Respondent shall comply with the requirements of 12 C.F.R. § 235.7(b) and its official commentary, which, as of November 1, 2022, require that Respondent shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of *any* Person that accepts or honors debit cards for payments to direct the routing of Electronic Debit Transactions for processing over *any* Payment Card Network that may process such transactions.”) (emphasis added).

⁸ 15 U.S.C. § 45(l) (“Each separate violation of such an order shall be a separate offense[.]”).

⁹ *Id.* (providing a civil penalty of up to \$10,000 for “each violation”).

¹⁰ RILA Comment at 9.

account number (“PAN”) alone, and that “there is the risk that a PAN-only requirement would facilitate the perpetuation of the collusion between Mastercard and issuers.”¹¹

Mastercard’s policy of refusing to detokenize for card-not-present (ecommerce) debit transactions, including those using an ewallet, has made it impossible for merchants to route such transactions to competing networks. The proposed order will advance merchant routing choice by putting an end to that policy. The proposed order should not be construed as an approval or endorsement of any policy or practice that the order does not specifically address, including the withholding of cryptogram or domain control validation or data other than the PAN.

Other public comments on the proposed order have noted that there is a lack of data about merchants’ real-world experience with decline rates when routing to competing networks in the card-not-present context.¹² We anticipate that following the Federal Reserve Board’s recent rulemaking clarifying Regulation II, which confirms that card-not-present transactions are a type of transaction subject to Regulation II’s exclusivity prohibition,¹³ competing networks will increasingly be enabled to process card-not-present transactions—thereby giving merchants more experience with routing card-not-present transactions to competing networks. The Commission will remain attentive to any conduct that inhibits merchant routing choice. If, in the future, you have information concerning your or other merchants’ ability to route tokenized card-not-present transactions to competing networks, we encourage you to provide it to Commission staff.

After review of all comments and careful consideration of the issues raised, the Commission has determined that the public interest is served by issuing the proposed consent order in final form. A copy of the final Decision and Order and other relevant materials are available from the Commission’s website at: <http://www.ftc.gov>.

It assists the Commission’s analysis to hear from a variety of sources in its law enforcement work. Thank you for your interest in this matter.

By direction of the Commission.

April J. Tabor
Secretary

¹¹ RILA Comment at 7-8.

¹² Merchant Advisory Group (MAG) Comment at 6, available at <https://www.regulations.gov/comment/FTC-2023-0010-0009>.

¹³ 87 Fed. Reg. 61217 (Oct. 11, 2022) (specifying that “the requirement that each debit card transaction must be able to be processed on at least two unaffiliated payment card networks applies to card-not-present transactions”).



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

May 30, 2023

Michael A. Cook
Senior Vice President & Assistant Treasurer
Walmart Inc.
702 SW 8th Street
Bentonville, AR 72716

Re: *In the Matter of Mastercard Incorporated*, FTC Docket No. C-4795

Dear Mr. Cook:

Thank you for your comment regarding the Commission's complaint and proposed consent order in the above-titled proceeding against Mastercard Incorporated ("Mastercard"). The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration. As you know, in this matter, the Commission addressed conduct by Mastercard that has inhibited merchants' ability to route electronic debit transactions to competing payment card networks, in violation of the Durbin Amendment, 15 U.S.C. § 1693o-2(b)(1)(B), and its implementing regulation, Regulation II, 12 C.F.R. § 235.7(b). Specifically, the complaint alleges that Mastercard's policy with respect to payment tokens used in ecommerce illegally inhibited merchants from being able to route to competing payment card networks debit transactions made using an ewallet online or through an application on a mobile device.

Your comment states that Walmart strongly agrees with the Commission's determination that tokenized debit transactions are subject to Regulation II's prohibition on routing restrictions, and that Mastercard's ewallet token policy violates that prohibition.¹ Your comment also recommends that the Commission modify the proposed order to require Mastercard to "return the results of the cryptogram and domain control [validation]" as well as the primary account number ("PAN") "on all detokenization requests."²

Mastercard's policy of refusing to detokenize for card-not-present (ecommerce) debit transactions, including those using an ewallet, has made it impossible for merchants to route such transactions to competing networks. The proposed order will advance merchant routing choice by putting an end to that policy. The proposed order should not be construed as an approval or endorsement of any policy or practice that the order does not specifically address, including the withholding of cryptogram or domain control validation or data other than the PAN.

¹ Walmart Comment at 1.

² Walmart Comment at 2 (emphasis omitted).

Other public comments on the proposed order have noted that there is a lack of data about merchants' real-world experience with decline rates when routing to competing networks in the card-not-present context.³ We anticipate that following the Federal Reserve Board's recent rulemaking clarifying Regulation II, which confirms that card-not-present transactions are a type of transaction subject to Regulation II's exclusivity prohibition,⁴ competing networks will increasingly be enabled to process card-not-present transactions—thereby giving merchants more experience with routing card-not-present transactions to competing networks. The Commission will remain attentive to any conduct that inhibits merchant routing choice. If, in the future, you have information concerning your or other merchants' ability to route tokenized card-not-present transactions to competing networks, we encourage you to provide it to Commission staff.

Your comment also recommends that the Commission “future-proof” the proposed order to address the possibility that the PAN could be replaced with some other account identifier in the future.⁵ The proposed order defines “PAN” as “the primary account number associated with a Debit Card holder’s account.”⁶ When tokens are used in debit transactions, it is the primary account number that is tokenized, and it is the primary account number that is detokenized. The proposed order, therefore, is appropriately tied to the PAN. As noted above, however, the Commission will remain attentive to any conduct that inhibits merchant routing choice, including through the use of new technology.

Finally, your comment addresses the prior notice requirement contained in Section IV of the proposed order. This provision is designed to enhance the Commission’s ability to monitor Mastercard’s compliance with the proposed order as Mastercard introduces new products. While noting that the “concept of this provision is a good idea,” your comment suggests expanding the requirement to cover conduct “beyond an outright violation” and extending the requirement to ten years.⁷ The prior notice requirement should not be read to imply any judgment about the legality of any debit product, and it does not expand or restrict Mastercard’s other obligations under the proposed order and Regulation II. Considering this, the requirement has an appropriate scope and length, and the Commission will not hesitate to address any violation of the order or of Regulation II after the term of the prior notice requirement expires.

After review of all comments and careful consideration of the issues raised, the Commission has determined that the public interest is served by issuing the proposed consent order in final form. A copy of the final Decision and Order and other relevant materials are available from the Commission’s website at: <http://www.ftc.gov>.

³ Merchant Advisory Group (MAG) Comment at 6, *available at* <https://www.regulations.gov/comment/FTC-2023-0010-0009>.

⁴ 87 Fed. Reg. 61217 (Oct. 11, 2022) (specifying that “the requirement that each debit card transaction must be able to be processed on at least two unaffiliated payment card networks applies to card-not-present transactions”).

⁵ Walmart Comment at 2-3.

⁶ Proposed Order at ¶ I.L.

⁷ Walmart Comment at 3.

It assists the Commission's analysis to hear from a variety of sources in its law enforcement work. Thank you for your interest in this matter.

By direction of the Commission.

April J. Tabor
Secretary