

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Lina M. Khan, Chair**
 Rebecca Kelly Slaughter
 Christine S. Wilson
 Alvaro M. Bedoya

In the Matter of)

Mastercard Incorporated,)
a corporation.)

DECISION AND ORDER
Docket No.

DECISION

The Federal Trade Commission initiated an investigation of certain acts and practices of Mastercard Incorporated (“Mastercard” or “Respondent”). The Commission’s Bureau of Competition prepared and furnished to Respondent the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint would charge Respondent with violations of Section 920 of the Electronic Funds Transfer Act (“EFTA”), as amended, 15 U.S.C. § 1693o-2, and its implementing regulation, Regulation II, 12 C.F.R. § 235 *et seq.*, and therefore of the Federal Trade Commission Act, 15 U.S.C. § 41 *et seq.*

Respondent and the Bureau of Competition executed an Agreement Containing Consent Order (“Consent Agreement”) containing (1) an admission by Respondent of all the jurisdictional facts set forth in the Draft Complaint, (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission’s Rules, and (4) a proposed Decision and Order.

The Commission considered the matter and determined that it had reason to believe that Respondent has violated the said Acts, and that a complaint should issue stating its charges in that respect. The Commission accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments; at the same time, it issued and served its Complaint. The Commission duly considered any comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure described in Rule 2.34, the Commission makes the following jurisdictional findings:

1. Respondent is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware with its executive offices and principal place of business located at 2000 Purchase Street, Purchase, NY 10577.
2. The Commission has jurisdiction of the subject matter of this proceeding and over Respondent, and the proceeding is in the public interest.

ORDER

I. Definitions

IT IS HEREBY ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Mastercard” or “Respondent” means Mastercard Incorporated, and its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Mastercard Incorporated, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Acquirer,” as defined in 12 C.F.R. § 235.2(b) as of November 1, 2022, means a Person that contracts directly or indirectly with a Merchant to provide settlement for the Merchant’s Electronic Debit Transactions over a Payment Card Network. An Acquirer does not include a Person that acts only as a processor for the services it provides to the Merchant.
- C. “Authorized” means 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.
- D. “Commission” means the Federal Trade Commission.
- E. “Competing Payment Card Network” means a Payment Card Network other than a Payment Card Network owned by, operated by, or affiliated with Mastercard.
- F. “Debit Card,” as defined in 12 C.F.R. § 235.2(f) as of November 1, 2022, (1) means any card, or other payment code or device, issued or approved for use through a Payment Card Network to debit an account, regardless of whether authorization is based on signature, personal identification number (PIN), or other means, and regardless of whether the issuer holds the account, and (2) includes any general-use prepaid card; and (3) does not include (i) any card, or other payment code or device, that is redeemable upon presentation at only a single merchant or an affiliated group of merchants for goods or services; or (ii) a check, draft, or similar paper instrument, or an electronic representation thereof.
- G. “Electronic Debit Transaction,” as defined in 12 C.F.R. § 235.2(h) as of November 1, 2022, (1) means the use of a Debit Card by a Person as a form of payment in the United

States to initiate a debit to an account, and (2) does not include transactions initiated at an ATM, including cash withdrawals and balance transfers initiated at an ATM.

- H. “Issuer,” as defined in 12 C.F.R. § 235.2(k) as of November 1, 2022, means any Person that authorizes the use of a Debit Card to perform an Electronic Debit Transaction.
- I. “Mastercard Token” means a Payment Token generated by a Token Service Provider owned by, operated by, or affiliated with Mastercard.
- J. “Merchant,” as defined in 12 C.F.R. § 235.2(l) as of November 1, 2022, means any Person that accepts Debit Cards as payment.
- K. “New Debit Product” means a new Mastercard product or service related to the initiation of Electronic Debit Transactions that is materially different from existing Mastercard products or services, and with respect to 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.
- L. “PAN” means the primary account number associated with a Debit Card holder’s account.
- M. “Payment Card Network,” as defined in 12 C.F.R. § 235.2(m) as of November 1, 2022, means an entity that (1) directly or indirectly provides the proprietary services, infrastructure, and software that Route information and data to an Issuer from an Acquirer to conduct the authorization, clearance, and settlement of Electronic Debit Transactions; and (2) a Merchant uses in order to accept as a form of payment a brand of Debit Card or other device that may be used to carry out Electronic Debit Transactions.
- N. “Payment Token” means a substitute credential used in place of a PAN in an Electronic Debit Transaction.
- O. “Person,” as defined in 12 C.F.R. § 235.2(n) as of November 1, 2022, means a natural person or an organization, including a corporation, government agency, estate trust, partnership, proprietorship, cooperative, or association.
- P. “Pilot Program or other Limited Launch” means the offering of a new product or service to a small number of customers for a limited time period for the purpose of determining the viability of a product or service or features/functions of a product or service.
- Q. “Route,” as defined in 12 C.F.R. § 235.2(p) as of November 1, 2022, means to direct and send information and data to an unaffiliated entity or to an affiliated entity acting on behalf of an unaffiliated entity.
- R. “Token Service Provider” means a Person responsible for the issuance and management of Payment Tokens.

II. Injunction

IT IS FURTHER ORDERED that:

A. Upon receiving a request from an Authorized Merchant, Authorized Acquirer, Authorized Competing Payment Card Network, or other Authorized Person in receipt of a Mastercard Token furnished for an Electronic Debit Transaction, Respondent shall make available a PAN for the purposes of routing to any Payment Card Network that is enabled by the Issuer on the Debit Card corresponding to that PAN. For e-commerce, card-not-present Electronic Debit Transactions, Respondent shall do so in the ordinary course, including consistent with the timeliness that Respondent provides PANs in response to requests in card-present transactions using Mastercard Tokens, and without requiring consideration for making the PAN available;

B. Respondent shall take no action that prohibits or inhibits any Person's efforts to serve as a Token Service Provider or provision Payment Tokens on Mastercard-branded Debit Cards;

Provided, however, that the issuance of standards for Payment Tokens shall not by itself be construed to violate this requirement; and

Provided further, however, that any improvement to Mastercard Tokens shall not by itself be construed to violate this requirement; and

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.

III. Notice to Affected Persons

IT IS FURTHER ORDERED that Respondent shall, no later than 60 days from the date this Order is issued, publicize this Order by means of an ad hoc Mastercard bulletin to Competing Payment Card Networks, Acquirers, and Issuers, using the language found in Appendix A.

IV. Prior Notice

IT IS FURTHER ORDERED that, for the 5 years following from the date this Order is issued:

A. Respondent shall not, directly or indirectly, through subsidiaries or otherwise, without providing 60-days advance written notice to the Commission, commercially launch (not

including any Pilot Program or other Limited Launch), any New Debit Product that requires Merchants to Route Electronic Debit Transactions only to Mastercard; and

- B. Respondent shall include in the prior notification to the Commission a description with supporting documents of the details of the New Debit Product, how it differs from existing or current products, information relating to its launch schedule, and any other information that Respondent believes will assist the Commission in analyzing the New Debit Product.

V. Compliance Reports

IT IS FURTHER ORDERED that Respondent shall file verified written reports (“compliance reports”) in accordance with the following:

- A. Respondent shall submit:
 - 1. An interim compliance report 60 days after the date this Order is issued, and every 90 days thereafter for a period of one year;
 - 2. Annual compliance reports one year after the date this Order is issued and annually for the next 9 years on the anniversary of that date; and
 - 3. Additional compliance reports as the Commission or its staff may request.
- B. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondent is in compliance with the Order. Conclusory statements that Respondent has complied with its obligations under the Order are insufficient. Respondent shall include in its report, among other information or documentation that may be necessary to demonstrate compliance:
 - 1. For both interim and annual compliance reports, a full description of the measures Respondent has implemented or plans to implement to ensure that it has complied or will comply with each paragraph of the Order; and
 - 2. For annual compliance reports only, data on the extent to which Respondent has provided PANs in compliance with Section II of the Order.
- C. For a period of 5 years after filing a compliance report, Respondent shall retain (1) all material written communications with each party identified in the compliance report concerning fulfilling Respondent’s obligations under Paragraph II.A of the Order, and (2) all non-privileged internal memoranda, reports, and recommendations concerning fulfilling Respondent’s obligations under Paragraph II.A of the Order and provide copies of these documents to Commission staff upon request.
- D. Respondent shall verify each compliance report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically

authorized to perform this function. If the compliance report is verified by someone other than the Chief Executive Officer, Respondent shall include documentation in the compliance report establishing that the verifier is authorized to verify the compliance report on behalf of the Respondent. Respondent shall file its compliance reports with the Secretary of the Commission at ElectronicFilings@ftc.gov and the Compliance Division at bccompliance@ftc.gov, as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a).

VI. Change in Respondent

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least 30 days prior to:

- A. The dissolution of Mastercard Incorporated;
- B. The acquisition, merger, or consolidation of Mastercard Incorporated; or
- C. Any other change in Respondent, including assignment and the creation, sale, or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

VII. Access

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and 5 days' notice to Respondent, made to its principal place of business as identified in this Order, registered office of its United States subsidiary, or its headquarters office, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books and other records and all documentary material and electronically stored information as defined in Commission Rules 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1) and (2), in the possession or under the control of Respondent related to compliance with this Order, which copying services shall be provided by Respondent at the request of the authorized representative of the Commission and at the expense of Respondent; and
- B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

VIII. Purpose

IT IS FURTHER ORDERED that the purpose of this Order is to remedy Respondent's alleged violation of EFTA Section 920(b)(1), 15 U.S.C. § 1693o-2(b)(1), as set forth by the Commission in its Complaint.

IX. Term

IT IS FURTHER ORDERED that this Order shall terminate 10 years from the date it is issued;

Provided, however, that, if the United States or the Commission files a complaint in federal court alleging a violation of this Order, the Order shall terminate 10 years from the date of the complaint's filing;

Provided further, however, that if such a complaint is dismissed or a federal court rules that Respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate as though the complaint had never been filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal; and

Provided further, however, that the filing of such a complaint shall not increase the duration of (x) any provision in this Order that terminates in less than 10 years from the issue date, or (y) the term of this Order if such complaint is filed after the Order has terminated pursuant to this provision.

By the Commission.

April J. Tabor
Secretary

SEAL

ISSUED:

APPENDIX A

Mastercard is required to send you this notice by the FTC’s Decision and Order in *In re Mastercard Incorporated.*, C-xxxx (“Order”). You may read and download a copy of the Order from the FTC’s website at [web link to case on FTC website]. Mastercard’s obligations under the Order are set out in Section II of the Order. Capitalized terms used in the Order are defined in Section I of the Order. All capitalized terms in this notice refer to terms defined in the Order. **Please read the Order carefully. If anything in this notice conflicts with the terms in the Order, the terms in the Order apply.**

Generally, the Order concerns compliance with the Durbin Amendment and Regulation II.

You are receiving this notice because Mastercard is required to give notice to Competing Payment Card Networks, Acquirers, and Issuers by Section III of the Order. If you have concerns in the future about whether Mastercard is complying with its obligations under the Order, you may contact the FTC by phoning or e-mailing [name] at [phone number and e-mail address].