

# EU regulators are overstepping with non-EU card fee caps

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Cardholders on both sides of the Atlantic would benefit if EU and U.S. policymakers permitted competing networks, processors and financial institutions to price as they see fit.

But if the European Commission is bent on curbing fees non-EEA issuers earn, it should at least demonstrate its virtue by similarly limiting fees EEA issuers earn from beyond its domain.

Normally regulators are reluctant to intervene with cross-border transactions where one leg is out of their jurisdiction. For example, Brussels never sought to cap interchange earned by EEA banks when their cardholders pay outside the EEA. In contrast, charged with implementing the debit-interchange caps and network-routing choice the Fed made no effort to apply them to foreign debit cards used in the U.S. or U.S. debit cards used abroad.

So, fees BofA, Chase and Citi earn when their cardholders spend in the EEA will be capped, while fees Allied Irish Bank, ING and Société Générale earn when their cardholders spend in the U.S. won't be capped.

If it's unconscionable for U.S. and EEA credit-card issuers to collect more than 30 basis points of interchange from EEA merchants, then it's also unreasonable for EEA issuers to reap free-market interchange from U.S. merchants.

Payment networks such as Mastercard and Visa use interchange to balance participation on both sides of the network. It fuels issuer innovation such as virtual, payroll and health care cards, GPR prepaid cards for the unbanked and underserved, and a smorgasbord of rewards, grace periods and free cards.

Payment-system prices can be set by the market, law or regulators. The most enlightened regulator or legislator can't match the dynamic intelligence of billions of market decisions by consumers, merchants, banks, networks and processors.

Interchange price controls took different paths in the eurozone and the U.S.

EC central planners have had the payment networks and interchange in their crosshairs since at least 1999, when they first initiated a competition case against Visa. In April 2015 the EU passed legislation mandating interchange price ceilings of 30 and 20 basis points on intra-EEA consumer credit and debit card payments.

Starting in October non-EEA Mastercard and Visa cards used at the physical point of sale in the EEA will be subject to the same caps. However, because payment alternatives and mix are different for e-commerce inter-regional card payments, the commission granted higher

interchange of 115 and 150 basis points for consumer debit and credit payments respectively.

EC leaders justified price controls with the Merchant Indifference Test (MIT), a theory contending the optimal card-acceptance fee is where merchants are indifferent between accepting cash and card payments from a one-time customer, to provide a patina of gravitas for the price controls they were determined to impose.

The MIT fails to recognize accepting cards begets more customers and more sales. British Judge Andrew Poppelwell in the ASDA versus Mastercard case derided the MIT as “inadequate” and having “serious flaws.” Judge Gerald Barling in the Sainsbury’s versus Mastercard case declared the MIT “so far divorced from commercial realities as to be an exercise the Merchant would not undertake,” and observed merchants accepted cards because they attracted customers.

In the U.S. effective merchant lobbying, bank and network complacency, a powerful and crafty political champion in Senate Majority Leader Dick Durbin, and a unique opportunity to attach it to landmark must-pass financial-system reform greased the path.

The 2010 Dodd-Frank Act mandated price controls on debit cards issued by U.S. banks with over \$10 billion assets and merchant routing choice between at least two networks. The Fed, however, made no attempt to apply the law to foreign debit cards used in the U.S. or U.S. debit cards used abroad.

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