Published in the *Washington Times*, May 27, 2008

Conyers' wallets

By Eric Grover

Americans avail themselves of an abundance of credit, debit and prepay card products. That's what choice is all about. But changes are in the wind on Capitol Hill.

House Judiciary Committee Chairman John Conyers recently began hearings on the Credit Card Fair Fee Act of 2008. It's a price-control bill, though Mr. Conyers makes claims it would enhance competition. The bill would do precisely the opposite. It also would hurt consumers and small shops because Big Brother would become intricately involved in pricing matters.

The legislation calls for, among other things, three "Electronic Payment Systems Judges" who, as pricing czars, would divine what merchants would be charged by MasterCard and Visa, and they would objectively divine this information via a "hypothetical perfectly competitive market." In 2010, their determination would become a uniform price cap for all merchants regardless of size or risk. Retailers could continue to negotiate singly or collectively for better terms.

Some of the bill's supporters cite the regulations in other nations to buttress their own lobbying. For example, Australia's central bank reduced merchant interchange fees and permitted merchants to levy surcharges on card purchases. The impact on consumers included higher cardholder fees and fewer card rewards. Merchants also tacked on additional charges, and that consequently led to reduced credit-card-transaction growth. (The European Union regulators also pine for increased red tape and a whiff of protectionist sentiment is in the air, too.)

Is there a problem stateside that needs fixing? American consumers and merchants have enormous choice. Each stage in American credit card payments is market-driven - from card issuance to merchant payment - although networks were another matter. A quarter-century ago, all the principal card payment networks except American Express were owned by banks and not for profit.

However, there's been a sea change. In 2004 a lawsuit filed by the Justice Department ended MasterCard and Visa's prohibitions on "member" banks participating in Amex and Discover. Since then, Morgan Stanley divested Discover and banks spun off MasterCard and Visa.

Today, the U.S. card-payment-network market is the most competitive in the world and becoming more so. EU regulators worry about having only two pan-European card-payment networks, one of which, Visa EU, remains a bank association. In the U.S there are four full-suite networks: Amex, Discover, MasterCard and Visa; national debit networks Star and NYCE; and PayPal; all of which are commercial enterprises independent of banks.

Now look at the contrast, notwithstanding China's trade commitments to open up its domestic market, China UnionPay enjoys a protected domestic card-payment-network monopoly. In Brazil, RedeCard and VisaNet have monopolies acquiring MasterCard and Visa transactions, respectively. Building payment-networking is difficult.

Nevertheless, the industry continues to attract capital and entrepreneurs. Companies like Revolution Money and Tempo are competing to drive down merchant fees.

But minimizing retailer fees implying a weaker cardholder proposition is not necessarily better. Interchange is managed to maximize value for all network participants.

Yet Mr. Conyers contends merchants are "forced" to accept payment cards. That's nonsense. Cash is the only payment merchants are compelled to accept. In fact, 7 million merchants each year choose to accept credit/debit/payment cards because they provide value, and that number is expected to grow by 9 percent in the near future.

Mr. Conyers argues MasterCard and Visa are associations "owned and controlled" by banks, implying collective price setting and an anti-trust issue. How wrong he is. The fact of the matter is that the payment networks sell their products to banks but are not controlled by banks.

American consumers will be harmed by the Credit Card Fair Fee Act because it is seeded in price controls and price controls cause shortages, reduce competition and innovation, and consequently force consumers to dip further into their wallets. And what about small, nontraditional merchants? Have the supporters of the legislation even considered how they would fare? What would their profit margins look like? Government regulating credit-, debit- and payment-card fees? Consumers beware. "Fair" isn't always fair.