



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").



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 transactions to competing networks. TH

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. 723f AMTJb (d.)3612y

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 suggest

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>.

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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”).



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

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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By direction of the Commission.

April J. Tabor
Secretary



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
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").

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")

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

“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

May 30, 2023

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

325 7th St NMerch

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”).

S OF AMERICA
FEDERAL TRADE COMMISSION
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 positit tifi'siC -2eeced 4 (f).096 2TTYfiTTYfs(iTT-2 (C)-3 (o1d3-1 ()-6 (h T

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>.

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Secretary



UNITED STATES

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, 12 C.F.R. § 235.7(c). Specifically, the complaint alleges that Mastercard's policy, with respect to payment systems, prohibits merchants from 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.

~~Several specific~~ ¹ Your comment also addresses provisions in the proposed order and suggests that the Commission broaden

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. ~~Mastercard's comment suggests that it products~~ While 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.

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”).

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

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

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