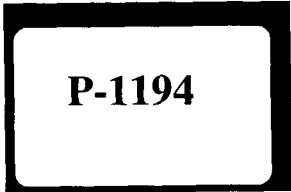


UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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:
UNITED STATES OF AMERICA, :
 :
 : **Civil Action No. 98-7076 (BSJ)**
 :
 Plaintiff, :
 : **HIGHLY CONFIDENTIAL**
 :
 -against- :
 :
 :
 VISA U.S.A., INC., VISA INTERNATIONAL :
 CORP., AND MASTERCARD INTERNATIONAL :
 INCORPORATED, :
 :
 : **Defendants.** :
 :
 :
-----X



**DEFENDANT MASTERCARD INTERNATIONAL
INCORPORATED'S AMENDED RESPONSES AND OBJECTIONS
TO PLAINTIFF'S THIRD SET OF INTERROGATORIES**

Defendant MasterCard International Incorporated ("MasterCard"), by its attorneys and pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and Local Civil Rules 26.2, 26.3, 33.1, 33.3, and 33.4, hereby responds and objects to plaintiff's Third Set of Interrogatories served on MasterCard by facsimile on January 31, 2000 ("Interrogatories"), amending its responses to Interrogatories 2(a), 2(b), 3(a), 3(b) and 4(a) as follows:

GENERAL OBJECTIONS

1. MasterCard objects to the Interrogatories on the grounds that many of the responses sought by plaintiff have been supplied previously in documents and/or by witnesses produced by MasterCard or others during (i) plaintiff's five-year investigation of the matters set forth in this action (the "Pre-Complaint Investigation"), and (ii) this subsequent litigation (the "Litigation"). During the course of the Pre-Complaint Investigation and the Litigation, plaintiff collected millions of pages of documents and examined numerous witnesses produced by MasterCard, Visa, and various third parties pursuant to Civil Investigative Demands, subpoenas and discovery requests. In addition, these Interrogatories are the third

set of interrogatories that the plaintiff has asked MasterCard to answer. As a result, plaintiff's Interrogatories, to the extent they seek responses already provided by MasterCard, are unduly burdensome, oppressive, vexatious and impose unwarranted and unnecessary burden and expense on MasterCard.

2. MasterCard objects to the Interrogatories to the extent that they are vague, ambiguous, cumulative, duplicative, overbroad, unduly burdensome, based upon incorrect factual assumptions or otherwise unclear as to the precise information sought, and to the extent that they seek information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

3. MasterCard objects to the Interrogatories to the extent that they seek to impose duties or obligations on MasterCard beyond those imposed by the Federal Rules of Civil Procedure or by this Court's Local Civil Rules.

4. MasterCard objects to the Interrogatories to the extent that they seek information covering transactions, activities, and events outside of the United States. Plaintiff has alleged (in Paragraph 18 of the Complaint) that the United States is the relevant geographic market. Therefore, any Interrogatories seeking information about events or circumstances outside of the United States are overbroad and are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

5. MasterCard objects to the Interrogatories to the extent that they call for information that is protected from discovery by the attorney-client privilege, the attorney work-product doctrine, the joint defense privilege, or any other privilege, protection or immunity applicable under the governing law ("privileged information").

6. MasterCard objects to the Interrogatories to the extent that they seek information in the possession or custody of entities, parties or persons other than MasterCard.

7. MasterCard's objections and responses to the Interrogatories are based upon information currently known or available to MasterCard through reasonable and diligent inquiry. MasterCard reserves the right to amend or supplement its objections and responses to the Interrogatories should additional information become known and/or available to it.

8. MasterCard's decision to provide information pursuant to the Interrogatories, notwithstanding the objectionable nature of any of the Interrogatories, should not be construed as: (a) a stipulation that the material is relevant, or (b) a waiver of the general or specific objections asserted hereto. MasterCard specifically reserves all objections as to the competency, relevancy, materiality and admissibility of the information provided, all objections as to burden, vagueness, unintelligibility, overbreadth and ambiguity, and all rights to object to the use of any documents or information in any subsequent proceeding, including, without limitation, the trial of this, or any other, action.

RESPONSES AND SPECIFIC OBJECTIONS

Interrogatory No. 1.(a)

1.(a) Do you contend that the relevant product market for purposes of analyzing whether defendants' actions alleged in plaintiff's complaint are anti-competitive includes the dollar volume of cash and check spent by consumers to pay for goods and services in the United States for the relevant years?

Response to Interrogatory No. 1.(a)

MasterCard objects to Interrogatory No. 1.(a) on the grounds that it is vague and ambiguous, particularly regarding the relevance of the phrase "the dollar volume of cash and check."

Subject to and without waiving the foregoing general and specific objections, MasterCard responds to Interrogatory No. 1.(a) as follows:

MasterCard contends that any economically meaningful relevant product market necessarily must include other forms of payment, including, but not limited to, cash and checks.

Interrogatory No. 1.(b)

1.(b) If the answer to subpart (a) is yes, do you also contend that cash and checks should be included within the relevant market analysis with respect to purchases of each of the following types of goods and services by consumers in the United States: (i) hotel rooms; (ii) restaurant meals; (iii) goods and services sold over the Internet; (iv) car rentals; (v) airline tickets; (vi) products sold via catalogue or MOTO?

Response to Interrogatory No. 1.(b)

MasterCard objects to Interrogatory No. 1.(b) on the grounds that it is vague, ambiguous, and to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing general and specific objections, MasterCard responds to Interrogatory No. 1.(b) as follows:

MasterCard contends that any economically meaningful analysis of the relevant product market with respect to purchases of each of the types of goods and services listed in Interrogatory No. 1.(b)(i)-(vi) must include other forms of payment, including, but not limited to, cash and checks.

Interrogatory No. 1.(c)

1.(c) For each "yes" answer to subparts (i) through (vi) of subsection (b) above, explain in detail how, in your view, cash and checks compete with general purpose credit and charge cards for purposes of purchases of such product(s) and/or service(s).

Response to Interrogatory No. 1.(c)

MasterCard objects to Interrogatory No. 1.(c) to the extent that it is vague, ambiguous, and to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing general and specific objections, MasterCard responds to Interrogatory No. 1.(c) as follows:

This Interrogatory does not request information that is relevant to this litigation, because the plaintiff has not alleged a relevant product market that is limited to the purchases of only the types of goods and services listed in Interrogatory No. 1.(b)(i)-(vi). Plaintiff has alleged a relevant product market of "[t]he products and services provided by general purpose card networks." (Complaint, ¶ 14). Moreover, any economically meaningful analysis of the alleged relevant product market can not be accomplished by selectively analyzing a limited number of extremely narrow merchant segments or product and service purchases.

A relevant product market for antitrust purposes is defined in terms of substitutability. The appropriate question in defining the relevant product market is whether there are sufficient consumers who view alternative products as substitutes for the products in the alleged relevant product market. General purpose cards are readily substitutable with other forms of payment, including cash and checks, for a reasonable proportion of purchasing decisions by consumers. As the discovery record in this litigation shows, cash and checks are still the payment options used in the vast majority of consumer purchases in the United States.

Interrogatory No. 2.(a)

2.(a) Do you contend that there are any pro-competitive effects that result from the past and/or present service on your Board of Directors (or other decision-making committees) by representatives of

your member financial institutions whose dollar volume of credit and charge transactions on cards issued by that institution with your brand (i.e., Visa or MasterCard, respectively) is less than 80% of the total dollar volume of credit and charge card transactions (i.e., including both Visa and MasterCard branded transactions) on cards issued by that member financial institution?

Response to Interrogatory No. 2.(a)

MasterCard objects to Interrogatory No. 2.(a) on the grounds that it is vague and ambiguous, particularly inasmuch as it does not specify the MasterCard Board of Directors (or "other decision-making committees") or geographic area to which it is referring, and to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing general and specific objections, MasterCard responds to Interrogatory No. 2.(a) as follows:

To the extent that the Interrogatory refers to service on the MasterCard U.S. Region Board of Directors and/or the MasterCard Global Board of Directors, and to United States credit and charge card transactions, the response is yes.

Interrogatory No. 2.(b)

2.(b) If the answer to subpart (a) is anything other than an unequivocal no, please explain in detail the nature of the pro-competitive effects you contend exist or existed as a result of such service on your Board of Directors. If the pro-competitive effects no longer exist, explain when and why they ended.

Response to Interrogatory No. 2.(b)

MasterCard objects to Interrogatory No. 2.(b) on the grounds that it is vague and ambiguous, particularly inasmuch as it does not specify the MasterCard Board of Directors (or "other decision-making committees") or geographic area to which it is referring, and to the extent that it seeks

information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing general and specific objections, MasterCard responds to Interrogatory No. 2.(b) as follows:

The service of representatives from such MasterCard members has resulted, and continues to result, in pro-competitive effects for at least two fundamental reasons. First, MasterCard's management has used, and continues to use, offers of U.S. Region and/or Global Board membership, and the subsequent Board participation, to foster a closer working relationship with selected members, which in turn may persuade the members to issue a greater amount of MasterCard-branded products and take advantage of more MasterCard services. Second, by not restricting the pool of candidates to those only from institutions with predominantly MasterCard portfolios, MasterCard, which does not operate as an issuer, is currently able to draw upon the vast breadth of experienced financial institution personnel with payment services knowledge and skill for its U.S. Region and Global Boards of Directors. In such a fashion, MasterCard can maximize the strength of its U.S. Region and Global Boards, clearly a pro-competitive effect.

Interrogatory No. 3.(a)

3.(a) Do you contend that anti-competitive effects would arise if you enacted a by-law or policy that prohibited service on your Board of Directors (and any other decision-making committees) by any representatives from member financial institutions whose dollar volume of credit and charge transactions on cards issued by that institution with your brand (i.e., Visa or MasterCard, respectively) is less than 80% of the total dollar volume of credit and charge card transactions (i.e., including both Visa and MasterCard credit and charge card transactions) on cards issued by that member financial institution?

Response to Interrogatory No. 3.(a)

MasterCard objects to Interrogatory No. 3.(a) on the grounds that it is vague and ambiguous, particularly inasmuch as it does not specify the MasterCard Board of Directors (or "other decision-

making committees") or geographic area to which it is referring, and to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing general and specific objections, MasterCard responds to Interrogatory No. 3.(a) as follows:

To the extent that the Interrogatory refers to service on the MasterCard U.S. Region Board of Directors and/or the MasterCard Global Board of Directors, and to United States credit and charge card transactions, the response is yes.

Interrogatory No. 3.(b)

3.(b) If the answer to subpart (a) is anything other than an unequivocal no, please explain in detail the nature of the anti-competitive effects you contend would arise.

Response to Interrogatory No. 3.(b)

MasterCard objects to Interrogatory No. 3.(b) on the grounds that it is vague and ambiguous, particularly inasmuch as it does not specify the MasterCard Board of Directors (or "other decision-making committees") or geographic area to which it is referring, and to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing general and specific objections, MasterCard responds to Interrogatory No. 3.(b) as follows:

As an initial matter, the enactment of such a by-law or policy would potentially eliminate the pro-competitive effects that MasterCard detailed in its response to Interrogatory No. 2.(b), and as such would

have anti-competitive effects. However, MasterCard does not contend that there are anti-competitive effects arising out of a decision by a MasterCard member to dedicate itself to a certain percentage of MasterCard product issuance. MasterCard contends that no anti-competitive effects result from individuals sitting on the MasterCard U.S. Region or Global Boards representing members that do not meet an 80% threshold, or any similar threshold; accordingly, the plaintiff's requested relief imposing such a requirement is not warranted.

Interrogatory No. 4.(a)

4.(a) Do you contend that each of the current members of your Board of Directors is a representative of a member financial institution whose dollar volume of credit and charge transactions on cards issued by that institution with your brand (i.e., Visa or MasterCard, respectively) is more than 80% of the total dollar volume of credit and charge card transactions (i.e., including both Visa and MasterCard credit and charge card transactions) on cards issued by that member financial institution?

Response to Interrogatory No. 4.(a)

MasterCard objects to Interrogatory No. 4.(a) on the grounds that it is vague and ambiguous, particularly inasmuch as it does not specify the MasterCard Board of Directors (or "other decision-making committees") or geographic area to which it is referring, and to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing general and specific objections, MasterCard responds to Interrogatory No. 4.(a) as follows:

To the extent that the Interrogatory refers to members of the MasterCard U.S. Region Board of Directors and/or the MasterCard Global Board of Directors, and to United States credit and charge card transactions, the response is no.

Interrogatory No. 4.(b)

4.(b) If the answer to subpart (a) is anything other than an unequivocal yes, please identify the name of each representative (and the financial institution for which they work) on your Board of Directors who fails to meet the criterion described in subpart (a) and what percentage of the total dollar volume of credit and charge card transactions that representative's financial institution has on the cards it issues with your brand.

Response to Interrogatory No. 4.(b)

MasterCard objects to Interrogatory No. 4.(b) on the grounds that it is vague and ambiguous, particularly inasmuch as it does not specify the MasterCard Board of Directors (or "other decision-making committees") or geographic area to which it is referring, and to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. MasterCard further objects to Interrogatory No. 4.(b) on the grounds that it is not in the nature of a contention interrogatory and thus in violation of Local Rule 33.3(b) inasmuch as the information requested could have been more practically obtained through other means of discovery.

Subject to and without waiving the foregoing general and specific objections, MasterCard responds to Interrogatory No. 4.(b) as follows:

MasterCard will not respond to this Interrogatory.

Interrogatory No. 4.(c)

4.(c) If the answer to subpart (a) is an unequivocal yes, please state for how long your Board membership has been such as to permit you to make that contention truthfully.

Response to Interrogatory No. 4.(c)

No answer is required.

Interrogatory No. 5.(a)

5.(a) Do you contend that Visa U.S.A.'s by-law or MasterCard's policy prohibiting U.S. member institutions from issuing American Express and Discover cards has any pro-competitive effects.

Response to Interrogatory No. 5.(a)

MasterCard objects to Interrogatory No. 5.(a) on the grounds that it is vague, ambiguous, overbroad and mischaracterizes MasterCard's Competitive Programs Policy ("CPP").

Subject to and without waiving the foregoing general and specific objections, MasterCard responds to Interrogatory No. 5.(a) as follows:

Assuming that Interrogatory No. 5.(a) concerns only the CPP conditionally adopted on June 28, 1996 by MasterCard's U.S. Region Board of Directors, MasterCard contends that the CPP has had pro-competitive effects.

Interrogatory No. 5.(b)

5.(b) If the answer to subpart (a) is yes, please describe in detail each of those pro-competitive effects.

Response to Interrogatory No. 5.(b)

MasterCard objects to Interrogatory No. 5.(b) on the grounds that it is vague, ambiguous, overbroad and mischaracterizes MasterCard's Competitive Programs Policy ("CPP").

Subject to and without waiving the foregoing general and specific objections, MasterCard responds to Interrogatory No. 5.(b), concerning only the United States, as follows:

MasterCard, as a membership association, is in the nature of a joint venture. Like most joint ventures the terms of membership must assure that all members that benefit from the venture are

dedicated to and support the venture. If some members are permitted to obtain the benefits of the venture without equally investing in the venture (in the sense, for example, that they have agreed to issue cards on a network that is not open to all the other members of the joint venture), other members will have fewer incentives to participate at all. MasterCard and its members invest on an ongoing basis in the MasterCard brand, its acceptance network, and its products and services. MasterCard's CPP was adopted in the face of a proposal by American Express to have **select** MasterCard members funnel certain transactions away from MasterCard and onto the American Express System while, while those members could remain on the MasterCard system for other transactions. Thus, under the American Express proposal those selected members would have enjoyed all of the benefits of the MasterCard system but would not have been required to make the same investment, in the form of brand dedication, as other members of MasterCard. The American Express proposal is a classic attempt at "cherry picking."

One of the examples of the pro-competitive effects that arise from MasterCard's CPP is reflected in the case of corporate cards. American Express has historically dominated the corporate card segment. MasterCard offers its members a corporate card program and has made limited inroads into the large share held by American Express. But if American Express were permitted to cherry pick the corporate card business of selected MasterCard members, that would certainly undermine the incentive of those selected members to support investments in MasterCard's corporate card program, since these select issuers would have available to them entrenched corporate card offerings not available to dedicated MasterCard issuers. And other members, not part of the select few, would have fewer incentives to support MasterCard at all, since the fruits of their investments would be fully available to the select few American Express issuers who have not dedicated themselves to MasterCard. MasterCard's CPP does not tell issuers that they cannot issue American Express products, including American Express corporate cards. It does provide, however, that if an issuer declines to dedicate itself to the MasterCard brand to the

same degree as all other members (again, in the form of only issuing cards on networks that are open to all other members), that the issuer will no longer be permitted the benefits that are derived from that dedication.

The effects of the American Express proposal can also be viewed in the context of the investment that MasterCard issuer members make in MasterCard's merchant acceptance network. MasterCard and its members have chosen to maximize the number of merchants that accept the MasterCard brand. One way that MasterCard and its members do this is by setting interchange rates that allow merchant banks to offer relatively low merchant discount fees. And the willingness of all issuer members to accept that level of interchange is part of the investment they make in MasterCard's merchant network. If issuers wish to benefit from MasterCard's merchant network, they must be willing to pay the price of maintaining that network, i.e, the lower interchange fees. American Express, on the other hand, has chosen to charge relatively high merchant discount fees and offer a less extensive merchant network targeted to meet the needs of higher end cardholders but not the needs of the full range of cardholders serviced by the MasterCard network. Because of the higher merchant fees, American Express can offer banks the equivalent of a higher interchange. If select banks were permitted to funnel high end transactions through the American Express system and to utilize the MasterCard system for all other transactions, they would be benefiting fully from the MasterCard merchant network without making the same interchange investment in that network as other member banks. Again, the CPP does not tell issuers that they cannot avail themselves of the higher merchant fees charged by American Express. It does require that if an issuer wants to avail itself of MasterCard's merchant network, it cannot avoid paying its share of the investment in that merchant network by funneling high end transactions through American Express.

Additionally, American Express and Discover will be "free-riding" on the card issuing expertise and cardholder relationships developed by member banks in conjunction with MasterCard.

Interrogatory No. 6.(a)

6.(a) Do you contend that the ability of Visa and MasterCard member financial institutions to issue American Express cards on the American Express network outside of the United States has had any anti-competitive effects?

Response to Interrogatory No. 6.(a)

MasterCard objects to Interrogatory No. 6.(a) on the grounds that it is vague, ambiguous, overbroad, particularly insofar as it seeks information covering transactions, activities, and events outside of the United States, and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing general and specific objections, MasterCard responds to Interrogatory No. 6.(a) as follows:

Clearly, the potential exists for many of the anti-competitive effects described in the response to Interrogatory No. 5.(b). Nonetheless, MasterCard is unable to determine at this time whether the fact that some Visa and MasterCard member financial institutions outside of the United States have chosen to issue American Express cards on the American Express network has had any material anti-competitive effects. The agreements that American Express has signed with MasterCard member institutions outside the United States have not been in force for more than a few years, in some cases. It is too early to truly determine what effect, if any, these partnerships have had on the MasterCard joint venture.

More importantly, it is unlikely that such a determination, by itself, would provide any relevant information for this litigation. The plaintiff has alleged that the United States represents a distinct geographic market for the relevant product markets to be analyzed. (Cmplt. ¶ 18). For the information sought by this Interrogatory to have any relevance to the plaintiff's claims, the plaintiff must, at a minimum, explain how conclusions about markets outside the U.S. provide meaningful guidance in

understanding the U.S. market. Such an explanation would require a detailed analysis of each of the variables that affect the nature of MasterCard's competitive position in each Region and country that it operates. To date, the plaintiff has not given any indication that it has explored these complex issues, but instead simply asserts to the Court that information from foreign markets is relevant to an analysis of its claims regarding the U.S. market.

Interrogatory No. 6.(b)

6.(b) If the answer to subpart (a) is anything other than an unequivocal no, please describe in detail the nature of the anti-competitive effects.

Response to Interrogatory No. 6.(b)

MasterCard objects to Interrogatory No. 6.(b) on the grounds that it is vague, ambiguous, overbroad, particularly insofar as it seeks information covering transactions, activities, and events outside of the United States, and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing general and specific objections, MasterCard responds to Interrogatory No. 6.(b) as follows:

See MasterCard's response to Interrogatory No. 6.(a).

Interrogatory No. 6.(c)

6.(c) If the answer to subpart (a) is no, do you nevertheless contend that repeal of Visa U.S.A.'s by-law or MasterCard's policy prohibiting U.S. member institutions from issuing American Express or Discover cards on their respective networks would cause anti-competitive effects to arise in the United States?

Response to Interrogatory No. 6.(c)

MasterCard objects to Interrogatory No. 6.(c) on the grounds that it is vague, ambiguous, overbroad and mischaracterizes MasterCard's Competitive Programs Policy ("CPP").

Subject to and without waiving the foregoing general and specific objections, MasterCard responds to Interrogatory No. 6.(c) as follows:

See MasterCard's response to Interrogatory No. 5.(a).

Interrogatory No. 6.(d)

6.(d) If the answer to subpart (c) is yes, please describe in detail the nature of the anti-competitive effects in the United States that you contend would arise.

Response to Interrogatory No. 6.(d)

MasterCard objects to Interrogatory No. 6.(d) on the grounds that it is vague, ambiguous, overbroad and mischaracterizes MasterCard's Competitive Programs Policy ("CPP").

Subject to and without waiving the foregoing general and specific objections, MasterCard responds to Interrogatory No. 6.(d) as follows:

See MasterCard's response to Interrogatory No. 5.(b).

Interrogatory No. 7.(a)

7.(a) Do you contend that the lack of any policy or by-law prohibiting issuance of American Express and Discover cards on their respective networks by Visa or MasterCard (Europay) member institutions within the European Union is entirely because of the views expressed by the European Commission concerning such a possible Visa European Region by-law in the Spring of 1996?

Response to Interrogatory No. 7.(a)

MasterCard objects to Interrogatory No. 7.(a) on the grounds that it is vague, ambiguous, overbroad, particularly insofar as it seeks information covering transactions, activities, and events outside of the United States, and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing general and specific objections, MasterCard responds to Interrogatory No. 7.(a) as follows:

No.

Interrogatory No. 7.(b)

7.(b) If the answer to subpart (a) is anything other than an unequivocal yes, please describe in detail all the reason(s) for that lack of such a policy or by-law.

Response to Interrogatory No. 7.(b)

MasterCard objects to Interrogatory No. 7.(b) on the grounds that it is vague, ambiguous, overbroad, particularly insofar as it seeks information covering transactions, activities, and events outside of the United States, and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing general and specific objections, MasterCard responds to Interrogatory No. 7.(b) as follows:

The Europay Board of Directors – not MasterCard -- had the authority to determine what action was necessary for MasterCard's Europe Region members. The Europay Board chose not to take any action regarding the participation in competitive programs by its members. MasterCard is not aware of

the exact rationale for that decision but refers the Government to the minutes of the July 1, 1996 Europay Board of Directors meeting, which reflects that "[t]he Chairman stressed that Europay did not need any such rules against 'competitive programme'." (MCJ2068996-9009, at 997).

Interrogatory No. 8.(a)

8.(a) Do you contend that if your U.S. member financial institutions issued American Express and/or Discover cards on their respective networks within the United States, that (i) such members, and/or (ii) American Express and/or Discover, would be "free riding" on any of your tangible or intangible assets or investments?

Response to Interrogatory No. 8.(a)

MasterCard objects to Interrogatory No. 8.(a) on the grounds that it is vague and ambiguous, particularly to the extent that it does not define the meaning of the term "free-riding," or explain whose use of the term it is quoting. Nor does the Interrogatory state whether American Express and/or Discover would open their networks to all MasterCard members.

Subject to and without waiving the foregoing general and specific objections, MasterCard responds to Interrogatory No. 8.(a) as follows:

If this Interrogatory relates to a selective issuer program of the type proposed by American Express, the answer is yes.

Interrogatory No. 8.(b)

8.(b) If the answer to subpart (a) is anything other than an unequivocal no, please describe in detail each of your assets or investments that you contend would be the subject of "free riding" by such member institution(s) and/or American Express or Discover.

Response to Interrogatory No. 8.(b)

MasterCard objects to Interrogatory No. 8.(b) on the grounds that it is vague and ambiguous, particularly to the extent that it does not define the meaning of the term "free-riding," or explain whose use of the term it is quoting.

Subject to and without waiving the foregoing general and specific objections, MasterCard responds to Interrogatory No. 8.(b) as follows:

See MasterCard's response to Interrogatory No. 5.(b).

Interrogatory No. 9.(a)

9.(a) Do you contend that (i) member financial institutions of the other bank card association (i.e., Visa if you are MasterCard or MasterCard if you are Visa) and (ii) that other bank card association, are "free riding" on your tangible or intangible assets or investments when that (those) institution(s) issue cards on that other bank card system?

Response to Interrogatory No. 9.(a)

MasterCard objects to Interrogatory No. 9.(a) on the grounds that it is vague and ambiguous, particularly to the extent that it does not define the meaning of the term "free-riding," or explain whose use of the term it is quoting. MasterCard further objects to Interrogatory No. 9.(a) as overbroad, particularly insofar as it seeks information covering transactions, activities, and events outside of the United States, and is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing general and specific objections, MasterCard responds to Interrogatory No. 9.(a), concerning only the United States, as follows:

MasterCard contends that issuance duality may result in a degree of "free-riding" much different in nature and scope from that which would occur if member banks were permitted to issue cards on a proprietary system not open to all members.

Interrogatory No. 9.(b)

9.(b) If the answer to subpart (a) is yes, please describe in detail your assets or investments that would be the subject of "free riding" by such member institution(s) and/or the other bank card association.

Response to Interrogatory No. 9.(b)

MasterCard objects to Interrogatory No. 9.(b) on the grounds that it is vague and ambiguous, particularly to the extent that it does not define the meaning of the term "free-riding," or explain whose use of the term it is quoting. MasterCard further objects to Interrogatory No. 9.(b) as overbroad, particularly insofar as it seeks information covering transactions, activities, and events outside of the United States, and is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing general and specific objections, MasterCard responds to Interrogatory No. 9.(b), concerning only the United States, as follows:

Issuance duality creates the potential for "free-riding" on the card issuing expertise and cardholder relationships developed by member banks in conjunction with MasterCard, but does not create the potential for the range and scope of "free-riding" which necessarily flows from a selective issuer program of the type proposed by American Express. (See MasterCard's response to Interrogatory No. 5.(b)).

Interrogatory No. 9.(c)

9.(c) If the answer to subpart (a) is no but the answer to Interrogatory 8.(a) is yes, please explain in detail the distinction(s) that you contend justify your different answers to these two interrogatories.

Response to Interrogatory No. 9.(c)

MasterCard objects to Interrogatory No. 9.(c) on the grounds that it is vague and ambiguous, particularly to the extent that it does not define the meaning of the term "free-riding", or explain whose use of the term it is quoting. MasterCard further objects to Interrogatory No. 9.(c) as overbroad, particularly insofar as it seeks information covering transactions, activities, and events outside of the United States, and is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing general and specific objections, MasterCard responds to Interrogatory No. 9.(c), concerning only the United States, as follows:

Both MasterCard and Visa are open membership associations which means that no single member has an opportunity not available to all other members. American Express and Discover are proprietary entities not open to all MasterCard and Visa members. This distinction has an important impact on the incentives and ability of members to engage in opportunistic behavior. (See MasterCard's response to Interrogatory No. 5.(b)). The nature of this distinction depends fundamentally on the selective invitation to issue on the American Express network as compared to the open MasterCard and Visa associations. Because issuance duality combined with the open nature of the two associations makes all products and innovations developed by one association available to issuers of the other association, there are no disincentives to invest based on concerns that a select few issuers have unique access to products and innovations not available to all MasterCard or Visa issuers.

Moreover, neither MasterCard nor Visa is integrated into the business of issuing cards – both are focused instead on what the Complaint characterizes as the “network” level. American Express and Discover are, of course, fully integrated payment card firms. In addition to owning their own proprietary networks, they are two of the largest issuers in the United States. Therefore, each has mixed incentives in any decision to open their respective networks to other issuers. In particular, each may hope to benefit from increased volume on their networks, but not if this new business excessively cannibalizes their proprietary issuing business. These conflicting motivations are likely to lead to incentives to impose anticompetitive market allocation restrictions on their new issuers, ultimately leading to reduced competition among issuers. Any outcome in which certain MasterCard issuers have reduced incentives to compete against American Express or Discover will harm both MasterCard and consumers.

Interrogatory No. 10.(a)

10.(a) Do you contend that the issuance of American Express cards by institutions that also issue Visa and/or MasterCard cards outside the United States has not caused an increase in at least one of the following two items: (i) the number of merchants accepting American Express cards in the countries where such issuance occurs, or (ii) an increase in the total number of American Express cardholders in those countries?

Response to Interrogatory No. 10.(a)

MasterCard objects to Interrogatory No. 10.(a) on the grounds that it is vague, ambiguous, overbroad, particularly insofar as it seeks information covering transactions, activities, and events outside of the United States, and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. MasterCard further objects to Interrogatory No. 10.(a) to the extent that it seeks information in the possession or custody of entities, parties or persons other than MasterCard.

Subject to and without waiving the foregoing general and specific objections, MasterCard responds to Interrogatory No. 10.(a) as follows:

Without a comprehensive economic analysis of the markets at issue, MasterCard cannot respond to this Interrogatory. MasterCard is not aware of any evidence that the issuance of American Express products by MasterCard members outside the United States has been the "cause" of any increase either in the number of merchants accepting American Express cards or the number of American Express cardholders in any specific market.

Interrogatory No. 10.(b)

10.(b) If the answer to subpart (a) is yes, do you also contend that the issuance within the United States of American Express cards by financial institutions that also issue Visa and/or MasterCard cards within the United States would also have no such effects?

Response to Interrogatory No. 10.(b)

MasterCard objects to Interrogatory No. 10.(b) on the grounds that it is vague, ambiguous, overbroad, particularly insofar as it seeks information covering transactions, activities, and events outside of the United States, and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. MasterCard further objects to Interrogatory No. 10.(b) to the extent that it seeks information in the possession or custody of entities, parties or persons other than MasterCard, and on the grounds that it calls for speculation.

Subject to and without waiving the foregoing general and specific objections, MasterCard responds to Interrogatory No. 10.(b) as follows:

Inasmuch as this Interrogatory calls for speculation, MasterCard cannot respond affirmatively or negatively. MasterCard believes, however, that any effect on the number of American Express merchants or cardholders in this country from the issuance of its cards by MasterCard members would not be any greater than those which could be achieved by American Express internally or by working with non-MasterCard members.

Interrogatory No. 10.(c)

10.(c) If the answers to subparts (a) and (b) are both yes, please explain all the reasons why you nevertheless believe that a by-law or policy prohibiting issuance of American Express and Discover cards by institutions that issue Visa and MasterCard in the United States is necessary.

Response to Interrogatory No. 10.(c)

Not required to answer. (However, see MasterCard's responses to Interrogatory Nos. 5.(b) and 9.(c)).

Interrogatory No. 10.(d)

10.(d) If the answer to subpart (a) was yes and to subpart (b) was no, please explain why you contend that there would be such effects in the United States but contend that there have been no such effects outside the United States.

Response to Interrogatory No. 10.(d)

Not required to answer.

Interrogatory No. 11.(a)

11.(a) Do you contend that American Express would not reach agreement to issue cards on the American Express network with any financial institutions issuing Visa or MasterCard cards in the United States if either Visa U.S.A.'s By-law 2.10(e) or MasterCard's Competitive Programs Policy were repealed?

Response to Interrogatory No. 11.(a)

MasterCard objects to Interrogatory No. 11.(a) on the grounds that it is vague and ambiguous, calls for speculation and is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing general and specific objections, MasterCard responds to Interrogatory No. 11.(a) as follows:

MasterCard can have no knowledge of what its members might do in a hypothetical situation. The CPP was enacted, however, to prevent members from engaging in such opportunistic behavior. (See MasterCard's response to Interrogatories Nos. 5.(b) and 9.(c)). MasterCard notes, however, that the discovery record in this litigation reveals that some MasterCard members have been skeptical of American Express' motives in approaching them and wary of dealing with American Express, regardless of the effects of CPP. As previously stated, MasterCard's CPP is not designed to keep card issuing financial institutions from signing agreements to issue American Express cards, but to protect the MasterCard brand, the association structure and the investments made in MasterCard by its members.

Interrogatory No. 11.(b)

11.(b) If the answer to subpart (a) is yes, please describe in detail the basis for that contention.

Response to Interrogatory No. 11.(b)

Not required to answer.

Interrogatory No. 11.(c)

11.(c) If the answer to subpart (a) is no, please state how many financial institutions you contend would agree with American Express to issue cards on its network in the United States.

Response to Interrogatory No. 11.(c)

MasterCard objects to Interrogatory No. 11.(c) on the grounds that it is vague and ambiguous, calls for speculation and is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing general and specific objections, MasterCard responds to Interrogatory No. 11.(c) as follows:

MasterCard cannot speculate as to how many members might engage in opportunistic behavior under such circumstances. (See MasterCard's response to Interrogatory No. 11.(a)). It is MasterCard's understanding, however, that American Express is only interested in offering this opportunity to a select few members.

Interrogatory No. 12.(a)

12.(a) Do you contend that repeal of Visa U.S.A. By-law 2.10(e) or MasterCard's Competitive Programs Policy would have an effect on the number and volume of transactions on your network?

Response to Interrogatory No. 12.(a)

MasterCard objects to Interrogatory No. 12.(a) on the grounds that it is vague and ambiguous, particularly inasmuch as it does not specify the geographic area to which it is referring, calls for speculation and to the extent that it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing general and specific objections, MasterCard responds to Interrogatory No. 12.(a), concerning only the United States, as follows:

MasterCard can have no knowledge of what might occur in a hypothetical situation. Although it can only speculate, MasterCard believes that some adverse effect on the number and volume of transactions on its network is likely, depending on the number of its members who will be willing to engage in opportunistic behavior under the circumstances.

Interrogatory No. 12.(b)

12.(b) If the answer to subpart (a) is yes, please describe in detail the effect you contend will occur and over what period of time.

Response to Interrogatory No. 12.(b)

MasterCard objects to Interrogatory No. 12.(b) on the grounds that it is vague and ambiguous, particularly inasmuch as it does not specify the geographic area to which it is referring, calls for speculation and to the extent that it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing general and specific objections, MasterCard responds to Interrogatory No. 12.(b), concerning only the United States, as follows:

If members engage in the type of opportunistic behavior described in the response to Interrogatory No. 5.(b), such behavior may affect the number, volume or type of transactions on MasterCard's network. If members choose to issue American Express corporate cards or travel and entertainment charge cards, for example, it is probable that certain transactions otherwise occurring on the MasterCard network would be diverted to the American Express network. Additionally, members' disincentives to continue to invest in and promote MasterCard products and the brand may ultimately cause further volume erosion, and could affect the viability of the MasterCard association.

Interrogatory No. 13.(a)

13.(a) Do you contend that MasterCard or Visa has ever named the other in a comparative advertisement published in any medium disseminated to merchants or cardholders/consumers in the United States.

Response to Interrogatory No. 13.(a)

MasterCard objects to Interrogatory No. 13.(a) on the grounds that it is vague, ambiguous, overbroad and to the extent that it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing general and specific objections, MasterCard responds to Interrogatory No. 13.(a) as follows:

Yes. MasterCard, however, does not contend that the nature of its competition with Visa is materially dependent on naming Visa "in a comparative advertisement published in any medium disseminated to merchants or cardholder/consumers in the United States."

Interrogatory No. 13.(b)

13.(b) If the answer to subpart (a) is yes, please identify the nature of each advertisement, where it appeared and for how long. Also identify the Bates number(s) of each copy of such advertisement produced to the Government.

Response to Interrogatory No. 13.(b)

MasterCard objects to Interrogatory No. 13.(b) on the grounds that it is vague, ambiguous, overbroad and to the extent that it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. MasterCard further objects to Interrogatory No. 13.(b) on the grounds that it is not in the nature of a contention interrogatory and thus in violation of Local Rule 33.3(b) inasmuch as the information requested could have been more practically obtained through other means of discovery.

Subject to and without waiving the foregoing general and specific objections, MasterCard responds to Interrogatory No. 13.(b). as follows:

MasterCard has named Visa in a comparative manner in communications and publications directed to MasterCard members, MasterCard merchants and prospective co-brand partners. MasterCard directs plaintiff's attention to the deposition testimony of Larry Flanagan regarding comparative advertising to cardholders. MasterCard is currently unaware of other examples of consumer advertising explicitly naming Visa. MasterCard has also implicitly named Visa in advertisements directed at consumers – advertisements that proclaimed Gold MasterCard the "Number One" Gold card (see e.g., Govt. Ex. 1223, letter and attachments from MasterCard's Marie Peyron to Steven Semeraro, Department of Justice, March 17, 1997); and advertisements that claim that "No card is more accepted" than MasterCard. Most importantly, all of MasterCard's advertising to consumers is meant to differentiate MasterCard from all of its competitors, including Visa.

Interrogatory No. 14.(a)

14.(a) Do you contend that there are any pro-competitive benefits to your being a not-for-profit association that would be lost if you were to become a for profit, stock company?

Response to Interrogatory No. 14.(a)

MasterCard objects to Interrogatory No. 14.(a) on the grounds that it is vague, ambiguous and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing general and specific objections, MasterCard responds to Interrogatory No. 14.(a) as follows:

MasterCard International is a nonstock membership corporation incorporated under the laws of the State of Delaware, that operates on a not-for-profit basis. MasterCard will not speculate regarding the meaning of the term "not-for-profit association." As to whether there would be any pro-competitive

benefits to MasterCard becoming a "for profit, stock company", MasterCard is unable to answer such a hypothetical question without a detailed explanation of the structure of the hypothetical "for profit, stock company". Even if MasterCard were inclined to speculate as to what information this Interrogatory is seeking, it does not understand how such an inquiry is relevant to this litigation or is designed to produce information relevant to this litigation.

Interrogatory No. 14.(b)

14.(b) If the answer to subpart (a) is yes, please describe in detail all such pro-competitive benefits.

Response to Interrogatory 14.(b)

Not required to answer.

Interrogatory No. 15.(a)

15.(a) Do you contend that competition between you and the other bank card association increased between January 1993 and January 1, 1998?

Response to Interrogatory No. 15.(a)

MasterCard objects to Interrogatory No. 15.(a) to the extent that it is vague, ambiguous, overbroad, particularly to the extent it seeks information covering transactions, activities, and events outside of the United States, and is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing general and specific objections, MasterCard responds to Interrogatory No. 15.(a) as follows:

MasterCard contends that it has always competed vigorously against each of its competitors, including Visa, both before, during and after the timeframe indicated in Interrogatory No. 15.(a).

Interrogatory No. 15.(b)

15.(b) If your answer to subpart (a) is yes, please describe in detail why you believe that to be the case and what the cause(s) for that (those) increase(s) was (were).

Response to Interrogatory No. 15.(b)

Not required to answer.

Interrogatories 20 through 23 are directed to MasterCard International only:

Interrogatory No. 20.(a)

20.(a) Do you contend that MasterCard (or its predecessor) took any action(s) with regard to dual issuance by its members of Visa and MasterCard cards in reliance on the content of the October 7, 1975 Business Review letter sent by the Antitrust Division to counsel for Visa?

Response to Interrogatory No. 20.(a)

MasterCard objects to Interrogatory No. 20.(a) to the extent that it is vague, ambiguous, overbroad and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing general and specific objections, MasterCard responds to Interrogatory No. 20.(a) as follows:

MasterCard asserts that neither it, nor its predecessors, has ever adopted a prohibition against the issuance of Visa (or its predecessors) card products by MasterCard members. However, for the

intervening twenty-four (24) years MasterCard has relied upon the statements in the Antitrust Division's October 7, 1975 Business Review letter to counsel for Visa (and its accompanying Press Release) as, and understood those statements to be, an affirmation of the propriety of dual issuance and governance under the antitrust laws. As MasterCard stated in its Answer to the Complaint, "the current structure developed and flourished" in light of the Department's response to Visa. (Answer, Introduction, p. 8).

Interrogatory No. 20.(b)

20.(b) If the answer to subpart (a) is yes, please describe in detail the actions you contend were taken by MasterCard (or its predecessor) in reliance on the content of the Business Review letter.

Response to Interrogatory No. 20.(b)

MasterCard objects to Interrogatory No. 20.(b) to the extent that it is vague, ambiguous, overbroad and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing general and specific objections, MasterCard responds to Interrogatory No. 20.(b) as follows:

Countless decisions, or "actions," have been made by MasterCard employees, U.S. Board and committee members, and member institutions regarding the U.S. market since October 7, 1975 in light of the presence of duality, and the affirmation of its propriety by the Antitrust Division.

Interrogatory No. 21.(a)

21.(a) Do you contend that a financial institution's license to issue cards that operate on the Cirrus network would not end if that institution's membership in MasterCard ended because that institution began to issue American Express or Discover cards in the United States?

Response to Interrogatory No. 21.(a)

MasterCard objects to Interrogatory No. 21.(a) to the extent that it is vague, ambiguous, overbroad and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing general and specific objections, MasterCard responds to Interrogatory No. 21.(a) as follows:

MasterCard is unable to answer Interrogatory No. 21.(a) because such a situation has never occurred. However, MasterCard is not aware of any specific Cirrus, MasterCard U.S. Region Board of Directors or MasterCard Global Board of Directors rule, policy or by-law that would expressly require this result.

Interrogatory No. 21.(b)

21.(b) If your answer to subpart (a) was yes, please explain in detail which rules, policies or by-laws of Cirrus, the MasterCard U.S. Region or MasterCard International you rely on to support that contention.

Response to Interrogatory No. 21.(b)

Not required to answer.

Interrogatory No. 22.(a)

22.(a) Do you contend that action(s) taken by you in 1999/2000 to compel or induce MasterCard member institutions that have representatives on your International and/or U.S. Region Boards of Directors to have at least 80% of the dollar transactions on all their outstanding credit, charge and/or debit cards be on the MasterCard system moot the Government's case or otherwise affect the Government's ability to obtain equitable relief against you?

Response to Interrogatory No. 22.(a)

MasterCard objects to Interrogatory No. 22.(a) on the grounds that it is vague and ambiguous, particularly with respect to the terms "compel" and "induce," and to the extent it calls for a legal conclusion. MasterCard further objects to Interrogatory No. 22.(a) to the extent that it requires the disclosure of information protected by the attorney-client privilege, work-product doctrine, joint defense privilege or any other applicable privilege or protection.

Subject to and without waiving the foregoing general and specific objections, MasterCard responds to Interrogatory No. 22.(a) as follows:

Yes.

Interrogatory No. 22.(b)

22.(b) If your answer to subpart (a) was yes, please explain in detail (i) each such action and (ii) what portions of the Government's case you contend are moot or otherwise affected and why.

Response to Interrogatory No. 22.(b)

MasterCard objects to Interrogatory No. 22.(b) on the grounds that it is vague, ambiguous, and to the extent it calls for a legal conclusion. MasterCard further objects to Interrogatory No. 22.(b) to the extent that it requires the disclosure of information protected by the attorney-client privilege, work-product doctrine, joint defense privilege or any other applicable privilege or protection.

Subject to and without waiving the foregoing general and specific objections, MasterCard responds to Interrogatory No. 22.(b) as follows:

To the extent the plaintiff's case is somehow premised on a lack of "dedication" for U.S. Board and committee members, market forces, as evidenced by MasterCard's Member Business Agreements, make any relief on Count One of the Complaint unnecessary and unwarranted.

Interrogatory No. 23.(a)

23.(a) Do you contend that pro-competitive, business justification(s) exist for MasterCard U.S. Region and/or MasterCard International Board of Directors not having deemed Visa a "competitive" card within the meaning of MasterCard U.S. Region's Competitive Programs Policy?

Response to Interrogatory No. 23.(a)

MasterCard objects to Interrogatory No. 23.(a) on the grounds that it is vague and ambiguous.

Subject to and without waiving the foregoing general and specific objections, MasterCard responds to Interrogatory No. 23.(a) as follows:

Yes.

Interrogatory No. 23.(b)

23.(b) If your answer to (a) is anything other than an unequivocal "no", please describe in detail the pro-competitive justification(s) you contend exist.

Response to Interrogatory No. 23.(b)

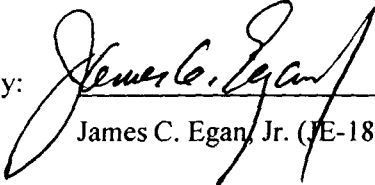
MasterCard objects to Interrogatory No. 23.(b) to the extent that it is vague and ambiguous.

Subject to and without waiving the foregoing general and specific objections, MasterCard responds to Interrogatory No. 23.(a) as follows:

See MasterCard's responses to Interrogatory Nos. 5.(b). and 9.(c).

Dated: Washington, District of Columbia
April 21, 2000

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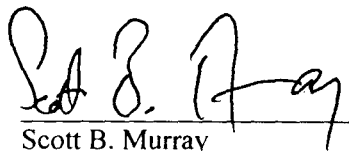
CERTIFICATE OF SERVICE

I, Scott B. Murray, hereby certify that a true and correct copy of the foregoing amended responses and objections of defendant MasterCard International Inc. to Plaintiff's Third Set of Interrogatories was served this 21st day of April 2000 via facsimile and Federal Express, on the following counsel for the parties in the action:

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