ANTICOMPETITIVE REGULATION IN THE PAYMENT CARD INDUSTRY

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ABSTRACT

The payment card industry in the United States has come under increasing scrutiny in recent years. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 reflects a high-water mark of congressional influence for the industry, altering bankruptcy procedures largely for the benefit of card issuers. Since that point, Congress has turned repeatedly to rein in perceived abuses in the industry. The most substantial and direct response to the perception of abuse is the Credit Card Accountability Responsibility and Disclosure Act of 2009. That statute was focused directly on the card industry and outlawed a wide variety of industry practices. More recently, in § 1075 (the "Durbin Amendment") of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Congress cut permissible interchange fees for debit card transactions to amounts that approximate the costs of processing those transactions; the Federal Reserve's implementing regulation apparently will lead to a more than 50 percent decline in those fees.

So why is it at all noteworthy that Congress, in the course of reining in an industry targeted for excessive behavior, should require substantial changes in the industry's operations? My hypothesis is a simple one. Both provisions make it more challenging to operate profitably in the payment card market. Because both provisions will pose greater challenges for smaller firms than they do for larger firms, both statutes will make it harder for smaller banks to compete in the payment card market. It may not be easy to evaluate the consequences of greater concentration in the industry. But it is clear that industry concentration is not what drove Congress to action: whatever else Congress was trying to do, it certainly was not trying to drive small banks from the payment card market

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