

briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is November 17, 2011. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules; witness testimony must be filed no later than three days before the hearing. The deadline for filing posthearing briefs is December 9, 2011. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before December 9, 2011. On January 13, 2011, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before January 17, 2011, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 Fed. Reg. 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: June 27, 2011.

**James R. Holbein,**

*Secretary to the Commission.*

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## DEPARTMENT OF JUSTICE

[OMB Number 1123-0011]

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 30-Day notice of information collection under review: Annual certification report and equitable sharing agreement.

The Department of Justice (DOJ), Criminal Division, Asset Forfeiture and Money Laundering Section (AFMLS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 76, Number 80, page 23338, on April 26, 2011, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 1, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or fax them to 202-395-7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Clifford Krieger at 202-514-0013 or the DOJ Desk Officer at 202-395-3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

### Overview of This Information Collection

(1) *Type of Information Collection:* Reauthorization a currently approved collection.

(2) *Title of the Form/Collection:* Annual Certification Report and Equitable Sharing Agreement.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: N/A. Criminal Division, Asset Forfeiture and Money Laundering Section.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Law Enforcement Agencies that participate in the Federal Equitable Sharing Program. Other: None. The form is part of a voluntary program in which law enforcement agencies receive forfeited assets and proceeds to further law enforcement operations. The participating law enforcement agencies must account for their use of program funds on an annual basis and renew their contract of participation. DOJ uses this information to ensure that the funds are spent in accordance with the requirements of the program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 9,736 respondents will complete a 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 4,868 annual total burden hours associated with this collection.

If Additional Information is Required Contact: Jerri Murray, Department Clearance Officer, United States

Department of Justice, Policy and Planning Staff, Justice Management Division, Two Constitution Square, 145 N Street, NE., Room 2E-508, Washington, DC 20530.

**Jerri Murray,**

*Department Clearance Officer, PRA, United States Department of Justice.*

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## DEPARTMENT OF JUSTICE

### Antitrust Division

#### ***United States, et al. v. American Express Company, et al.; Public Comments and Response on Proposed Final Judgment***

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), the United States hereby publishes below its Response to public comments received on the proposed Final Judgment in *United States, et al. v. American Express Company, et al.*, Civil Action No. CV-10-4496, which was filed in the United States District Court for the Eastern District of New York on June 14, 2011. The United States received six comments in this case. Pursuant to the June 22, 2011 Order of Judge Nicholas G. Garaufis, the United States has been excused from publishing the substance of the public comments in the **Federal Register**. The public comments and the United States' Response thereto may be found on Department of Justice's Web site at: <http://www.justice.gov/atr/cases/americanexpress.html>.

Copies of the comments and the Response are available for inspection at the Department of Justice Antitrust Division, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (telephone: 202-514-2481) and at the Office of the Clerk of the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, NY 11201. Copies of any of these materials may be obtained upon request and payment of a copying fee.

**Patricia A. Brink,**

*Director of Civil Enforcement.*

#### **In the United States District Court for the Eastern District of New York**

*United States of America, et al.*, Plaintiffs, *v. American Express Company, American Express Travel Related Services Company, Inc., Mastercard International Incorporated, and Visa Inc.*, Defendants.

Civil Action No. 10-CV-4496 (NGG) (RER)

#### **Response of Plaintiff United States to Public Comments on the Proposed Final Judgment**

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h) ("APPA" or "Tunney Act"), the United States hereby files the public comments concerning the proposed Final Judgment in this case and the United States' response to those comments. Most of the comments applaud the settlement for lessening the restraints on competition in the General Purpose Card industry. None of the comments contends that the proposed Final Judgment is contrary to the public interest or should not be approved by the Court. The United States has carefully considered the various questions and suggestions contained in the comments and continues to believe that the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violations alleged in the Amended Complaint against Defendants MasterCard International Incorporated ("MasterCard") and Visa Inc. ("Visa"). The United States will therefore move the Court for entry of the proposed Final Judgment after the public comments and this Response have been published in the **Federal Register**.<sup>1</sup>

#### **I. Procedural History**

The United States and seven Plaintiff States filed the Complaint in this case on October 4, 2010. Simultaneously, the Plaintiffs filed a proposed Final Judgment as to Defendants MasterCard and Visa and a Stipulation consenting to entry of the proposed Final Judgment after compliance with the Tunney Act. Defendants American Express Company and American Express Travel Related Services Company, Inc., are not parties to the proposed settlement and the litigation against them will continue. On December 21, 2010, the United States filed an Amended Complaint adding eleven additional States as Plaintiffs and an Amended Stipulation including those States in the proposed settlement.<sup>2</sup>

As required by the Tunney Act, the United States (1) filed on October 4, 2010, a Competitive Impact Statement ("CIS") explaining the settlement with MasterCard and Visa; (2) caused the proposed Final Judgment and CIS to be

published in the **Federal Register** on October 13, 2010 (75 FR 62858); and (3) published summaries of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written public comments, in *The Washington Post* and *The New York Post* for seven days beginning on October 11, 2010 and ending on October 17, 2010. The 60-day period for public comments ended on December 16, 2010. The United States received six comments, which are described below in Section IV, and attached as exhibits hereto.

#### **II. The Amended Complaint and the Proposed Final Judgment**

The Amended Complaint challenges certain of Defendants' rules, policies, and practices that impede merchants from providing discounts or benefits to promote the use of a competing credit card that costs the merchant less to accept ("Merchant Restraints").<sup>3</sup> These Merchant Restraints have the effect of suppressing interbrand price and non-price competition in violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

The Visa Merchant Restraints challenged in the Amended Complaint prohibit a merchant from offering a discount at the point of sale to a customer who chooses to use a competitor's General Purpose credit or charge Card ("General Purpose Card") instead of a Visa General Purpose Card. Visa's rules do not allow discounts for other General Purpose Cards, unless such discounts are equally available for Visa transactions. *See* Amended Complaint ¶ 26 (citing Visa International Operating Regulations at 445 (April 1, 2010) (Discount Offer—U.S. Region 5.2.D.2)). The MasterCard Merchant Restraints challenged in the Complaint prohibit a merchant from "engag[ing] in any acceptance practice that discriminates against or discourages the use of a [MasterCard] Card in favor of any other acceptance brand." *See* Amended Complaint ¶ 27 (quoting MasterCard Rule 5.11.1). This means that merchants cannot offer discounts or other benefits to persuade customers to use a Discover, American Express, or

<sup>3</sup> Pursuant to the Stipulation filed with the Court on October 4, 2010, both Visa and MasterCard have agreed that they "shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, \* \* \* and shall \* \* \* comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court." Stipulation ¶ 3. Accordingly, Visa and MasterCard have ceased enforcing the Merchant Restraints. The language of their merchant rules described in this section, however, will not be changed until the Court enters the Final Judgment. *See* proposed Final Judgment §§ V.A-D.

<sup>1</sup> The United States will shortly be filing a motion, pursuant to 15 U.S.C. 16(d), to excuse its obligation to publish certain voluminous exhibits in the **Federal Register**. The United States will arrange for publication of the comments and this Response once the Court has ruled on that motion.

<sup>2</sup> On April 8, 2011, the State of Hawaii withdrew as a Plaintiff.