Steven Semeraro
United States Department of Justice, Antitrust Division
325 Seventh Street, NW, Suite 300, Washington, DC 20004
Attorney for the Plaintiff United States of America

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, **Plaintiff,** **v.** **VISA U.S.A. INC., VISA INTERNATIONAL CORP., AND MASTERCARD INTERNATIONAL INCORPORATED,** **Defendants.**	**Civil Action No. 98-** **COMPLAINT FOR EQUITABLE RELIEF FOR VIOLATIONS OF 15 U.S.C. § 1** **(SHERMAN ANTITRUST ACT)**

Joel I. Klein (JK3481)
Assistant Attorney General

John M. Nannes (JN4148)
Deputy Assistant Attorney General

Rebecca P. Dick (RD5481)
Director, Civil Non-Merger Enforcement

M. J. Moltenbrey (MM4814)
Chief, Civil Task Force

Susan L. Edelheit (SE8020)
Assistant Chief, Civil Task Force

Melvin A. Schwarz (MS8604)
Special Counsel for Civil Enforcement

Steven Semeraro (SS8817)
Kurt Shaffert (KS4333)
Scott A. Scheele (SS0496)
Jeffrey I. Steger (JS7416)
Sean T. Fox (SF8664)
Ahmed Taha (AT8157)

Attorneys, Civil Task Force
United States
Department of Justice
Antitrust Division
Suite 300
325 Seventh Street, N.W.
Washington, D.C. 20004
202/514-8374
202/514-7308 (fax)

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UNITED STATES DISTRICT COURT
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UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
v.	)	**Civil Action No. 98-**
VISA U.S.A. INC., VISA INTERNATIONAL CORP., AND MASTERCARD INTERNATIONAL INCORPORATED,	)	**COMPLAINT FOR EQUITABLE RELIEF FOR VIOLATIONS OF 15 U.S.C. § 1**
Defendants.	)	**(SHERMAN ANTITRUST ACT)**

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to prevent and enjoin Visa U.S.A. Inc. and Visa International Corp. (collectively "Visa") and MasterCard International Incorporated ("MasterCard") from violating the antitrust laws by restraining competition in the market for general purpose card network products and services. General purpose cards — which include credit cards and charge cards — are payment devices that enable consumers to make purchases from unrelated merchants without immediately accessing or reserving funds. Visa and MasterCard are the two largest general purpose card networks. Together, they account for over 75% of all purchases made with general purpose cards in the United States.

Visa and MasterCard are joint ventures — or, as they call themselves, "associations" — created, owned, governed, and operated by and in the interests of their member banks. These

banks use the associations' products and services either to issue cards to consumers, provide card acceptance services to merchants, or both.

The same large banks control both associations by simultaneously serving on the board of directors of one and on important committees of the other. In addition, each of these banks issues significant numbers of both Visa and MasterCard cards. The control of the two associations by banks that have significant interests in both — known in the industry as "duality" — has substantially lessened competition between Visa and MasterCard because these banks have been, and continue to be, significantly less willing to fund and implement competitive initiatives that would cause consumers to switch their business from one association to the other.

In addition, both Visa and MasterCard — on behalf of and in collaboration with the banks that govern them — have adopted rules and policies that restrict the ability of all member banks to do business with American Express, Discover/Novus, or any other network that the controlling banks deem to be "competitive." Importantly, Visa and MasterCard do not apply these rules to one another. Banks can therefore do business with the two largest general purpose card networks, but not with smaller competitor networks. These exclusionary rules and policies eliminate certain forms of competition among the Visa and MasterCard member banks, and have effectively precluded American Express and Discover/Novus from competing to enlist banks in the U.S. to issue their cards.

Through their common control of both Visa and MasterCard, the largest banks have stifled competition between these two networks and have thwarted competition from smaller competitor networks. This reduction in competition among general purpose card networks has hindered and delayed the development and implementation of improved network products and services, and

has lessened consumer choice. If allowed to continue, the anticompetitive structure and practices of the associations will threaten competition in the development and marketing of new general purpose card products, such as products that integrate credit, debit, and stored value functions. Accordingly, the United States brings this action and complains and alleges as follows:

I.
Jurisdiction And Venue

1. The United States files this Complaint under § 4 of the Sherman Act, 15 U.S.C. § 4, as amended, to prevent and restrain Visa and MasterCard from violating § 1 of the Sherman Act, 15 U.S.C. §1, as amended.

2. Visa and MasterCard maintain offices, transact business, and are found within the Southern District of New York, within the meaning of 15 U.S.C. § 22. This Court has personal jurisdiction over each defendant, and venue is proper under 15 U.S.C. § 22 and 28 U.S.C. § 1391(b).

II.
Defendants and Co-Conspirators

3. Visa U.S.A. Inc. ("Visa U.S.A.") and Visa International Corp. ("Visa International") are associations of independent banks structured as membership corporations. Both corporations are organized under the laws of the State of Delaware, with their principal place of business in San Francisco, California. Visa International, Visa U.S.A., and all of their predecessors and subsidiaries are referred to herein collectively as Visa.

4. Visa International has ultimate authority over Visa U.S.A. Visa International has delegated some authority to its regional boards, but Visa U.S.A.'s authority to regulate even matters solely within the United States is subject to Visa International's policies.

5. MasterCard International Incorporated ("MasterCard International") is also an association of independent banks structured as a membership corporation. It is organized under the laws of the State of Delaware, with its principal place of business in Purchase, New York. MasterCard International has created a separate Board of Directors and hired separate management to run its business in the United States. Unlike Visa, MasterCard International has not created a separate corporate subsidiary for its United States operations. MasterCard International and all of its predecessors and subsidiaries are referred to herein collectively as MasterCard.

6. Certain financial institutions not made defendants in this Complaint participated as co-conspirators in the violations alleged and have performed acts and made statements in furtherance thereof.

III.
Trade And Commerce

7. Throughout the period covered by this Complaint, Visa and MasterCard have operated general purpose card networks throughout the United States. They provide card network products and services in, and those products and services affect, a substantial amount of interstate commerce. In 1997, transaction volume on the Visa and MasterCard networks exceeded $600 billion.

IV.
Relevant Market

8. General purpose cards are payment devices that a consumer can use to make purchases (a) from unrelated merchants and (b) without accessing or reserving the consumer's funds at the time of the purchase. There are two principal types of general purpose cards:

- credit cards — such as Visa and MasterCard Classic and Gold cards, the American Express Optima card, and the Discover card — that usually permit the cardholder to either (i) pay all charges within a set period after a monthly bill is rendered, or (ii) pay only a portion of the charges within that time and pay the remainder in monthly installments, including interest; and
- charge cards — such as the American Express Green Card — that require the cardholder to pay all charges within a set period after a monthly bill is rendered.

General purpose cards do not include cards that can be used at only one merchant (e.g., department store cards) or cards that immediately access funds on deposit in a checking or savings account (e.g., debit cards).

9. General purpose cards provide a consumer with a combination of convenience, widespread acceptance, security, and deferred payment options that is not effectively replicated by any other form of payment. For a significant number of consumers and types of transactions, other forms of payment are not a close substitute for general purpose cards.

10. Competition to provide general purpose cards occurs at two levels. First, Visa and MasterCard compete with American Express, Discover/Novus, Diners Club, and Japan Credit Bureau ("JCB") in an upstream market, hereinafter referred to as the general purpose card

network market. Second, individual Visa and MasterCard member banks compete with each other and with American Express, Discover/Novus, Diners Club, and JCB in two downstream markets:

- the market for issuing general purpose cards to consumers ("the card-issuing market");
- the market for providing the services that enable merchants to accept general purpose cards for the purchase of goods or services ("the card-acceptance market").

11. The Visa and MasterCard associations compete only in the upstream network market. Their member banks — with the exception of Citibank, which owns Diners Club — compete only in the two downstream markets. American Express, Discover/Novus, Diners Club, and JCB are integrated entities that compete in all three markets.

A.
Product Market

12. Certain functions essential to the acceptance and use of general purpose cards are most efficiently performed by general purpose card networks, often because the functions require broad coordination across the network.

13. For example, among these functions, all general purpose card networks:

- invent, develop, and implement systems and technologies, including systems to authorize and settle card transactions and reduce fraud;
- develop, market, advertise, and promote their brand names among consumers and merchants;
- invent, develop, implement, standardize, market, and advertise types of card products;
- develop and implement rules and standards to govern their networks;

- set fees and assessments for use of the network's products and services, including the interchange fee that accounts for the largest part of the price that merchants pay for the right to accept general purpose cards; and

- extend card acceptance to merchant segments that have not accepted cards in the past.

14. The products and services provided by general purpose card networks form a relevant product market ("the network market"). Banks and other entities that issue cards and provide card acceptance services to merchants rely on general purpose card networks to provide a core set of these products and services for which there is no cost-effective alternative. Card issuers and banks that provide card acceptance services to merchants thus cannot substitute other products and services for the products and services provided by general purpose card networks in an amount sufficient to deter the exercise of market power in the network market.

15. In addition, consumers do not substitute other forms of payment, and merchants do not stop accepting general purpose cards, in amounts sufficient to deter the exercise of market power in the network market.

16. The products and services provided by general purpose card networks are critical inputs to the entities that issue cards to consumers and provide card acceptance services to merchants.

17. Card issuers compete for cardholders with respect to interest rates, annual cardholder fees, payment terms and conditions, card enhancements, and customer service. Entities that provide card acceptance services to merchants compete with respect to their fees and the quality of service they provide. This competition among Visa and MasterCard member banks in the card-issuing market and the card-acceptance market is not a substitute for, and does not replace,

competition at the network level. Competition at the downstream levels thus cannot protect consumers from the anticompetitive effects of the exercise of market power by general purpose card networks. Competition among card issuers does, however, ensure that if network competition is vigorous, the benefits of that competition will be passed on to consumers.

B.
Geographic Market

18. The United States is the relevant geographic market for each relevant product market.

19. Almost all of the general purpose cards issued by banks based in the United States are issued to domestic cardholders, and these consumers use their cards predominantly at merchants located in the United States.

20. Most general purpose card transactions with merchants located in the United States are made using cards issued in the United States, and most merchants would not consider networks operating outside the United States to be a substitute for networks operating in the United States.

21. The defendants consider the United States to be a separate geographic market, as demonstrated in part by their establishing separate Boards of Directors for — and separate rules governing the operation of — their card networks in the United States. For example, the Visa and MasterCard rules permitting the member banks to issue Visa and MasterCard, but no other network's cards, apply only in the United States.

V.
Visa and MasterCard Have Market Power in the Network Market

22. The anticompetitive effects alleged in this Complaint occur primarily in the network market.

23. Visa and MasterCard together have and exercise market power in the network market.

24. Visa and MasterCard are the two largest general purpose card networks in the United States. Their only significant competitors are the American Express and Discover/Novus networks, and entry into the network market is extremely difficult.

A.
Visa and MasterCard Dominate the Market

25. In 1997, Visa accounted for approximately 50% of the dollar volume of transactions on all general purpose cards in the United States and approximately 53% of the number of general purpose cards issued.

26. In 1997, MasterCard accounted for approximately 25% of the dollar volume of transactions on all general purpose cards in the United States and approximately 33% of the number of general purpose cards issued.

27. Together, Visa and MasterCard account for approximately 75% of general purpose card dollar volume and approximately 86% of the number of general purpose cards issued.

28. In the United States, approximately 3.4 million merchant outlets accept both Visa and MasterCard. Practically every merchant that accepts Visa also accepts MasterCard and vice versa. This common merchant base is significantly larger than the base of any other network competitor.

29. In 1997, American Express accounted for approximately 18% of dollar volume and 5% of general purpose cards issued in the United States. Cards on the American Express network were accepted at approximately 2.5 million merchant outlets in the United States.

30. In 1997, Discover/Novus accounted for approximately 6% of dollar volume and 8.5% of general purpose cards issued in the United States. Cards on the Novus network were accepted at approximately 3.1 million merchant outlets in the United States.

31. There are two other general purpose card networks that compete in the United States:

- Diners Club/Carte Blanche ("Diners"), which is owned by Citicorp — the bank that has issued the largest number of Visa and MasterCard cards — and
- JCB, a network based in Japan that issues cards in the United States primarily to Japanese expatriates.

Both networks have competitively insignificant market shares and limited merchant acceptance in the United States.

B.
Competition Among Card Issuers is Not a Substitute for Network Competition

32. Card issuers may compete on interest rates, fees, enhancements, and customer service. This competition, however, cannot cure the harm to consumers arising from a lack of competition among card networks, nor does it prevent the Visa and MasterCard member banks from collectively exercising power in the network market to the detriment of consumers.

C.
There Are Significant Barriers to Network Entry

33. The prospect of entry by new card networks does not prevent Visa and MasterCard from exercising market power in the network market.

34. Entry is extremely difficult because establishing a new general purpose card network requires large investments to develop both cardholder and merchant bases. Coordinated development of both cardholder and merchant bases is critical because the utility of a particular card product to cardholders and merchants depends not only on the cost and features of the card, but also on the ubiquity of its acceptance and use.

35. Since Visa and MasterCard were formed in the mid-1960s, only one network has successfully entered the relevant market. In 1985, Sears created that new network, then called Discover and now known as Novus, by building on the infrastructure and the cardholder and merchant bases of the Sears single-retailer card system. At the time, Sears was one of the largest retailers and card issuers in the United States.

36. In the early 1980s, Citicorp — the largest issuer of Visa and MasterCard cards and, at the time, a large provider of card acceptance services to merchants — unsuccessfully attempted to enter the network market.

37. Other companies that considered entering the network market concluded that the high cost of building a merchant and cardholder base made entry too difficult. For example, in the late 1980s, AT&T considered forming a new general purpose card network. After analyzing the Discover and Citicorp experiences, however, it decided not to enter the network market. AT&T instead entered only at the card-issuing level by becoming a member of Visa and MasterCard.

38. Visa and MasterCard have adopted and maintained anticompetitive rules and policies described in paragraphs 101 to 154 that further increase an entrant's cost of developing cardholder and merchant bases.

39. By virtue of their dominant market shares and the difficulty of entry into the highly-concentrated network market, Visa and MasterCard together have the power to injure competition in that market. As described below, they have exercised that power to the detriment of consumers by reducing competitive investments in the innovation, development, and marketing of improved network products and services, and by restraining the competitiveness of smaller networks.

VI.
The Same Banks Have Taken Control of Both Visa and MasterCard

40. Both Visa and MasterCard are organized as membership corporations that ostensibly operate on a not-for-profit basis. Their activities are financed through fees and assessments levied on their members. Both card networks permit a variety of financial institutions to become members, including commercial banks, thrifts, credit unions, and entities that are engaged primarily in the card business, commonly known as "non-bank banks" or "monoline banks." Throughout this Complaint, all types of financial institutions that are eligible to become members of Visa and MasterCard are referred to collectively as "banks," and all financial institutions that are members of Visa and/or MasterCard are referred to collectively as "member banks."

41. Under Visa's and MasterCard's corporate structures, a member bank in either association has the right to issue cards bearing the association's trademark and to offer card acceptance services for the association's cards. Most member banks — including all of the

largest ones — also become owners of the association and receive a bundle of rights similar to those of a shareholder in a corporation. These rights include the opportunity to vote for a board of directors, participate in the governance of the association, and share in the association's assets upon dissolution. Voting and dissolution rights are apportioned according to the dollar volume of transactions that the bank has transmitted through the network. Member banks also agree to abide by the associations' bylaws, rules, regulations, and policies.

A.
Visa and MasterCard Began As Entirely Separate Systems

42. Prior to 1970, Visa and MasterCard were controlled by different groups of banks.

43. In 1970, one of Visa's member banks, Worthen Bank of Arkansas, sought to become a card-issuing member of both networks. MasterCard did not object, but Visa responded by adopting Bylaw 2.16, a bylaw that prohibited member banks from issuing any other network's cards.

44. Worthen then sued Visa, alleging that Bylaw 2.16 violated § 1 of the Sherman Act. The district court determined that the bylaw was a *per se* violation and granted summary judgment for Worthen. The Eighth Circuit, however, reversed and remanded for trial under the rule of reason.

45. While the case was awaiting trial, Visa asked the Department of Justice to express its views — pursuant to a Department procedure called a "Business Review" — on the legality of a more restrictive bylaw that would have prohibited Visa members from both issuing cards *and* providing card acceptance services for "any other [card] program presently existing or which may develop."

46. The Department responded that it would not object to a bylaw that restricted Visa members to *issuing* Visa cards exclusively "to the extent it is necessary to insure continued intersystem competition." But the Department expressed concern that Visa's proposed prohibition on banks providing card *acceptance* services to merchants for both networks "might well handicap efforts to create new bank credit card systems and may also diminish competition among the banks in various markets."

B.
The Visa and MasterCard Governing Banks Adopted Duality

47. Notwithstanding the Business Review Letter, the member banks on Visa's Board of Directors, over the objections of Visa's General Counsel, voted to permit Visa member banks to own and participate in the governance of MasterCard, and to permit MasterCard members to own and participate in the governance of Visa. MasterCard's Board of Directors also permitted MasterCard member banks to become owners and governors of Visa, and Visa members to become owners and governors of MasterCard.

48. This overlapping ownership and governance structure has become known in the industry as duality.

49. Since 1975, virtually all significant card-issuing banks have become owners of both Visa and MasterCard. Almost all of the largest card-issuing banks have representatives on one of the associations' boards of directors as well as have representatives on the important committees that influence policy for each network. For example, MasterCard's Business Committee and Visa's Marketing Advisors Committee advise their respective network's professional staff and management on key strategic and competitive issues. In 1996, twelve of the twenty-one banks

represented on Visa's Board of Directors were also represented on MasterCard's Business Committee. Seventeen of the twenty-seven banks on MasterCard's Business Committee had representatives on Visa's Marketing Advisors Committee. Seven of the twenty-two banks represented on MasterCard's Board of Directors also were represented on Visa's Marketing Advisors Committee.

50. In total, as of year-end 1996, approximately nineteen banks — including Chase Manhattan, Citibank, First Chicago, Bank of America, and NationsBank — had a representative on the board of directors of one association and on at least one important committee of the other association.

51. Despite this overlap in ownership and governance, neither Visa nor MasterCard enforces the safeguards necessary to prevent one association from obtaining confidential competitive information about the other.

52. In 1992, MasterCard International's Executive Vice President and General Counsel wrote in a letter to the Department of Justice that "when one board acts with respect to a matter, the results of those actions are disseminated to the members which are members in both organizations. As a result, each of the associations is a fishbowl and officers and board members are aware of what the other is doing, much more so than in the normal corporate environment."

VII.
Visa and MasterCard Restrain Competition

53. Visa and MasterCard — on behalf of and in collaboration with their governing banks — make competitive decisions that (a) restrain competition between the two associations; and (b) restrain competition from other networks and eliminate certain forms of competition among the

member banks. As a result of this anticompetitive behavior, certain competitive initiatives that would have benefited consumers have been abandoned, delayed, suppressed, and diluted; consumer choices have been reduced; and competition among general purpose card networks has been restrained substantially.

A.
Duality Restrains Competition Between Visa and MasterCard

54. The common control of both Visa and MasterCard by banks with significant financial interests in both networks restrains competition between those two general purpose card networks.

1.
Duality Lessens the Associations' Incentives to Compete Against One Another

55. The banks that govern Visa earn substantial profits from issuing MasterCard cards. For example, as of year-end 1997, Visa U.S.A.'s Board of Directors included representatives of First Union Corporation and Associates First Capital Corporation, both of which had issued nearly 40% of their general purpose cards on the MasterCard network.

56. The banks that govern MasterCard earn an even greater percentage of their profits from issuing Visa cards. For example, as of year-end 1997, at least five banks that placed directors on the MasterCard board for the United States Region issued more Visa cards than MasterCard cards. The most pronounced examples among MasterCard's 1997 board members were Providian Bancorp Inc. and Capital One Bank, which had issued more than 95% and more than 66% of their cards on the Visa network, respectively.

57. Because of these significant overlapping financial interests, the banks that govern each association have rejected investments in, and implementation of, competitive initiatives that might lead consumers to switch from one association's brand of card to the other's. From the banks' perspective, these innovations would merely shift their profits from cards issued on one of their networks to cards issued on the other.

58. Because the same banks control the associations, the overlapping interests of the governing banks substantially restrain the ability of the separate managements of Visa and MasterCard to compete.

2.
Visa and MasterCard Top Executives Admit that Duality Restrains Competition

59. Officials at the highest levels of Visa and MasterCard have acknowledged — repeatedly, publicly, and under oath — that the common ownership and governance of Visa and MasterCard significantly limit competition between the two associations.

60. In 1992, Visa International's President and Chief Executive Officer testified:

> Q: So you believe consumers would be better off without duality?
>
> A: Yes.

He explained that "Visa was a better organization [before its owners acquired an interest in MasterCard. I]t created more, it was more innovative, it was more vital and more imaginative. . . . The real creativity, ingenuity, desire to develop, [and] support from members that made Visa what it is today came before duality because there were groups of banks who wanted to support Visa to go beat up on MasterCard, and there were groups of banks in MasterCard who wanted to support MasterCard to go beat up on Visa. And they weren't sitting

there as shareholders of both organizations not really caring who beat up on whom or if they didn't beat up on anyone or not caring who won. If you've got one foot firmly placed on both sides of the street, who cares. . . . [a]nd I think that not only would the banks have benefited had they gone this way [without duality], but ultimately the consumer would, too . . . . "

61. In 1992, Visa International's Executive Vice President and General Counsel testified that "it is very difficult for us to take a step, an aggressive step that hurts MasterCard because the same banks who sit there on the board, who are in Visa are also in MasterCard." In response to the question whether "duality has led to a decrease in intersystem competition between Visa and MasterCard," he replied, "Absolutely," and when asked whether duality harmed consumers, he answered "I think in the long run they would be better off without duality . . . ."

62. In 1992, MasterCard International's Executive Vice President and General Counsel wrote in a letter to the Department of Justice that Visa's and MasterCard's "members, which necessarily underwrite the [networks'] costs, view the associations as complementary and are displeased when one attempts to enhance itself at the expense of the other. . . . MasterCard and Visa simply do not 'compete' in any conventional business sense."

63. In January 1997, the President of MasterCard International's U.S. Region testified: "It is clear that because of duality today you don't see MasterCard and Visa in the marketplace attacking each other. . . . [T]he owners . . . don't want us attacking the other thing they own . . . ."

64. Also in January 1997, the President and Chief Executive Officer of Visa U.S.A. testified that "you can't compete in certain areas if you're co-owned." He emphasized that Visa

would seek to differentiate its network services from MasterCard's to a greater extent if Visa were not owned by the same banks that own MasterCard.

3.
Proposals to Roll Back Duality Were Rejected

65. Recognizing that duality blunts competition between the associations, each network's staff and management have sought at various times to increase their network's independence and enhance network competition. The banks that control Visa and MasterCard have resisted these efforts.

66. In 1991, Visa International's President and Chief Executive Officer proposed eliminating the overlap between the two networks. Under the proposal, each member bank would issue prospectively only one general purpose card brand, Visa or MasterCard, and would participate exclusively in the governance of the system on which it chose to issue cards.

67. Also in 1991, Visa's U.S. Executive/Planning Committee considered the advantages and disadvantages of phasing out duality. According to an internal Visa document, an anticipated benefit of eliminating duality was to create "real competition with MasterCard."

68. The Visa Board rejected these proposals, voting instead to continue to permit a bank to govern Visa regardless of the extent of the bank's interest in MasterCard.

69. Similarly, throughout the 1990s, MasterCard's professional staff repeatedly urged the network's Chief Executive Officers to end the practice of providing member banks with equal access to MasterCard network services regardless of the banks' interests in Visa.

70. In 1992, a MasterCard staff memorandum reported that MasterCard's "innovative ideas are totally neutralized in a dual world."

71. In 1994, a MasterCard management team advised MasterCard International's then-new President and Chief Executive Officer about the "tyranny to issuer duality" and the "drive . . . to homogenize" that resulted in "no meaningful difference" in the network products and services offered by MasterCard and Visa.

72. In 1996, a high-ranking MasterCard executive again emphasized that increasing the revenues collected by card issuers, advertising more effectively, and increasing overall efficiency are "matters that become marginalized in a dual world with a larger competitor."

73. As one of these memoranda concluded, "[t]he cure is in a core of dedicated issuers; dedicated not dual." Under these staff proposals, new MasterCard innovations would have been made available only to member banks that agreed to favor MasterCard over Visa.

74. Despite these proposals, MasterCard, like Visa, continued to permit banks to govern MasterCard, regardless of their interest in Visa.

4.
Duality Has Anticompetitive Effects on Brand Development

75. Brand development is an essential aspect of establishing and developing a general purpose card network. A network promotes and differentiates its brand in order to attract consumers, merchants, and banks to use its brand rather than a competing network's brand. Advertising campaigns, such as Visa's ubiquitous "they don't take American Express" advertisements, are an important component of network competition because they educate consumers and merchants about important attributes of the network. In recent years, advertising has accounted for approximately a quarter of all expenses for both Visa U.S.A. and MasterCard's U.S. region.

76. Because consumers value the ability to use their cards to make purchases whenever and wherever they want, a card network must offer widespread merchant acceptance. In the United States, virtually all merchants that accept any credit card accept both Visa and MasterCard. Yet, studies have long shown that consumers wrongly perceive that Visa is accepted by significantly more merchants than MasterCard.

77. In 1992, MasterCard management was advised by its advertising consultant that MasterCard "must name Visa" in its advertisements in order to combat this misperception. As a result, MasterCard management proposed that MasterCard institute an advertising campaign proclaiming: "No other card is more accepted. Not Visa. Not American Express."

78. Bank representatives on the MasterCard Business Committee objected on the ground that this advertisement would harm Visa. MasterCard's U.S. Region President responded to these objections by assuring member banks that MasterCard's acceptance claim comparison to Visa would be used only if it "did not negatively impact Visa."

79. During the same time period, MasterCard faced a similar perceived acceptance gap vis-a-vis Visa in Canada, where duality does not exist. There, MasterCard's Canadian Region ran the advertising that was rejected in the United States. It used the tag line — "No card is accepted in more places worldwide than MasterCard. Not Visa. Not American Express." Within two years, MasterCard's Canadian Region concluded that "the use of this tag line . . . has helped improve acceptance imagery as well as reduce the Visa brand awareness advantage." One study showed a drop in the perceived acceptance gap in Canada from 15% to 4% during a one-year period in which MasterCard named Visa in its advertisements.

80. Notwithstanding the success of this campaign, MasterCard has not named Visa in a comparative acceptance advertisement in the United States. Surveys continue to show that consumers in the United States wrongly perceive that Visa is significantly more widely accepted than is MasterCard.

81. Similarly, Visa does not name MasterCard in its U.S. advertising. But, in the non-dual Canadian market, Visa has named MasterCard. For example, in one advertisement, Visa highlighted a Canadian merchant that only accepted Visa. A Visa executive testified that Visa management never proposed running the Canadian advertisement in the U.S. "because we knew that they [the banks] wouldn't accept it." He further testified that when Visa's U.S. Marketing Advisors Committee was shown the advertisement, "their reaction clearly was don't you show that in the U.S., on U.S. television."

5.
Duality Has Anticompetitive Effects on Product Development

82. The overlap in control of Visa and MasterCard constrains each association's professional staff and management from proposing competitive initiatives likely to lead consumers to switch from one brand to the other. In 1991, a Visa executive testified that member banks opposed Visa initiatives "against MasterCard because they had a vested interest on that side too, and this was an ongoing problem in almost everything we did and continue to do." He added that Visa's managers "often don't even propose them [competitive initiatives] because we know they are unacceptable to members."

83. The anticompetitive effects of duality exceed what can be readily observed because many products, services, and innovations that would have emerged in a competitive environment

were never even considered by the associations or their managements. Nevertheless, there are several instances in which the controlling banks have restrained critical competitive initiatives developed by the managements of Visa and MasterCard.

a.
Smart Cards

84. In the 1980s, MasterCard developed and extensively tested smart cards. A smart card differs from the cards in widespread use in the United States in that it can store information on an integrated circuit instead of, or in addition to, a magnetic stripe. Integrated circuits are capable of storing significantly more information than magnetic stripes. This additional data storage capacity would enable a card network to enhance its products by, among other things, storing cash and personal information such as airline and hotel preferences, identification numbers, and medical data. Smart cards would also enable issuers to reduce their costs by providing superior fraud and credit risk control.

85. In 1987, MasterCard staff concluded that introducing this product would give MasterCard a significant advantage over Visa, and sought board approval to introduce smart cards. Bank representatives on the MasterCard Board's Executive Committee refused, however, to approve the initiative without Visa's agreement. MasterCard then approached the Visa Board, and the two networks hired a consultant to consider whether to introduce this new product jointly.

86. After several banks represented on Visa's Board of Directors expressed their opposition to the introduction of the smart card, Visa notified MasterCard that it would not introduce the product.

87. MasterCard's Board then refused to permit MasterCard to move forward, and the planned development was shelved.

88. After a decade of delay, Visa and MasterCard are now finally testing separate smart card options, although with full knowledge of each other's strategic plans.

b.
Commercial Cards

89. In 1993, Visa staff concluded that prohibiting Visa member banks from issuing both Visa and MasterCard commercial cards — i.e., corporate cards and other cards issued to businesses rather than consumers — would enable Visa to innovate and differentiate its commercial products from MasterCard's more effectively than if duality were permitted.

90. Based on Visa management's recommendation, its Board initially adopted a resolution that would have required Visa member banks to decide by early 1996 whether to issue Visa or MasterCard commercial cards exclusively. Visa then planned to promote its commercial cards aggressively and allocated a substantial budget to the initiative.

91. Widespread bank opposition led Visa to reverse its decision and allow banks to issue both MasterCard and Visa commercial cards.

92. Soon after the decision to permit banks to issue both associations' commercial cards, Visa scaled back its investment in developing commercial card products.

93. Visa's former Executive Vice President of Market Development testified that "the amount of money that Visa spent [on the commercial card] was reduced because it became apparent that it was going to be a dual world."

c.
Secure Transactions Over the Internet

94. The member banks also delayed Visa's introduction of the first system to provide secure general purpose card transactions over the Internet and thereby prevented Visa from gaining a competitive advantage over MasterCard.

95. In October 1995, Visa and Microsoft jointly announced the specifications for a system to provide secure transactions over the Internet. Visa intended to use Microsoft encryption software to implement the announced standard.

96. In a message to member banks, MasterCard stated that it had "no choice but to respond competitively" to the Visa-Microsoft alliance and it began to form alliances with other software providers.

97. The member banks pressured Visa to abandon its agreement with Microsoft in favor of a cooperative effort with MasterCard to develop a standardized approach. Visa complied with the banks' wishes.

98. In a 1995 presentation to the Federal Trade Commission on joint ventures, Visa International's Executive Vice President and General Counsel blamed duality for the delay in introducing the Internet security system. He stated that if "we had our group [of banks] and [MasterCard] had their group . . . this thing would be out there already."

99. In 1997, Visa U.S.A.'s President and Chief Executive Officer testified that this was yet another case in which Visa "had an opportunity to get out ahead [of MasterCard] and had to come back, work again with MasterCard."

100. Also in 1997, Visa U.S.A.'s former Executive Vice President of Market Development testified in regard to Internet security that the Visa staff and management "deserve[d] the opportunity to either prove that we were right or to fail. Standardizing things too quickly in new, emerging products and markets, from my experience as a marketing person, has the . . . capability of stifling innovation."

B.
Visa and MasterCard Restrain Competition From Other Networks and Prohibit Certain Forms of Competition Among Their Member Banks

101. In addition to restraining network competition between themselves, Visa and MasterCard — on behalf of and in collaboration with their governing banks — have adopted and maintained rules and policies that prohibit all member banks from doing business with other general purpose card networks such as American Express and Discover/Novus. These rules restrain competition (a) between the bank-controlled Visa and MasterCard networks and the general purpose card networks not so controlled, and (b) among the Visa and MasterCard member banks.

102. Prior to the mid-1980s, Visa and MasterCard did not compete directly with other networks. At that time, other general purpose card networks, such as American Express, issued charge cards intended primarily for use in the travel and entertainment sectors. In contrast, Visa and MasterCard cards were targeted for use in the general retail sector.

103. By the mid-1980s, Visa and MasterCard had expanded into travel and entertainment; American Express had expanded into the retail sector; and Sears had entered the network market with the Discover network, now called Novus. These changes brought the bank-controlled Visa and MasterCard networks into direct competition with American Express and Discover/Novus.

104. Visa and MasterCard — on behalf of and in collaboration with their governing banks — responded to this competitive threat by adopting rules that lessened the ability of those networks to compete effectively (a) with Visa and MasterCard in the network market and (b) with the associations' member banks in the downstream card-issuing and card-acceptance markets.

105. Visa and MasterCard both exempt each other and the Citicorp-owned Diners Club network from these exclusionary rules, enforcing them only against American Express and Discover/Novus.

106. By adopting and maintaining these discriminatory exclusionary rules, Visa and MasterCard preserve and extend their jointly held market power. As MasterCard explained to its members in a 1991 document discussing competition among Visa, MasterCard, American Express, and Discover: "[Visa and MasterCard form] a segment of the credit card market[,] . . . a market where MasterCard and Visa <u>together</u> are fighting to maintain their dominance . . . and <u>minimize incursion</u> of non-bank or competitive quasi-bank products." (Emphasis in the original).

1.
Visa and MasterCard Impede the Ability of Other Networks to Convince Merchants to Accept Their Cards

107. One difficulty that a network faces in convincing merchants to accept its cards is that merchants strongly prefer to use a single card acceptance terminal to process transactions for all brands of general purpose cards. Processing transactions involves transmitting transaction data from a merchant's terminal to a central computer that directs the information to the appropriate

card network for authorization and settlement. Visa and MasterCard permit banks to process transactions for both networks through a single merchant terminal, enhancing the ability of both networks to convince merchants to accept their cards.

108. In the mid-1980s, Visa, MasterCard, and their member banks used their control of merchant terminals to hinder American Express's and Discover/Novus's efforts to build merchant bases.

109. In response to these practices, American Express and Discover/Novus developed their own card acceptance terminals capable of handling all card transactions. American Express and Discover/Novus then entered into agreements with a few Visa and MasterCard member banks that were willing to permit American Express and Discover/Novus to process those banks' Visa and MasterCard transactions through terminals that accepted all card brands.

110. Other banks complained to Visa and MasterCard about these agreements, and the associations then adopted new regulations that prohibited any member bank from permitting American Express or Discover/Novus to process Visa and MasterCard transactions. These regulations — which were an exception to the existing rules that permitted the banks to contract with third-party processors — substantially hindered American Express's and Discover/Novus's ability to persuade merchants to accept their cards.

111. Eventually, because of strong merchant demand for a single terminal, Visa and MasterCard agreed to modify their regulations to permit banks to link their processing services to American Express and Discover/Novus. Under the modified regulations, any network could place a terminal with a merchant as long as all transactions on the terminal that involved another network's cards were diverted to that other network for processing.

112. American Express then began to divert transactions in accordance with the modified Visa and MasterCard regulations and, by offering card acceptance services at low prices, American Express placed terminals with a number of merchants.

113. This prompted several Visa and MasterCard member banks to again complain about American Express's pricing practices to Visa and MasterCard.

114. In response, Visa and MasterCard adopted additional rules effectively requiring merchants to pay a higher fee for Visa and MasterCard transactions if they used a card acceptance terminal placed by American Express. According to Visa's Executive Vice President and General Counsel, these discriminatory fees were adopted to "make it more difficult for Amex to price our [member bank] acquirers out of the marketplace" and remained in effect until at least 1991.

2.

Visa and MasterCard Impede the Ability of Other Networks to Provide Cash Advances

115. A valuable feature of any general purpose card network is the ability to provide cardholders with convenient access to cash advances, most importantly through automated teller machines ("ATMs").

116. Visa and MasterCard each own one of the two worldwide ATM networks, Plus and Cirrus respectively.

117. Visa's rules permit member banks that issue MasterCard cards to use the Plus system to provide cash advances on MasterCard cards.

118. Similarly, MasterCard's rules permit member banks that issue Visa cards to use the Cirrus system to provide cash advances on Visa cards.

119. As a result, any member bank can enable its cardholders to use general purpose cards to obtain cash advances worldwide at over 200,000 locations.

120. To obtain access to these ATMs, a bank merely needs to agree to pay a fee to the ATM operator whenever one of its cardholders obtains a cash advance, and to agree to accept cards issued by Cirrus or Plus member banks at its own ATMs.

121. Visa stated in its 1988 Corporate Strategic Plan that "[t]he successful consolidation of regional ATM switches into a unified, bank-owned and operated national network will deprive Discover and American Express of the opportunity to chip away at a major strategic advantage by the banking industry through the progressive creation of a national network of their own."

122. Visa and MasterCard will not permit American Express and Discover/Novus to use Cirrus or Plus to provide cash access to their cardholders.

123. As a direct result of Visa's and MasterCard's exclusionary practices, American Express and Discover/Novus have had to negotiate individually with scores of regional ATM networks and banks to secure ATM access for their cardholders, often at access prices higher than those paid by member banks.

124. The cash access networks that American Express and Discover have assembled through these individual negotiations are smaller, more geographically uneven, and more costly to maintain than those that Visa and MasterCard make available to each other's member banks.

3.

Visa and MasterCard Impede the Ability of Other Networks to Contract with Issuers

125. In the last few years, American Express and Discover/Novus have attempted to expand their networks by convincing other entities, including banks, to issue cards on their

networks. In the United States, those efforts have been stymied by Visa and MasterCard rules that prohibit all member banks from issuing cards on the American Express and Discover/Novus networks.

a.
Visa Adopts Bylaw 2.10(e)

126. In 1991, Visa U.S.A's Board of Directors adopted Bylaw 2.10(e), which states that "the membership of any member shall automatically terminate in the event it, or its parent, subsidiary or affiliate, issues, directly or indirectly, Discover Cards or American Express Cards, or any other card deemed competitive by the Board of Directors."

127. Visa has asserted that it adopted Bylaw 2.10(e) to prevent Discover/Novus and American Express from becoming card-issuing members of Visa by acquiring member banks, as Discover attempted to do in 1990. As written, however, the bylaw also prohibits all independently owned Visa member banks from issuing cards on the American Express or Discover/Novus networks.

128. Bylaw 2.10(e) prohibits Visa's member banks from issuing cards on any network that is "deemed competitive" by Visa's Board. But Visa's Board has *not* deemed MasterCard to be a competitor, and Visa's member banks may thus issue cards without restriction on the MasterCard network. The bylaw applies only to American Express and Discover/Novus, the networks not controlled by the member banks.

129. By 1994, American Express and Discover/Novus had begun to pursue a number of competitive initiatives to strengthen their networks, including arrangements with certain banks in

the United States to issue cards on the American Express or Discover/Novus networks in addition to the Visa and MasterCard networks.

130. Visa U.S.A.'s Bylaw 2.10(e) has effectively precluded member banks in this country from issuing American Express or Discover cards.

b.
MasterCard Adopts Competitive Programs Policy

131. In May 1996, American Express, through its Chairman, publicly announced its intention to contract with banks to issue American Express cards. Unlike Visa, MasterCard at that time had no rule that prohibited its member banks from issuing cards on other networks. American Express thus focused its efforts on banks that primarily issued MasterCard.

132. Many banks expressed interest in American Express's proposal and, within a month, discussions commenced between American Express and a number of banks. MasterCard learned of some of these negotiations.

133. At its June 1996 meeting, the MasterCard U.S. Board adopted a policy that mirrored the Visa bylaw. MasterCard's policy on "competitive programs" provides that:

> With the exception of participation by members in Visa, which is essentially owned by the same member entities, and [Diners Club and JCB], members of MasterCard may not participate either as issuers or acquirers in competitive general purpose card programs.

At the meeting in which MasterCard adopted the policy, the board considered the American Express proposal to partner with member banks and concluded that the newly adopted policy would prohibit member banks from issuing American Express cards.

c.

The Exclusionary Rules Restrain Competition in the United States

134. Following adoption of the MasterCard policy, those banks that had been negotiating with American Express terminated the discussions. The banks were not interested in issuing American Express cards if doing so would require them to forfeit their right to issue *both* Visa and MasterCard, the two dominant general purpose card brands.

135. In addition, Visa's Bylaw 2.10(e) and MasterCard's competitive programs policy would prohibit a bank that issued American Express or Discover cards from accessing the wide array of other Visa or MasterCard products and services, including the Plus and Cirrus ATM systems and the associations' point-of-sale debit cards that can be used to make purchases from merchants with funds deducted directly from the cardholder's bank account.

136. In these ways, the rules raise the cost to a member bank of issuing American Express or Discover/Novus credit cards to prohibitively high levels and make it practically impossible for American Express and Discover/Novus to convince banks — the most experienced and skilled card issuers and the only entities that hold the demand deposit accounts of most consumers — to issue cards on their networks.

137. The current presidents of both Visa U.S.A. and MasterCard's U.S. Region have said that, were it not for the exclusionary rules, some of their member banks in the United States would issue American Express cards.

138. In addition, in 1997, the former Chairman of MasterCard International and then Chief Executive Officer of a bank that was among the top ten general purpose card issuers, testified that eliminating Visa's and MasterCard's exclusionary rules in the United States "would force MasterCard and Visa to compete more intensely for the affection of the members."

139. This increased competition between the networks for banks' card-issuing resources — as well as competition among the banks to offer additional card brands — would spur the development and implementation of higher quality and lower priced network products and services.

140. In addition, consumer choice would be enhanced by eliminating the exclusionary rules. Consumers would have access to new general purpose cards that would combine the network attributes of American Express or Discover/Novus with the card-issuing attributes of individual banks. For example, a consumer would have the option of obtaining American Express and Discover/Novus network cards from an institution that also offers other banking products such as a demand deposit checking account or a Visa or MasterCard card.

141. Finally, eliminating the exclusionary rules would benefit consumers by enhancing the competitive effectiveness of Visa's and MasterCard's smaller network competitors, thereby enabling those networks to compete more vigorously against Visa and MasterCard. For example, Visa U.S.A.'s former Executive Vice President of Market Development testified in 1997 that issuing through banks would help a competitive network to obtain additional volume and thereby realize lower costs and "better economies of scale."

142. Without ubiquitous merchant acceptance of its cards, a card network cannot compete fully and effectively with Visa and MasterCard. To ensure ubiquitous acceptance throughout the

United States, a card network needs a substantial market share. Without issuance by some Visa and MasterCard member banks, a network could not, as a practical matter, maintain the necessary minimum market share.

143. Visa's internal documents reveal that allowing competitive networks to issue cards through Visa member banks would increase competition. For example, Visa documents state that the member banks are a "huge and effective distribution network;" that "through partnerships with Visa member banks" competitor networks would "threaten to rapidly erode [Visa's merchant] acceptance advantage;" and banks issuing a competitor's cards "would strengthen [the competitor's] other products - commercial cards, travelers's cheques, stored value cards."

144. MasterCard's internal documents similarly acknowledge the importance of banks to the effectiveness of competition from other networks. For example, MasterCard documents state that member banks possess "powerful distribution channel capabilities for new products" and that, by issuing through banks, competitor networks would "obviously build[ ] revenue . . . to reinvest back into the business, probably continuing to open up new acceptance channels that they do not perceive Visa or MasterCard to be dominating."

d.
Competition Has Increased
Outside the U.S. Where the Exclusionary Rules Do Not Apply

145. In 1996, both Visa and MasterCard responded to American Express's worldwide effort to convince banks to issue cards on the American Express network. Both associations considered whether to adopt a worldwide rule — mirroring Visa U.S.A.'s Bylaw 2.10(e) — that would prohibit member banks from issuing cards on the American Express and Novus networks.

Visa's management concluded that Visa could compete effectively without an exclusionary rule and told Visa's International Board member banks that it was "not necessary" to prohibit banks from issuing competitive cards. MasterCard's management reached a similar conclusion, and both international boards then delegated authority to each region to decide for itself whether to prohibit member banks from issuing cards on the American Express and Discover/Novus networks.

146. Aside from the United States — and Canada, where each bank may issue only one card brand — no Visa or MasterCard regional board has adopted a rule prohibiting banks from issuing other networks' cards. In several countries where the rule has been considered, competition authorities have objected to the rule and expressed concern that such a rule would have anticompetitive effects.

147. In more than a dozen foreign countries, American Express has successfully contracted with Visa and MasterCard member banks to also issue cards on the American Express network. In many of these countries, Visa and MasterCard have responded by introducing new products and services.

148. For example, Visa International's European Region implemented an aggressive set of competitive initiatives shortly after its regional board rejected an exclusionary rule analogous to Bylaw 2.10(e). These initiatives included product enhancements, increased network support for the Visa Gold card and co-branding deals, and improved merchant services.

149. MasterCard responded in a similar fashion after Puerto Rico's largest bank, Banco Popular, decided to issue American Express cards. Puerto Rico is part of MasterCard's Latin American Region, which rejected a strict prohibition on banks issuing American Express cards.

After Banco Popular informed MasterCard of the bank's deal with American Express, the President of MasterCard's Latin America/Caribbean Region told a Banco Popular executive "that MasterCard will strive (try even harder) to be competitive by improving the service and attention provided to Banco Popular in order to assure that [the bank] continue[s] the expansion of [its] MasterCard business."

4.
Visa and MasterCard Impede Other Networks' Ability to Provide New General Purpose Card Products

150. Visa Bylaw 2.10(e) and the MasterCard competitive programs policy also reduce network competition in developing new general purpose card products.

151. These products — which will retain the core characteristics of ubiquitous acceptance and deferred payment options — will integrate additional functionalities such as debit and stored value. A strategy document presented to the MasterCard Executive Committee explained that "[b]y utilizing a multi-application operating system, our members also have the ability to use the chip technology to create 'relationship cards' allowing their customers to have credit, debit and stored value resident on a single card with a choice of payment type at the point of sale." In a 1995 proceeding before the Federal Trade Commission, Visa International's Executive Vice President and General Counsel agreed, stating that "[t]he payment engine I foresee is a chip card which will have all your relationships on it."

152. As a practical matter, only banks that hold consumers' demand deposit accounts can provide this type of general purpose card. Such a card is likely to play a critical role in network competition in the future.

153. The associations' rules substantially diminish competing networks' ability to develop general purpose card products, including products that incorporate debit or stored value functionality. For example, a consultant for one bank that was considering whether to issue American Express cards reported that American Express "is not positioned to tap into the burgeoning debit card market" and it "faces an increasing challenge in the rapidly evolving payment systems industry, factoring in the reach of thousands of Visa/MasterCard issuers." But "[w]ith its platform of core deposit relationships," the report concluded, the bank "could assist American Express in establishing successful debit card programs."

154. For those reasons, the Visa and MasterCard rules substantially diminish competition among networks in the development and issuance of the next generation of general purpose cards.

VIII.
First Offense
(Duality — Combinations and Conspiracies in Restraint of Trade)

155. Each of the defendants, on behalf of and in collaboration with its governing banks, has engaged in a continuing combination and conspiracy to organize and operate its general purpose card network in a manner that restrains competition among general purpose card networks in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, as amended.

156. In furtherance of these combinations and conspiracies, each of the defendants and its member banks have, *inter alia:*

b. appointed and elected to its Board of Directors and influential committees representatives of banks that have substantial interests in both Visa and

MasterCard, and therefore have diminished incentives to support competition between the two networks;

c. allowed banks with substantial interests in competing networks to propose, recommend, and vote on competitive decisions, such as advertising, marketing campaigns, research, and development; and

d. shared competitively sensitive information, including information about proposed or planned investments in new products and services, with banks that participate in the governance of competing networks.

157. These combinations and conspiracies have anticompetitive effects, including:

a. each defendant failed to engage in competitive advertising that would have informed consumers about the relative value of different brands of general purpose credit cards;

b. each defendant reduced or delayed its investments in new general purpose card technologies, products, and services, including, among other things, Internet technology, smart cards, and commercial cards; and

c. consumers have been deprived of the benefits of free and open competition among defendants in the promotion, development, and implementation of new general purpose card products and services.

Unless enjoined by this Court, these anticompetitive effects are likely to continue.

158. These combinations and conspiracies are not reasonably necessary to accomplish any procompetitive objective.

IX.
Second Offense
(Exclusionary Rules — Combinations and Conspiracies in Restraint of Trade)

159. Each of the defendants, on behalf of and in collaboration with its governing banks, has engaged in a continuing combination and conspiracy to organize and operate its general purpose card networks in a manner that restrains competition among general purpose card networks in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, as amended.

160. In furtherance of this combination and conspiracy, each of the defendants and its governing banks has adopted rules and policies that disadvantage or exclude rival general purpose card networks, such as American Express and Discover/Novus, including rules or policies prohibiting member banks from issuing cards on the American Express or Discover/Novus networks.

161. These combinations and conspiracies have had anticompetitive effects, including:

a. consumers have had fewer choices in the characteristics and variety of card products that have been made available to them;

b. Visa and MasterCard member banks have been prevented from competing with one another with respect to the variety of card brands that they may offer to consumers;

c. card networks not owned by banks have been foreclosed from access to an important channel of distribution; and

d. consumers have been denied the benefits of free and open competition among general purpose card networks in the promotion, development, and implementation of new general purpose card products and services.

Unless enjoined by this Court, these anticompetitive effects are likely to continue.

162. These combinations and conspiracies are not reasonably necessary to accomplish any procompetitive objective.

X.
PRAYER FOR RELIEF

WHEREFORE, the United States prays that final judgment be entered against each Defendant declaring, ordering, and adjudging:

1. that Defendants Visa International, Visa U.S.A., and MasterCard International have violated Section 1 of the Sherman Act, 15 U.S.C. § 1;

2. that Defendants Visa International, Visa U.S.A., and their subsidiaries and successors be permanently enjoined from allowing any bank not dedicated to the Visa brand to exercise a direct governance voice in Visa International or Visa U.S.A. including, but not limited to, by (a) having a director on the Visa International Board of Directors or the Visa U.S.A. Board of Directors, or (b) having a representative on any committee that has decision-making authority or that directly advises Visa management, the Visa International Board of Directors, or the Visa U.S.A. Board of Directors on matters of competitive significance;

3. that Defendant MasterCard International and its subsidiaries and successors be permanently enjoined from allowing any bank not dedicated to the MasterCard brand to exercise a direct governance voice in MasterCard International or any MasterCard division or subsidiary that operates in the United States, including, but not limited to, by (a) having a director on the MasterCard International Board of Directors or the MasterCard U.S. Region Board of Directors, or (b) having a representative on any committee that has decision-making authority or directly

advises MasterCard management, the MasterCard International, Board of Directors, or the MasterCard U.S. Region Board of Directors on matters of competitive significance;

4. that Defendants Visa International, Visa U.S.A., and their subsidiaries and successors be permanently enjoined from permitting access to confidential or competitively sensitive information by any member bank that has a direct governance voice in another network;

5. that Defendant MasterCard International and its subsidiaries and successors be permanently enjoined from permitting access to confidential or competitively sensitive information by any member bank that has a direct governance voice in another network;

6. that Defendants Visa International and Visa U.S.A. and their subsidiaries and successors be permanently enjoined from enforcing Visa U.S.A.'s Bylaw 2.10(e) or any similar bylaw, rule, or policy;

7. that Defendant MasterCard International and its subsidiaries and successors, be permanently enjoined from enforcing MasterCard U.S. Region's competitive programs policy or any similar bylaw, rule, or policy;

8. that the Court grant such other relief as the United States may request that the Court deems just and proper; and

9. that the United States recover its costs in this action.

Dated: October 7, 1998

_____/s/_____
JOEL I. KLEIN (JK3481)
Assistant Attorney General

_____/s/_____
STEVEN SEMERARO (SS8817)

_____/s/_____
JOHN M. NANNES (JN4148)
Deputy Assistant Attorney General

_____/s/_____
KURT SHAFFERT (KS4333)

_____/s/_____
REBECCA P. DICK (RD5481)
Director, Civil Non-Merger Enforcement

_____/s/_____
SCOTT A. SCHEELE (SS0496)

_____/s/_____
M. J. MOLTENBREY (MM4814)
Chief, Civil Task Force

_____/s/_____
JEFFREY I. STEGER (JS7416)

_____/s/_____
SUSAN L. EDELHEIT (SE8020)
Ass't Chief, Civil Task Force

_____/s/_____
SEAN T. FOX (SF8664)

_____/s/_____
MELVIN A. SCHWARZ (MS8604)
Special Counsel for Civil Enforcement

_____/s/_____
AHMED TAHA (AT8157)
Attorneys, Civil Task Force
United States
Department of Justice
Antitrust Division - Suite 300
325 Seventh Street, N.W.
Washington, D.C. 20004
202/616-5935
202/514-7308 (fax)