

The Capital One-Discover Merger Shows the Need for the Credit Card Competition Act

Financial industry lobbyists who oppose the Credit Card Competition Act (CCCA) are claiming that the acquisition of Discover by Capital One makes legislation like the CCCA unnecessary. This claim does not stand up to scrutiny.

The Merger Will Not Stop Visa and Mastercard from Stifling Competition

- The CCCA responds to the market failure that has allowed the Visa/Mastercard duopoly, which controls more than 80 percent of the U.S. credit card network market, to charge excessive credit card transaction fees that inflate the retail prices all Americans pay.
- Visa and Mastercard centrally fix swipe fee rates across all banks that issue Visa and Mastercard credit cards, meaning banks do not compete with each other over the fees they deduct from transaction amounts every time a Visa or Mastercard credit card is used.
- Visa and Mastercard also each impose contractual rules that block the banks that issue credit cards bearing Visaⁱ or Mastercardⁱⁱ logos from enabling any other competing card network to be able to process transactions over those cards.
- These anticompetitive practices stifle competition and entrench Visa's and Mastercard's market dominance, and the proposed merger would do nothing to change them.
- Capital One apparently won't even try to challenge Visa's and Mastercard's dominance in credit cards. On an investor call after the merger announcement, Capital One CEO Richard Fairbank stated that Capital One will move its "entire" debit business over to Discover's Pulse debit network, but on credit cards he stated that "we have strong relationships with both Visa and Mastercard that go back to our founding days...And along the way, we're going to partner with Visa and Mastercard in this journey."ⁱⁱⁱ

The CCCA Will Bring Meaningful Competition to the Visa/Mastercard Credit Card Duopoly

- The CCCA is narrowly tailored legislation that prohibits credit card network exclusivity arrangements between Visa or Mastercard and the nation's largest financial institutions (those with over \$100 billion in assets—a total of about 30 institutions).
- The CCCA would ensure that Visa and Mastercard credit cards issued by those giant institutions are enabled with at least two unaffiliated credit card networks—either Visa or Mastercard, plus a competitor network such as Star, NYCE, Accel or one of the dozen or so networks operating today. Under the CCCA, merchants would then be allowed to choose which of the two networks on the card to use to process transactions, meaning networks would have a competitive incentive to offer better pricing, security, and service than other networks.
- Through these reforms, the CCCA would finally inject competitive market dynamics into the credit card network industry, helping restrain fees and incentivizing greater innovation, cost-efficiency, and security.
- Visa, Mastercard, and giant card-issuing financial institutions are terrified of facing real competition and are citing every argument they can think of to head off pro-competitive reforms like the CCCA.
- But the Capital One/Discover merger will not change the bars to competition that Visa and Mastercard have established or fix the broken credit card market—only legislation can.

ⁱ Visa Rule 1.3.4.6 prohibits Visa credit card issuers from including, on any credit card, “any Trade Name or Mark that identifies or is associated with any entity, or its subsidiaries or affiliates, deemed competitive by Visa, including American Express Company, Discover Financial Services, [and] Mastercard Worldwide.” Visa Rule 1.4.1.1 provides that a Visa credit card issuer “must not condition the offer or issuance of any payment card product bearing the Visa Program Marks or the maintenance of a Cardholder relationship upon the possession or acceptance of a product bearing the Marks of the American Express Company, Mastercard Worldwide, Discover Financial Services, Diner’s Club, JCB, or any other non-Visa general purpose payment card network, as designated by Visa, without the prior written consent of Visa.” See [Visa Core Rules and Visa Product and Service Rules](#), October 14, 2023, at pp. 93-94.

ⁱⁱ Mastercard Rule 4.9 provides that “Except as expressly permitted by [Mastercard], none of the following marks or any similar or related mark, or any mark owned by or affiliated with one of these entities, may appear on a Card. (1) American Express; (2) JCB; (3) Diners Club; (4) Discover; (5) Visa; (6) Any other name, logo, or mark identifying or in any way associated with a payment service that [Mastercard] deems to be competitive with any Mastercard product or Program. Any such competitor’s credit or debit POI mark, logo, or name, regardless of whether registered, may not appear on a Card, nor may a payment application of any such competitor reside on the magnetic stripe or chip of a Card.” See [Mastercard Rules](#), June 6, 2023, at pp. 92-93.

ⁱⁱⁱ See [transcript](#) of conference call held by Capital One Financial Corporation and Discover Financial Services on February 20, 2024.