

The FTC reports to the US Congress on Dodd-Frank

Agency to remain vigilant in enforcing payment network rules

On Christmas Eve, the Federal Trade Commission ('FTC') issued its required report to the US Congress detailing the steps the agency has taken under new rules governing debit card transactions. The Federal Reserve Board put the rules in place in 2011 as required under the Dodd-Frank Wall Street Reform and Consumer Protection Act ('Dodd-Frank Act'). The Dodd-Frank Act amended the Electronic Fund Transfer Act ('EFTA') to restrict interchange fees and to prohibit exclusive networks for debit card transactions. The FTC shares authority under the Dodd-Frank Act with other federal agencies. Violations of the EFTA are treated as FTC Act violations (in other words, actions that are unfair or deceptive) and can subject entities to significant financial penalties, restrictions on prospective activities, restitution, and other remediation actions.

The FTC's enforcement focus here has been on payment card networks and other non-bank entities. In particular, under Dodd-Frank, the FTC is required to explain in its report to Congress whether it has identified any evidence 'that payment card network companies have taken steps to diminish the ability of small banks and credit unions to compete with large financial institutions in the debit card issuance market.' The FTC also used the report to address its outreach to merchants and other activities it has taken to protect consumers who use payment cards.

In the report, the FTC noted that it undertook 'significant efforts' to educate businesses and consumers about the changes in debit card regulations under the Dodd-Frank Act. The FTC's initiatives included a business publication in multiple languages that targeted small, independent businesses that might not have known about the Dodd-Frank rule changes (including the rule requiring issuing banks and payment card networks to permit merchants to choose between two or more unaffiliated competing payment networks for payment processing), and a popular post on its 'Business Center Blog' summarising the changes for businesses (<http://business.ftc.gov/blog/2011/09/businesses-new-rules-electronic-payments-take-effect-october-1st>). The FTC also established a special 'mailbox': paymentcard@ftc.gov, to allow consumers and merchants to easily file complaints regarding potential violations of the new rules.

In terms of investigation and enforcement, the FTC reported to Congress that it has issued a request for information to one (unnamed) payment card network to determine whether certain payment card network rules may violate the new Dodd-Frank Act rules. The agency makes clear that it will 'vigorously investigate potential violations' of the rules against entities within its jurisdiction, with particular emphasis on merchants' 'ability to direct routing to their network of choice.' However, the FTC reported that it has not uncovered evidence of payment card companies taking steps to diminish the ability of small banks and credit unions to successfully compete with

large financial institutions in the debit card issuance market.

The agency states that it has, and will continue to, use its enforcement authority under the FTC Act and the EFTA, to take action against entities who process payments made with credit, debit, and other payment cards and engage in unfair, deceptive, or other unlawful conduct resulting in harm to consumers or small businesses. The FTC noted that it filed a complaint against a large enterprise that allegedly lured consumers into deceptive 'trial memberships and bogus government-grant and money-making schemes' via an internet scam. This scheme allegedly resulted in over 500,000 consumers seeking chargebacks and reversal to their credit cards or debits to bank accounts. Another example provided in the report was a settlement whereby the FTC mailed refunds to 100 merchants throughout the US who were defrauded by an operation that provided debit and credit card processing services. The FTC claims that the processors made false promises, failed to disclose fees and concealed pages of fine print.

Lastly the FTC reported that it would continue to monitor mobile payment developments. The agency believes that new options for processing mobile payments may allow merchants to avoid using traditional payment card networks and possibly lower their costs. Significant issues with mobile payments that the agency will review are dispute resolution, data security, and privacy.

The FTC of the past few years is a highly energised agency that has taken numerous enforcement actions, using the full panoply of its powers. The FTC is carefully monitoring payment processors for Dodd-Frank Act compliance and we expect to see further investigative actions in the coming months.

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