



If interchange fees weren't fixed, would they be broken?

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Collective setting of interchange fees is under antitrust attack/scrutiny.

- Many private suits brought in the U.S. by merchants against MasterCard and Visa.
- A potential concern for other U.S. electronic payment instruments.
- UK OFT investigation of MasterCard and Visa credit cards.
- EC scrutiny of PEDD “initiative”.

What does an “antitrust” approach mean and how does it differ from regulation?

- U.S. antitrust has *both* outcome and process elements.
 - Outcome typically measured by effects on consumer welfare.
 - Process focuses on “harm to competition”.
 - Neither monopoly pricing nor obtaining a monopoly through competitive actions (e.g., superior R&D programs) is illegal.
 - Obtaining or extending a monopoly through means that “harm competition” (e.g., exclusionary or predatory behavior) is illegal.
- A “but-for world” is a key element of the antitrust approach.
 - It is not enough that one could imagine a world in which consumers would do better.
 - It is also necessary to show the market could reasonably be expected to operate that way absent the challenged practice.
- Arguably, a regulatory approach would focus solely on consumer welfare or whatever is the social objective.
 - But it is still necessary to ask whether regulation would have the intended effects.

What about bilateral bargaining as the but-for world?

- Transaction cost issues.
 - Australian EFTPOS as a model?
 - Would bargaining intermediaries arise in large-number situations?
- Threat points matter.
 - Australian EFTPOS as a cautionary tale?
 - Reserve Bank of Australia concluded it was impossible for parties to reach bilateral agreements to change rates.
 - Bargaining institutions may be quite significant.

There are several alternative threat points in need of analysis.

- Default rates
 - Set by whom?
 - Would this be anything new?
- Arbitration
 - By whom?
 - Based on what principles? Would this become cost-based regulation?
- Allow disagreement to persist.
 - Effects of honor-all-issuer rules: complements pricing.
 - Is honor-all-issuers necessary?
- Allow issuer-specific surcharges.
 - Would this undermine the brand and/or harm consumers by reducing Rochet and Tirole's α ?