

Amid widespread outrage over new debit card fees charged by Bank of America and other big banks, Chief Deputy Whip Peter Welch (D-Vt.) and House colleagues on Thursday called on Attorney General Eric Holder to investigate whether big banks are coordinating their fee strategies in violation of federal anti-trust laws.

In a letter to Holder, Welch and his colleagues highlighted public statements by banks and banking associations that point to possible efforts to coordinate fee increases.

“It appears that banks are seeking to justify fee increases after Congress and the Federal Reserve Board recently limited banks’ ability to collude with networks to set debit interchange fees,” Welch and his colleagues wrote. “Statements made by individual banks and their trade associations raise questions about whether some price increases that have occurred this year have actually been coordinated.”

In one instance, the Texas Bankers Association sent an email to members immediately following the failure in the U.S. Senate of a measure to delay debit card swipe fee reforms. The email read in part: “Now, the industry must regroup and each and every one of you must decide how you are going to pay for the use of debit cards. It may be through a monthly fee; it may be by using a “prepaid” card as opposed to a debit card; it may be that there is a way to not offer retailers instant credit for the transactions, limiting the amounts that can be charged, etc...”

Three of the nation’s four largest banks – Bank of America, J.P. Morgan Chase and Wells Fargo – have recently announced they will begin charging new debit card fees.

“Actions taken by Bank of America (BOA) earlier this week highlight our concern and demonstrate that immediate scrutiny of additional anticompetitive pricing practices by banks is in order,” Welch and his colleagues wrote. “...We are concerned that BOA’s announcement may be a reaction to, and participation in, price signaling or collusion that has occurred among and between banks and bank associations.”

American consumers and businesses pay the highest swipe fees in the world. The duopoly of Visa and Master Card, in conjunction with the nation’s largest banks, charge consumers \$50

billion each year in swipe fees.

Welch's letter was signed by Reps. Conyers (D-Mich.), Grijalva (D-Ariz.), Ellison (D-Minn.) and Honda (D-Calif.). The full text is copied below. Welch is the House leader on the issue of swipe fees and worked closely with Sen. Dick Durbin (D-Ill.) to pass into law key debit card swipe fee reforms.

The Honorable Eric Holder

United States Attorney General

U.S. Department of Justice

950 Pennsylvania Avenue, NW

Washington, DC 20530

Dear Attorney General Holder:

We urge you to immediately open an investigation to determine whether banking trade associations and/or individual banks have violated antitrust laws. Specifically, we are concerned that communications between banks and bank associations that may amount to price signaling or collusion have occurred in the wake of Congressional action to reform debit card swipe fees.

As you are well aware, Visa and MasterCard are the two dominant card networks that set pricing for thousands of banks across the country. The result is that banks which normally compete agree not to do so when it comes to swipe fee prices and instead accept fees centrally determined by Visa and MasterCard.

This collective pricing activity is harmful to competition, raises serious legal questions, and has led to consumers and merchants in the United States earning the dubious honor of paying the highest credit card swipe fees in the world. American businesses of every size have seen swipe fees rise faster than any other expense in the last decade – growing faster even than health care costs.

It appears that banks are seeking to justify fee increases after Congress and the Federal Reserve Board recently limited banks' ability to collude with networks to set debit interchange fees. Statements made by individual banks and their trade associations raise questions about whether some price increases that have occurred this year have actually been coordinated.

The statements that caught our attention include:

- “What do we do to offset the loss of revenue?’ Wells Fargo CEO John G. Stumpf asked colleagues in London on Monday. ‘Unfortunately, the consumer will pay.’ According to the American Banker, Wells Fargo may increase minimum balances, charge money for debit cards and dump free checking so it can recoup about \$1.3 billion in losses stemming from Mr. Durbin’s needless meddling.” The Washington Times, May 26, 2011 (available at <http://www.washingtontimes.com/news/2011/may/26/washington-declares-war-on-your-debit-card/>)

- “[Wells Fargo](http://www.wellsfargo.com) (NYSE: WFC) will consider adding fees and increasing current fees in the event that the Durbin Amendment goes into law as scheduled, according to Wells Fargo Chairman and CEO John Stumpf during the Barclays Capital Americas Select Conference in London.” MyBankTracker, May 26, 2011 (available at <http://www.mybanktracker.com/bank-news/2011/05/26/wells-fargo-nodurbin-delay-means-fees/>)

- “The only options left will be to shift these costs to consumers or cease providing debit cards,’ said ABA President Frank Keating.” Center for Public Integrity, May 4, 2011 (available at <http://www.minyanville.com/businessmarkets/articles/credit-card-companies-debit-card-s-interchange/5/4/2011/id/34339> )

- “Free checking is going to be gone,’ said Independent Community Bankers Association President Jerry C. Walker. ‘You can kiss that away. If you want a debit card, there are going to be (extra) fees.’” TMCNet, May 8, 2011 ( available at <http://business-video.tmcnet.com/news/2011/05/08/5494967.htm> )

- “Now, the industry must regroup and each and every one of you must decide how you are going to pay for the use of debit cards. It may be through a monthly fee; it may be by using a “prepaid” card as opposed to a debit card; it may be that there is a way to not offer retailers instant credit for the transactions, limiting the amounts that can be charged, etc. I would also think you will be considering not paying for debit card fraud like many of you have been for a long time.” Email from Texas Bankers Association to its Members in response to U.S. Senate vote to defeat the Tester-Corker Amendment, June 8, 2011 (attached for your reference).

These statements are just a sampling of the statements made by bankers this year. Bank officials made similar statements during Congressional consideration of the Credit CARD Act and when bank overdraft fees were regulated. There is clearly no problem with banks making independent business decisions based upon the landscape as they see it. Antitrust issues are raised, however, if they are attempting to facilitate group decisions on their prices, terms and conditions.

Actions taken by Bank of America (BOA) earlier this week highlight our concern and demonstrate that immediate scrutiny of additional anticompetitive pricing practices by banks is in order. Specifically, BOA announced it will begin charging customers a \$5.00 monthly fee to use their debit cards. We are concerned that BOA’s announcement may be a reaction to, and participation in, price signaling or collusion that has occurred among and between banks and bank associations.

Again, General Holder, We urge you to immediately open an investigation into this matter and look forward to your prompt response.

Sincerely,

PETER WELCH

Member of Congress