

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DISCOVER FINANCIAL SERVICES, INC.,

Plaintiff,

v.

VISA U.S.A., INC., VISA
INTERNATIONAL SERVICE
ASSOCIATION, MASTERCARD
INCORPORATED and MASTERCARD
INTERNATIONAL INCORPORATED,,

Defendants.

Case No. 04 CV 7844

ECF Case

DEFENDANTS' PROPOSED SPECIAL VERDICT FORM

SHERMAN ACT, § 1 (CREDIT)

We, the jury, unanimously find as follows:

1. Have Plaintiffs proven by a preponderance of the evidence that the harmful effect on competition caused by By-Law 2.10(e)'s restraint upon trade in the credit markets was a material cause of any monetary injury to the Plaintiffs in their business?

Yes _____

No _____

2. Have Plaintiffs proven by a preponderance of the evidence that the harmful effect on competition caused by Competitive Programs Policy's restraint upon trade in the credit markets was a material cause of any monetary injury to the Plaintiffs in their business?

Yes _____

No _____

(If "Yes" to Question 1 and 2, proceed to Question 3 below. If "Yes" only to one of questions 1 and 2, proceed to Question 4 below. If "No" to Questions 1 and 2, proceed to Question 18 on p.6.)

3. Have Plaintiffs proven by a preponderance of the evidence that the monetary injury, if any, caused after June 28, 1996 by By-Law 2.10(e) and the Competitive Programs Policy is a single, indivisible harm, incapable of logical division?

Yes _____

No _____

4. Did the Plaintiffs prove by a preponderance of the evidence that Discover would have done third-party acquiring at least from 1995-June 1996?

Yes _____

No _____

5. Did Plaintiffs prove by a preponderance of the evidence that Discover would have done third-party acquiring from June 1996-October 2004?

Yes _____

No _____

6. What is the total amount of damages, if any, that Plaintiffs have, by the preponderance of the evidence, proven would fairly compensate them for the monetary injury you found in Questions 1 and 2 above?

Amount _____

7. Do you find that plaintiffs could have taken any additional steps not taken to mitigate the damages amount you found in response to Question 6 above?

Yes _____

No _____

(If "No," proceed to Question 9 below.)

8. By what amount would could additional steps not taken have mitigated plaintiffs damages that you found in response to Question 6 above?

Amount _____

9. Of the damages you found in response to Question 6 above, was any amount caused only by MasterCard's CPP over and above any amount caused by Visa's By-Law 2.10(e)?

Yes _____

No _____

(If "No," proceed to Question 11 below.)

10. If you answered "Yes" in response to Question 9 above, please state the amount.

Amount _____

11. Is any amount of the damages you found in response to Question 6 based on a determination that Discover was unable to pursue third-party acquiring prior to October 4, 2004?

Yes _____

No _____

(If "No," proceed to Question 15 below.)

12. What amount of the damages you found in response to Question 6 was caused by Discover's being unable to pursue third-party acquiring prior to October 4, 2004?

Amount _____

13. What amount of the damages you found in response to Question 11 was caused by the issuing restriction in By-Law 2.10(e)?

Amount _____

14. What amount of the damages you found in response to Question 11 was caused by the issuing restriction in the CPP?

Amount _____

15. As to any injury you found in responding to Question 6, did the injury to Plaintiffs' business first occur on or before October 7, 1994?

Yes _____

No _____

(If "No," proceed to question 18 below.)

16. Did any action taken pursuant to the By-Law 2.10(e) conspiracy in the credit markets cause a new and accumulating injury to Plaintiffs after October 7, 1994?

Yes _____

No _____

(If "No," proceed to question 18 below.)

17. Did any financial institutions join the By-Law 2.10(e) conspiracy in the credit markets after October 7, 1994?

Yes _____

No _____

SHERMAN ACT, § 1 (DEBIT)

We, the jury, unanimously find as follows:

18. Have Plaintiffs proven by a preponderance of the evidence that general purpose debit cards are a relevant product market within the United States?

Yes _____

No _____

19. Have Plaintiffs proven by a preponderance of the evidence that general purpose debit card network services are a relevant product market within the United States?

Yes _____

No _____

(If the answer to either Question 1 or Question 2 is "No," please **[steps for returning form].**)

20. Have Plaintiffs proven by the preponderance of the evidence that By-Law 2.10(e) had a harmful effect on competition in the debit markets in the United States?

Yes _____

No _____

(If "No," please **[steps for returning form].**)

21. Have Plaintiffs proven by the preponderance of the evidence that By-Law 2.10(e) unreasonably restrained trade in the debit markets in the United States?

Yes _____

No _____

(If "No," please [steps for returning form].)

22. Have Plaintiffs proven by the preponderance of the evidence that By-Law 2.10(e)'s harmful effect on competition on the debit markets that you found in Question 20 above was a material cause of injury to Plaintiffs in their business or property?

Yes _____

No _____

(If "No," please [steps for returning form].)

23. What is the total amount of damages, if any, that Plaintiffs have, by the preponderance of the evidence, proven would fairly compensate them for the injury you found in Question 22 above?

Amount _____

24. Do you find that plaintiffs could have taken any additional steps not taken to mitigate the damages amount you found in response to Question 23 above?

Yes _____

No _____

(If "No," proceed to Question 26.)

25. By what amount would could additional steps not taken have mitigated plaintiffs damages that you found in response to Question 23 above?

Amount _____

26. Is any amount of the damages you found in response to Question 23 based on a determination that Discover was unable to pursue third-party acquiring prior to October 4, 2004?

Yes _____

No _____

(If "No," please proceed to Question 30 below.)

27. What amount of the damages you found in response to Question 23 was caused by Discover's being unable to pursue third-party acquiring prior to October 4, 2004?

Amount _____

28. What amount of the damages you found in response to Question 11 was caused by the issuing restriction in By-Law 2.10(e)?

Amount _____

29. What amount of the damages you found in response to Question 11 was caused by the issuing restriction in the CPP?

Amount _____

30. As to any injury you found in responding to Question 22, did the injury to Plaintiff's business first occur on or before October 4, 2000?¹

Yes _____

No _____

(If "No," please [steps for returning form].)

31. Did any action taken pursuant to the By-Law 2.10(e) conspiracy in the debit markets cause a new and accumulating injury to Plaintiffs after October 4, 2000?

Yes _____

No _____

(If "No," please [steps for returning form].)

¹ Visa will submit a trial brief on the appropriateness of this date.

32. Did any financial institutions join the By-Law 2.10(e) conspiracy in the debit markets after October 4, 2000?

Yes _____

No _____