UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

MARCHBANKS TRUCK SERVICE, INC. d/b/a BEAR MOUNTAIN TRAVEL STOP, MAHWAH FUEL STOP, GERALD F. KRACHEY d/b/a KRACHEY'S BP SOUTH, WALT WHITMAN TRUCK STOP, INC., on behalf of themselves and all others similarly situated, Plaintiffs, v. COMDATA NETWORK, INC. d/b/a COMDATA CORPORATION, CERIDIAN CORPORATION, TRAVELCENTERS OF AMERICA LLC, TA OPERATING LLC, TRAVELCENTERS OF AMERICA HOLDING COMPANY, LLC, PETRO STOPPING CENTERS, L.P., PILOT TRAVEL CENTERS LLC, PILOT CORPORATION, and LOVE'S TRAVEL STOPS & COUNTRY STORES, INC., Defendants.	Civil Action No. 07-1078-JKG Consolidated Case

EXPERT DECLARATION OF DR. HAL J. SINGER
(SUBMITTED FOR SETTLEMENT PURPOSES ONLY UNDER FRE 408)

March 4, 2014

ECONOMISTS INCORPORATED

INTRODUCTION

1. My name is Hal J. Singer. As part of the Definitive Master Class Settlement Agreement[1] between Plaintiffs[2] and Defendants[3] in the above captioned litigation, defendant Comdata has agreed, among other things, to refrain for five years from enforcing certain provisions in its agreements with truck stops and retail fueling merchants that Plaintiffs allege are anticompetitive (the "Prospective Relief" or "PR").[4] I have been asked by Plaintiffs' Class Counsel to estimate the likely competitive benefits of the PR for the proposed Settlement Class[5] on a going-forward basis. My assignment, as I understand it, is to estimate the dollar value of the PR to the members of the Settlement Class.[6]

2. This declaration is organized as follows: In Part I, I offer a brief overview of the key alleged anticompetitive contractual provisions at issue. I discuss my opinion that the provisions led to injury to Plaintiffs and the Settlement Class in the form of artificially inflated

1. *See* Definitive Master Class Settlement Agreement (March 3, 2014) [hereafter "Master Settlement Agreement"].

2. The named Plaintiffs include: Marchbanks Truck Service, Inc. d/b/a Bear Mountain Travel Stop, Mahwah Fuel Stop, Gerald F. Krachey d/b/a Krachey's BP South, and Walt Whitman Truck Stop, Inc. *Id.* ¶ 1.

3. The Defendants include: Pilot Travel Centers LLC and Pilot Corporation (the "Pilot Defendants"), TravelCenters of America LLC, TA Operating LLC, TravelCenters of America Holding Company LLC, and Petro Shopping Centers (the "TA Defendants") and Love's Travel Stops & Country Store, Inc. ("Love's") (collectively, the "Chain Defendants") and Comdata Network, Inc. n/k/a Comdata Inc. ("Comdata") and Ceridian Corporation n/k/a Ceridian LLC ("Ceridian") (collectively, the "Comdata/Ceridian Defendants"). *Id.*

4. As I understand it, most of the Prospective Relief becomes effective upon the date of Preliminary Approval. Settlement Class Members' ability to surcharge, however, may be delayed for a few months so that appropriate point of sale device updates can be developed and distributed to allow for surcharging.

5. The proposed Settlement Class is defined as: "All owners and operators of truck stops or other retail fueling facilities with at least one physical location in the United States that paid Merchant Transaction Fees directly to Comdata on Comdata Proprietary Transactions and that were calculated based on a percentage of the face amount of the transaction during the Settlement Class Period with the exception of Mobile Fuelers, Wilco-Hess locations, the Pilot Defendants, the TA Defendants, and Love's and any of the parents, subsidiaries, affiliates, franchisees or employees of any of the Defendants." *See* Master Settlement Agreement., ¶ 2.

6. A portion of the estimated economic benefits that I have estimated in this Declaration may be passed on to the customers of the Settlement Class in the form of lower prices for diesel fuel than would have prevailed in the absence of the Prospective Relief.

fees ("Merchant Transaction Fees") members of the Settlement Class paid when processing Comdata OTR Fleet Card transactions. I then discuss how the PR would be expected to ameliorate such anticompetitive effects on a going-forward basis.

3. In Part II, I present two benchmarks for valuing the PR from the perspective of the Settlement Class over the period from the date of Preliminary Approval, when many of the key aspects of the PR become effective, until five years thereafter. I use each of these benchmarks to estimate the collective economic benefits of the PR to the Settlement Class under a variety of possible scenarios. Based on this analysis, I estimate that the PR would be expected to generate competitive benefits to the Settlement Class valued between $260 million and $491 million from 2014 through 2018.

QUALIFICATIONS

4. I am a Principal at Economists Incorporated. I am also a Senior Fellow at the Progressive Policy Institute and an Adjunct Professor at Georgetown University's McDonough School of Business.

5. I have written two books, multiple book chapters, and dozens of articles in legal and economic journals. On issues ranging from mergers to vertical restraints to valuation, I have testified before the U.S. Senate, the U.S. House of Representatives, the U.S. Federal Communications Commission, the U.S. Department of Justice, the U.S. Copyright Royalty Judges, and the Canadian Copyright Board. In the last two years, I have served as a consultant for a range of firms and agencies, including Apple, AT&T, the California Department of Justice, the Canadian Competition Bureau, and Google.

6. I earned M.A. and Ph.D. degrees in economics from the Johns Hopkins University and a B.S. *magna cum laude* in economics from Tulane University.

7. I have submitted two lengthy expert reports on behalf of the Plaintiffs and proposed class in this matter, focusing on issues relating to the competitive effects of the challenged conduct.[7] I and my staff have reviewed thousands of documents produced by Defendants and third parties in this matter and expended a great deal of time analyzing economic issues that bear upon my analysis in this Declaration.

I. COMPETITIVE EFFECTS OF THE CHALLENGED CONDUCT

8. In this section, I first describe key provisions in the contractual agreements at issue and their competitive effects. I then explain the ways in which the PR would be expected to ameliorate those effects on a going-forward basis.

A. The Challenged Conduct

9. Defendant Comdata, a wholly owned subsidiary of co-defendant Ceridian, is the dominant issuer for over-the-road ("OTR") trucking in the United States of fleet payment cards ("OTR Fleet Cards" or "Fleet Cards").[8] Long-haul truck drivers working for trucking companies and commercial over-the-road fleets ("OTR Fleets" or "Fleets") use Fleet Cards to pay for point-of-sale purchases of diesel fuel and other items.[9] Long-haul, over-the-road Fleets typically

7. *See* Expert Report of Dr. Hal J. Singer (June 7, 2013) [hereafter Singer Merits Report]; Supplemental Expert Report of Dr. Hal J. Singer (August 23, 2013).

8. *See* Comdata Website—"About Us," *available at* http://www.comdata.com/about-us/about (last accessed Feb. 18, 2014).

9. *See* Lauren Setar, "IBISWorld Industry Report 48412—Long Distance Freight Trucking in the U.S.," (February 2013) at 6 ("Most trucks used for long-distance freight trucking require diesel fuel, which makes up more than 70.0% of all fuel burned by trucks."). *See* Letter to Mary N. Lehner & Daniel Zach, Bureau of Competition, United States Federal Trade Commission, from George L. Paul & Rebecca H. Farrington, "re: Pilot/Flying J: Limited Competition Between Pilot and Flying J," (September 10, 2009) [hereafter *Pilot/Flying J Letter*] ("Virtually all over-the-road trucking companies use proprietary payment cards to purchase diesel fuel at truck stops and to manage their fleet drivers efficiently.").

purchase diesel fuel and other goods and services from merchants referred to as truck stops.[10] Many of these truck stops are owned and run by independent operators ("Independents"), which include both single-stop merchants and small regional chains. Some truck stops are operated by a small number of multistate chains, which comprise networks of multiple truck stops owned by a single entity or franchisees of that entity.[11] The four largest national chains are co-Defendants in this litigation, including TravelCenters of America, LLC ("TA"), Petro Shopping Centers, L.P. ("Petro") (Petro was acquired by TA in 2007),[12] Pilot Travel Centers LLC/Pilot Corporation ("Pilot"), and Love's Travel Stops & Country Stores, Inc. ("Love's") (collectively, the "Major Chains").

10. Plaintiffs allege that Comdata used its position as the leading issuer of OTR Fleet Cards to induce Independents to accept merchant services agreements ("MSAs") that included several allegedly anticompetitive provisions.[13] These allegedly anticompetitive provisions included: (1) the "no-surcharge rule," which prohibited Independents from charging an

10. *See* Tom Stanford, Jim Beach & Doug Condra, *Truckstops & Truck Drivers—A Changing Relationship*, Newport Communications Group White Paper (May 2008) at 1 ("[L]ong-haul trucking and truckstops grew together into major industries… Truckstop operators built huge businesses, not only selling fuel, food and truck services, but also… showers, laundries, movie rooms and a variety of entertainment offerings.").

11. *See* Singer Merits Report, ¶ 3.

12. TA acquired Petro in 2007. *See* "TravelCenters of America Acquires Petro," *available at* http://www.petrotruckstops.com/travel_centers.sstg (last accessed April 1, 2013).

13. *See Marchbanks Truck Service, Inc. v. Comdata Network, Inc.*, No. 07-1078, 2011 U.S. Dist. LEXIS 158011, at *21 (E.D. Pa. Mar. 24, 2011) [hereafter Gardner 2011 Opinion] ("Comdata imposed exclusionary and restrictive contractual provisions on the Independents which were largely more onerous versions of the provisions in the Chain defendants' contracts, summarized above, including fuel discount and transaction fee most favored nations provisions, restrictions on converting customers to rival Fleet Cards, and bans on steering, surcharging, and rebating. Because of the predominance of Comdata's Fleet Card among Fleets, the Independents had no real choice but to accept the terms and fees set forth by Comdata. Independents must accept Comdata-issued Fleet Cards or risk losing the substantial percentage of their customers and potential customers that use Comdata Fleet Cards."). As I understand it, Judge Gardner's decision denying Defendants' motion to dismiss was required to accept the facts asserted in Plaintiffs' complaint as correct. The opinion is cited herein merely to aid in the summary of Plaintiffs' allegations.

additional fee to Fleets using the Comdata OTR Fleet Card; (2) the "lowest cash price" provision, which required that Independents charge Fleets using Comdata Fleet Cards the lowest posted cash price for diesel and not the "credit" or other higher price; (3) the "no-active conversion" provision, which barred Independents from engaging in active sales efforts (including advertising other Fleet Cards or directly soliciting on behalf of rival Fleet Cards) to convert Fleets using Comdata OTR Fleet Cards to rival Fleet Cards; and (4) the "Fuel Discount Most-Favored-Nation" provision, which impaired Independents' ability to offer discounts to Fleets using non-Comdata Fleet Cards, by requiring that the same discounts would have to be extended to transactions on Comdata cards (thereby imposing a severe penalty on Independents for discounting).[14]

11. Comdata also entered into contracts with the Major Chain Defendants, whereby the Major Chains, at various times during the relevant period, agreed to restrictive contractual provisions akin to those in Comdata's MSAs with Independents.[15] In particular, at certain points during the relevant period, Comdata's MSAs with each of the Major Chains contained a "no-active conversion" clause that, in my opinion, would have made it difficult for the Major Chains to successfully offer a proprietary OTR Fleet Card (or expand existing internal direct billing programs into robust competitors to Comdata's OTR Fleet Card).[16]

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14. *Id.; see also* Singer Merits Report, ¶ 7. Some of Comdata's MSAs with Independents and the Major Chains also included a "transaction fee most favored nations" provision, which "guarantees that Comdata will receive the highest transaction fees of all the Fleet Cards accepted at a truck stop." *See* Gardner 2011 Opinion at *19-20.

15. *See* Gardner 2011 Opinion at *17-20.

16. *Id.*, at *174 ("[the Major Chains] agreed not to issue Fleet Cards of their own or promote or expand their own Fleet Cards in competition with Comdata, and (c) agreed to certain restrictive contractual provisions designed to limit competition in the Fleet Card market.").

12. In my opinion, the effect of these provisions was to insulate Comdata from price competition from rival Fleet Cards, to deter entry by or expansion of rival OTR Fleet Cards, and to inhibit the ability of members of the Settlement Class to incentivize customers to avail themselves of rival Fleet Cards offering lower Merchant Transaction Fees.[17] Collectively, the provisions listed above prevented truck stops from using differential pricing to signal to Fleets the higher costs of Comdata OTR Fleet Cards, or from rewarding Fleets electing to use lower-cost cards offered by Fleet Card rivals. That is, members of the Settlement Class could neither increase the price of Comdata OTR Fleet Cards directly, by surcharging, nor could they increase the relative price of Comdata OTR Fleet Cards by offering discounts on Merchant Transaction Fees or fuel on transactions made with non-Comdata Fleet Cards.[18]

13. Plaintiffs allege that, in 2000 and 2001, Comdata used the combined force of its allegedly anticompetitive restrictions on Independents and its agreements with the Major Chains to impose a two-tiered Truck Stop Fee structure (the "Fee Restructuring" or "FR") on Comdata OTR Fleet Card transactions, which (according to Plaintiffs) substantially increased the Merchant Transaction Fees it charged to members of the Settlement Class.[19] Pursuant to the FR, Comdata began charging Independents Merchant Transaction Fees that were calculated as a percentage of the total dollar value of the transaction (typically ranging from 1 to 2.5 percent).[20]

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17. *See* Singer Merits Report, Part II.B. and Part II.C.

18. *Id.*, ¶ 85.

19. *See* Gardner 2011 Opinion at *16 ("Beginning in or around 2000… Comdata implemented a two-tier pricing system under which the Chain defendants are charged a flat fee of $1 per transaction, while Independents are charged a percentage-based fee of around 2% or more per transaction, which amounts to effectively a 500-1000% differential in pricing.").

20. *Id.*

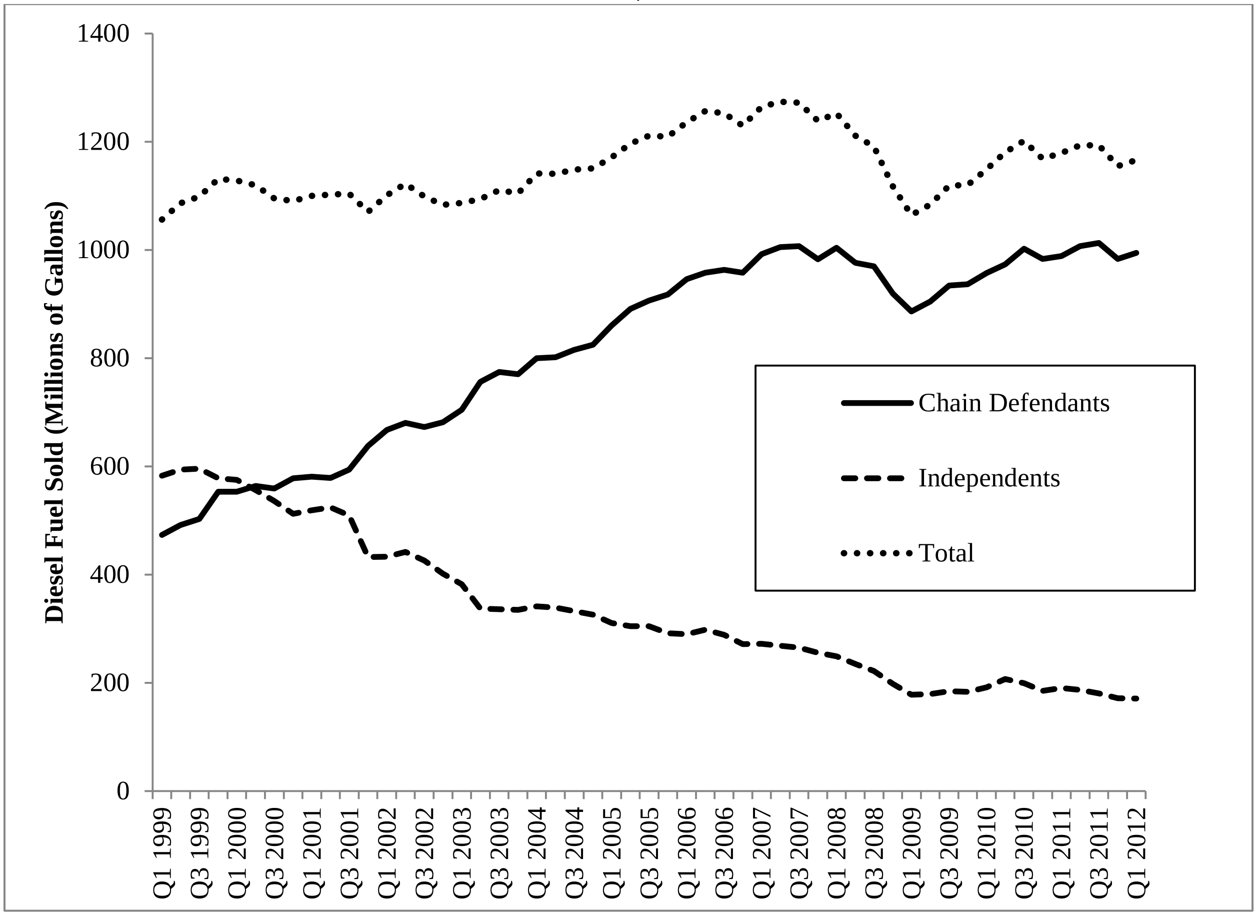
In contrast, Comdata continued to charge the Major Chains relatively lower, flat Merchant Transaction Fees, irrespective of the total dollar value of the transaction.[21]

14. In my opinion, the FR resulted in a substantial disparity between the Merchant Transaction Fees Comdata charged the Major Chains compared to those charged to Independents. At certain points during the period at issue, Merchant Transaction Fees that Comdata charged Independents were eight times higher than those charged to the Major Chains.[22] In addition to placing Independents at a significant cost disadvantage relative to their primary rivals (the Major Chain), the FR represented a substantial increase in Independents' costs, given that Merchant Transaction Fees increased from an average of less than $1 per transaction prior to the FR to more than $7 per transaction in 2008.[23]

15. As a result of the challenged conduct, it is my opinion that the members of the Settlement Class suffered injury in the form of artificially inflated Merchant Transaction Fees paid on Comdata OTR Fleet Card transactions during the Settlement Class Period.[24] As shown in Figure 1, in addition to these artificially inflated fees, the higher costs borne by Independents vis-à-vis the Major Chains impaired the ability of the members of the Settlement Class to offer competitive diesel prices, and (in my opinion) caused Independents to lose a substantial amount of their collective diesel volume to the Major Chains over the period at issue.

21. *Id.*
22. *Id.; see also* Singer Merits Report, ¶ 141.
23. *See* Singer Merits Report, ¶ 136.
24. *Id.*, Part III.

FIGURE 1: GALLONS OF DIESEL FUEL SOLD VIA COMDATA NETWORK, INDEPENDENTS VS. CHAIN DEFENDANTS, 1999-2012



Source: Singer Merits Report, Figure 6.

16. In my opinion, the FR would not have been sustainable for Comdata absent the challenged provisions in its MSAs with Independents and the Major Chains.[25] Absent these restrictions, Independents would have been incentivized to use a number of strategies prohibited by the challenged provisions to steer Fleets toward rival OTR Fleet Cards, and encourage rival OTR Fleet Cards to compete with Comdata on the basis of lower Merchant Transaction Fees.[26]

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25. *Id.*, ¶¶ 112-130.
26. *Id.*, ¶¶ 102-111.

Similarly, absent the challenged provisions in Comdata's agreements with the Major Chains, the latter would have faced greater incentives to support rival OTR Fleet Cards or to introduce or expand their own proprietary OTR Fleet Cards to compete directly with Comdata.[27]

B. The Proposed Prospective Relief

17. As enumerated in the Master Settlement Agreement, Comdata has agreed to refrain from enforcing many of the challenged provisions in its MSAs with Settlement Class Members and the Major Chains for a period of five years from the date of Preliminary Approval of the Settlement.[28] In particular, with respect to its agreements with the Major Chains, Comdata has agreed to: (1) refrain from enforcing the "Active Sales Ban" provision in its existing contracts with TA/Petro and Love's; (2) refrain from inserting an "Active Sales Ban" provision into any new agreements with the Major Chains; and (3) refrain from inserting a "Transaction Fee MFN" provision in any new agreements with the Major Chains.[29] With respect to its agreements with Settlement Class Members,[30] Comdata has agreed to (1) refrain from enforcing the "Active Sales Ban" provisions in its existing MSAs, and not insert such provisions in subsequent MSAs; (2) refrain from enforcing the "Fuel Discount MFN" provisions in its existing MSAs, and not insert such provisions in subsequent MSAs; (3) refrain from enforcing the "Transaction Fee MFN" provisions in its existing MSAs, and not insert such provisions in subsequent MSAs; and (4) refrain from enforcing the "no-surcharge" provisions in its existing MSAs, and not insert such provisions in subsequent MSAs, thus allowing Settlement Class

27. *Id.*, ¶¶ 65-77.
28. *See* Master Settlement Agreement, § V.B. and § V.C.
29. *See* Master Settlement Agreement, § V.B.
30. *Id.*, § V.C.

Members to surcharge the percentage-based portions of their Comdata proprietary transactions under certain conditions.[31]

18. Accordingly, in my opinion, the Prospective Relief can be expected to place downward pressure on Comdata's Merchant Transaction Fees. In particular, the PR effects two key changes: (1) it allows Settlement Class Members to offer differential pricing to Fleets, including by surcharging Fleets on Comdata transactions with relatively high Merchant Transaction Fees or by discounting transactions using rival cards with relatively low Merchant

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31. The Master Settlement Agreement lists conditions governing the use of surcharging by truck stops, including (1) limits on the amount of a given surcharge, (2) that surcharging Comdata transactions is permitted only where certain rival OTR Fleet Cards also permit surcharging, (3) a requirement to notify Comdata of the intent to impose surcharges, and (4) a requirement to post information for Fleets at the truck stop location about surcharging. *Id.* None of these conditions would be expected to prevent the proposed Prospective Relief from placing downward pressure on Comdata's Merchant Transaction Fees. *Id.*, § V.C. (a) – (i).

First, the surcharge to Fleets is permitted to fully reflect the Merchant Transaction Fee differential between Comdata and its closest rival. *Id.* For example, if Comdata's Merchant Transaction Fee is 2.5 percent, and if the next closest rival charges 1.5 percent, then the Truck Stop is permitted to surcharge 1.0 percent. Further, if the next closest rival charges a fee in excess of 1.5 percent, the surcharge can be adjusted upward, as if the next closest rival had charged only 1.5 percent. *Id*. Such differentials should be sufficient to steer substantial Fleet volume away from the Comdata Fleet Card in light of Fleets' substantial sensitivity to price. *See* Singer Merits Report, ¶109, n. 263 (citing evidence that Fleets would switch between payment mechanisms to one quarter to one half of one cent per gallon).

Second, neither the requirement to notify Comdata of the intent to impose surcharges nor the requirement to post surcharging information would be expected to prevent the Prospective Relief from placing downward pressure on Comdata's Merchant Transaction Fees. The requirement to notify merely gives Comdata the opportunity to match lower Merchant Transaction Fees offered by OTR Fleet Card rivals, which itself would result in lower Comdata Merchant Transaction Fees. *Id*. The requirement to post information on surcharging would simply alert Fleets to the existence (and source) of the surcharge through signage at the fuel pump *Id.*

Third, even if one were to assume that surcharging were prohibited by the Settlement, Settlement Class Members would still be permitted to engage in steering by "offering a more favorable discount to a trucker or fleet using a rival OTR fleet card than that merchant offers to fleets using Comdata" and to use efforts to actively convert Fleets to rival OTR fleet cards. *See* Master Settlement Agreement, ¶ 22. In other words, even in the absence of surcharging, Settlement Class Members would still be permitted to utilize steering strategies to tilt the relative prices of Fleet Cards as perceived by the Fleets, allowing Fleets to internalize the differential between Comdata's Merchant Transaction Fee and the Merchant Transaction Fee offered by *any* rival OTR Fleet Card. This would incentivize Fleets to rationally choose to use those Fleet Cards that impose the lowest total cost per transaction, placing downward pressure on Comdata's Merchant Transaction Fees. *See* Singer Merits Report, ¶¶ 56, 85, 104-106.

Transaction Fees; and (2) it allows Settlement Class Members to engage in active efforts to convert Fleets to Fleet Cards with relatively low Merchant Transaction Fees.

15. The PR will, in my opinion, thus allow Settlement Class Members to engage in steering strategies that will incentivize Fleets to avail themselves of OTR Fleet Cards that impose lower Merchant Transaction Fees. For example, representatives from several buying groups (associations of Independent Truck Stops) submitted declarations in this case indicating that, in the absence of provisions like the "no-surcharge rule" and "Fuel Discount MFN," they would use the collective power of their members to steer Fleets away from Comdata OTR Cards by threatening to impose surcharges at all member locations on Comdata transactions, or offering other incentives to rival OTR Cards (such as discounts) in exchange for lower Merchant Transaction Fees.[32] Economists have demonstrated that provisions such as no-surcharge and anti-discounting rules—which prevent merchants from passing on the higher costs of certain payment cards to consumers or from incentivizing the use of lower cost cards—discourage the issuers of those payment cards from competing with one another on the basis of Merchant Transaction Fees.[33] Conversely, when merchants (here, Truck Stops and other retail fueling facilities) are able to signal differences in costs to consumers (Fleets), Fleet Card issuers,

32. *See* Singer Merits Report, ¶¶ 107-108.

33. *Id.*, ¶ 85. *See also* Nicholas Economides, *Competition Policy Issues in the Consumer Payments Industry*, in MOVING MONEY: THE FUTURE OF CONSUMER PAYMENT, 117, 113-126 (Robert E. Litan & Martin Neil Bailey eds., 2009) ("The card networks impose various contractual restrictions, such as those against surcharges, steering, and discrimination… which collectively prohibits or discourages merchants from favoring cards that offer better terms. This both reduces competition among card networks in getting merchants' business and supports high interchange fees."). *See also* Alan S. Frankel, *Monopoly and Competition in the Supply and Exchange of Money*, 66 ANTITRUST L. J. 345, 313-362 (1998) ("Thus a surcharge ban at least ensures for card issuers that price coherence across credit card brands will continue, reducing price competition at the merchant level among competing brands.").

including Comdata and its rivals, will have the incentive and the ability to engage in price competition by offering lower Merchant Transaction Fees.

19. Finally, the experience in Australia provides corroborating empirical evidence that removing barriers to steering by merchants will place downward pressure on Merchant Transaction Fees. In 2003, as part of an effort to increase competition and lower payment card fees, the Reserve Bank of Australia imposed a ban on the use of no-surcharge rules (in addition to mandating a decrease in interchange fees).[34] In subsequent years, the number of merchants engaging in steering via surcharging increased and merchant transaction fees fell.[35]

II. Estimating the Value of the Prospective Relief to the Settlement Class

20. In my opinion, the PR would generate economic value through two primary channels. *First*, holding Settlement Class Member sales volumes fixed at current levels, Settlement Class Members would benefit from lower Fleet Fees on each transaction. *Second*, by reducing or eliminating the large disparity between the Merchant Transaction Fees charged to Settlement Class Members and Major Chains, the PR would enable Settlement Class Members to recapture some of the diesel fuel volumes previously forfeited to Major Chains.[36]

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34. *See* Reserve Bank of Australia, *Payment System Board Annual Report*, (2012) at 25 ("The removal of 'no-surcharge' rules by the Reserve Bank as part of the reforms starting in 2003 allowed merchants to pass on the cost of credit and debit card transactions, with merchants having previously been prevented from doing so by rules of the international card schemes. These rules had masked price signals to cardholders about the relative costs of different payment methods. They had also contributed to the cross-subsidization of credit card users by all other customers, as merchants could recover the costs of accepting card payments only by incorporating them into the overall prices of their goods and services. *Finally, by preventing the possibility of surcharging, these rules limited the ability of merchants to put downward pressure on their merchant service fees.*") (emphasis added).

35. *See* Economides 2009, *supra*, at 123.

36. *See* Figure 1, *supra*.

21. In this Section, I use two benchmarks to quantify these effects. The first (the "Buying Group Benchmark") is based on an agreement negotiated in 2010 by a large buying group to secure lower Merchant Transaction Fees from one of Comdata's Fleet Card rivals. These relatively low Merchant Transaction Fees are used as a proxy for the Merchant Transaction Fees that would be observed more generally after the PR has taken effect. The second (the "Major Chain Benchmark") is based on the observed inflation in Merchant Transaction Fees charged to Major Chain Defendants, who were not subject to the FR. As explained below, I use each of these benchmarks to estimate the value of the PR under a variety of different scenarios.

A. The Buying Group Benchmark

22. Roady's is a large network of independently owned Truck Stops that also serves as a membership-based buying group for Independents.[37] In late 2010, when Fleet Card rival TCH began converting Independents from a flat fee of $1 per transaction to a percentage-based Merchant Transaction Fee, Roady's successfully negotiated, on behalf of its members, a fee of one percent with TCH, significantly below TCH's initial offer of 1.65 percent.[38] Record evidence indicates that this rate remained in effect as of February of 2012.[39] Accordingly, the Buying Group Benchmark provides an up-to-date estimate of the rates that Fleet Card rivals have

37. *See* http://www.roadys.com/pressreleases/10-02-16.pdf; *see also* http://www.roadys.com/pressreleases/12-02-20.pdf.

38. *See* KRAC0001788 (E-mail from Roady's Regional Manager Ruthie Carlson to buying group members stating that "Roady's has been in negotiations with TCH expressing our displeasure with the increase since they served notice to us in August. We have been able to negotiate down to 1% which you can see by the letter that I have attached to this email. At first TCH was going to charge all independent truck stops a fee of 1.65%. Roady's was able to negotiate them to 1.35% and now to 1%...This negotiation process is a prime example of why we are stronger and better TOGETHER as Roady's.").

39. *See* KRAC0036877.

been willing to offer buyers with bargaining leverage, and of the market rates that would prevail more generally among Settlement Class Members under the more competitive conditions that would be expected to develop under the PR. The Buying Group Benchmark predicts that Settlement Class Members would, on average, pay Merchant Transaction Fees of one percent, once competition has had sufficient time to emerge.

B. The Major Chain Benchmark

23. Although the Major Chains' Merchant Transaction Fees did increase under the FR, they did so at a much more gradual pace than the Settlement Class Members' Merchant Transaction Fees. The Major Chain Benchmark uses the observed inflation in Major Chains' Merchant Transaction Fees to estimate the Fees that would be available to Settlement Class Members after the PR has taken effect. Specifically, the Major Chain benchmark predicts that, once competition has had sufficient time to emerge, Settlement Class Members would, on average, pay Merchant Transaction Fees equal to the average Merchant Transaction Fee that Comdata charged to Settlement Class Members prior to the FR, inflated at an annual rate equal to the inflation experienced by the Major Chains since the FR.[40]

C. Using the Benchmarks to Estimate the Value of the PR Under Different Scenarios

24. I use the two benchmarks described above to model the economic value of the PR to the Settlement Class under various scenarios. As illustrated in Table 1, the scenarios are delineated across three separate premises, with each subdivided into two cases ("Case A") and ("Case B").

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40. After the PR, the Settlement Class Member Merchant Transaction Fees are projected to continue to rise over time at the same annual rate observed for Major Chains.

TABLE 1: SUMMARY OF SCENARIOS

Premise	Case A	Case B
Transition Period	Benefits = 0 in 2014-2015	Benefits = 0 in 2014.
Volume Recapture Rate	Mirrors decline over first five years of FR. Restores Settlement Class Member volumes to approximately 57 percent of pre-FR levels. (Annual growth rate = 12%).	Restores Settlement Class Member volumes to approximately 75 percent of pre-FR levels. (Annual growth rate = 19%).
Merchant Transaction Fee w/o Relief	Percentage MT Fee held fixed at actual (2013) levels.	Percentage MT Fee grows at historical rate.

25. The first premise, referred to as the "Transition Period," specifies the interval over which competitive conditions are projected to emerge after the PR is put into place in 2014. Under Case A, to account for a possible transition or phase-in period of the PR as Settlement Class Members and the market generally adjusts to the new set of rules, I project conservatively that the PR does not yield any economic benefits to Settlement Class Members in 2014 or in 2015; benefits are constrained to zero during both of these years. To the extent that competition would emerge more rapidly, Case A may be overly conservative. Accordingly, under Case B, I project that sufficient competition emerges for the PR to begin delivering economic benefits in 2015 (but still not in 2014).[41]

26. The second premise, referred to as the "Volume Recapture Rate," specifies the rate at which Settlement Class Members are expected to recapture forgone diesel fuel volumes once competition has emerged in the market. Under Case A, Settlement Class Members are projected to increase their diesel fuel volumes at a pace that mirrors the observed decline in

41. There is a distinction between the harm caused by the allegedly anticompetitive provisions in the past and the benefits anticipated by the PR. I explained previously why the challenged contractual provisions were, in my opinion, necessary for Comdata to impose the FR. Without those provisions, Comdata could not have imposed the FR or, if it tried to do so, would have been forced by competition to promptly reverse its price increase to the Settlement Class Members. However, now that Comdata has established the FR over many years, eliminating the challenged provisions will not necessarily result in an immediate return to more competitive pricing.

volume that Settlement Class Members incurred over the first five years after the FR was imposed (which translates into an annual rate of approximately 12 percent). If Settlement Class Member sales were to grow at this rate for five years, this assumed increase would restore Settlement Class Member diesel fuel volumes to approximately 57 percent of pre-FR levels.[42] Case A may be overly conservative to the extent that the pace of the observed decline in Settlement Class Member sales volumes after the FR was slowed by: (1) relatively low diesel fuel prices (translating into lower Merchant Transaction Fees for Settlement Class Members than those that prevail today);[43] or (2) the time that it took Comdata to convert the vast majority of Settlement Class Members to percentage-based fees.[44] Accordingly, under Case B, Settlement Class Members are projected to increase their diesel fuel volumes at an annual rate of approximately 19 percent, which would restore Settlement Class Member volumes to 75 percent of their pre-FR levels over a period of five years.

27. The third and final premise, referred to as "Merchant Transaction Fee w/o Relief," specifies the path that Merchant Transaction Fees for Settlement Class Members are projected to follow in the absence of the PR. Under Case A, Merchant Transaction Fees are projected to remain constant from 2014 to 2018 in the absence of the PR, at approximately 1.9 percent.[45] This

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42. Under Case A, Settlement Class volumes would not be restored to 100 percent of pre-FR levels, even after five years. This is because Settlement Class Member diesel fuel volumes have fallen substantially below what they were five years after the FR was first put into place. *See* Figure 1, *supra*.

43. *See* Singer Merits Report, Figure 2.

44. *See* Expert Report of Jeffrey J. Leitzinger, Ph.D. (June 7, 2013), Exhibit 6.

45. Based on the Comdata transaction fees reported by named plaintiffs. *See Marchbanks' Objections & Responses to Rog 3 In Comdata's 4th Set of Interrogatories* (June 2013) (showing a fee of 2.0% for Comdata transactions since at least April 5, 2000); *see also Krachey's Objections & Responses to Rog 3 In Comdata's 4th Set of Interrogatories* (June 2013) (stating that Krachey's paid Comdata a transaction fee of 1.85% from the third quarter of 2003 through the present).

projection may be overly conservative, given that Comdata's percentage fees have historically exhibited a steady upward trend over time.[46] Accordingly, under Case B, in the absence of the PR, the average percentage Merchant Transaction Fee is projected to grow from 2014 to 2018 at the same rate as the observed trend over the past five years.[47]

TABLE 2: RANGE OF ESTIMATED PR VALUATIONS

Benchmark	Premise	Case	Estimated Value of PR (2014 - 2018)
Buying Group	Transition Period	A	$262,006,813
	Volume Recapture Rate	A	
	MT Fee w/o IR	A	
Buying Group	Transition Period	B	$489,068,384
	Volume Recapture Rate	B	
	MT Fee w/o IR	B	
Major Chain	Transition Period	A	$260,464,651
	Volume Recapture Rate	A	
	MT Fee w/o IR	A	
Major Chain	Transition Period	B	$491,368,835
	Volume Recapture Rate	B	
	MT Fee w/o IR	B	

28. The range of estimated PR valuations is displayed in Table 2. For each benchmark, the low end of the range occurs when each of the three premises is set to Case A. In this case, the Buying Group Benchmark indicates that the PR would generate approximately $262 million worth of value over the five-year period. The Major Chain Benchmark yields a similar estimate under Case A (approximately $260.5 million). The high end of the range occurs when each premise is set to Case B. In this case, the Buying Group Benchmark indicates that the

46. Source: Comdata's FMLog Database.
47. *Id.*

PR would generate approximately $489.1 million worth of value over the five-year period, while the Major Chain Benchmark yields a slightly higher estimate of approximately $491.4 million.[48]

CONCLUSION

29. Based on the analysis above, I estimate that the PR would be expected to generate benefits valued between $260 million and $491 million between 2014 and 2018.

48. Intermediate cases can also be modeled. Because there are three types of premises, each with two possible Cases, a total of $2^3 = 8$ different estimates can be computed for each benchmark. For simplicity, here I have presented only two estimates for each benchmark, giving the upper and lower extremes of the range.

* * *

I declare that, to the best of my knowledge, the foregoing is true and correct.

Hal J. Singer

March 4, 2014