



# **Comments of the International Center for Law & Economics on Proposed Consent Agreement; Mastercard Incorporated**

***Federal Trade Commission Matter No. 202 0011***

*February 7, 2023*

**Authored by:**

**Julian Morris** (Senior Scholar, International Center for Law & Economics)

# Comment on Mastercard Incorporated; Matter No. 201 0011

February 2023

**Julian Morris\***

Commissioners,

I am an expert on the law & economics of payment cards and have written extensively the subject.<sup>1</sup> I am submitting this comment on behalf of the International Center for Law & Economics (ICLE) because we have concerns regarding the effects that the consent order may have on the functioning of and innovation in payment systems.

Among these are that the agreement will undermine the security of payments made using single-message systems; set a precedent that, if applied more broadly, would undermine the security of payments more generally; and discourage investment in innovation, especially in the development of new, secure, tokenized payment systems that have the potential to reduce fraud, theft, and other forms of counterparty risk. Such an outcome would be, in our view, entirely detrimental to the future of the U.S. payment system.

To elaborate those concerns, we attach a paper we recently produced that discusses the regulation of single-message payment systems and, in particular, the regulation of routing on such networks. We hope this work will help to inform your deliberations on the matter.

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\* Julian Morris is a Senior Fellow with International Center for Law & Economics.

<sup>1</sup> See, e.g., Julian Morris & Todd J. Zywicki, *Regulating Routing in Payment Networks*, INTERNATIONAL CENTER FOR LAW & ECONOMICS (Aug. 18, 2022), <https://laweconcenter.org/resources/regulating-routing-in-payment-networks>; Julian Morris, *Central Banks and Real-Time Payments: Lessons From Brazil's Pix*, INTERNATIONAL CENTER FOR LAW & ECONOMICS (Jun. 1, 2022), <https://laweconcenter.org/resources/central-banks-and-real-time-payments-lessons-from-brazils-pix>; Julian Morris, *Regulating Payment-Card Fees: International Best Practices And Lessons For Costa Rica*, INTERNATIONAL CENTER FOR LAW & ECONOMICS (May 25, 2022), <https://laweconcenter.org/resources/regulating-payment-card-fees-international-best-practices-and-lessons-for-costa-rica>; Todd J. Zywicki, Julian Morris, & Geoffrey A. Manne, *The Effects Of Price Controls On Payment-Card Interchange Fees: A Review And Update*, INTERNATIONAL CENTER FOR LAW & ECONOMICS (Mar. 4, 2022), <https://laweconcenter.org/resources/the-effects-of-price-controls-on-payment-card-interchange-fees-a-review-and-update>.