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THE ANTITRUST ECONOMICS OF CREDIT CARD NETWORKS:
REPLY TO EVANS AND SCHMALENSEE COMMENT

DENNIS W. CARLTON
ALAN S. FRANKEL*

1. INTRODUCTION

In their comment on our article, David Evans and Richard Schmalensee claim to disagree with almost everything we say. Such criticism, even if wrong, is desirable because it can spark a greater awareness of the consequences of the antitrust standards applied to joint ventures, an area of acknowledged and growing importance. Yet none of their arguments refute our claim that the analyses in both MountainWest and NaBanC04 are wrong. Instead, they mischaracterize our positions or attribute to us positions we never state and attack us for them.

Our position is simple—joint ventures should be permitted to significantly restrict competition only when reasonably necessary to achieve efficiencies (with great weight given to legitimate efficiency claims). By misstating our views on antitrust policy towards joint ventures, Evans and Schmalensee obscure both our position and the extreme nature of

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The journal's space constraint precludes us from responding to every one of their mischaracterizations and mistakes in this Reply, so we focus on the most important points.
their own—that joint ventures like Visa have an unlimited right to use collective rules to exercise market power, even in the absence of any associated efficiencies. By mischaracterizing the extent to which we relied on market share evidence to infer the existence of market power in *MountainWest*, Evans and Schmalensee obscure the fact that the court's holding in that case—that Visa could not exercise market power because its individual members lack market power—is wrong. Moreover, they wrongly interpret their quantitative data as supporting their position in *MountaInWest*, when in fact it supports our position. By incorrectly suggesting that we, and not the NaBanco court, wrongly relied on an overly simplified model of credit card competition, and by mischaracterizing our policy recommendations about interchange fees, they obscure the fact that NaBanco's analysis of interchange fees is wrong.

**II. MARKET POWER**

The Tenth Circuit held in *MountainWest* that, as a matter of law, a group of firms cannot act collectively to exercise market power if the firms individually lack market power. In our article we explained why this is logically wrong and provided an example in which small stores, each with no individual market power, band together to exclude Wal-Mart, keep prices from failing, and thereby exercise their collective market power. Evans and Schmalensee agree with us that a restriction on access that causes prices to be significantly higher than those that would otherwise prevail is an exercise of market power, and they acknowledge that "[i]n the case of the exclusion of WalMart" they "might well find evidence of market power." Yet they fail to recognize that this logic demonstrates that the Tenth Circuit's holding, which would find no market power in the Wal Mart example, is wrong. Their discussion of market shares is not relevant to the court's logical error.

Evans and Schmalensee wrongly imply that we relied primarily on the large collective market share of Visa's members to infer that Visa exercised market power. While we believe the large collective market share is indicative of the competitive importance of access to Visa, our analysis focused on three types of direct evidence of price effects to show that Visa did exercise collective market power by excluding Dean Witter.

6 Carlton & Frankel. supra note 2, at 654.
7 Evans & Schmalensee, supra note 1, at 870.
8 Evans's and Schmalensee's long discussion about some of the pitfalls of using market shares to infer market power in various circumstances is irrelevant to our analysis because we do not rely on market shares in the way they claim. Because we determined that Visa's exclusion of Dean Witter prevented price's from falling, we know that Visa has exercised collective market power. There was no need for further analysis of market definition and market shares (which, in any event, are a rough and sometimes unreliable guide to market
First, at the time, Dean Witter would have been the only large-scale issuer of a no-fee, low-price Visa card. Second, Visa and its members themselves predicted that the entry of Dean Witter would cause their prices and profits to decline. Third, the recent entry of AT&T, followed by others such as GM, caused credit card prices to fall. Therefore, entry by Dean Witter (which would have entered well before GM) also would likely have caused prices to fall, and so its exclusion harmed consumers and was an exercise of market power.9

Evans and Schmalensee focus exclusively on our claim that AT&T's entry caused prices to fall, and ignore all other evidence about Dean Witter's likely competitive effects. While they agree with us that examining the competitive impact of AT&T's entry could provide useful evidence about the likely impact of Dean Witter's entry, they reject our conclusion that AT&T had a procompetitive effect. Numerous industry observers, business analysts, and Visa members reported that AT&T increased competition and lowered price, and we provided references to a few of the dozens of trade press accounts of such reports. Evans and Schmalensee do not dispute that these reports accurately reflect the views of these industry experts, but they dismiss this evidence.

Evans and Schmalensee claim that a regression analysis of annual fee data shows that AT&T's entry was not associated with a decline in fees. A correct analysis of the data, however, confirms the industry view that annual fees did fall significantly. Figure I shows the precipitous decline in annual fees, adjusted for inflation, that began with AT&T's entry.

power. However, if one were to use market shares, it is only the collective share that could possibly be meaningful in order to assess collective market power. In any event, we fail to see how a high collective share should mitigate concerns that the members of a joint venture can exercise market power. The opposite is more likely to be the case. Exclusion from a large joint venture can decrease competition by rendering excluded firms less effective competitors. See, e.g., United States v. Realty Multi-List, Inc., 629 F.2d 1351 (5th Cir. 1980). For a discussion of the proper and improper use of market shares to infer harm in various circumstances, see Dennis W. Carlton & Steven C. Salop, You Keep on Knocking But You Can't Come in: Evaluating Restrictions on Access to InputJoint Ventures (Working Paper No. 111, Center for the Study of the Economy and the State, The University of Chicago 1995).

9 We also discussed why the price evidence suggests that the NaBanco court was wrong to conclude that cash and checks constrained credit card prices. Carlton & Frankel, supra note 2, at 653. Evans and Schmalensee nevertheless support the NaBanco decision. In MountainWest, Visa abandoned its position that cash and checks are in the same market as credit cards.

" Evans & Schmalensee, Supra note 1. at 872-75. The jury in MountainWest concluded on the basis of this other evidence that Visa's exclusion of Dean Witter did harm competition, and the district court ruled that there was sufficient evidence to justify this finding.

" Carlton & Frankel, supra note 2, at 653.
Statistics confirm what the figure suggests: After the entry of AT&T, the decline in annual fees, adjusted for inflation, accelerated by a statistically significant amount. The data also show the important effect that a second major entrant, General Motors, had in September 1992. Following GM's large-scale introduction of a no-fee bank card, the decline in

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Evans and Schmalensee limit their analysis to data from 1984 to mid-1992, while we analyze data through the third quarter of 1994. In materials we provided to Visa during the MountainWest trial we showed that AT&T's entry is associated with a statistically significant reduction in annual fees even for the short data set that Evans and Schmalensee used. Evans and Schmalensee test for an immediate downward shift in fees. Because it takes time to enter, for customers to switch, and competitors to react, we allowed for the possibility that AT&T increased the rate at which fees were declining in inflation-adjusted terms. With this change we detect a statistically significant downward effect of AT&T's entry on the trend. The lines in the figure (which reflect the average of the seasonal effects) are based on a regression of real fees on a constant term, seasonal effects, a time trend, and an AT&T effect on the trend. The regression line drawn is constrained to be continuous at AT&T's entry, a constraint that is validated by statistical tests. The results are unchanged when a log specification, which may be more appropriate, is used. Because Schmalensee
annual fees accelerated further." Evans and Schmalensee omit half of the post-AT&T data, including all of the post-GM data, from their analysis, so they cannot detect the effect of GM's entry. Because Dean Witter's no-fee Visa card was to have been launched in March 1991, the beneficial effects on consumers of additional low-priced entry was delayed by Visa's exclusion of Dean Witter.

The lesson of AT&T (and GM) is that the entry of the first few nontraditional large-scale promoters of zero-fee bank cards caused prices to fall significantly, despite the existence of thousands of other bank card issuers. Had Visa expelled AT&T and GM, prices would not have fallen as fast and consumers would have been injured. This supports the industry view that Visa could keep prices higher (i.e., exercise collective market power) through its exclusion of large price cutters like Dean Witter, and our conclusion that Visa's exclusion of Dean Witter did cause direct consumer injury by slowing the decline in annual fees."

111. ACCESS TO JOINT VENTURES

Evans and Schmalensee grossly mischaracterize our article by claiming that we propose antitrust intervention unless a joint venture can prove that every one of its agreements is "essential" to its operation. Rather, we propose that a joint venture should be allowed to adopt rules that significantly harm competition only if those rules are reasonably necessary for efficient operation. We never state that a restriction is permitted only when it is essential to the survival of the joint venture. An agreement or access restriction can be efficient and socially desirable, even if the joint venture could survive without it. The essential-to-survival test that Evans and Schmalensee wrongly attribute to us would be far too strict. If a rule simultaneously restricts competition and is efficient, one must weigh the efficiency benefits against the competitive harms in order to decide whether the rule is in the public interest. In cases where the evidence is ambiguous, we would give the benefit of the doubt to the joint venture.

did not introduce his analysis at trial, our analysis of his data was never introduced in rebuttal.

* For a significant fraction of credit card users (about 30%) the annual fee is all that matters because they pay off their balances in full each month. Say So Long to Booming Balances, CREDIT CARD MGMT., April 1992, at 60-61. Our review of interest rate data suggests that recent entry in the credit card market has also lowered credit card interest rates and made them more responsive to changes in other market interest rates.

* Based on the impact of GINI's entry, we estimate that consumers have paid over $1 billion extra in annual fees since 1991 because Dean Witter was excluded from Visa.

5 Evans & Schmalensee, supra note 1, at 881.
If a joint venture claims that the profits earned from exercising market power are essential to its creation and survival, we would require proof of this claimed essentiality. However, there are many other possible efficiency defenses that would not require such a proof. For example, an access restriction could lower coordination costs among firms, allowing the product to be produced at lower costs. There is no need to prove that the access restriction is essential to the joint venture’s survival. Such a test would be inappropriate, having nothing to do with whether the efficiency of the access restriction outweighs the competitive harms.

In contrast to Evans and Schmalensee, we would subject joint ventures to different standards than a single firm. The reason is simple: A joint venture necessarily allows competing firms to cooperate. Although such cooperation can produce benefits, it can also suppress competition unnecessarily. When collective action—e.g., pricing, standard setting, membership—causes price to be higher than otherwise, there is the concern that the joint venture is engaged in anticompetitive actions unrelated to efficiency. Evans and Schmalensee criticize our concern with anticompetitive effects because, they say, we do not protect the "property" of joint ventures, and without property protection incentives are diminished. But they never explore the consequences of a policy allowing their unlimited protection of "property."

Our position is that a joint venture does not have a "property right" to profits that result from an anticompetitive agreement that generates no efficiencies. Evans and Schmalensee take the opposite position. In their view a joint venture is entitled to its "property," even when the property consists of the profits resulting from an exercise of market power that is unrelated to efficiencies. They claim that protection of profits, even profits resulting solely from the exercise of market power, is necessary in order to provide adequate incentives for firms to invest and innovate. According to the logic of that position, even a price-fixing cartel should be immune from antitrust action because taking away the extra profits its members earn through collusion would reduce the incentives to innovate in the economy." But Evans and Schmalensee then contradict the logic of this extreme position by conceding that price fixing among joint venture members may require justification. Yet, they would explicitly

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16 Id. at 880-81.

17 Evans and Schmalensee rely on the patent laws to support their argument that profits resulting from the exercise of market power by joint ventures should be protected. But they note that "[b]ecause of the exclusive and potentially sweeping scope of the patent monopoly, it is limited in duration." Id. at 877. We would add that patents are also limited in scope—not everything can obtain patent protection. One concern in a joint venture like Visa is that it could, through the rule advocated by Evans and Schmalensee, obtain the economic equivalent of perpetual patent protection for products not eligible for patents.
allow other anticompetitive restrictions on competition, such as exclusion or expulsion of vigorous competitors, without requiring the joint venture to provide any efficiency justification. They argue that a refusal by a joint venture to "share property" (i.e., exclusion or expulsion) is an entirely different matter than an agreement to restrict competition among members of the joint venture, even when the anticompetitive effects are the same." But they provide no reason for this distinction.

Visa did raise the defense that it was entitled to its "property"—namely, the extra profits its members derive from its exclusion of Dean Witter—in order to generate incentives to invest. This defense must be taken seriously because, as we stress, one danger with compelling access is that it could adversely affect investment incentives. That is why we impose such stringent standards before we would recommend intervention in a joint venture. However, unlike Evans and Schmalensee, we do not unquestioningly accept this justification and do not grant joint ventures an unlimited property right to the profits that result from an exercise of market power through exclusion.

in general, we believe that it is likely to be difficult for a court to evaluate the assertion that a restriction on competition is essential to generate profits sufficient to provide incentives to innovate or invest. Ex-post profit calculations may be a poor indicator of ex ante profit expectations, and there may not be other comparable ventures to use as a benchmark. In such cases, given our reluctance to intervene in joint ventures, we would give the benefit of the doubt to the defendant when evidence on justification is ambiguous.' But the matter is considerably

id. at 882. Although the antitrust laws treat naked price fixing as per se illegal, Evans and Schmalensee would treat naked exclusion as per se legal. See Eric B. Rasmusen et al., Naked Exclusion, 81 Am. Econ. Rev. 1137 (1991).

"Evans and Schmalensee do concede that they would scrutinize restrictions among members to make sure that the restrictions are necessary for efficiency. But it is illogical to be concerned with restrictions on competition only among current members. Suppose that if Firm A is permitted to join a joint venture, price will fall from $20 to $10. If Firm A is refused entry into the joint venture, that action is permissible according to Evans and Schmalensee. If Firm A is admitted, drives price down to $10, and then is expelled, that is also permissible because Firm A, once expelled, is not a "member." If Firm A is allowed in, but told how much to produce (e.g., is competitively restrained so that price remains at $20), that is not permissible. Nothing can justify the different outcomes in these cases. To see the illogical nature of their rule in another way, notice that their rule would allow Visa to expel a Visa member who begins to compete against Visa through a proprietary card, even when the rule has no efficiency justification. Again, this is a clear competitive restriction that we would oppose but Evans and Schmalensee would not.

"The same difficulty may also attend the showing of efficiencies from the rules of the joint ventures.

"This does not mean that one is allowed to ignore unambiguous evidence contradicting efficiency claims.
different if the history of the venture provides a way to test the validity of the asserted "essentiality" of the profits resulting from an exercise of market power. For example, Visa has been structured as an open joint venture and has flourished. Any bank (except one affiliated with Dean Witter or American Express) can join Visa, "share" Visa's "property," and compete with other Visa members. This negates any claim that Visa needs to protect its "property rights" to the higher profits its members earn when they exclude competitors in order to provide adequate incentives for members to innovate and expand. In fact, six of the top ten Visa issuers were not original "innovators."

Evans and Schmalensee dispute that history is probative of efficiency justifications because circumstances may have changed. Of course, that is not an adequate response unless circumstances in fact have changed. One can always say that because of changed circumstances evidence may be irrelevant, but that does not mean that one can assume that it is. Specifically, they say that it is foolish to have a requirement that if a venture is open to A and B, it may not be closed. Perhaps. But suppose C is identical to A and B except that it will cause prices to fall because it is a more aggressive competitor, and the members exclude C solely for that reason. Suppose the members claim that their actions are justified because firms like C will create inefficiencies—e.g., raise production costs. It is surely relevant to use the evidence to expose the pretextual nature of this efficiency claim. As we stress in our article, intervention into successful joint ventures should be done only when "clear and convincing evidence demonstrates that the intervention will benefit society." Here, the operating history of Visa directly contradicts its efficiency justifications and shows that they are a pretext to allow Visa keep prices higher for longer than otherwise would occur. One cannot ignore evidence that efficiency justifications are bogus. Accordingly, because we find an anticompetitive harm with no offsetting efficiency justification, we favor intervention to allow Dean Witter into Visa.

Evans and Schmalensee argue that there is a perverse paradox in our recommendation of compelling access to a joint venture. If access is compelled, they say, the collective market power of the joint venture must rise as the venture becomes overinclusive, thereby creating additional net

22 Evans & Schmalensee, supra note 1, at 882.
23 For example, Visa claimed that Dean Witter could steal valuable information from

Visa and use it to benefit its Discover Card. If this is an important concern, why is it that banks like Citibank can belong to Visa and issue their own proprietary cards (e.g., Diner's Club)? History can often reveal the plausibility (or lack thereof) of claimed efficiencies.
21 Carlton & Frankel, supra note 2, at 668.
competitive harm." That reasoning is wrong. Our test for compelling entry is whether the benefits from compelling entry clearly exceed the possible harms (including a possible diminution in "intersystem" competition). It is impossible for net anticompetitive harm to result if our test is satisfied, which we believe it was in MountainWest.

We investigated the possibility that Dean Witter's admission to Visa would make the venture overinclusive and diminish competition between Discover Card and Visa. We concluded that the intrasystem competition effect would offset any possible adverse intersystem effect so that price would fall if Dean Witter entered. This also reflects the views of Visa's members and explains why they want to keep Dean Witter out of Visa.

Although Evans and Schmalensee do not investigate the likely effect on intersystem competition of admitting Dean Witter, they seem sure that it will result in a diminution of intersystem competition. But curiously, they fail to explain how. Would it cause the interchange fee to rise? According to them, it cannot, because interchange fees are efficiently set at the amount necessary to cover costs. Could it affect final prices? Apparently not, because they claim that there is so much competition already that prices are competitively set. Moreover, it is not obvious that the intersystem effect is even negative because the by-law that kept Dean Witter out also inhibits, and was specifically designed to inhibit, new intersystem competitors. Evans and Schmalensee ignore that the exclusion of Dean Witter from Visa is a serious punishment that will chill the incentives of existing or future Visa members to develop their own proprietary cards in competition with Visa.

27 Prior to trial in MountainWest, Visa claimed that one likely effect of Dean Witter's membership in Visa on "intersystem competition" would be a reduction in the pace of technological innovation concerning central network activities such as data processing and communications. As we explained, we do not believe that there will be any significant diminished incentive for either Visa or Dean Witter to reduce the costs of performing those functions. Carlton & Frankel, supra note 2, at 667. However, we also pointed out that the share of total costs represented by those functions was very small-about 2% of revenue-so that any possible reduction in the cost of these network functions is likely swamped by the direct competitive benefits that Dean Witter would generate from increased intrasystem competition. We also separately analyzed other possible intersystem concerns, such as allegations that interchange fees would increase, and explained why those concerns were unwarranted. Evans and Schmalensee compare our argument to a claim that "the percent of total retail revenues McDonald's and Burger King spend on the centralized functions of their franchise operations measures the importance of competition between
IV. INTERCHANGE FEES

Evans and Schmalensee attack us for interventionist positions towards interchange fees, which we neither state nor hold. They themselves adopt a strict noninterventionist policy that precludes any inquiry into the evidence. They claim that our criticisms of NaBanco are wrong because we assume that the credit card market can be modeled as a perfectly competitive industry. But we did not make that error, the NaBanco court did. -

The NaBanco court accepted the argument that without mandated interchange fees there would be no guarantee that issuing banks would cover their costs under competition, in part because the merchant and issuer banks are so interdependent.21 One should always be wary of claims that the world is so interdependent that the marketplace cannot function efficiently. Indeed, as our article showed, the claim is false in the circumstances postulated by the NaBanco court (not by us). Under those circumstances competition works perfectly and the interchange fee has absolutely no effect on the final prices that anyone receives or pays after all payment flows are accounted for.

Evans and Schmalensee apparently disagree not with our conclusion that the NaBanco analysis is wrong, but with our adoption of the NaBanco assumptions to demonstrate this fact. They argue that the world is more complicated than simple competitive supply-and-demand curves. But that is precisely our point. If you use NaBanco's assumptions, you do not obtain NaBanco's conclusion. Only in circumstances that depart from those postulated in NaBanco does one obtain the result that interchange fees can even matter. Despite their mischaracterization and criticism, nothing Evans and Schmalensee say rebuts our claim that the analysis in NaBanco is wrong."

them." Evans & Schmalensee upra note 1. at 885. We are not exactly sure what this means or why McDonald's is a useful analogy to Visa. McDonald's is not a joint venture, does not all@w open entrv, is a for-profit firm (Visa is not for profit), and sells business franchises. In any event, the consequences of eliminating competition between Burger King and McDonald's would indeed depend on the importance of all of their competing functions, one of which may be "centralized franchise operations."

29 The reason is easy to see. Using the assumptions of the NaBanco court, if the inter- change fee rises by $1, so that issuing banks earn $1 more per transaction, that increase would be completely offset in competition by a rebate of $1 back to customers by the issuing bank.

"Just because the court* s analysis is wrong in NaBanco does not mean that the decision exonerating Visa was bad public policv. One can reach the right decision for the wrong reason. Nowhere in our article do we analyze the facts of NaBanco to see if the court reached the correct decision. Evans and Schmalensee are wrong to suggest otherwise. We investigate NaBanco only to point out the logical error in the court's analysis, an analysis which is likely to have broad application.
It would be peculiar for interchange fees to be used if their usage really had no effects. We identify several circumstances where interchange fees do matter. For example, in some situations the interchange fee could be used to cartelize an industry, as might occur if the interchange fee is set high and banks do not compete through rebates to consumers (perhaps because of restrictions on competition imposed by the joint venture). In other situations the use of interchange fees and restrictions might function like resale price maintenance to encourage promotional activity that benefits the joint venture because of network externalities. Evans and Schmalensee are apparently content to justify interchange fees using the NaBanco court's reasoning that the system is so interdependent that there is no reason to expect costs to be covered. We believe greater specificity and evidence are needed before reaching such a conclusion. The entire economy is "interdependent," yet we usually do not worry about individual firms needing to receive subsidies above and beyond the revenues they receive from selling their products. Instead of vague generalizations about competition not working when there are interdependencies, we prefer to examine evidence and analyze the specific effect of interchange fees under different circumstances. For example, we mention that one effect of the interchange fee may be to effectively tax cash purchases and subsidize the use of credit cards. This was a key issue in several banking laws, and can only be analyzed in a framework like ours.

Promotional activities can also be an inefficient nonprice competitive response to an artificially elevated price, such as when airlines competed through service quality and banks through promotional gifts when their prices (air fares and deposit interest rates, respectively) were kept above the competitive level by regulation.

According to Evans and Schmalensee, "Interchange fees represent a sensible response to the complexities of network linkages, interdependent demands, and transaction costs of various sorts, and that court-imposed zero fees would reduce efficiency and harm consumers." Evans & Schmalensee, supra note 1, at 896. They state that there are virtually no payment card systems that have ever had a zero interchange fee. However, they ignore debit card systems that started with no interchange fee and our example of check clearing, which involves no interchange fee. According to the NaBanco theory that Evans and Schmalensee endorse, banks should not be able to cover their costs of offering checking accounts without an interchange fee.

"For example, the demand for tennis rackets depends on the price and promotion of tennis balls. The demand for tennis balls depends on the price and promotion of tennis rackets. Add tennis shoes in and we get even more interdependence. Yet no one suggests that competition cannot work, or that "interchange" fees need to be paid by tennis ball manufacturers to tennis racket manufacturers to cover costs."

"This occurs if transaction costs (or contractual and legal restrictions) prevent merchants from charging different prices for cash and credit purchases.

"Evans and Schmalensee try to rebut our claim that credit card interchange fees may represent a tax paid by cash customers to subsidize credit customers by suggesting that the effect is due to transaction costs and not the interchange fee. Evans & Schmalensee, supra note 1, at 897. But this completely ignores the fact that the size of the transfer from cash payers to credit payers will be tied directly to the size of the interchange fee, so the transfer is under Visa's control and not exogenously imposed by transaction costs.
Contrary to Evans's and Schmalensee's implication, we are reluctant to intervene in joint ventures and would recommend doing so only where the evidence demonstrates an overall anticompetitive effect. Although Evans and Schmalensee perform no detailed study of the effects of interchange fees, they nevertheless conclude that interchange fees can never be anticompetitive. Because we do no detailed study of the effects of interchange fees in our article, we cannot conclude one way or the other whether credit card interchange fees are desirable, so we cannot possibly recommend intervention. Specifically, we nowhere recommend, as Evans and Schmalensee imply, that all U.S. banks should be forced to enter into a multitude of bilateral agreements on interchange fees, or that Visa should be forced to allow individual members to impose unilateral charges on each other. Indeed, we believe that such policies are not sensible.

V. CONCLUSION

Our article repeatedly stressed our reluctance to intervene in joint ventures, and for that reason we require convincing evidence, not just the theoretical possibility, of harm before favoring intervention. It is hard for Evans and Schmalensee to "oppose" our position-collective policies that substantially restrict competition are allowable only if reason- ably necessary for efficient operation (with great weight given to legiti- mate efficiency justifications)-and be less interventionist without taking extreme positions themselves or misrepresenting our views. They do both. They condone collective action such as expulsion of vigorous com- petitors and exclusion of efficient rivals, even if those actions are unre- lated to efficiency and substantially raise price and harm competition. They mischaracterize our position as an essential- for-survival test that, in fact, bears no relation at all to our stated position.

*NaBanco* and *MountainWest* are likely to have important precedential value for judging the antitrust implications of joint venture activity. The NaBanco analysis of why interchange fees are needed and the Moun- tainWest analysis of why collective market power is nonexistent when individual members of a joint venture lack market power are both wrong, or at best, misleading.

We end on a cautionary note. Intervention in a joint venture must not be taken lightly. For example, even in MountainWest, where we found that, contrary to the court's erroneous logic, there was a restriction on competition, we likely would have sided with Visa had the evidence supported an efficiency rationale for Visa's exclusion policy. The way to prevent endless lawsuits regarding joint ventures is not to conclude
incorrectly, as the Tenth Circuit did in *MountainWest*, that there are no competitive harms. Rather, when there are competitive harms the rule of reason should be used in such a way as to make clear that legitimate efficiency justifications will be given great weight. That should not mean blind acceptance of all asserted justifications for anticompetitive restrictions.