

NATURE OF THE ACTION

1. Heartland brings this action in order to obtain the level playing field necessary to compete on equal terms with Paymentech, the leading credit card processor in the United States, in the restaurant market. If not restrained, the anti-competitive scheme engineered by Paymentech and Micros, the market leader in restaurant point-of-sale systems (“POS”), will succeed. Unabated, the Paymentech/Micros scheme will continue to impose onerous costs on competing processors resulting in higher processing prices to restaurants to the benefit of the conspirators.

2. The scheme is elegant and insidious. Paymentech’s wholly-owned subsidiary, Merchant Link, has entered into an exclusive contract with Micros whereby Merchant Link acts as the exclusive method of access for credit card processing for Micros POS systems in the restaurant industry. Micros then uses its power in the market for table-service restaurant POS systems to require its restaurant customers, after they have already purchased a Micros system, to use Merchant Link as a condition of using that Micros POS system. Merchant Link, for its part, then charges a supracompetitive gateway fee to processors – rather than directly to the merchants, as is the industry norm – thereby creating an added cost for all processors except for Paymentech, which owns Merchant Link. The result is an artificially inflated processing market, where Paymentech can under-bid its competitors while charging restaurants a rate higher than the competitive rate for processing.

3. In order to serve restaurants that use Micros POS systems, processors like Heartland must agree to Merchant Link’s terms of access because Micros users are bound to Merchant Link. Those terms of access for processors such as Heartland are non-negotiable and come at a hefty price.

4. Unfortunately, for processors like Heartland who already provide restaurants with the same services, Merchant Link's price buys no benefit beyond access to restaurants with Micros POS systems. The exorbitant toll charged by Merchant Link is well above the market rate for similar services and is particularly pernicious because Paymentech's competitors do not need Merchant Link in order to process Micros transactions. Indeed, Paymentech's competitors would provide the same interface to Micros POS transactions as Merchant Link *at no additional cost to merchants*. Heartland has complained to Micros about these arrangements without result.

5. Neither the processor nor the merchant obtain any real benefit from the Merchant Link contracts imposed upon them. Heartland, for instance, continues to provide virtually all the service and support the merchant might require and the Merchant pays higher fees for the privilege of having an unnecessary (and often problematic) third party interface in the payment processing stream. Indeed, all the Merchant Link arrangement does is increase the burden and costs of processing for merchants all while impairing Heartland's ability to compete for the business of restaurants with Micros POS systems.

6. This inability to compete inures to the detriment of restaurants which use Micros POS systems. Because the Merchant Link fee charged to the processor is, in Heartland's case at least, higher than what the processor would otherwise charge for processing, the fee must be passed on to customers, otherwise Heartland would not be able to cover its costs. In short, because of the Merchant Link toll, credit card processors that compete with Paymentech are faced with no real competitive choice: either provide processing at a loss by absorbing the cost of the Merchant Link fee; or pass the cost on to the merchant. Hence, the Merchant Link fee artificially increases the prices that can be offered by Paymentech's

competitors. On the other hand, Paymentech, as the owner of Merchant Link, only faces the negligible cost of providing Merchant Link's services. The result is that Paymentech can always undercut its competitors and still charge above competitive rates for processing since it faces a greatly diminished competitive constraint.

7. This scheme benefits Paymentech in various ways. First, because the Merchant Link toll bears no economic relation to the costs of the services it provides, Paymentech, as the owner of Merchant Link, does not face the same artificial costs that other processors face in competition for Micros POS restaurants, and can therefore under-bid Heartland and other low cost processors and get more customers. Second, because of Paymentech's ability to under-bid, Paymentech is squeezing its competitors, who, well aware of Paymentech's competitive advantage, are forced to forego virtually all profit in a losing attempt to maintain market share. Third, the Merchant Link toll is billed by, and paid to, Paymentech. Paymentech thus ensures a benefit for itself even if a merchant chooses to process with another processor. In other words, processors who wish to compete for Micros POS restaurants are, in effect, required to pay a subsidy to Paymentech for the privilege. The benefit does not end there, however, because the Merchant Link tie also provides Paymentech with an advantage in bidding for processing business because it knows from its gateway the identity of any new merchant that is coming on line with Micros well before the competition does. Moreover, the gateway also provides a source of competitively valuable information that Paymentech can exploit to its advantage.

8. Micros benefits as well. Part of the Merchant Link fee collected by Paymentech is paid by Paymentech to Micros. This per-transaction stream of revenue is hidden from Micros' customers and allows Micros to secretly derive revenue over and above what it

achieves from the sales and service of its POS systems. Micros also benefits because the effect of the Merchant Link tie shifts the entire technical support burden away from Micros and its distributors and puts the expense and burden on the processor.

9. The net effect of the Micros-Merchant Link tie is that (1) the entire payment processing market for Micros POS systems is artificially inflated by the Merchant Link fee; (2) Paymentech, through Merchant Link, now collects revenue from every single credit and debit card transaction that occurs on a Micros POS system in the restaurant market in the United States, regardless of whether or not Paymentech is the actual processor for the restaurant-merchant; and (3) Paymentech is the only payment processor that can offer processing services for lower than the artificially high market rate.

10. As a consequence of this scheme Paymentech's competitors are denied a level playing field and cannot fairly compete with Paymentech in offering processing services to restaurants that use Micros POS systems. Micros customers, faced with this artificially inflated fee, will have no choice but to either pay the supra competitive rates that Paymentech's competitors are forced to charge, or pay whatever processing fee Paymentech offers. Further, as Micros is the unparalleled leader in selling POS systems in the restaurant industry, this unlawful tying arrangement affects the entire table-service restaurant market. Ultimately, Paymentech will control POS card processing for all merchants in the restaurant market that use Micros POS systems, free of the competitive market forces to which it was subject prior to this tying arrangement.

11. In short, Defendants' conduct here is (1) deceiving consumers regarding the true rates they will be paying for their debit and credit card processing; (2) charging consumers supracompetitive prices in a market that has been artificially inflated by Defendants' unlawful

conspiracy; and (3) giving Paymentech de facto control – and ultimately, sole control – over the payment processing market for Micros POS systems, while charging Paymentech’s competitors above-market rates for the use of Paymentech’s gateway in order to compete with Paymentech. Accordingly, Plaintiff brings this action under the Sherman Act for injunctive and monetary relief to put an end to Defendants’ antitrust conspiracy.

JURISDICTION AND VENUE

12. This action is brought to recover damages caused by reason of, and for injunctive relief against, the violations of Defendants, as alleged in detail below, of Section 1 of the Sherman Act, 15 U.S.C. § 1.

13. This Court has jurisdiction over these claims under 15 U.S.C. §§ 15, 26, 28 U.S.C. § 1337, and 28 U.S.C. § 1331.

14. Venue is proper in this district under Sections 4 and 12 of the Clayton Act, 15 U.S.C. §§ 15, 22, and under 28 U.S.C. § 1391 because Defendants have agents, transact business, and are found within this district.

PARTIES

15. Plaintiff Heartland is a corporation duly organized and existing under the laws of Delaware, with its principal place of business at 90 Nassau Street, Princeton, New Jersey. Heartland is a corporation that provides credit and debit card processing and payroll solutions to more than 160,000 restaurant, hotel, and retail merchants throughout the United States. Heartland also provides additional services to its merchants such as gift and loyalty card programs and paper check authorization, and it sells and rents point-of-sale devices and supplies.

16. Defendant Micros is a Maryland corporation with a principal place of business in Columbia, Maryland. Micros is the leading developer of restaurant information systems comprising of hardware and software for point-of-sale systems and operational applications, as well as a suite of back office applications that include inventory, labor and financial management, and other centrally hosted enterprise applications.

17. Defendant Merchant Link is a Delaware limited liability company with a principal place of business in Silver Spring, Maryland. Merchant Link is a network-based gateway company that provides merchants with a single interface to all major payment providers. Merchant Link is a wholly-owned subsidiary of Defendant Paymentech.

18. Defendant Chase Paymentech is a Delaware limited liability company with a principal place of business in Dallas, Texas. Paymentech is the largest payment processor in the world. Although it is not a publicly-owned company, and thus much of its financial information is not publicly-available, Paymentech boasts over a million active merchants, "including 75 percent of the leading ecommerce businesses." Paymentech further claims to have processed approximately 18.2 billion payment transactions in 2006, with more than \$660.0 billion in annual bankcard and debit volume. Paymentech owns, and is the parent company of, Merchant Link. For antitrust purposes, Paymentech and Merchant Link constitute a single economic unit.

GENERAL ALLEGATIONS

I. RELEVANT MARKETS AND DEFENDANTS' MARKET POWER THEREIN

A. Micros and the Table-Service Restaurant Point-of-Sale Systems Market

19. Point-of-sale systems are information technology solutions for merchants selling to the general public. They are composed of hardware, software, and support services

that help manage the operations of hospitality and retail industries. POS systems – which are the modern-day equivalent of cash registers of the past – enable a merchant to, *inter alia*, take debit and credit card payments from customers. The actual processing of these credit and debit card transactions, wherein the transaction is authorized, are performed for the merchant by outside processing companies, such as Heartland and Paymentech.

20. POS systems are not, however, “one size fits all.” While many types of businesses can benefit from POS systems (e.g., retail stores, gas stations, movie theaters, sports arenas, etc.), and while POS systems for a wide variety of businesses have common functions, POS systems designed specifically for certain industries – such as the restaurant, hotel, and specialty retail industry – have features that make them preferable to systems designed for other types of establishments. As such, these POS systems are industry-specific and are thus not interchangeable with POS systems used by general retail businesses.

1. Restaurant POS Systems

21. POS systems designed for restaurants are different from POS systems designed for other general retail markets because they perform a wide variety of functions besides payment transactions. One key difference in features is that an electronic credit or debit card payment made by the customer in a retail store is instantaneous while in a restaurant it is not. The retail store does not need to retain any information from the customer’s credit card. In a table-service restaurant, by contrast, the payment process requires the server to swipe the card, print the receipt, take it to the customer to fill in the tip amount, and go back to the POS terminal to update this amount in the transaction. This requires the POS system to be able to capture that information until the transaction is completed.

22. Similarly, inventory tracking in restaurants is quite different from other retail establishments in that each menu item is associated with a large number of different ingredients; whereas, in most other retail establishments, when an item is purchased, the POS system need only debit that item from inventory. Other additional functions for a restaurant-specific POS system can include giving the merchant the ability to:

- Place an order through the POS system and have it print out or display in the kitchen
- Manage deliveries
- Control inventory
- Record employees' entry and exit times
- Measure employee productivity
- Provide reports that facilitate financial management of the establishment
- Track customer loyalty and preferences

23. As such, restaurant POS systems are distinct from, and are not interchangeable with, POS systems used by other types of retail establishments. Indeed, Micros, in its 2006 annual report, describes one of the four markets in which it competes as "the restaurant POS marketplace."

2. The Table-Service Restaurant Market

24. Even within restaurants there are significant differences in the POS system features required. Specifically, the POS systems for the restaurant industry are themselves divided into two broad categories: table-service restaurants (also referred to as full-service restaurants), and quick-service restaurants (also referred to as limited-service restaurants). POS systems for restaurants are almost always designed for either table-service or quick-service restaurants. Because of the features required by these two segments of the restaurant industry POS systems for table-service restaurants are a relevant market for antitrust purposes.

25. Table-service restaurants and quick-service restaurants – and the POS systems used in each – differ in several significant ways. A key difference between the two types of restaurants is the time in which payment is made. Payment is made in table-service restaurants after the meal is served. Conversely, a restaurant is defined as quick-service when payment is made prior to the meal. This distinction is important in terms of the features of a POS system. For instance, in table-service restaurants, when payment is made after the meal, the POS system must be able to accumulate a customer's order over the course of the meal. The actual processing of the charge by the POS system involves a number of steps and the holding of charge information that is not required in quick-service establishments. In table-service restaurants the POS system must be able to amend the initial charge authorized when the signature receipt is produced so as to allow the server to add the tip specified by the customer. In contrast, POS systems for quick-service restaurants only need to be able to capture a customer's order at a single point in time and process the payment in one step.

26. Indeed, the marked differences in the needs of these two types of food service establishments have caused POS system providers to specialize in one of the two sectors or to develop differentiated products specifically designed for each of them. Because of the level of differentiation between POS systems for quick-service restaurants and table-service restaurants, a table-service restaurant would not substitute a POS system designed for quick-service restaurants in response to a small but significant price increase. Hence, given the limited opportunities for table-service restaurants to substitute to other POS systems a hypothetical monopolist of POS systems for table-service restaurants would find it profitable to impose a small but significant and nontransitory price increase. Hence, POS systems for table-service restaurants are a relevant product market.

27. The relevant geographic market is the United States.

3. Micros' Power in the Relevant Market

28. Micros is often described as the market leader in sales of POS systems in the restaurant market. In addition, Micros has historically been successful in the high-end of the table-service segment, but has increased its sales in the quick-service segments in recent years. Hence, while Micros has a high share in the sales of restaurant POS systems generally, Micros' strength in the relevant submarket, the table-service market, implies that its market share in the market for table-service restaurant POS systems will be even higher.

29. Southwest Securities states "Micros is the undisputed market leader [in restaurant information systems]" and "MICROS is considered the default choice in restaurants and hotels." This report estimates Micros' market share in this market to be 41%. According to the report, its next closest competitor, Radiant (the maker of the brand Aloha), has only a quarter of the installed systems of Micros systems.

30. A Jefferies & Company report states "MCRS ... is gaining share in the Quick Serve restaurant segment after years of success in Table Serve. We cannot find a competitor that has anything approaching MCRS' install base, geographic footprint or execution track record." The report goes on to say, "Despite some consolidation, competition remains mostly fragmented and underwhelming." Jefferies & Company provides a further breakdown of Micros' market strength in restaurant POS systems into table-service and quick-service restaurants. When describing Micros' position in the table-service market, the report mentions that "[t]he top 20 TSRs are 65% of the market and MCRS [Micros] is in 11 of the top 20. MCRS is in four out of the top five, including being one of four systems at Pizza Hut, Applebee's (one of two), Denny's (one of two) and iHop (one of three). The top five

represent just below 40% of the total market.” In the quick-service segment, “[t]he top 20 chains represent 70% of properties and MCRS is in six of top 20.”

31. Micros’ profit margin itself demonstrates its market power. The Micros 2006 annual report states that cost of sales were just under 50% of revenues implying a margin of approximately 100%.

32. Thus, Micros has market power in the table-service restaurant POS market and has a market share well in excess of 50%. Micros also has market power with respect to the broader restaurant POS market (which includes both table-service and quick-service restaurants), and holds a market share in excess of 40%. Micros’ position in the market allows it to charge higher rates for its products than the next closest substitute.

II. DEFENDANTS’ UNLAWFUL AND ANTICOMPETITIVE CONDUCT

A. The Anticompetitive Micros-Merchant Link Arrangement

33. In order for credit or debit card transactions to be processed, an interface – which is a software program that enables the transfer of transaction data between the merchant’s POS system and the processing company’s computer – is required. The transmission of credit card data to a processor over an interface connection is traditionally handled in one of two ways. One method is to have a *direct interface* between the POS system and the processor. This is to say that, when a merchant purchases a POS system, the POS system will already have one or more interfaces in it to connect directly with one or more processors. If the POS system does not have an interface to the merchant’s preferred processor, the merchant can arrange for such an interface for an additional charge.

34. The second method is where the POS system interfaces with a *gateway*. Simply put, a “gateway” is a software program that essentially acts as a terminal to which the

transaction data from a POS system is routed and, from there, can be transferred to any number of processing companies. Gateways are a service provided by third-party software companies, who charge merchants an additional fee for each transaction. Consequently, they are a less preferred method of credit card processing for cost-conscious merchants. Because a merchant can always buy a POS system with a direct interface to the processor the merchant prefers, the additional gateway fee is an unnecessary *per transaction* charge that significantly increases a merchant's POS processing costs. Indeed, there is no technological impediment to Micros having a direct interface with Heartland (or any other processor), eliminating the need for a gateway at all.

35. Gateway charges, like credit card processing charges, are commonly volume-driven. This is to say that, the more transactions a merchant processes in a given day (i.e., the "bigger" the merchant is), the lower the gateway fee charged per transaction. Thus, for instance, a large restaurant chain would be able to obtain a lower gateway fee rate of \$0.01 to \$0.02 (or even less) per transaction.

36. Notwithstanding these market realities, the Defendants have conspired to squash competition and increase the overall costs to restaurant merchants by forcing merchants who buy Micros POS systems to use Paymentech's gateway and Paymentech processing or pay significantly more for processing. Further, the Defendants have arranged it so that the gateway fee is billed to the processors, rather than to the merchants directly. In other words, the cost of the Paymentech gateway is now a cost of credit card processing for processors who deal with Micros-using merchants. This subsidy to Paymentech has been imposed on all of Paymentech's competitors. However, Paymentech, as the ultimate owner of the gateway, is free to avoid this gateway fee – in whole or in part – since Paymentech would merely be

charging itself for the use of its own gateway. This benefit is not shared by Paymentech's competitors, whose costs have been uniformly raised by this unorthodox Micros-Merchant Link pricing arrangement. As such, the increased cost imposed on Paymentech's competitors weakens competition, raises the cost of processing on Micros POS systems across the board (save Paymentech), and allows Paymentech to increase its price to merchants while still under-bidding its competitors every time.

37. The mechanics of this scheme are as follows. According to the contract imposed on Heartland by Merchant Link, Micros and Merchant Link "entered into an agreement pursuant to which MICROS' devices exclusively use Merchant-Link services for the transmission of electronic transactions, including but not limited to, credit, debit and EFT transactions, from MICROS' terminals and network and help desk services for such terminals." Thus, only Paymentech's subsidiary Merchant Link can serve as the interface for any transaction emanating from a Micros POS system.

38. Merchant Link, however, charges a supracompetitive rate for its "services." Instead of the usual volume-driven per transaction fee, Merchant Link – taking full advantage of the exclusive arrangement afforded to it by Micros – charges a flat rate of \$0.04 per transaction for high-speed transactions, and \$0.0595 for transactions that use a dial-up connection, regardless of transaction volume. Because of this fee, processors, knowing that Paymentech can under-bid them at any time, are forced to sell to Micros-using restaurants for little or no profit – and even then often find themselves losing the merchant to Paymentech, who is always magically able to offer processing for a lower price thanks to its ownership of Merchant Link. Merchant Link's pricing in this regard is well above the market rate, but

cannot be challenged because of the tie imposed upon Micros customers. Worse yet, Merchant Link is free under the contract to increase its fees upon notice at any time.

39. The Heartland/Merchant Link Agreement was imposed on Heartland without any real opportunity to negotiate its terms. Merchant Link was only able to dictate terms to Heartland and force this onerous agreement (with terms unlike any other interface entity) on Heartland solely because of Micros' power in the marketplace, which enables Micros to force this tie on its customers.

40. Micros, in turn, imposes on purchasers of its POS systems the condition that they use only Merchant Link. Micros can impose this condition on sales because it is the most desirable POS system for restaurants, and because the exact implications of this condition are often intentionally not disclosed and, hence, not known by the customer.

41. Thus, Defendants, acting in concert, have conspired to exploit Micros' market power to compel its customers to require any processor (Paymentech's competitors) to use Paymentech's subsidiary, Merchant Link, as the only avenue for processing payment from their Micros POS system. Further, Defendants have made every effort to actively conceal the economic effects of their scheme from both processors and merchants alike.

42. Consequently, a processor, such as Heartland, cannot service a Micros restaurant user for credit card processing without allowing Merchant Link to stand in the middle. And the processor is compelled to pay whatever Merchant Link demands, or forego the opportunity to process.

43. There is, however, no legitimate business reason that merchants be forced to use Merchant Link over any other third party gateway provider or the processors' own interface. Gateway services can be provided by any number of software companies. Further, the

services that Merchant Link provides to merchants are illusory, because they do not provide any added value. There is no increased efficiency or security associated with use of Merchant Link. There is nothing special about the 800 numbers, dedicated lines or internet gateway offered by Merchant Link. Indeed, these same services are provided by – and, in practice, are actually rendered by – the processor. To add further insult to injury, the Merchant Link fees are non-negotiable, and are offered to the processor (and thus to the consumer) on a take-it-or-leave-it basis. The only purpose in interposing Merchant Link between the POS system and the processor is to impose fees on Paymentech's competitors. This situation puts Heartland and the other processors at a clear competitive disadvantage, while robbing restaurants of the lower prices of a competitive processing market.

44. At bottom, the \$0.04 Merchant Link fee for high-speed transactions (and \$0.0595 fee for dial-up) presents processors with no real choice; either (1) pass on the fee to the merchant, resulting in an artificially high charge to the merchant for what he might have obtained for half the price but for the Merchant Link tie-in; or (2) absorb the Merchant Link fee, and provide processing services at a price that fails to cover its costs.

45. This conduct harms Heartland (and it is believed other processors) on a consistent basis. For example, shortly before the filing of this complaint, Heartland lost the business of a pizza shop owner in Arkansas. The merchant had been processing with Heartland and had recently purchased a Micros POS system. Heartland informed the merchant that his using Micros incurred a \$0.04 per transaction fee to Merchant Link. The merchant, surprised and angered by this disclosure, confirmed the fee with the Micros distributor which had sold him the Micros system. In order to placate the merchant, the Micros distributor agreed to reimburse the \$0.04 fee that Heartland was compelled to charge because of the

Merchant Link tie. Not long thereafter, the merchant was contacted by Paymentech and was told that Paymentech could beat Heartland's price, and not charge the \$0.04. The merchant replaced Heartland as his processor with Paymentech.

46. Similarly, a Micros distributor in St. Louis informed a Heartland customer who had purchased a Micros POS system that Paymentech can under-bid Heartland because Paymentech owns Merchant Link. The distributor also told the merchant that if any steps were taken to bypass the fee (other than by processing through Paymentech) Micros would not service the new system in any fashion.

47. This scenario of Paymentech riding to the rescue of merchants disappointed by the undisclosed \$0.04 (or \$0.0595) fee is not an isolated incident but is occurring with greater frequency to all of Paymentech's competitors, as Paymentech slowly corners the market on Micros POS processing. Indeed, because Paymentech can underbid Heartland, Heartland (and other processors) has already lost competitive access to a significant portion of the restaurant market.

48. Micros is compensated for – and thus has an economic interest in – this exclusive arrangement with Merchant Link and/or Paymentech in the form of (i) financial and other consideration for the exclusive contract, and (ii) a “cut” of the \$0.04 high-speed fee (or \$0.0595 dial-up fee) Merchant Link charges on every transaction.

49. This arrangement is pernicious. For example, Heartland, like many payment processors in the restaurant payment processing market, charges a competitive market rate of \$0.01 to \$0.12 per transaction, depending on the volume of transactions for the particular merchant. The flat fee charged by Merchant Link, therefore, threatens to consume all of Heartland's revenue with respect to its Micros-using customers, unless Heartland passes this

cost on to its merchants. As such, a transaction which would cost a non-Micros using customer of Heartland \$0.03 to \$0.04 costs Heartland's customers who use Micros with a high-speed connection \$0.07 to \$0.08. Heartland is required to pay this flat \$0.04 high-speed gateway fee (or \$0.0595 dial-up fee) as a consequence of the Micros-Merchant Link tie whether the merchant ultimately pays for it or not, and regardless of the fact that Heartland and the merchant receive no benefit from the use of Merchant Link's gateway. The total annual cost of the Merchant Link requirement on Heartland – which Heartland is currently required to pay to Merchant Link, and thus to Paymentech – is \$2.7 million.

50. Merchant Link does virtually nothing to earn this substantial fee other than connect the merchant to the Merchant Link gateway which forwards the transaction to Heartland for processing. Heartland, on the other hand, provides virtually all the service and support: Heartland authorizes the transaction, settles the transaction, accepts support calls from customers, provides a support website, accepts liability for fraud and unpaid fees, processes all cardholder disputes and chargebacks, pays the merchant and resolves any merchant disputes, provides on-site service, sets up the merchant for Visa, Discover, American Express and all debit networks, provides statements to the merchant and collects Merchant Link fees for Paymentech — all for 2 to 3 cents. Heartland would provide these services whether or not Merchant Link was present; thus, Merchant Link's presence provides no enhancement to Heartland's services, and Heartland has no need for Merchant Link in order to process transactions emanating from a Micros POS system.

51. Importantly, neither Micros nor its agents specifically disclose the Merchant Link tie-in, or the exorbitant fee that accompanies it, to its customers in its sale and maintenance agreements. In fact, Micros sales personnel intentionally conceal the Merchant

Link fee from prospective merchants prior to sale. Consequently, the vast majority of merchants who purchase a Micros POS system do not find out – and, indeed, do not have the means to find out – about the exorbitant Merchant Link fees until after they have purchased their Micros POS system. Furthermore, as Micros POS systems cost in excess of \$24,000.00, the cost of switching to a different, non-Micros POS system so as to avoid the Merchant Link fee is too high for most, if not all, restaurant merchants. As such, these restaurant merchants are “locked in” to the Micros-Merchant Link conspiracy which imposes higher costs and provides no benefit other than illegal profits for Paymentech and Micros.

52. This conduct has a destructive effect. For example, when a Heartland customer purchases a Micros POS system for its restaurant it soon discovers that it cannot continue to process with Heartland at the rate to which it is accustomed. The merchant is informed (most often by Heartland) that the processing from a Micros systems entails an additional charge of \$0.04 a transaction, often double their previous rate, because of the fee imposed by Merchant Link.¹ The merchant is told that Heartland can do nothing about that additional charge because Micros requires Heartland to use Merchant Link, even though there is no practical reason for the requirement. The merchant then discovers that it is bound by its Micros agreement and cannot opt out of the Merchant Link “service.” The merchant next is told (most often by its Micros distributor) that if he switches his processing to Paymentech, Paymentech, because it owns Merchant Link, will be able to charge a rate lower than that available from Heartland. The merchant then switches to Paymentech and pays a rate for processing that is higher than

¹ One of the ways that Heartland distinguishes itself amongst processors is the transparency of its billing practices. Heartland stands alone in providing merchants with statements that detail all charges and fees. Thus, any merchant processing with Heartland would see the Merchant Link fee reflected on its billing statement.

that which it paid Heartland before, but lower than that which Heartland would be forced to charge because of the Merchant Link fee. Heartland loses a customer, the customer loses its lower rate, and Paymentech and Micros reap the benefit.

53. The damage is even more significant at the high end of the table-service restaurant market. The largest chains with the largest volume present the greatest opportunity for incremental profits for processors because of the fixed cost nature of the processing business. Those high volume users demand the most competitive pricing and Heartland is unable to compete for that business because of the inflexible cost of Paymentech's gateway. Overall, Heartland has lost significant market share in Micros using restaurants since the inception of defendants' scheme.

54. Because Heartland's damages result directly from Micros' requirement that its customers use Merchant Link's gateway, Heartland's damages – and the damages of all competitors of Paymentech who are forced to pay Merchant Link's outrageous prices – are inextricably intertwined with Defendants' unlawful tying arrangement. Heartland's damages include, but are not necessarily limited to: (1) the \$2.7 million Heartland is forced to pay annually to Merchant Link for the use of its gateway; (2) lost profits from losing customers in the restaurant POS processing market in an amount to be determined at trial, but believed to be in excess of \$10 million; and (3) lower profit margins on customers Heartland is able to procure.

IV. HARM TO CONSUMERS AND TO COMPETITION

55. The unlawful Micros-Merchant Link(-Paymentech) arrangement has harmed – and will continue to harm – competition. First, as described above, the \$0.04 Merchant Link high-speed gateway fee (or \$0.0595 dial-up fee) gives restaurants no real competitive

choice: either (1) pay a much higher fee to process with Heartland or another similarly situated processor; or (2) pay a lower but still supra competitive rate to process with Paymentech. In both cases the restaurant pays a higher price for processing.

56. Second, Paymentech currently has de facto control of the Micros restaurant submarket, and has created a dangerous probability that it will soon become the payment processor for all restaurant Micros POS users. Specifically, before the Micros-Merchant Link tie went into effect, payment processing companies like Heartland and Paymentech competed for Micros customers' business on a level playing field by competing on the basis of price and quality of service.

57. The Micros-Merchant Link tie, however, has eliminated that price competition and raised the cost of processing from a Micros POS such that a transaction which previously cost the merchant \$0.04 to process with Heartland now costs the merchant \$0.08. The tie also allows Paymentech, as the owner of Merchant Link, to increase its market share. Indeed, Paymentech has done this by both marketing its ability to under-price Heartland, and by actually under-pricing Heartland. Thus, for instance, Paymentech can undercut Heartland by agreeing to charge the merchant \$0.06 per transaction, because it can absorb the Merchant Link fee, reap a \$0.02 benefit over the competitive rate and still be \$0.02 cheaper than the competition. Heartland, in an attempt to compete with Paymentech for Micros-using merchants, cuts its margin to the bone, in some cases to less than a penny a transaction, and still often cannot win—or retain – the business because of the cost of Paymentech's gateway.

58. Finally, Paymentech – aside from gaining a profit on every single Micros transaction through Merchant Link, regardless of whether it is the processor on that transaction

or not – has the added competitive advantage of being able to learn from Merchant Link every time another Micros POS system has been sold to a restaurant in need of processing.

59. In short, while the Micros-Merchant Link tie is in place, no processing company can compete with Paymentech in the restaurant market, restaurants pay higher processing fees and Paymentech and Micros reap the benefit.

COUNT I

UNLAWFUL TYING IN VIOLATION OF 15 U.S.C. § 1

(against All Defendants)

60. Plaintiff repeats and realleges each allegation set forth in paragraphs 1 through 58 above.

61. Micros POS systems, and Merchant Link's gateway, are separate products.

62. Micros has market power in the table-service restaurant POS systems market, as well as in the general restaurant POS systems market, and holds a market share in excess of 40% in both.

63. Using Micros' market power, Micros and Merchant Link, at the behest of Paymentech, have tied together Micros' POS systems with Merchant Link's gateway.

64. Further, and again using its market power, Micros conceals and otherwise fails to disclose the exorbitant Merchant Link fees from consumers before they purchase a Micros POS system, thus "locking in" these merchants to the unlawful Micros-Merchant Link tie.

65. Upon information and belief, Micros is financially compensated for this unlawful tying arrangement, and thus has an economic interest in the tied product.

66. The above-described unlawful tying arrangement affects a not insubstantial amount of commerce. Specifically, Heartland alone pays \$2.7 million annually to Merchant Link (and thus to Paymentech) as a result of the Micros-Merchant Link tie. The total amount that Paymentech's other competitors pay as a result of this tie – and thus the amount of commerce affected – is thus many times greater than \$2.7 million.

67. Heartland's damages result directly from Micros' requirement that its customers use Merchant Link's gateway. As such, Heartland's damages – and the damages of all competitors of Paymentech who are forced to pay Merchant Link's outrageous prices – are inextricably intertwined with Defendants' unlawful tying arrangement. Heartland's damages include, but are not necessarily limited to: (1) the \$2.7 million Heartland is forced to pay annually to Merchant Link for the use of its gateway; (2) lost profits from losing customers in the restaurant POS processing market in an amount to be determined at trial, but believed to be in excess of \$10 million; and (3) lower profit margins on customers Heartland is able to procure.

68. The above-described tying arrangement constitutes a *per se* violation of Section 1 of the Sherman Act.

69. The above-described tying arrangement constitutes a violation of Section 1 of the Sherman Act because the anticompetitive effects of this conduct are not outweighed by any pro-competitive considerations.

70. As a direct and proximate result of the above-described behavior, Plaintiff has suffered damages.

COUNT II

**UNREASONABLE RESTRAINT OF TRADE BY DEFENDANTS
IN VIOLATION OF 15 U.S.C. § 1**

(against All Defendants)

71. Plaintiff repeats and realleges each allegation set forth in paragraphs 1 through 70 above.

72. Defendants, through the above-described conduct, have conspired and combined in a plan, common design and understanding with specific intent to raise the costs of Paymentech's competitors and thereby give Paymentech control over a substantial portion of the market for restaurant payment processing services in the United States.

73. The conduct of Defendants constitutes a contract, combination, or conspiracy in restraint of trade in the national markets for restaurant point-of-sale payment processing services and local submarkets thereof which affects interstate commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

74. Heartland's damages result directly from Micros' requirement that its customers use Merchant Link's gateway. As such, Heartland's damages – and the damages of all competitors of Paymentech who are forced to pay Merchant Link's outrageous prices – are inextricably intertwined with Defendants' unlawful tying arrangement. Heartland's damages include, but are not necessarily limited to: (1) the \$2.7 million Heartland is forced to pay annually to Merchant Link for the use of its gateway; (2) lost profits from losing customers in the restaurant POS processing market in an amount to be determined at trial, but believed to be in excess of \$10 million; and (3) lower profit margins on customers Heartland is able to procure.

75. By reason of these violations, Heartland has been and will continue to be injured in its business and property and is entitled to recover threefold such actual damages as the jury finds Heartland has sustained, injunctive relief, and Plaintiff's cost of suit, including reasonable attorney's fees.

COUNT III

UNFAIR COMPETITION

(against Paymentech)

76. Plaintiff repeats and realleges each allegation set forth in paragraphs 1 through 75 above.

77. The above-described conduct by Paymentech constitutes unfair competition under New Jersey law.

78. As a result of Paymentech's conduct, Heartland has suffered damages.

WHEREFORE, Heartland demands judgment against the Defendants jointly and/or severally for:

- (1) Damages in an amount to be determined at trial, which sum is to be trebled;
- (2) Attorneys fees pursuant to 15 U.S.C. §§ 15 and 26;
- (3) A preliminary and permanent injunction enjoining the Defendants from continuing the unlawful and anti-competitive conduct described herein;
- (4) A declaratory judgment declaring the arrangement designating Merchant Link as the exclusive gateway for Micros products violates 15 U.S.C. § 1;
- (5) Interest;
- (6) Punitive damages; and

(7) Such other legal and equitable relief as this Court deems just and proper.

s/ Seth J. Lapidow
Seth J. Lapidow, Esq.
SAUL EWING LLP
A Delaware LLP
750 College Road East, Suite 100
Princeton, NJ 08540
(609) 452-3100
Attorneys for Plaintiff
Heartland Payment Systems, Inc.

Dated: November 26, 2007

L.CIV.R. 11.2 CERTIFICATION

Plaintiff Heartland Payment Systems, Inc. knows of no other arbitration or lawsuit involving this matter, nor is any to defendant's knowledge contemplated, and defendant knows of no other person who should be joined in this action at this time.

s/ Seth J. Lapidow

Dated: November 26, 2007

JURY DEMAND

Heartland Payment Systems, Inc. hereby demands a trial by jury of all causes of action so triable.

s/ Seth J. Lapidow

Dated: November 26, 2007