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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, *Plaintiff* v. VISA INC. and PLAID INC., *Defendants*.	Case No.: **COMPLAINT**

Visa seeks to buy Plaid – as its CEO said – as an “insurance policy” to neutralize a “threat to our important US debit business.” Visa is a monopolist in online debit transactions, extracting billions of dollars in fees annually from merchants and consumers. Plaid, a financial technology firm with access to important financial data from over 11,000 U.S. banks, is a threat to this monopoly: it has been developing an innovative new solution that would be a substitute for Visa’s online debit services. By acquiring Plaid, Visa would eliminate a nascent competitive threat that would likely result in substantial savings and more innovative online debit services for merchants and consumers. For the reasons discussed below, the proposed acquisition violates Section 2 of the Sherman Act, 15 U.S.C. § 2, and Section 7 of the Clayton Act, 15 U.S.C. § 18, and must be stopped.

INTRODUCTION

1. Visa is "everywhere you want to be."[1] Its debit cards are accepted by the vast majority of U.S. merchants, and it controls approximately 70% of the online debit transactions market. In 2019, there were roughly 500 million Visa debit cards in circulation in the United States. That same year, Visa processed approximately 43 billion debit transactions, including more than 10 billion online transactions. In 2019, Visa earned over $4 billion from its debit business, including approximately $2 billion from online debit.

2. American consumers increasingly make purchases online, attracted by the convenience of being able to shop any time, from anywhere, with fast delivery. In recent years, online transactions have experienced "explosive" growth, a trend that has only been accelerated by the COVID-19 pandemic, with online sales growing more than 30% between the first and second quarters of 2020.

3. American consumers use debit cards to purchase hundreds of billions of dollars of goods and services on the internet each year. Many consumers buying goods and services online either prefer using debit or cannot access other means of payment, such as credit. Because of its ubiquity among consumers, merchants have no choice but to accept Visa debit despite perennial complaints about the high cost of Visa's debit service.

4. Visa's monopoly power in online debit is protected by significant barriers to entry and expansion. Visa connects millions of merchants to hundreds of millions of consumers in the United States. New challengers to Visa's monopoly would thus face a chicken-and-egg quandary, needing connections with millions of consumers to attract thousands of merchants and needing thousands of merchants to attract millions of consumers. Visa's Chief Financial Officer has acknowledged that building an extensive network like Visa's is "very, very hard to do" and

[1] https://usa.visa.com/.

"takes many years of investment," but "[i]f you can do that, then you can have a business [like Visa's] that has a relatively high margin." He explained that entry barriers are so significant that even well-funded companies with strong brand names struggle to enter online debit.

5. Mastercard, Visa's only longstanding rival in online debit services, has a much smaller market share of around 25%. For years, Mastercard has neither gained significant share from Visa nor restrained Visa's monopoly. Mastercard's participation in the online debit market has not translated into lower prices for consumers, and this appears unlikely to change. For example, Visa has long-term contracts with many of the nation's largest banks that restrict these banks' ability to issue Mastercard debit cards. Visa also has hamstrung smaller rivals by either erecting technical barriers, or entering into restrictive agreements that prevent rivals from growing their share in online debit, or both.

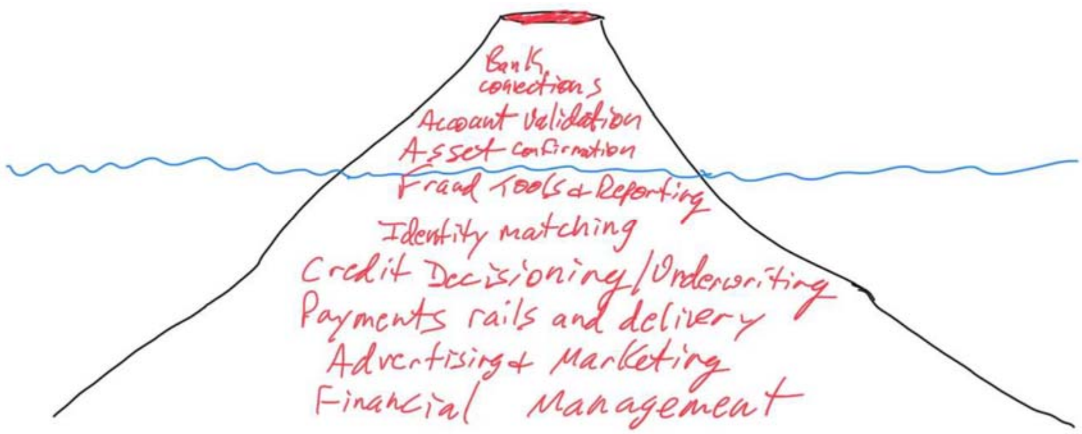
6. These entry barriers, coupled with Visa's long-term, restrictive contracts with banks, are nearly insurmountable, meaning Visa rarely faces any significant threats to its online debit monopoly. Plaid is such a threat.

7. Plaid is uniquely positioned to surmount these entry barriers and undermine Visa's monopoly in online debit services. Plaid powers some of today's most innovative financial technology ("fintech") apps, such as Venmo, Acorns, and Betterment. Plaid's technology allows fintechs to plug into consumers' various financial accounts, with consumer permission, to aggregate spending data, look up balances, and verify other personal financial information. Plaid has already built connections to 11,000 U.S. financial institutions and more than 200 million consumer bank accounts in the United States and growing. These established connections position Plaid to overcome the entry barriers that others face in attempting to provide online debit services.

8. While Plaid's existing technology does not compete directly with Visa today, Plaid is planning to leverage that technology, combined with its existing relationships with banks and consumers, to facilitate transactions between consumers and merchants in competition with Visa. Like Visa's online debit services, Plaid's new debit service would enable consumers to pay for goods and services online with money debited from their bank accounts. With this new

online debit service, Plaid intended to "steal[] share" and become a "formidable competitor to Visa and Mastercard." Competition from Plaid likely would drive down prices for online debit transactions, chipping away at Visa's monopoly and resulting in substantial savings to merchants and consumers.

9. Visa feared that Plaid's innovative potential – on its own or in partnership with another company – would threaten Visa's debit business. In evaluating whether to consider Plaid as a potential acquisition target in March 2019, Visa's Vice President of Corporate Development and Head of Strategic Opportunities expressed concerns to his colleagues about the threat Plaid posed to Visa's established debit business, observing: "I don't want to be IBM to their Microsoft." This executive analogized Plaid to an island "volcano" whose current capabilities are just "the tip showing above the water" and warned that "[w]hat lies beneath, though, is a massive opportunity – one that threatens Visa." He underscored his point by illustrating Plaid's disruptive potential:



10. Several months later, Visa had the opportunity to acquire Plaid. While conducting extensive due diligence, Visa's senior executives became alarmed to learn about Plaid's plans to add a "meaningful money movement business by the end of 2021" that would compete with Visa's online debit services. This prompted Visa's CEO to conclude that Plaid was "clearly, on their own or owned by a competitor going to create some threat to our important

US debit business" and to tell his CFO that purchasing Plaid would be an "insurance policy to protect our debit biz in the US."

11. In making the case to buy Plaid to Visa's Board of Directors, Visa's senior leadership estimated a "potential downside risk of $300-500M in our US debit business" by 2024 should Plaid fall into the hands of a rival. Visa understood that could create an "[e]xistential risk to our U.S. debit business" and that "Visa may be forced to accept lower margins or not have a competitive offering."

12. On January 13, 2020, Visa agreed to acquire Plaid in part to eliminate this existential risk and protect its monopoly in online debit. Visa offered approximately $5.3 billion for Plaid, "an unprecedented revenue multiple of over 50X" and the second-largest acquisition in Visa's history. Recognizing that the deal "does not hunt on financial grounds," Visa's CEO justified the extraordinary purchase price for Plaid as a "strategic, not financial" move because "[o]ur US debit business i[s] critical and we must always do what it takes to protect this business."

13. Monopolists cannot have "free reign to squash nascent, albeit unproven, competitors at will." *United States v. Microsoft Corp.*, 253 F.3d 34, 79 (D.C. Cir. 2001). Acquiring Plaid would eliminate the nascent but significant competitive threat Plaid poses, further entrenching Visa's monopoly in online debit. As a result, both merchants and consumers would be deprived of competition that would drastically lower costs for online debit transactions, leaving them with few alternatives to Visa's monopoly prices. Thus, the acquisition would unlawfully maintain Visa's monopoly in violation of Section 2 of the Sherman Act.

14. Visa's proposed acquisition also would violate Section 7 of the Clayton Act, which was "designed to arrest the creation of monopolies 'in their incipiency,'" *United States v. Gen. Dynamics Corp.*, 415 U.S. 486, 505 n.13 (1974), and similarly prohibits a monopolist from bolstering its monopoly through an acquisition that eliminates a nascent but significant competitive threat. The Supreme Court has explained that an acquisition can violate Section 7 when "the relative size of the acquiring corporation ha[s] increased to such a point that its advantage over its competitors threaten[s] to be 'decisive.'" *Brown Shoe Co. v. United States*,

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