DOJ’s antitrust lawsuit against Visa is misguided

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American Banker

December 12, 2024

Antitrust regulators at Lina Kahn's Federal Trade Commission and Jonathan Kanter's Department of Justice Antitrust Division have been animated by ideological zeal, political-point scoring and animus toward big companies. They're devotees of the New Brandeis school of antitrust and believe big is bad per se. America's leading payment network Visa fits the bill.

The DOJ filed its long-anticipated antitrust complaint against Visa in September in the Southern District of New York, alleging violations of the Sherman Antitrust Act. It's more focused on protecting weaker competitors than competition and consumer welfare. It contrasts starkly with the DOJ's 1998 antitrust suit that forced Mastercard and Visa to end their bans on member banks participating in the Discover and American Express networks. That promoted network competition.

The current suit contends that Visa has monopolized and attempted to monopolize general purpose debit network services and card-not-present debit network services through agreements with merchants, acquirers and others, restraining competition. The DOJ thinks Visa competes too fiercely in the debit network market.

Visa has long been America's largest debit network. Nevertheless, the U.S. is the world's most competitive debit network market. China, Russia, Turkey, Iran and Spain each have one domestic debit network, China UnionPay, Mir, Troy, Shetab and SistemaPay, respectively. The U.K. has two. Canada and Australia each have three. The U.S. has more than a dozen. Only in the U.S. and Australia do merchants enjoy debit-routing choice.

The DOJ asserts "despite their smaller size, PIN networks have continued to innovate" citing their offering debit without PIN authentication. That isn't innovation, however. It's playing catch-up. Discover, Mastercard and Visa have supported debit without pin authentication for decades.

The traditional national PIN debit networks have underinvested in differentiating features and in their brands. Debit cards, typically, are branded with Visa or Mastercard. The second enabled network is often a national PIN debit network. Its brand is never on the front of the card and rarely on the back. Brand-neutered networks ride in Visa's and Mastercard's brand slipstreams. Cardholders don't' know there's a second debit network, much less what it is. The capability-anemic national debit networks compete solely on switch fees — a commodity model. They've given banks and merchants no reason to prefer them other than price.

Debit networks enable payments. So do credit networks. In 2023, Visa's debit network had 27.5% of total U.S. "card" network payment volume. Visa with credit had 53.7% of total card payment volume.

But payments are broader than cards.

Cash and checks are still relevant.

Buy now/pay later systems like Affirm, Block's Afterpay, Klarna and PayPal's Pay in 4 are winning share.

Alternative payment systems like PayPal, Venmo, Block's Cash App Pay, Zelle and Trustly are in the mix.

Moreover, the market is dynamic. Antitrust regulators have a poor track record of anticipating new vectors of competition and innovation.

The DOJ's antitrust suits against dominant tech firms IBM and Microsoft solved nothing. Markets moved on. Mainframe goliath IBM ceded microcomputer operating systems and software to Microsoft and Apple. Notwithstanding its dominant desktop position, Microsoft's efforts in financial management, EBPP and mobile OS failed, and it was bested in search and browsers.

Antitrust regulators don't know where new and intensified payments competition and innovation will come from.

Discover currently offers 1% cash back on its debit cards, which are exempt from the Durbin Amendment's debit-interchange price controls and routing-choice mandate.

Capital One's Discover acquisition — assuming it's green-lighted by regulators — will rock the debit network market. Capital One will convert its Mastercard debit cards to Discover, thereby unshackling them from the Durbin Amendment.

In 2023, Discover, Mastercard and Visa dual-message debit transactions enjoyed interchange fees 213% higher than those subject to the price cap. When the Federal Reserve's proposed cap reduction takes effect, they'll be 281% higher. Market interchange is an enormous advantage for debit issuers and networks, and it is pro-consumer. It will fund superior debit cards and demand deposit accounts, enabling Capital One to win debit share from retail banking titans like Bank of America, Chase, U.S. Bank and Wells Fargo, and debit share from Visa.

American Express launched a debit card. It also enjoys market interchange, and, therefore, offers more compelling rewards and benefits than large banks' fettered Visa-branded debit cards.

While hailed as disruptive, stablecoins have lacked compelling licit use cases and a clear legal and regulatory regime. The incoming Trump administration will be more digital-currency friendly. Stablecoins could yet be the 21st century electronic banknotes and carve out meaningful roles in retail, bill, P2P and B2B payments.

National debit networks could step up their games.

In particular, processing colossi Fiserv and FIS could leverage their core bank, issuer and merchant processing relationships to differentiate their debit networks.

Visa offers issuers, acquirers and merchants that give it more transactions better prices. All debit networks and payment processors charge lower fees to customers that do more business with them.

The DOJ preposterously suggested Visa bullied tech giant Apple and America's largest bank Chase into commercial agreements contrary to their interests. Other than the government, who could bully Apple or Chase into anything? Firms incorporating payments are often best-served plugging into existing networks and processors. The DOJ alleges Visa pressured Chase to limit the number of networks enabled on its debit cards to two. But it's not in Chase's interest to enable more debit networks than legally required.

The DOJ cites Visa's fixed acquirer network fee, or FANF — introduced in 2012 — as evidence of pricing power. Facially it is. However, much of its FANF revenue is given to big merchants, merchant acquirers and large issuers in "rebates and incentives" — Visa's euphemism for price cuts.

The DOJ complains many debit transactions are "non-contestable" for routing purposes. Most are non-contestable because of how the Fed implemented the Durbin Amendment's routing-choice mandate. The Fed stipulated debit issuers must enable at least two unaffiliated networks for each card, but not two unaffiliated networks for each means of authentication. Consequently, most debit transactions at small and medium-size enterprises and online were and are non-contestable. That the Durbin Amendment didn't fully achieve what the DOJ's Neo-Brandeisians hoped isn't an antitrust problem.

In payment networks scale matters. There are powerful network effects and efficiencies. More acceptance begets more spend, and more spend begets more acceptance. Greater technology prowess and resources generate more enhancements, which generate more acceptance and spend.

Competitive markets ruthlessly and more effectively regulate dominant competitors than the most enlightened antitrust regulators. The DOJ isn't going to fix a debit network market that isn't broken.

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