IS YOUR DEBIT CARD THE REASON EVERYTHING IS SO EXPENSIVE?

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Cost of living was the top financial concern for in the 2024 presidential election.[1] *The Department of Justice (DOJ) points to an apolitical culprit for some of the elevated cost of living: your debit card. In its September 2024 civil antitrust lawsuit, the DOJ alleges that Visa has amassed monopolistic power in the debit network industry, thereby stifling competition.*[2] *Therefore, the suit states, Visa is able to charge higher fees than it would be able to in a competitive market, which result in higher prices for consumers.*[3] *In its defense, Visa claims that there are myriad sources for consumers to pay for goods, and the suit ignores these competitors.*[4] *The outcome of this antitrust suit will impact the roughly 100 billion debit transactions completed in the U.S. annually.*[5]

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[1] CERTIFIED FIN. PLANNER BD. OF STANDARDS, INC., AMERICANS' FINANCIAL OUTLOOK AND THE 2024 ELECTION SURVEY 11 (2024), https://www.cfp.net/knowledge/reports-and-statistics/consumer-surveys/americans-financial-outlook-and-the-2024-election-survey. [https://perma.cc/27MD-JUBE].

[2] Press Release, Dep't of Just. Off. of Pub. Affs., *Justice Department Sues Visa for Monopolizing Debit Markets* (Sept. 24, 2024), https://www.justice.gov/opa/pr/justice-department-sues-visa-monopolizing-debit-markets. [https://perma.cc/DC4E-FGHZ].

[3] *Id.*

[4] *Visa Responds to DOJ Debit Card Complaint*, PYMNTS (Sept. 24, 2024), https://www.pymnts.com/antitrust/2024/visa-responds-justice-department-debit-card-complaint/./ [https://perma.cc/2G7R-UR5H].

[5] Felix Salmon, *Visa's debit juggernaut*, AXIOS (Sept. 25, 2024), https://www.axios.com/2024/09/25/visas-debit-juggernaut. [https://perma.cc/E5VG-GS9F].

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Introduction

On September 24, 2024, the DOJ filed a civil antitrust lawsuit against Visa in the Southern District of New York.[6] The suit alleges that Visa engaged in "monopolization and other unlawful conduct in debt network markets in violation of Sections 1 and 2 of the Sherman Act."[7] This is not the first DOJ action against Visa in recent memory: the Department filed another antitrust lawsuit in 2020 to stop the company from acquiring the fintech giant Plaid.[8] However, this current lawsuit targets Visa's primary competitive advantage: its scale in the debit payments network. Given Visa's prominence in the market, the antitrust action has the potential to impact a majority of Americans and their everyday payments.[9]

I. Click, Tap, or Swipe: Visa and the Debit Network

Debit cards and their associated networks facilitate billions of dollars in payments annually. In 2023, American consumers used debit cards in 30% of their transactions, averaging fourteen payments per month compared to eleven in 2022.[10] Active card users spent an average of $17, 274 annually, an 8.1% increase from 2022.[11] The two largest debit card issuers, Visa and Mastercard, generated approximately $4.1 trillion in purchase volume in 2022.[12] Nearly 87% of Americans own a debit card, with approximately 70% actually using the card for purchases.[13] Despite the massive transaction volume supported by debit cards, more than 60% of all American debit transactions run through one network: Visa.[14] This network concentration culminated in the antitrust suit brought by the DOJ.

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[6] Dep't of Just. Off. of Pub. Affs., *supra* note 2.

[7] *Id.*

[8] *Id.*

[9] *See infra* Part II.

[10] *2024 Diary of Consumer Payment Choice*, Fed. Rsrv. Fin. Servs. (May 2024), https://www.frbservices.org/news/research/2024-findings-from-the-diary-of-consumer-payment-choice. [https://perma.cc/AMG2-KELY].

[11] *Survey: Debit card use grew in 2023*, Am. Bankers Ass'n Banking J. (Aug. 9, 2024), https://bankingjournal.aba.com/2024/08/survey-debit-card-use-grew-in-2023/#:~:text=The%20average%20debit%20ticket%20size,year%20during%20the%20same%20period. [https://perma.cc/JH2Q-5EUT].

[12] *Global Network Card Brands in the U.S.—2022*, Nilson Report (Feb. 2023), https://nilsonreport.com/newsletters/1235/./ [https://perma.cc/999N-CY67].

[13] Statista, *Share of individuals who own a debit card in the United States* (Mar. 2024), https://www-statista-com.ezp-prod1.hul.harvard.edu/statistics/1362157/debit-card-ownership-rate-usa/./ [https://perma.cc/GPL5-EWB2].

[14] Dep't of Just. Off. of Pub. Affs., *supra* note 2.

A. Visa

Visa "facilitate[s] global commerce and money movement across more than 200 countries and territories among a global set of consumers, merchants, financial institutions and government entities."[15] In 2023, the company reported $32.7 billion in net revenues and $17.3 billion in net income, increases of 11% and 15% from 2022, respectively.[16] Across its credit, debit, and prepaid segments in 2023, it processed 212 billion transactions worth a total volume of $12.3 trillion dollars.[17] In the U.S. alone, there were 944 million Visa debit cards in circulation as of year-end 2023.[18] While the company offers auxiliary services including risk management and cross-border solutions, its core offerings are its credit, debit, and prepaid card products.[19]

B. The Payments Network

Debit networks like Visa operate as intermediaries between consumers' and merchants' banks.[20] Visa contracts with parties on both sides of a given transaction. It works with consumers' banks to issue debit cards (hereafter, "issuers") and with merchants' banks to accept these cards for purchases (hereafter, "acquirers").[21] These networks provide a simple but pivotal service to consumers and merchants: they guarantee payment, provide a medium for disputes, enable fraud protection, and connect banks on either side of the table to transfer funds.[22] While banks actually transfer the funds to the other party, debit networks oversee the process by aggregating transactions for banks within their network through settlement reports.[23] Though Americans rely on debit transactions for the necessities of life, most are unaware of the networks that drive those transaction; instead, they receive a card with their issuer's branding, a sixteen-digit card number, PIN number, security chip, and a "front-of-card" network logo—such as Visa.[24]

All in all, the debit transaction process is relatively simple. When a consumer uses a debit card for a purchase, the acquirer sends the consumer's account and transaction details to a debit network to manage authorization,

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[15] Visa, *Annual Report* (2023), https://annualreport.visa.com/home/default.aspx. [https://perma.cc/A4DC-6GNV].
[16] *Id.*
[17] *Id.*
[18] STATISTA, *supra* note 13.
[19] Visa, *supra* note 15.
[20] Complaint at 13, United States v. Visa, No. 1:24-cv-07214 (S.D.N.Y. filed Sept. 24, 2024).
[21] *Id.*
[22] *Id.* at 13–14.
[23] *Id.* at 4, 14.
[24] *Id.*

clearing, and settlement.[25] The debit network then seeks authorization from the issuer, which is responsible for checking for sufficient balance and fraud.[26] Once authorized, the issuer places a hold on the funds and confirms authorization through the debit network to the acquirer.[27] Lastly, the acquirer will confirm the authorization to the merchant, which completes a transaction.[28]

Debit networks earn revenue by charging issuers and acquirers fees for every debit transaction.[29] Acquirers pay a network fee for every single transaction on the network.[30] Acquirers also may pay a Fixed Acquirer Network Fee (FANF) which varies based on number of locations and quantity of "card-not-present" transactions.[31] Lastly, the acquirer pays an interchange fee for every transaction, which goes to the issuer for its card services.[32] In turn, the acquirer charges merchants for its role in the payment process.[33]

II. The Department of Justice's Antitrust Case

The DOJ alleges four violations in its Complaint: monopolization of debit networks, attempted monopolization of debit markets, unlawful agreements not to compete, and unlawful agreements that restrain trade.[34] These claims arise from two alleged strategies Visa employed to keep its status as the most powerful debit market: crafting a web of contracts to hinder other networks from competing and using monopoly power to prevent innovative alternatives.[35]

A. Visa's Alleged Strategies to Hinder Other Networks

First, the DOJ argues that Visa uses "a meticulous strategy to lock up debit volume to prevent competition."[36] This strategy focuses on using abnormally high rates to induce volume commitment contracts from merchants or acquirers.[37]

[25] *Id.* at 15.
[26] Complaint at 15, United States v. Visa, No. 1:24-cv-07214 (S.D.N.Y. filed Sept. 24, 2024).
[27] *Id.* at 16.
[28] *Id.*
[29] *Id.* at 18.
[30] *Id.*
[31] *Id.*
[32] Complaint at 19, United States v. Visa, No. 1:24-cv-07214 (S.D.N.Y. filed Sept. 24, 2024).
[33] *Id.*
[34] *Id.* at 64–67.
[35] *Id.* at 27, 40.
[36] *Id.* at 27.
[37] *Id.* at 27–28.

The Complaint alleges that Visa employs a "cliff pricing" strategy to increase the fees merchants and acquirers pay if they use a competitor to route transactions.[38] This strategy offers customers a lower fee per transaction so long as a certain volume is met. However, if the merchant or acquirer does not meet this volume, then Visa charges its punitively high off-the-rack prices.[39] The volume commitments typically have a minimum threshold of 90–100% of the merchant or acquirer's volume.[40]

This same strategy is employed with issuer banks. If issuing banks do not meet the threshold stated in their contract with Visa, then Visa has the right to impose significant monetary penalties across all the Visa transactions it handles.[41] The result of these volume commitments is that competitors cannot gain a foothold on either side of the transaction. The contracts that merchants, acquirers, and issuers sign impose severe economic costs for using competitors.[42] Without the scale on either side, the competitors cannot grow their features to match what Visa currently offers, such as fraud protection.[43] As such, no competitor "has more than a single-digit share of debit transactions in the United States."[44]

B. Visa's Alleged Strategies to Prevent Innovative Alternatives

Visa's strategies stifle not only traditional debit networks but also innovative fintech platforms seeking to revolutionize payment processing. The DOJ explains that these innovators "cut Visa out of the transaction . . . . [t]hey rely on a consumer's bank account number, rather than a debit card credential, to make real-time purchases directly from the consumer's bank accounts."[45] In response, Visa uses "relationship" agreements, including one with Apple, that often have a lower economic benefit than if it had done nothing, all in an effort to preserve its market dominance.[46]

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[38] Complaint at 29, United States v. Visa, No. 1:24-cv-07214 (S.D.N.Y. filed Sept. 24, 2024).
[39] *Id.*
[40] *Id.* at 30. The Complaint provides a cogent example of this pricing. Take a restaurant that has 100 transactions per day, with 50 being non-contestable and having to route through Visa since the issuer does not accept another network. *Id.* at 30–31. Visa may charge $0.50 as a rack rate per transaction, or, as an incentive to increase volume, they may offer $0.25 per transaction if they are allotted all 100. *Id.* at 31. Therefore, the restaurant can route the 50 through Visa for $25 *plus* any fees for the competitor, or it can route all 100 through Visa for $25 flat. *Id.* at 31. No competitor can survive offering a free service, so Visa is practically the *de facto* choice. *Id.* at 31.
[41] *Id.* at 35.
[42] *Id.* at 38.
[43] *Id.* at 39.
[44] Complaint at 39, United States v. Visa, No. 1:24-cv-07214 (S.D.N.Y. filed Sept. 24, 2024).
[45] *Id.* at 40.
[46] *Id.* at 42.

The Complaint points to several disruptors to argue its case. First, when PayPal sought a new mode of encouraging payment from bank account to bank account, Visa "used the threat of exorbitant wallet fees and high rack rates" to push PayPal into a routing contract.[47] PayPal "had little choice but to take the deal" given that it risked losing customers who used Visa on its platform without it.[48] Further, the DOJ points to agreements with Big Tech to maintain its control over their payment systems. For example, Visa's deal with Apple involves payments of hundreds of millions of dollars annually in return for Apple not disintermediating Visa or creating systems that rely on non-Visa processes.[49]

C. The Effect on Consumers

In summary, the DOJ alleges that Visa's contracts and strategies create a monopoly that prevents other industry participants from scaling.[50] If these businesses could scale and compete with Visa, the DOJ alleges, they would be able to offer new choices, better features, and lower fees.[51] Further, they allege that this monopolistic conduct has stopped innovation that would offer Americans new ways to pay for transactions directly from their bank accounts.[52] Subsequently, with no innovation from other players in the payment processing industry, they allege that Visa has no incentive to innovate itself, leading to fewer features and benefits for all consumers.[53]

D. Visa's Response

As of writing this Column, Visa has not laid out a fulsome response to the allegations from the DOJ. In a statement to reporters, Visa's General Counsel argued that there is a wide variety of options for consumers to pay for goods and services.[54] Visa claims, "[w]hen businesses and consumers choose Visa, it is because of our secure and reliable network, world-class fraud protection, and the value we provide."[55] However, these comments do not address the DOJ's argument of how it allegedly established this value proposition: by controlling the debit payments network.

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[47] *Id.* at 46.
[48] *Id.*
[49] *Id.* at 50.
[50] Complaint at 51, United States v. Visa, No. 1:24-cv-07214 (S.D.N.Y. filed Sept. 24, 2024).
[51] *Id.*
[52] *Id.* at 52.
[53] *Id.* at 53.
[54] *Visa Responds to DOJ Debit Card Complaint, supra* note 4.
[55] *Id.*

The DOJ's argument does open an important question about the efficacy of the suit. The network fees that Visa collects are less than a quarter of the total fees paid by merchants.[56] On a transaction of $60, 10 cents is associated with the network charges by Visa, while the remainder is interchange and acquirer fees charged by banks.[57] On top of this, the fees contested by the DOJ only pertain to debit networks and ignore the entirety of the credit card system. Thus, the antitrust suit only targets a small portion of the overall fees paid by consumers and merchants.

Conclusion

The antitrust case against Visa has the potential to shift how Americans pay for everyday goods and services. The DOJ argues that without its monopoly, consumers will face lower fees, more features, and a more innovative payments processing industry. Visa, on the other hand, contends that its industry-leading features are what enable its competitive advantage, not any monopolistic strategies. With the advancement of digital wallets and other online payment processing mediums, time will tell whether this antitrust suit or payment processing innovation will chip away at Visa's market dominance.

[56] Lulu Wang, *A DOJ Victory Against Visa May Not Help Merchants or Consumers,* Pro-Market (Oct. 3, 2024), https://www.promarket.org/2024/10/03/a-doj-victory-against-visa-may-not-help-merchants-or-consumers/. [https://perma.cc/LGB7-6WW5].

[57] *Id.*