After shaking down Bain for evidence, DOJ files suit to stop Visa purchase of Plaid, a nightmarish turn of events for the $5.3-billion dream deal

The Feds see Plaid acquisition as naked attempt by Visa to perpetuate a monopoly with 'insurance policy;' the card giant responds with acerbic aplomb.

November 6, 2020 — 5:29 PM by Brooke Southall

Plaid is now known at DOJ as a payments disruptor as much as a picnic blanket design choice.

Brooke's Note: With the world's biggest payments giant, the world's most dreaded business court and regulators intent on busting up a deal with an anti-trust lawsuit, the sparks are flying in Visa's acquisition of Plaid, during a highly political time. The RIA business cares for two reasons about whether Visa buys stripling Plaid for $5.3 billion. Plaid's wealth management aggregation franchise is at the tip of the seal's nose in the imbroglio. But also the $5.3-billion price tag is still standing there -- pregnantly -- as a sort of beacon of aspirational thinking in fintech valuations. If this Visa-Plaid deal collapses, we all reset our thinking. Interestingly, the DOJ almost seems to be using the price itself as a circumstantial smoking gun to allege that Visa is buying something priceless -- the unnatural killing off of a natural predator. That said, it's clear, too, from what DOJ writes, that Plaid put itself up for sale -- perhaps anticipating momentous challenges ahead and wanting to be safely under the wing of a company like Visa when the storm hit.

0 Comments

The past-due $5.3 billion Plaid-Visa deal is now in deep trouble after the Department of Justice (DOJ) slammed the card giant with an anti-trust suit for allegedly buying an "insurance policy" -- prompting a seething response from Visa.

Characterizing the deal as one monopolist buying an up-start with the ability to challenge that monopoly, the DOJ filed the deal buster lawsuit, Nov. 5.

Visa CEO Al Kelly allegedly stated that Plaid posed an "existential risk" to the firm.

Ironically, it's laced with comments Visa executives never meant to be heard publicly. See: With Visa-Plaid deal closing five months delayed already, Feds accuse Bain & Co. of stonewalling on pricing strategy documents that cast light on anti-trust hotspot.

It's a declaration of intent, says Ari Sonneberg, partner and chief marketing officer at Boston-based Wagner Law Group, via email.

"It is now very clear that the DOJ was not just going through the motions in examining this deal, and more importantly, just how much of a threat they view the merger to the ever-growing world of debit transactions," he explains.

Filed with a Northern California Federal Court, the suit alleges the Plaid deal violates the Sherman Antitrust Act of 1890 and the Clayton Antitrust Act of 1914. The laws are designed to block anti-competitive mergers that curb economic competition.

The court is known as the presumptive destination for major cases focused on semiconductor, telecommunications and software industries, with an expertise in antitrust, securities and technology law, according to legal references.

Existential risk

The DOJ argues that Visa executives were guided by the belief that the credit-card giant had to buy Plaid or risk oblivion -- a belief that drove unlawfully anti-competitive behavior spearheaded by the credit-card giant's CEO, Al Kelly.

"[Plaid represents an] existential risk to [Visa's] US existential risk to [Visa's] US debit business," Kelly told Visa board members, according to the DOJ complaint.

Ari Sonneberg: The DOJ has stated a convincing claim.

"[If Visa doesn't acquire it], Visa may be forced to accept lower margins, or not have a competitive offering ... [and inaction presents a] potential downside risk of $300 million [to] $500 million," the suit states.

But Visa quickly disputed the DOJ's case in a statement -- implying that that DOJ's allegations are based a wrong-headed reading of basic facts.

"[The] attempt to block Visa's acquisition of Plaid is legally flawed and contradicted by the facts. This action reflects a lack of understanding of Plaid's business and the highly competitive payments landscape in which Visa operates," the statement reads.

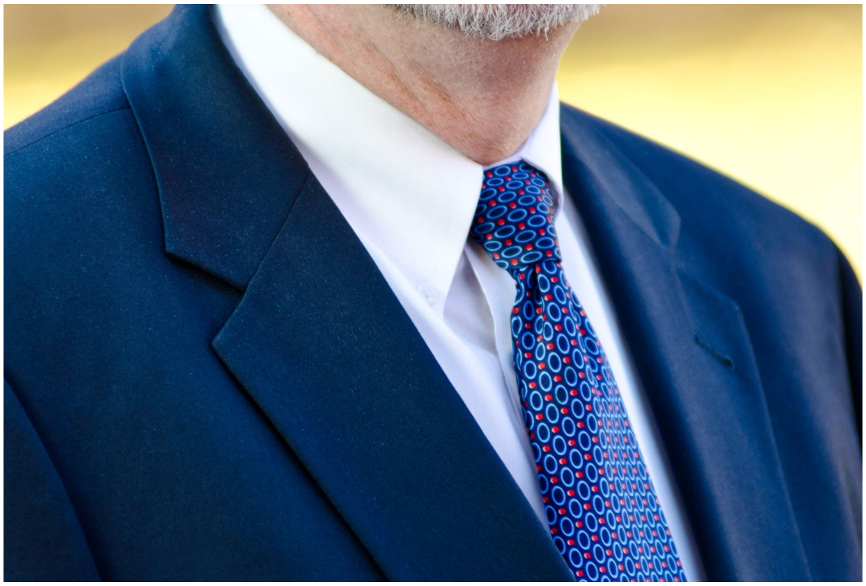
"As we explained to the DOJ, Plaid is not a payments company," it continues.

But Sonneberg says the suit has merit.

"The DOJ has stated a convincing claim in its complaint, but it is without doubt that Visa will have a compelling response, underscoring their stance that the deal actually benefits consumers -- certainly they were prepared for this."

Acts of largesse

Beyond the defensive logic the DOJ attributes to Visa CEO Kelly, the regulator also asserts that other Visa executives believed the payments giant was set to take a $5.3 billion bullet to protect its clientele.



William Kovacic: There's been a real effect in the policymaking environment ... [after] intense criticism.

An internal document quoted in the regulator's court filing notes that Visa believed the Plaid deal staved off a threat to its competitors as much as to itself.

"[T]he acquisition is in part defensive, not just for Visa but also on behalf of our largest issuing [bank] clients, whom we believe have a lot to lose if [pay-by-bank transactions] accelerate as the result of Plaid landing in the wrong hands," one executive allegedly stated.

"It is in our collective interest to manage the evolution of these payment forms in a way that protects the commercial results we mutually realize through card-based payments."

But in alleging this act of largesse, the DOJ may be making up for an increasingly under fire period in its history where its generosity has proven problematic, according to some industry observers.

The regulator is under pressure from the House antitrust subcommittee in Congress.

Last month, the subcommittee effectively argued that the DOJ's 2012 decision to green-light Facebook's acquisition of Instagram for $1 billion created a monopoly that the regulator should have stopped.

"Unwinding that … that's the right answer, David Cicilline, chairman of the House subcommittee told Reuters last month.

The corollary with Plaid is that, Instagram had increasingly dominated its own small niche of social media, as Plaid does in aggregation. Thus, in its suit against Visa, the DOJ could well be driven by a desire not to make the same 'mistake' twice.

"There's been a real effect in the policymaking environment ... [after] intense criticism that government has ... run away from cases instead of seizing them," says William Kovacic, former chairman of the Federal Trade Commission.

"I think it took awhile to sink in," he continues, in comments provided to the Washington Post over the DOJ's recent antitrust case against Google.

But it's not over till the fat-lady sings, says Sonneberg. "This lawsuit does, of course, dim the prospect of the deal going through, but I still would not count [Visa] out."

Disruptive technology

Bill Singer, attorney and writer of the Broke and Broker blog, says, via email, that the DOJ suit has its flaws.

"What bothers me to some extent with DOJ's case ... is that the complaint conflates many legitimate concerns about

Rep. David Cicilline says the DOJ missed the implications of some prior technology acquisitions.

Visa's overwhelming and damaging role as a monopoly with the disruptive nature of the ongoing digital revolution, as manifested by the growth of financial technology as a competitor for both banks and credit cards."

Visa is the online payment market's outright behemoth. Its 2019 revenues, neared $23 billion, and it has a market-cap of $218 billion, as of Nov. 6.

It also controls more than 70% of the online debit payments market, according to DOJ data. New York-based rival Mastercard accounts for just 25%, according to the DOJ.

Such scale renders San Francisco-based Plaid -- and its competitive capability -- miniscule by comparison.

It also makes the $5.3 billion Plaid valuation price -- by conventional measure -- an anomaly that DOJ cites as suspicious in itself.

The aggregator's 2019 revenues are an estimated $100 million -- 0.43% of Visa's; and its hefty $5.3 billion price-tag -- is "an unprecedented revenue multiple of over 50x," according to the DOJ. The deal equals just 2.4% of Visa's overall value.

Visa declined to comment beyond reiterating a statement it shared publicly on Nov. 5. Plaid declined a request for comment.

Makan Delrahim, the Assistant U.S. Attorney for the Antitrust Division overseeing its suit has yet to respond.

Stealing share

The crux of Visa's defense, inferred from its public statement, revolves around the claim that Plaid is not a direct competitor.

"Visa's business faces intense competition from a variety of players -- but Plaid is not one of them," the firm insists. See: 'Fraud' lawsuit slams Plaid on eve of historic $5.3-billion payday; some experts say it's a 'fishing expedition,' but plaintiff's lawyers say, 'This is no shakedown' -- Second suit follows in July

"Plaid is a data network that enables individuals to connect their financial accounts to the apps and services they use to manage their financial lives, and its capabilities complement Visa's."

At present, Plaid's business model -- generating revenues by providing fee-based access to aggregated data -- is distinct from Visa's. Visa processes credit card transactions between merchants and banks, without direct bank intervention.

But the DOJ states that Plaid was building a debit service, set for launch in 2021, that undercut Visa as payments middleman with a "50% reduction" in cost.

A graphic allegedly depicting Plaid's threat to Visa as a volcano (click to enlarge).

"Plaid intended to 'steal share' and become a 'formidable competitor' to Visa and Mastercard," the suit alleges.

Volcanic threat

The problem with this assertion is that the DOJ is relying on what-ifs, rather than hard evidence, says Lex Sokolin, analyst at New York-based ConsenSys, via email.

"While the price paid for Plaid was high, it is not a large industry incumbent that has control over the payments market.

"You would have to define sectors quite broadly to get there, as well as rely on future plans of Plaid that had not yet materialized," he says in comments provided prior to the DOJ's decision to file suit

That said, Andrew Westergren, Visa's vice president of corporate development and head of strategic opportunities allegedly compared Plaid to a "volcano" that had the potential to crush Visa, or turbocharge it.

"[Its aggregation is] just the tip showing above the water ... [and w]hat lies beneath is a massive opportunity -- one that threatens Visa," he said, according to the DOJ.

Bill Singer: 'Visa is acquiring Plaid before Plaid's technology renders Visa obsolete.'

The DOJ lawsuit comes hard on the heels of regulator's aggressive pursuit of evidence from Visa's Boston business counsel, Bain & Co. See: With Visa-Plaid deal closing five months delayed already, Feds accuse Bain & Co. of stonewalling.

DOJ may have succeeded in leaning on Bain to hand over data it claimed was confidential, according to Sonneberg.

"The DOJ would not have bothered to sue Bain if it had an ironclad case for nixing the deal prior thereto," he says.

Stonewalling DOJ

On Oct. 27, the DOJ filed a petition in a federal court charging that Bain stymied its antitrust investigation into Visa's purchase.

This followed a June 11 request for Bain to handover documents of work it did for Visa in the run-up to the deal, according to the release.

Allegedly, these included discussions over Visa's pricing strategy and competitive position.

"It's more than likely that the DOJ came across some additional evidence subsequent to filing its suit against Bain -- where that evidence came from remains to be seen, but it is certainly possible that it did come from Bain," says Sonneberg.

Lex Sokolin: While the price paid for Plaid was high, it is

The fact that Bain and Visa didn't play ball may have also driven the Fed to press charges, says Singer.

not a large industry incumbent that has control over the payments market.

"[Litigation] is often undertaken by DOJ out of frustration with a company that will not provide timely information. Both the DOJ and Visa hope the prospect of a major federal trial with its attendant costs will force the other party's hand."

Bain has yet to respond to a request for comment.

Crushing rivals

The DOJ's action against Visa also reveals the regulator's long-standing frustration with the tactics allegedly employed by the firm.

Its complaint alleges that Visa has used exclusionary tactics that have stifled even Mastercard, a giant in its own right, with a market capitalization of $310 billion, as of Nov. 6.

Andrew Westergren (allegedly): [Plaid] is a massive opportunity -- one that threatens Visa.

"Visa's long-term, restrictive contracts with banks, are nearly insurmountable, meaning Visa rarely faces any significant threats to its online debit monopoly [but] Plaid is such a threat," the complaint states.

The regulator also alleges that Visa is no stranger to using its scale to crush rivals -- one way or another.

One unnamed "major" technology company was, for instance, allegedly convinced -- with an offer of "fee reductions" that are currently being renegotiated -- not to build or support software that could hamper Visa's business.

The DOJ suit also indicates that the regulator will argue that fear drove Visa to a strategy of swallowing-up a potential rival, according to Singer.

"The acquisition that Visa's CEO Kelly so inartfully referenced as an 'insurance policy' may be better seen as the efforts of a company, which sees the writing on the wall ... Visa is acquiring Plaid before Plaid's technology renders Visa obsolete," Singer says.

Reputational reasoning

Plaid gathers, sifts, and verifies data from people's bank accounts, which it then shares with other financial institutions and applications, with individual client consent.

Its software underpins the growing digital payments applications market, which includes rising brands like Venmo, Square, and Stripe.

Makan Delrahim, who oversees the DOJ's suit against Visa has yet to respond to a request for comment.

But it is far from the only aggregator operating in the US market. Rivals include Envestnet-owned Yodlee, and Salt Lake City, Utah-based Finicity, which MasterCard acquired in June – subject to DOJ approval.

Plaid also snapped up a third rival, New York-based Quovo, in early 2019 – a beat-the-competition-by-buying-them deal that is, in some ways, a microcosm of its own stalling sale to Visa. See: Plaid makes $200-million snack of Quovo -- albeit defensively -- and creates Yodlee super-foe.

Overall Plaid has access to the data of over 200 million consumer bank accounts at 11,000 firms. Yodlee connects with 450 million consumer accounts and draws data from over 17,000 sources; and Finicity links to 16,000

But Plaid drew the DOJ's scrutiny because of its reputation as *the* aggregator for a host of up-and-coming financial technology firms, especially those in the digital payments market.

Plaid connects to over 2,600 financial technology applications; whereas Yodlee links to over 1,400 Financial institutions, financial technology innovators and financial advisory firms, according to the firm.

"Plaid's established connections and technology uniquely positions it to enter the payments market and disrupt Visa's monopoly," the regulator states in a release.

"Because it accesses data on behalf of so many fintech app customers, Plaid has become the leading financial data aggregation company in the United States."

No people referenced

Envestnet | Yodlee | Visa Inc. | Plaid

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