NRF THE VOICE OF RETAIL

March 2, 2020

Hon. Makan Delrahim
Assistant Attorney General, Antitrust Division
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

RE: Visa's Intended Acquisition of Plaid

Dear Assistant Attorney General Delrahim,

On behalf of the National Retail Federation (NRF), I am writing to express concerns about Visa's intended acquisition of Plaid. Visa, a player with market power in the U.S. credit and debit card markets, has actively used its power in the marketplace to impose anticompetitive prices and terms on U.S. retailers for decades. One of the few potential glimmers of hope with respect to such activity is that technological change has the potential to open these markets to competition as consumers transition from paying for things with plastic cards to mobile payments. But Visa has embarked on a buying spree over the past year as part of a strategy to simultaneously protect its dominant position in plastic cards while extending its market dominance into mobile and other nascent payments. This latest acquisition of Plaid is a particularly troubling attempt by Visa to impose a stranglehold on U.S. payments of the future.

NRF is the world's largest retail trade association, representing discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants and internet retailers from the United States and more than 45 countries. Retail is the nation's largest private sector employer, supporting one in four U.S. jobs – 42 million working Americans. Contributing $2.6 trillion to annual GDP, retail is a daily barometer for the nation's economy.

## A. Background on Competition Problems in Payments

Cheap communications and public key cryptography have enabled faster and cheaper payment methods, facilitating e-commerce. But credit card networks such as Visa continue to block innovation, create inefficiency in the system, and extract higher prices. For retailers to accept credit card payments, they must pay a fee to a credit card issuing bank that is set by the networks (e.g., Visa and MasterCard) that connect those banks with the retailer's own bank. These fees are often the second or third highest operating cost for a retailer, behind wages and employee health benefits.[1]

For example, when a consumer buys a bottle of water at the local corner shop with a credit card, the corner shop must pay the credit card issuing bank a swipe fee to process the transaction.
This swipe fee may be 2% (or more) of the sale, which may sound small but is often more than the margin on that bottle of water for the corner shop. For this reason, many small retailers impose a minimum purchase requirement for credit or debit card purchases.

[1] *Swipe Fees*, National Retail Federation, https://nrf.com/swipe-fees (last visited Feb. 1, 2019).

These swipe fees add up quickly. Merchants pay more than $100 billion per year in these fees.[2] And the problem is growing worse, as both Visa and Mastercard raised their fees yet again in 2019, and Visa recently announced a restructuring of the fees that will result in even more significant increases.[3] Those two networks dominate the markets for credit and debit cards. Visa has 53 percent of the network market for credit cards in the United States and more than 50 percent of the market for debit cards, while Mastercard has 22 percent of the credit card market and nearly 22 percent of the debit card market.[4]

The anticompetitive actions taken by Visa and Mastercard have given rise to numerous challenges over time.[5] Costs for merchants and consumers have risen dramatically year after year. Merchant fees set by Visa and Mastercard and paid to card-issuing banks increased 77 percent between 2012 and 2018 alone while network fees merchants paid to Visa and Mastercard increased 70 percent during that time period.[6] At the same time, credit card fees and interest paid by consumers increased 39 percent between 2013 and 2018.[7] These numbers are indicators of the competition problems rampant in this market.

As fees have skyrocketed, the quality of card services has not improved in a manner that is close to commensurate with the fees. An October 2019 study by CMSPI indicates that merchant losses due to fraud from online transactions have increased by 50 percent in the same time period.[8] In 2018, the United States accounted for 21.54 percent of global card volume but 33.99 percent of global card fraud losses.[9] Specifically, Visa and Mastercard failed time and again to adopt, or were

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[2] Jennifer Surane, *Visa Is Planning the Biggest Changes to Swipe Fees in a Decade*, Bloomberg (Feb. 4, 2020), https://www.bloomberg.com/news/articles/2020-02-04/visa-is-planning-the-biggest-changes-to-swipe-fees-in-a-decade.

[3] AnnaMaria Andriotis, *Purchases with Plastic Get Costlier for Merchants—and Consumers*, Wall Street Journal (Feb. 15, 2019), https://www.wsj.com/articles/purchases-with-plastic-get-costlier-for-merchantsand-consumers-11550226601; Jennifer Surane, *Visa Is Planning the Biggest Changes to Swipe Fees in a Decade*, Bloomberg (Feb. 4, 2020), https://www.bloomberg.com/news/articles/2020-02-04/visa-is-planning-the-biggest-changes-to-swipe-fees-in-a-decade.

[4] Bianca Peter, *Market Share by Credit Card Network*, NerdWallet (Sept. 2, 2019), https://wallethub.com/edu/cc/market-share-by-credit-card-network/25531/; *U.S. Debit Cards Projected*, The Nilson Report, Oct. 2019, https://nilsonreport.com/mention/406/1link/

[5] Bruce D. Sokler, Robert G. Kidwell & Farrah Short, *What Have Merchants Gained from Antitrust Litigation?*, Mintz Insight Center, (Aug. 3, 2016), https://www.mintz.com/insights-center/viewpoints/2301/2016-08-what-have-merchants-gained-payment-card-antitrust; K. Craig Wildfang & Ryan W. Marth, *The Persistence of Antitrust Controversy and Litigation in Credit Card Networks*, 73 Antitrust Law Journal No. 3 (2006).

[6] AnnaMaria Andriotis, *Purchases with Plastic Get Costlier for Merchants – and Consumers*, The Wall Street Journal (Feb. 15, 2019), https://www.wsj.com/articles/purchases-with-plastic-get-costlier-for-merchantsand-consumers-11550226601?mod=searchresults&page=3&pos=6.

[7] Sarah O'Brien, *Consumers Paying $104 Billion in Credit Card Interest and Fees*, CNBC (Jul. 20, 2018), https://www.cnbc.com/2018/07/19/consumers-paying-104-billion-in-credit-card-interest-and-fees.html.

[8] The CMSPI Index (Oct. 2019), *see* attachment.

slow to agree to adopt, new, faster, more secure technology – such as tokenized credit card numbers and PIN numbers to accompany more secure "chip" cards – because they wanted to protect their market share from more innovative competitors. Instead, these two networks used their decision-making positions on standard-setting bodies to ensure that the industry chose less secure technology. And, they are continuing to follow that pattern with their mobile commerce decisions that will tie Visa and Mastercard together behind a single "click-to-pay" button designed for websites.[10]

New payment technologies present the one glimmer of hope that the market has produced for retailers and consumers alike. Today, the United States is the only country in which there is no usable fintech alternative for consumer payments that is not proprietary to a card network or a bank. As a result, the major card networks have been able to raise their fees, unabated, without improving quality or output.

NRF has long led the fight on this issue, including through helping to pass legislative reforms that helped consumers save billions of dollars annually by putting in place the only law that limits the fees that networks set on behalf of banks and mandates competition (the law applies only to debit transactions).[11]

There is some hope, though, that the status quo will change, as a host of fintech startups are seeking to simplify how consumers move money to retailers, which could create competition eventually to reduce swipe fees. For example, PayStand, a business-to-business platform, has created a zero percent fee network.[12] Another startup, AeroPay, only charges 1% for fees, compared to the 3% that Visa and Mastercard charge for some credit cards.[13]

While these solutions have not penetrated the market in any significant way to date, they demonstrate that the technology is there to make payments far more cost-efficient. In a functioning market that would force prices down, but payments do not follow the normal rules of functioning markets.

These innovative startups can bring change to an industry dominated by the major credit card networks that use their market power to the disadvantage of both retailers (through higher swipe fees) and consumers (through higher overall annual fees, interest rates, and prices). Yet these dominant

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[9] *Card Fraud Losses Reach $27.85 Billion*, The Nilson Report (Nov. 2019), https://nilsonreport.com/mention/407/1link/.

[10] RPGC Group, *Payment Insecurity* (Dec. 2019), https://www.securepaymentspartnership.com/wp-content/uploads/2019/12/Payment_Insecurity_Final.pdf.

[11] 15 U.S.C. §1693o-2; *Swipe Fees*, National Retail Federation, https://nrf.com/swipe-fees (last visited Feb. 1, 2019) (NRF advocated heavily for passage of the Durbin Amendment to the Dodd-Frank Wall Street Reform and Consumer Protection Act which limited the level at which card networks could fix debit fees and protected competitive choice of networks for merchants on debit transactions).

[12] Gabriela Barkho, *Fintech Startups Aim to Kill Swipe Fees on Behalf of Small Business Owners*, Crunchbase News (June 18, 2018), https://news.crunchbase.com/news/fintech-startups-look-to-kill-swipe-fees-on-behalf-of-small-business-owners/.

[13] Jim Dalke, *This Chicago Startup Helps Mom and Pop Shops Cut Down on Credit Card Fees*, Chicago Inno (Nov. 20, 2018), https://www.americaninno.com/chicago/chicago-startup/this-chicago-startup-helps-mom-and-pop-shops-cut-down-on-credit-card-fees/.

players will not easily give up their profits and have embraced a strategy of acquisition to foreclose much-needed competition.

**B. Payment Systems Acquisitions Raise Concerns about Killing Off Competition**

The dominant credit card companies have already begun to engage in a series of transactions to protect their market power. Among the fintech acquisitions and partnerships entered into by Visa in 2019 alone are:

- Earthport – a specialist in cross-border payments;
- Rambus – which provides tokenization services in addition to its semiconductor business;
- Verifi – which provides a chargeback tool to help merchants increase their approval rates; and
- Payworks – which provides payment acceptance and point-of-sale gateway solutions.[14]

Each of these companies had the potential to provide solutions to a critical part of the payments network, and that could—if not acquired by Visa—result in fewer transactions traveling over the Visa network.

Visa's agreement to acquire Plaid, a fintech company that helps businesses like Venmo link users' Venmo accounts to their bank accounts, raises heightened concerns about Visa's anticompetitive practices.[15] Plaid helps companies like Venmo avoid using credit card networks' communications rails by verifying a user's bank account for use with their Venmo account, simplifying use of bank transactions and potentially cutting out the middleman of the credit card processor.[16]

Plaid also facilitates the use of products such as Mint, which allows users to link their bank accounts directly to a finance app that tracks their spending—a service that credit cards also often provide. Businesses can also use Plaid to facilitate business-to-business payments, an area in which credit card companies have lately been trying to increase their market share.[17]

There are indications that the market may be moving in the direction of making Plaid's services more valuable. For example, the Federal Reserve Board is engaged in a project called

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[14] Matthew Cochrane, *Visa Doubles Down on Fintech*, Motley Fool (Aug. 17, 2019), https://www.fool.com/investing/2019/08/17/visa-doubles-down-on-fintech.aspx. Visa has also entered into a number of partnerships with fintech companies including Go-Jek, Paymate, and Setoo.
[15] Ben Walsh, *Visa Is Buying Plaid for $5.3 Billion. Here's Why.*, Barron's (Jan. 14, 2020), https://www.barrons.com/articles/visa-is-buying-plaid-for-5-3-billion-to-help-it-compete-with-venmo-51578954755.
[16] Cara Lombardo and AnnaMaria Andriotis, *Visa to Pay $5.3 Billion for Fintech Startup*, Wall Street Journal (Jan. 13, 2020), https://www.wsj.com/articles/visa-nears-deal-to-buy-fintech-startup-plaid-11578948426 ("Card networks are concerned that consumer payments could move away from debit and credit cards to bank accounts, essentially allowing consumers to pay for products directly out of their bank accounts while bypassing so-called card rails altogether.").
[17] Cara Lombardo and AnnaMaria Andriotis, *Visa to Pay $5.3 Billion for Fintech Startup*, Wall Street Journal (Jan. 13, 2020), https://www.wsj.com/articles/visa-nears-deal-to-buy-fintech-startup-plaid-11578948426.

FedNow. The goal of FedNow is to create a real-time payment system in the United States and help it catch up with other nations in faster payment technology. This system would likely build upon the Fed's experience with direct bank transfer payments through its Automated Clearinghouse (ACH).[18] The resulting growth in the volume and attractiveness of direct bank transfers could make Plaid's technology a key strategic piece of this future set of payment transactions.

Innovations such as these threaten the credit card companies' stranglehold on payments and will force them to compete more aggressively to enter new markets. If users could simply pay directly from their bank account, including from their phones, the credit card intermediary is no longer needed. Plaid also threatens the credit card companies' ability to gather data on consumer spending patterns, denying them access to information that they can resell.[19] Finally, by challenging credit card companies in the business-to-business market, Plaid will force them to compete more vigorously if they hope to expand into that new market.

However, once owned by Visa, Plaid is unlikely to disintermediate Visa from parts of the payments market that it has dominated for many years. Visa's new subsidiary would also give it insight into the behavior of a number of other fintech companies offering directly competitive products that depend on Plaid to move consumers' funds from their bank accounts. Suddenly those companies' product offerings and market success will be visible to their most powerful incumbent rival.

These threats to the credit card companies' business model explain why Visa was willing to pay nearly twice Plaid's market value.[20] The mere fact that Visa was willing to overpay that much should raise red flags. It indicates that this transaction is not just an attempt to capture the value of Plaid, but instead is geared toward constraining the developing payments market.

With that in mind, NRF urges the Department to carefully scrutinize the transaction, including Visa's internal documents, which we believe will show that this acquisition is likely to restrict competition. If that is the case, then the transaction should not be allowed to be completed.

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[18] *The Fed Debuts FedNow*, PYMNTS.COM (Aug. 6, 2019) ("For the new inter-bank system, the Federal Reserve will speed up its settlement and clearing processes for payments between banks."), https://www.pymnts.com/news/faster-payments/2019/the-fed-debuts-fednow/.

[19] Brooke Southall, *Visa gambles $5.3 billion that Plaid will pay Big Data dividends while big-footing Envestnet-Yodlee and beating back fintech competitors*, RIABiz (Jan. 22, 2020), https://riabiz.com/a/2020/1/22/visa-gambles-53-billion-that-plaid-will-pay-big-data-dividends-while-big-footing-envestnet-yodlee-and-beating-back-fintech-banking-competitors.

[20] *Id*. ("Visa is paying a significant premium over Plaid's valuation of roughly $2.65 billion in a 2018 funding round, though the purchase price still represents a rounding error for a company with a market value of some $420 billion.").

We hope that these views are helpful to your deliberations and request a meeting to provide more background on the experiences of NRF members in this market and how those experiences relate to the proposed acquisition.

Sincerely,

Stephanie Martz
Chief Administrative Officer
and General Counsel

CC: Owen Kendler,
Chief of the Media, Entertainment,
and Professional Services Section

Craig Minerva,
Media, Entertainment,
and Professional Services Section