

EXHIBIT 6

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 v.

24 CV 97214

6 VISA, INC.,

7 Defendant.

Conference

8 -----x
9 New York, N.Y.
November 12, 2024
5:00 p.m.

10 Before:

11 HON. JOHN G. KOELTL,

12 District Judge

13
14 APPEARANCES

15 DEPARTMENT OF JUSTICE, ANTITRUST DIVISION

Attorneys for Plaintiff

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1 The second course of conduct is about agreements that
2 Visa has entered into with certain technology partners. These
3 are -- an example would be they have an agreement with Apple
4 whereby Visa has provided technology to Apple that allows Apple
5 Pay to work, which is a way you can pay debit and credit with
6 your phone. And as part of those agreements, they allege that
7 we have -- and they're relying entirely on the written
8 agreements here. They allege that we have essentially paid
9 them off not to compete.

10 So we've entered into these agreements with them, and
11 under the agreements, they're not allowed to compete in debit.
12 However, if you actually look at the terms of the agreements
13 which are incorporated by reference into the agreements, they
14 don't do that. What they do is they say that if Apple decides
15 to become a competitor, Visa no longer has to continue to deal
16 with them and no longer has to provide their technology to
17 them.

18 So under the terms of the agreements themselves, we
19 don't think that's anticompetitive product, because there's
20 lots of law that says that there's no duty to deal with
21 competitors.

22 THE COURT: Okay. Mr. Duffy.

23 MR. DUFFY: Yes. If I can just have a few minutes to
24 respond, you know, with our initial thoughts on the substantive
25 bases of the motion, and then I did want to follow up with our

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1 view of the benefits of having the pre-conference letter still
2 submitted.

3 First, with respect to market definition, Mr. Gostin
4 referenced ACH, which you know, as we've put forward in our
5 complaint, it is our position that ACH is not in the same
6 market as debit network services, and there are a few reasons
7 for that. I think one of the more important is that ACH simply
8 does not provide for a near instantaneous form of payment, and
9 for that reason, it is not reasonably interchangeable with
10 debit cards and cannot be used for many of the same types of
11 processes.

12 Mr. Gostin also indicated that there are several
13 criteria that we think are necessary for a product to be within
14 the market. Fraud protections being one. And although we do
15 say that the other smaller debit networks, called the PIN
16 networks, don't have as robust fraud capabilities as Visa does,
17 for a variety of reasons, they still do offer some type of
18 fraud protections that do set them apart from a basic ACH
19 product. And as your Honor mentioned, to the extent there are
20 disputes about this, they are very much factual issues that we
21 don't think would be suitable for a motion to dismiss,
22 irrespective of the substance.

23 Going to the two types of conduct that Mr. Gostin was
24 talking about. The volume based discounts, first, I think it's
25 important for us to point out we're not alleging a predatory

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1 pricing theory of harm under that theory. What the United
2 States is alleging is that Visa has created incentive
3 structures with their contracts with merchants and with banks
4 that are tantamount to exclusive dealing because of the nature
5 of the terms that are set forth.

6 So what Visa does is that there are certain
7 transactions that a merchant is going to have no choice but to
8 use Visa for routing that transaction. Visa is able to
9 leverage those non-contestable transactions and create pricing
10 structures that make it entirely uneconomical for merchants and
11 their banks to consider alternative networks for those
12 transactions that the networks could compete for. And, you
13 know, we think the law is quite clear that that type of de
14 facto exclusive dealing is a cognizable violation of the
15 Sherman Act, both as monopolization and an unreasonable
16 restraint on trade.

17 And then, finally, with respect to the tech partner
18 contracts that Mr. Gostin was discussing, the key
19 anticompetitive element of those agreements is not Visa
20 refusing to deal. It is, instead, the nature of the threat of
21 basically telling potential competitors if you do not compete
22 with me, I will provide you with lucrative incentives, and if
23 you do choose to compete with me, I am going to impose
24 penalties upon you. So it is not a duty to deal situation as
25 much as it is an incentive being offered to not compete with

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1 Visa.

2 And then if I can briefly just address kind of the
3 process issue of the three-page pre-motion letter. When
4 agreeing to the briefing schedule, the United States was very
5 interested in ensuring that we would have Visa's letter
6 outlining the bases of its motion to help us, you know, kind of
7 get a head start on the response to a motion to dismiss given
8 the holiday schedule and so forth. It was kind of important
9 for us to be able to get a better sense as to what their
10 arguments would be. So we think we would benefit very much
11 from having that letter on November 20 as Visa committed when
12 proposing that schedule.

13 We also think, and the parties have submitted some
14 letters dealing with the issue of discovery, and we think that
15 the Court will eventually need to decide whether discovery can
16 commence while a motion to dismiss is pending. And we do think
17 that the three-page letter would help the Court in that
18 determination when the issues is properly before the Court.

19 THE COURT: I must say I'm unpersuaded that the
20 letters would do anything. You've heard from Visa the
21 arguments that it intends to make. I'm sure you all can talk
22 among yourselves. But as far as I'm concerned, it appears to
23 be unnecessary paper.

24 I also don't think that that exchange of letters is
25 going to sufficiently inform me of the merits or lack of merits