# Dynamic Competition and Merger Enforcement in the Payments Industry

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## Introduction

The payments ecosystem has transformed rapidly over the past decade, driven by the rise of digital wallets, open banking, embedded finance, and fintech platforms. These developments have expanded the range of services available while blurring the traditional boundaries among industry participants as technology companies have entered payment services, banks have integrated fintech capabilities, and payment platforms have expanded into lending and other financial functions. At the same time, antitrust scrutiny of mergers in this space has intensified, particularly where transactions involve nascent competitors or adjacent platform capabilities.

These trends have prompted debate among practitioners and commentators about how merger policy should adapt. Some have argued that competition authorities are taking an increasingly aggressive posture toward transactions in innovation-driven markets,[1] while others contend that recent enforcement actions represent a natural evolution of longstanding analytical tools.[2]

At the same time, merger policy in innovation-driven industries may raise a separate concern. Acquisitions have historically played an important role by providing exit opportunities for startups and their investors. The prospect of acquisition can incentivize entry, attract venture capital, and support experimentation in markets characterized by technological uncertainty.[3] To the extent that merger enforcement

becomes more restrictive, it may also affect incentives for entry, investment, and innovation.[4] The challenge for policymakers is therefore not only to prevent anticompetitive consolidation but also to preserve the conditions that support dynamic competition.

This article examines the recent evolution of U.S. antitrust agencies' and courts' application of existing legal and economic frameworks to mergers in the payments systems industry and highlights a number of considerations that authorities need to contend with when seeking to balance the risk of anticompetitive consolidation against the potential costs of deterring procompetitive transactions. Specifically, the discussion that follows examines the economic characteristics of the payments industry; reviews recent enforcement actions and case law; analyzes the 2023 Merger Guidelines, which, in many respects, formalized analytical approaches that agencies had already begun to apply rather than introducing entirely new theories of harm; and considers the implications of these developments for M&A activity and innovation incentives in the payments ecosystem.

## Economic Foundations: Payments as Multi-Sided, Dynamic Platforms

The payments industry exhibits several features that may complicate traditional merger analysis.

First, many firms in the industry operate as multi-sided platforms, connecting consumers, merchants, financial institutions, and, increasingly, developers and third-party applications.[5] The economics literature on two-sided platforms—a subset of multi-sided platforms involving two primary user groups—explains that the value of the platform to any given group depends on participation by others, giving rise to indirect network effects that can reinforce scale advantages and, in some cases, lead to concentration.[6] An indirect network effect arises when the value to users on one side of a platform increases because more users participate on another side of the platform. By contrast, a direct network effect arises when the value to each user increases because more users are connected to the same side of the network.[7] The economic literature also explains that, in payments, the indirect effect can be particularly pronounced because adoption of a payment method by consumers may increase its value to merchants (who can reach more card-carrying customers), and merchant acceptance, in turn, could make the payment method more attractive to consumers.[8] However, the competitive implications of these feedback loops are not predetermined. The economics literature recognizes that network effects can cut both ways: while in some contexts they may reinforce the position of established firms, the same dynamics can accelerate a challenger's growth when a new entrant gains traction on one side of the platform.[9]

Second, pricing structures in the payments industry often differ from those in traditional single-sided industries. One side of the platform (typically, consumers) may face zero or subsidized pricing, while revenue is generated on the other side through merchant fees or financial services.[10] The economics of two-sided platforms

demonstrates that a highly skewed pricing structure can be efficient in these settings, and that it may in fact be welfare-maximizing for price to fall below marginal cost on one side of the market while exceeding it on the other.[11] A foundational insight of the literature on two-sided markets is that the allocation of fees between the two sides is not neutral, as it can affect transaction volume and welfare.[12] This non-neutrality complicates the application of standard analytical tools.

Third, data can play an important role in the payments industry, though the extent to which it constitutes a durable competitive advantage is context-specific and debated in the economics literature.[13] Payments platforms generate extensive transaction-level data that can improve fraud detection, underwriting, and product development.[14] In some circumstances, control over proprietary data may reinforce competitive advantages; in others, data may be non-rivalrous, widely available, or subject to diminishing returns, limiting its significance as a barrier to entry.[15]

Finally, payments services are increasingly embedded within broader ecosystems that include lending, banking, and commerce platforms. Competition may therefore occur not only between standalone products, but also between integrated ecosystems offering bundled services. In industries with strong network effects, some economists have observed that "competition for the market" (i.e., the race among rivals to become the prevailing platform) may in some cases take precedence over "competition within the market"—that is, conventional rivalry among established firms for marginal customers.[16] Whether this framing applies in a given context depends on the strength of network effects, the degree of multi-homing (the practice of users simultaneously participating on multiple competing platforms), and interoperability standards.[17] In payments, where large networks coexist and multi-homing is common among both consumers and merchants, competitive dynamics may differ from industries where a single platform may dominate.

Entry barriers for payments services embedded within broader digital and financial ecosystems often may involve coordination challenges in addition to financial constraints. New entrants must simultaneously attract multiple user groups, and in network industries, incompatible platforms may face reverse network effects—the disadvantage of small size, where having fewer users makes the platform less attractive to additional users.[18] However, the significance of these barriers is context specific. Where interoperability standards exist or multi-homing is prevalent, barriers may be lower than theory alone would suggest.[19]

These features underscore the importance of considering both potential harms and potential efficiencies in payments mergers. Ecosystem expansion can generate procompetitive benefits, including improved coordination across complementary services, economies of scale, faster diffusion of innovation through broader distribution channels, and the elimination of double marginalization (the efficiency gain from combining two firms that each add a markup at successive stages of production, thereby reducing the cumulative markup borne by end users).[20] A balanced assessment

requires weighing these potential benefits against any risks to competition. This framework applies with particular force in the payments industry, where the economic characteristics discussed above cut in both directions.

## Recent Enforcement: Visa/Plaid and Mastercard/Finicity

The authorities' approach to two recent payments systems mergers highlights the complexity of analyzing these transactions and offers insights into how antitrust analysis is being applied to the economic characteristics discussed above.

The U.S. Department of Justice's (DOJ's) challenge to Visa's proposed acquisition of Plaid in 2020 marked a notable application of potential competition doctrine in this space. Plaid is a data aggregation company that provides application programming interfaces ("APIs") that enable fintech applications to connect to users' bank accounts. At the time of the proposed acquisition, Plaid was developing capabilities that the DOJ claimed might facilitate pay-by-bank functionality as an alternative to traditional card networks. The DOJ alleged that, though Plaid did not compete directly with Visa's core debit network at the time, it posed a nascent competitive threat by enabling fintech firms to develop payment solutions that could bypass traditional card networks. The complaint emphasized Plaid's potential to evolve into a competitor and relied heavily on the DOJ's characterization of internal documents, including what the complaint described as an executive's diagram portraying Plaid's threat to Visa's debit business and a CEO statement that the DOJ characterized as treating the deal as an "insurance policy."[21] The parties disputed the DOJ's interpretation of these documents and the competitive significance the DOJ attributed to them. The parties abandoned the deal in January 2021 before any motion to dismiss was decided, and the case did not produce a judicial ruling on whether the DOJ's theory or its reliance on those documents would have been sufficient to establish liability.[22]

By contrast, Mastercard's 2020 acquisition of Finicity—another data aggregation company providing APIs for open banking and financial data connectivity—was not challenged.[23] Although both transactions involved data aggregation firms, the Finicity acquisition did not appear to raise the same concerns for the DOJ regarding the elimination of a specific competitive threat to Mastercard's core network business.[24] Together, the two cases underscore the fact-specific nature of enforcement in the payments industry, particularly in evaluating potential competition.[25]

These two cases illustrate the application of potential competition analysis in the payments context. Rather than focusing solely on current market shares or horizontal overlap, the DOJ in the Visa/Plaid matter examined how the transaction might affect future competition and the evolution of the payments ecosystem. The DOJ's approach in Visa/Plaid can be understood as reflecting analytical approaches that the agencies later formalized in the 2023 Merger Guidelines, though the theory was never tested in court,

and its viability remains an open question. At the same time, the Mastercard/Finicity non-challenge demonstrates that the agencies have continued to exercise case-by-case judgment, evaluating the specific facts and competitive dynamics of each transaction rather than adopting a categorical posture toward payments-related acquisitions.

## The 2023 Merger Guidelines and Recent Case Law

Recently, the U.S. antitrust authorities have sought to formalize their evolving approach to mergers, including mergers involving dynamic competition and platform concerns, through the release of the 2023 Merger Guidelines. The Guidelines articulate the agencies' analytical framework for evaluating mergers; they do not directly establish or alter the evidentiary standards that courts may, and often do, apply. Several provisions of the Guidelines are particularly relevant to the payments industry.

Guideline 4 addresses mergers that eliminate a potential entrant or nascent competitor, directly echoing the theory advanced by the DOJ in Visa/Plaid. Under this framework, the agencies examine whether one or both merging firms had a reasonable probability of entering the relevant market absent the acquisition, and whether such entry offered a substantial likelihood of reducing concentration or other significant procompetitive effects.[26] In dynamic markets, where entry may occur through adjacent services or new technologies, assessing the likelihood and significance of future competition presents inherent challenges.

Guideline 6 focuses on mergers that may entrench or extend a firm's dominant position, recognizing that a merger involving an already-dominant firm may substantially reduce competition by raising entry barriers or eliminating nascent competitive threats.[27] In the payments industry, agencies may seek to apply this theory where they allege that an incumbent's acquisition of complementary capabilities, such as data aggregation, API infrastructure, or embedded finance tools, could strengthen the incumbent's ecosystem or increase switching costs. Whether such a theory would succeed in a given case would depend on the specific facts and evidence, including whether the acquirer possesses the requisite market position and whether the alleged effects are likely to materialize.

Guideline 9 addresses mergers involving multi-sided platforms, recognizing that markets involving platforms may exhibit unique competitive dynamics. It directs the agencies to consider competition between platforms, competition on a platform, and competition to displace a platform and notes that network effects can create a tendency toward concentration in platform industries.[28] The Guidelines preserve agency flexibility to define a market on whichever side reveals competitive harm.

While the Guidelines articulate the agencies' preferred analytical framework, the case law around the same period suggests that courts have continued to apply their own evidentiary requirements independently. The most significant recent test of the nascent competition doctrine is the January 2023 opinion (issued before the Guidelines

were finalized) denying the FTC's preliminary injunction in *FTC v. Meta Platforms (Within)*. The U.S. District Court for the Northern District of California accepted the viability of the actual potential competition theory, but held that the FTC was required to show a "reasonable probability" (defined as a likelihood "noticeably greater than 50%") that Meta would have entered the VR-dedicated fitness app market on its own absent the acquisition.[29] In applying that standard, the court looked for objective evidence that Meta was likely to enter, such as evidence concerning its resources, capabilities, incentives, and available paths to entry, rather than relying solely on statements about Meta's internal interest in the market.[30] That approach is at least as demanding as the pre-Guidelines case law.

Other decisions in the same timeframe reflect a similar pattern. The Northern District of California declined to grant the FTC's preliminary injunction against Microsoft's acquisition of Activision in mid-2023—also prior to the Guidelines' release—finding that Microsoft's own internal modeling and contemporaneous platform-licensing commitments did not support the agency's foreclosure theory.[31] The U.S. District Court for the Southern District of New York's December 2023 preliminary injunction in *FTC v. IQVIA*, issued contemporaneously with the Guidelines, was a government win, but the court's opinion rested on traditional concentration analysis in a tightly defined market for healthcare-professional programmatic advertising rather than novel nascent-competition reasoning.[32]

Across these decisions, courts have continued to expect concrete evidence in potential-competition cases: identifiable entry plans, allocated capital, regulatory approvals, customer commitments, and product milestones. While the 2023 Guidelines provide a broader set of analytical tools, the judicial standard for establishing competitive harm in potential-competition and nascent-competitor cases has not demonstrably shifted, at least as of yet. It remains to be seen whether courts will adapt their evidentiary expectations in light of the Guidelines' analytical framework or largely continue on their existing trajectory.

## Applying the Framework: Current and Emerging Transactions

Against this enforcement and doctrinal backdrop, M&A activity in the payments sector has continued to evolve. While deal volume and value declined from their 2021 peak through 2023, largely reflecting macroeconomic headwinds such as higher interest rates and valuation adjustments, the composition of transactions has shifted toward smaller, capability-driven acquisitions in adjacent services such as embedded payments, cross-border solutions, and data infrastructure. This shift appears to reflect not only economic conditions but also an evolving enforcement environment in which acquirers increasingly structure transactions to minimize regulatory risk.[33]

The most prominent example is Capital One's acquisition of Discover, completed in May 2025, which illustrates the interplay between horizontal and vertical considerations in payments mergers. On the horizontal dimension, some commentators estimated

that the combined entity's share of subprime credit card issuance would reach approximately 30 percent, with post-merger Herfindahl-Hirschman Index (HHI) in the high 1,800s, though others contested this framing, arguing that the relevant market was broader than subprime cards alone.[34] The DOJ did not challenge the transaction.[35] The Federal Reserve and the U.S. Department of the Treasury's Office of the Comptroller of the Currency approved the deal in April 2025, with their orders focusing on local deposit competition (with negligible overlap between two largely internet banks), prudential factors, and Discover's pre-merger compliance issues; neither agency conducted a sustained analysis of credit card market concentration, as that falls outside their respective regulatory mandates.[36]

On the vertical dimension, the transaction combined a major card issuer with a payment network. Capital One CEO Richard Fairbank described owning a network as the "holy grail" for an issuer, with a stated strategic rationale of integrating Capital One's issuance volume with Discover's network rails to strengthen Discover as a more robust competitive alternative to the larger Visa and Mastercard networks.[37] That migration is now underway, as Capital One began routing new credit card originations onto the Discover network in early 2026.[38] Critics (including several members of the U.S. Congress and consumer advocacy groups) argued that combining an issuer with a network would reinforce rather than disrupt the existing network structure, because the merged firm's incentives may align with maintaining, not undermining, prevailing interchange economics.[39] Proponents countered that a vertically integrated issuer network would face different incentives than those of a standalone network and could compete more aggressively on pricing and merchant acceptance.[40] The case underscores that, for payments mergers combining firms at different levels of the value chain, both horizontal competitive effects and vertical considerations warrant analysis.

At the same time, numerous smaller acquisitions by fintech firms and payment processors reflect ongoing ecosystem expansion. Firms such as Stripe, PayPal, and Fiserv have pursued acquisitions aimed at enhancing capabilities in areas such as APIs, embedded finance, and data analytics.[41] Whether such transactions raise competitive concerns will likely depend on the specific facts, including the availability of alternative providers and the extent to which the acquisition forecloses rivals from necessary inputs.[42]

Together, these examples illustrate that merger analysis in the payments industry has increasingly turned on how transactions affect platform capabilities and future competitive dynamics, rather than solely on current market structure. They also highlight the tension between the potential for vertical integration to enhance competition and the risk that it may entrench existing positions, a theme that connects directly to the broader question of innovation incentives.

## Dynamic Competition and Innovation Incentives

Merger enforcement in the payments industry must also account for the role of successful exits in promoting innovation. A well-functioning exit environment, including both acquisitions and IPOs, is an important part of the innovation ecosystem because it allows investors, founders, and employees to realize returns and redeploy capital and talent into new ventures. Within that broader exit environment, acquisitions can be especially important in the payments ecosystem because they often serve as a key exit mechanism for startups and their investors.[43] That role may be particularly salient in the payments industry, where startups often develop specialized capabilities that are complementary to larger financial institutions, payment networks, processors, or commerce platforms, while standalone scaling may require substantial capital, regulatory infrastructure, customer trust, and distribution. For that reason, the prospect of acquisition can incentivize entry by entrepreneurs and startups, attract venture capital, and support experimentation.

The relationship between enforcement and innovation incentives is direct. In the payments industry, standalone scale often requires substantial capital and time, and IPOs now account for only approximately 10 percent of successful venture-backed exits.[44] Acquisitions therefore represent the substantial majority of exit opportunities for venture-backed firms in this space. When feasible exit channels narrow, investors require higher expected returns to compensate for illiquidity, reducing the net present value of marginal projects and the total amount of invested capital.[45] More restrictive merger enforcement may therefore directly limit the ability of investors to exit their investments, potentially reducing venture funding and the level of innovation in the payments ecosystem.[46] Conversely, permissive enforcement may reduce innovation incentives if it enables incumbents to acquire and extinguish potential competitors.[47] The policy challenge is to distinguish transactions that enhance innovation from those that suppress it. This challenge is particularly acute in the payments industry, where the rapid pace of technological change and the complexity of platform dynamics make the competitive effects of any given transaction difficult to predict ex ante.[48]

Furthermore, consumer welfare is implicated on both sides of this equation. An acquisition can accelerate diffusion of innovation through incumbent distribution channels, reaching consumers faster than a startup could independently, and integration can generate efficiencies that reduce costs and improve quality.[49] At the same time, some transactions may eliminate future competition in ways that reduce long-run welfare.[50]

## Conclusion

Merger analysis in the payments industry requires a careful balance between traditional structural tools and a broader understanding of dynamic competition. The 2023 Merger Guidelines reflect an effort to incorporate these considerations, particularly in relation to potential competition and platform dynamics.

At the same time, recent enforcement actions and case law suggest that these approaches represent a continuation of trends already visible in the payments industry rather than a fundamental shift. Courts have continued to require concrete evidence in potential-competition cases, and agencies have exercised case-by-case judgment in deciding which transactions to challenge. As agencies and courts continue to apply these frameworks, a central challenge will be distinguishing transactions that risk harming competition from those that facilitate innovation and entry.

This balance is particularly important in the payments ecosystem, where the costs of enforcement errors run in both directions. Overly permissive enforcement may in some circumstances allow transactions that reduce future competition, while overly restrictive enforcement may dampen innovation and limit the exit opportunities that drive entrepreneurial entry. The challenge is amplified during the early stages of a nascent network industry, when information is most limited, technological possibilities most uncertain, and the consequences of policy choices most significant.[51] Because early-stage targets typically command negligible market share at the time of sale, the relevant competitive impact is dynamic rather than static.[52] Neither the 2023 Guidelines nor recent case law has fully articulated how to weigh these competing considerations, though the Guidelines' emphasis on potential competition and innovation effects represents a step in that direction. A balanced framework for evaluating payments-related M&A should therefore account not only for network effects, potential competition, and the direct effects of a transaction on market concentration, but also for innovation incentives, integration efficiencies, second-order effects on venture funding and entrepreneurial entry, and the ultimate impact on consumer welfare.

## Endnotes

1 *See, e.g.*, Fenwick & West LLP, "4 Antitrust Enforcement Trends for 2024" (Jan. 22, 2024) (describing an "aggressive antitrust enforcement agenda" and noting that "for many deals the antitrust process has gotten … significantly more burdensome"); Skadden, Arps, Slate, Meagher & Flom LLP, "2024 Insights: Antitrust" (Dec. 2023) (discussing the agencies' "aggressive merger enforcement approach").

2 *See, e.g.*, Herbert Hovenkamp, "Platforms and the Rule of Reason: The American Express Case," 2019 COLUM. BUS. L. REV. 35, 39–42 (2019) (analyzing recent enforcement as applying established analytical tools to new platform settings); U.S. Dep't of Justice & Fed. Trade Comm'n, Merger Guidelines (2023) ("2023 Merger Guidelines") (noting that the revision "builds on the learning and experience reflected in those prior Guidelines and successive revisions").

3 Yael Hochberg, Dasha Anosova & Lauren Hunt, "The Role of Private Equity in the Entrepreneurial Ecosystem," ABA Section of Antitrust Law (Summer 2025) (explaining that "[t]he mere prospect of being acquired can spur more entrepreneurs to launch new ventures" and that "[b]etter exit opportunities decrease the funding cost to startups and expand the set of projects that are feasible").

4 *See* Hochberg, et al., *supra* note 3 (explaining that "[r]estrictive merger enforcement that diminishes acquisition probabilities, absent reliable substitutes, increases investor lock-in and lowers the valuations of startups").

5 *See* Jean-Charles Rochet & Jean Tirole, "Platform Competition in Two-Sided Markets," 1 J. EUR. ECON. ASS'N 990, 990–92 (2003) (describing how two-sided platforms connect distinct user groups through indirect network effects).

6 *Id.* at 990.

7 Dennis W. Carlton & Jeffrey M. Perloff, *Modern Industrial Organization* 417–18 (4th ed. 2015).

8 *Id.* (discussing the interdependence of adoption decisions by cardholders and merchants in payment networks); *see also* Rochet, et al., *supra* note 5 at 1003–04.

9 *See, e.g.*, Nicholas Economides, "Public Policy in Network Industries," *Handbook of Antitrust Economics* 469, 478–480 (Paolo Buccirossi ed., 2008) (discussing how the self-reinforcing nature of network effects can lead to rapid expansion when an entrant gains traction); John E. Kwoka, Jr. & Lawrence J. White, *The Antitrust Revolution: Economics, Competition, and Policy* 480–81 (5th ed. 2009) (noting fierce rivalry at the early stages of network development as rivals each hope to start the bandwagon process).

10 Rochet, et al., *supra* note 5; *see also* Jean-Charles Rochet & Jean Tirole, "Competition Policy in Two-Sided Markets," *Handbook of Antitrust Economics* 543, 549 (Paolo Buccirossi ed., 2008) (discussing how platforms commonly subsidize one side while charging the other).

11 Rochet & Tirole, *supra* note 10 at 549; *see also* OECD Competition Committee, Policy Roundtable on Two-Sided Markets ¶¶ 5–8 (2009).

12 Rochet, et al., *supra* note 5 at 1013 ("In the two-sided market model, total demand depends on the price structure, not just the price level.").

13 *See, e.g.*, Complaint, *United States v. Visa Inc.*, No. 3:20-cv-07810 (N.D. Cal. Nov. 5, 2020) [hereinafter *Visa* Complaint], ¶¶ 38–45 (alleging that Plaid's transaction-level data capabilities constituted a significant competitive asset); cf. Catherine Tucker, "Digital Data, Platforms and the Usual [Antitrust] Suspects: Network Effects, Switching Costs, Essential Facility," 54 REV. INDUS. ORG. 683, 690–93 (2019) (arguing that data is often non-rivalrous, widely available, and subject to diminishing returns, limiting its significance as a barrier to entry); Anja Lambrecht & Catherine Tucker, "Can Big Data Protect a Firm from Competition?," CPI Antitrust Chronicle, Jan. 2017, 1–5 (concluding that big data is generally neither rare nor inimitable).

14 *See Visa* Complaint, *supra* note 13, ¶¶ 38–45 (describing Plaid's transaction-level data capabilities and their significance for product development and underwriting).

15 *See* 2023 Merger Guidelines §§ 2.5.B, 2.6 (2023); *Visa* Complaint, *supra* note 13, ¶¶ 38–45; Tucker, *supra* note 13 at 690–93 (arguing that data advantages may be context-specific rather than universally decisive).

16 Economides, *supra* note 9 at 486 ("Strong network effects imply that competition for the market takes precedence over competition in the market").

17 *See* Rochet & Tirole, *supra* note 10 at 549–51 (discussing how platform competition and multi-homing affect the significance of network effects); Catherine Tucker, "Network Effects and Market Power: What Have We Learned in the Last Decade?," Antitrust, Spring 2018, 72–79 (arguing that network effects are localized and do not necessarily imply entrenchment).

18 Kwoka, et al., *supra* note 9 ("[E]ntry by new networks (if they are not compatible with incumbent networks) is more difficult than in otherwise similar nonnetwork industries, because the entrant suffers from the reverse network effects of small size and customer base.").

19 *See* Tucker, *supra* note 17 at 72–79 (discussing how multi-homing and platform instability reduce the competitive significance of network effects); *see also* Dennis W. Carlton & Jeffrey M. Perloff, *Modern Industrial Organization* 417–18 (4th ed. 2015) (noting that "competition can occur among a few networks and be a stable equilibrium outcome as long as the scale economies are not too great").

20 *See* Carlton, et al., *supra* note 19 at 398–402 (discussing vertical integration efficiencies, including the elimination of double marginalization); 2023 Merger Guidelines § 3.3 (recognizing that vertical mergers may generate procompetitive efficiencies); *see also* Chad Syverson, "What Determines Productivity?," 49 J. ECON. LITERATURE 326, 364–66 (2011) (discussing how integration and scale can improve coordination and reduce transaction costs).

21 *Visa* Complaint, *supra* note 13, ¶¶ 8–11; Press Release, U.S. Dep't of Justice, Visa and Plaid Abandon Merger After Antitrust Division's Suit to Block (Jan. 12, 2021).

22 Press Release, U.S. Dep't of Justice, Visa and Plaid Abandon Merger After Antitrust Division's Suit to Block (Jan. 12, 2021).

23 Press Release, Mastercard, Mastercard Completes Acquisition of Finicity (Nov. 19, 2020).

24 *See* Press Release, Mastercard, Mastercard Completes Acquisition of Finicity (Nov. 19, 2020); cf. *Visa* Complaint, *supra* note 13 (alleging specific nascent competitive threats not present in the Mastercard/Finicity transaction).

25 The documentary record may also have affected enforcement in these cases. In the Visa/Plaid matter the DOJ pointed to internal documents reflecting concern about Plaid's potential competition.

26 2023 Merger Guidelines § 2.4.

27 *Id.* at § 2.6.

28 2023 Merger Guidelines § 2.9.

29 *FTC v. Meta Platforms Inc.*, 654 F. Supp. 3d 926–28 (adopting the "reasonable probability" standard and defining it as a likelihood "noticeably greater than 50%").

30 *Id.* at 928–31 (analyzing the objective evidence of Meta's capabilities, incentives, and available paths to de novo entry, including financial resources, VR engineering expertise, fitness content creation capabilities, and identified means of entry).

31 *FTC v. Microsoft Corp.*, 681 F. Supp. 3d 1089–1101.

32 *FTC v. IQVIA Holdings Inc.*, 710 F. Supp. 3d 329, 376–90 (S.D.N.Y. 2023).

33 *See, e.g.*, McKinsey & Company, Global Payments Report (2023) (noting declining M&A deal volume in payments from 2021 highs amid rising interest rates and valuation adjustments); S&P Global Market Intelligence, Fintech M&A and Fundraising Activity Annual Review (2023).

34 *See* Am. Econ. Liberties Project, "Capital One/Discover: A Competition Policy and Regulatory Deep Dive" (2024) (estimating post-merger HHI in subprime credit cards in the high 1,800s with combined share around 30 percent); cf. Bank Pol'y Inst., "Is the Subprime Segment of the Credit Card Market Concentrated?" (2024) (contesting the market definition and arguing that the relevant market is broader).

35 The DOJ took no enforcement action against the Capital One/Discover transaction.

36 Fed. Reserve Bd., Order Approving the Merger of Bank Holding Companies (Apr. 18, 2025); Off. of the Comptroller of the Currency, Conditional Approval No. 1310 (Apr. 18, 2025). The Capital One/Discover transaction was reviewed under the 2024 Banking Addendum to the U.S. Dep't of Justice & Fed. Trade Comm'n, Merger Guidelines, which superseded the DOJ's longstanding 1995 Bank Merger Competitive Review Guidelines. *See* U.S. Dep't of Justice & Fed. Trade Comm'n, 2024 Banking Addendum to the 2023 Merger Guidelines (2024). The 2024 Addendum aligned the framework for bank merger review with the general Merger Guidelines, replacing the banking-specific HHI thresholds and market definition approaches that had governed DOJ competitive analysis of bank mergers for nearly three decades.

37 Richard Fairbank, Capital One Q4 2023 Earnings Call (Feb. 20, 2024) (describing ownership of a network as "the holy grail" for an issuer).

38 "Capital One Ignites Competition With Shift to Discover Network," PYMNTS, March 4, 2026.

39 *See, e.g.*, Elizabeth Warren, "Letter to Fed and OCC," December 18, 2024; "The Anticompetitive Effects of the Proposed Capital One-Discover Merger," Americans for Financial Reform Education Fund, April 2024.

40 *See, e.g.*, Richard Fairbank, Capital One Q4 2023 Earnings Call (Feb. 20, 2024) (arguing that network ownership would allow Capital One to compete on interchange pricing and merchant acceptance); "Capital One Ignites Competition With Shift to Discover Network," PYMNTS, March 4, 2026 (reporting early evidence of Capital One routing volume onto Discover rails).

41 *See, e.g.*, Press Release, Stripe, Stripe to Acquire Paystack (Oct. 15, 2020); Press Release, PayPal, PayPal Completes Acquisition of Honey Science Corporation (Jan. 6, 2020); Press Release, Fiserv, Fiserv Completes Acquisition of First Data (July 29, 2019); Press Release, Stripe, Stripe Acquires TaxJar (Apr. 1, 2021).

42 *See* 2023 Merger Guidelines §§ 2.5, 2.6 (discussing foreclosure and entrenchment theories); see also id. § 2.4 (addressing mergers that eliminate potential entrants in concentrated markets).

43 Hochberg, et al., *supra* note 3 (explaining that acquisitions serve as a key exit mechanism for startups and their investors).

44 *Id.* (noting that IPOs now account for only approximately 10 percent of successful venture-backed exits) (citing NVCA Yearbook (2020)).

45 *Id.* (explaining that "[w]hen the set of feasible exit channels narrows, investors require a higher expected return to compensate for illiquidity and delayed payoff realization" and that "[t]he increased cost of capital reduces the net present value of marginal projects, decreasing the amount of invested capital").

46 *Id.* (explaining that "stricter merger enforcement can significantly impact the ability of VC investors to generate returns and, as a result, their willingness to invest" and that "[r]estrictive merger enforcement that diminishes acquisition probabilities, absent reliable substitutes, increases investor lock-in and lowers the valuations of startups"); Devin Reilly, D. Daniel Sokol & David Toniatti, "The Importance of Exit via Acquisition to Venture Capital, Entrepreneurship, and Innovation," 32 MINN. J. INT'L L. 159 (2023) (discussing the role of acquisition exits in supporting venture capital investment and entrepreneurship).

47 *See* Colleen Cunningham, Florian Ederer & Song Ma, "Killer Acquisitions," 129 J. POL. ECON. 649 (2021) (documenting evidence that some acquisitions are motivated by a desire to discontinue the target's innovation projects and preempt future competition).

48 *See* McKinsey & Company, Global Payments Report (2023) (documenting the rapid transformation of the payments ecosystem over the past decade, including the emergence of new business models and product categories such as digital wallets, buy-now-pay-later, embedded finance, and real-time payments); *see also* Economides, *supra* note 9 at 494 (noting that in industries with fast technological change, "it is difficult to predict future winning technologies, and therefore it is hard to fashion an antitrust remedy with an accurate prediction of its effect on industry structure and competition a few years down the road"); 2023 Merger Guidelines § 2.6 (acknowledging that "[i]mportant dynamic competitive effects can arise through the entry, investment, innovation, and terms offered by the merged firm and other industry participants, even when the Agencies cannot predict specific reactions and responses with precision").

49 *See* Hochberg, et al., *supra* note 3 (explaining that "an acquisition can accelerate diffusion of the startup's innovation through incumbent distribution channels" and increase consumer welfare); *see also* Carlton, et al., *supra* note 7 at 398–402 (discussing vertical integration efficiencies).

50 *See* Cunningham, et al., *supra* note 47 at 650–51 (2021); *see also* 2023 Merger Guidelines § 2.4 (noting that mergers can substantially lessen competition by eliminating a potential entrant).

51 Kwoka, et al., *supra* note 9 at 480.

52 Hochberg, et al., *supra* note 3 (noting that "early-stage companies acquired by incumbents typically command negligible market share at the time of sale" and that "the relevant competitive impact is dynamic").

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