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Title: Evaluating Anti-Steering Provisions in Two-Sided Markets: Lessons from American Express

Introduction of Topic: As claimed by the Department of Justice (DOJ) and multiple states, this paper will discuss whether American Express's "anti-steering" policies were an unlawful restriction of commerce under Section 1 of the Sherman Act. In the end, American Express (Amex) won its case in the Supreme Court by showing evidence that there was no harm on either side of the platform, merchants and consumers. This case brought up important issues about the proper application of antitrust law to platform-based enterprises.

I. Background

- Anti-steering rules: contractual provisions designed by Amex to prevent merchants from steering customers toward low-fee credit cards.
    - Require merchants that accept Amex cards to agree not to discourage customers from using their Amex cards.
- 2010: DOJ and 11 states filed suit against Amex, Visa, and Mastercard over anti-steering rules. (DOJ case brief)
    - Visa and Mastercard settled; Amex continued litigation.
- 2015: District Court found Amex liable for antitrust violations. (DOJ case brief)
- 2016: Second Circuit reversed the decision, siding with Amex. (DOJ case brief)
- 2018: U.S. Supreme Court maintained Amex's victory (5-4 decision). (Supreme Court opinion)

    - The first antitrust case involving a two-sided platform to be decided by the Supreme Court (kcFED)
- Core issue: whether anti-steering provisions harmed competition in a two-sided market.

II. Aspects of Amex's Defense

1. Two-sided market theory
    a. Core Argument: Amex operates a two-sided platform that simultaneously serves cardholders and merchants; changes to one side inevitably affect the other.
    b. Indirect network effect: the value of the two-sided platform to one set of participants is determined by the participants in the other group. (Supreme Court opinion)
        i. E.g., more cardholders make the platform more valuable to merchants, and more merchant acceptance enhances value for cardholders.
2. Burden of proof for harm in a two-sided market (Supreme Court opinion)
    a. The Supreme Court clarified that plaintiffs must provide net anticompetitive/welfare effects across the platform.
    b. Harm must be evaluated across both groups, not merchants alone. However, DOJ mainly focused on harm to merchants and ignored cardholders' benefits.
3. Justification of anti-steering rules
    a. Anti-steering rules helped sustain the Amex business model by offering substantial rewards and benefits to cardholders from high fees obtaining from merchants.
    b. Protect cardholders' experience by preventing merchant behavior that might create diminish value (e.g., suggesting consumers use a lower-tier card).

    c. "With credit cards, networks often charge cardholders a lower fee than merchants because cardholders are more price sensitive" (Supreme Court opinion, p.4). This differential pricing is an economically rational response to differences in demand elasticity.

4. No proven harm to consumers
    a. There is no evidence of reduced output, diminished quality, or higher total costs that consumers bear from the DOJ's report.
    b. Amex's rewards program, service, and consumer satisfaction remained strong and even increased throughout the review period.
        i. "We experienced record-level customer satisfaction in 2015, up 40 percent compared to 2010" (Amex Corporate Social Responsibility Report, p.31).

III. Aspects of DOJ and Antitrust Concerns

1. Traditional antitrust standard
    a. One-sided market approach: focused only on how the restraints affected merchants, not cardholders.
    b. DOJ claimed that consumer benefits on the cardholder side were not enough to justify the harm on the merchant side
2. Restraint price competition
    a. Anti-steering rules prohibited merchants from incentivizing the use of lower-cost cards.
        i. E.g. offer discounts to customers or show the relative costs of different cards. (DOJ case brief)

b. DOJ argued that those rules suppressed price competition and blocked efficient consumer choices.
    i. Burden to Entry: Discover had tried to enter the market with a lower-cost fee to merchants, but anti-steering rules blocked the merchants' ability to direct the market shares to use Discover. In the end, Discover had to abandon the low-cost plan to be able to compete with Visa and MasterCard.
    ii. Stifling price competition: anti-steering rules enabled these four major networks (Amex, Visa, MasterCard, and Discover) to increase fees more easily and prevent newcomers, which might lead to a violation of Section 1 of the Sherman Act. (DOJ case brief)

3. Merchant harm and market power
    a. Amex charged merchants higher fees than Visa or Mastercard.
        i. Indicating market power:
        ii. Merchants wouldn't be able to bear higher costs without steering customers, leading to downstream price distortion.
    b. Anti-steering rules restricted competitive behavior.
4. Critique of the Supreme Court's reasoning: implications for future litigation standards
    a. Katz critiqued the majority opinion for misapplying economic theory and ignoring factual evidence. Also, he expressed concerns that the decision could hinder effective antitrust enforcement by setting a high burden of proof for plaintiffs in cases involving two-sided markets. (CPI-M.Katz)
    b. Over-simplifying vertical restraints: (CPI-Klein)

IV. Conclusion

- The Amex case illustrates how the structure of a market (two-sided vs. one-sided) can dramatically shift the outcome of antitrust analysis. While the DOJ showed clear harm to merchants, the Supreme Court's emphasis on consumer benefit and platform theory led to a finding of legality.
- The case marks a turning point in antitrust law, particularly for platform businesses.
- Future enforcement will depend on how well agencies can prove comprehensive harm in networked markets.
- This case emphasizes that economic framing, especially market definition, can determine legal outcomes in antitrust analysis. It then brings out the discussion of the challenges with modern digital platforms, where harm and benefits are distributed asymmetrically across market participants.

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