Xinhui Katrina Kuo

Professor Jiawei Chen

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

I. Introduction

We have greatly benefited from the astonishing development of technology, but that growth has also raised tough questions for the law. The rise of big tech companies like Amazon, Apple, and Google has forced people to rethink how antitrust laws apply to today's markets. These companies, just like American Express (Amex), act as go-betweens for two different but connected groups of users, which economists refer to as "two-sided markets." When the Supreme Court ruled on *Ohio v. American Express* in 2018, it wasn't just about credit cards, it was the first time the Court tackled this kind of platform model head-on, turning the case into a key moment for both antitrust law and economic theory.

The Department of Justice (DOJ) and multiple states argued that American Express's "anti-steering" policies were an unlawful restriction of commerce under Section 1 of the Sherman Act. Amex, however, defended the provisions as essential to its business model and argued they didn't harm overall competition. In the end, 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 paper will examine the legal and economic arguments presented in the case, explore the implications of the Supreme Court's decision, and evaluate whether the ruling was consistent with sound competition policy in the context of multi-sided market platforms.

II. American Express in Context

American Express (Amex) is a multinational financial services corporation best known for its credit cards and other financial products. The company was founded in 1850 and is headquartered in New York City as a freight forwarding company. The introduction "it is a global premium payments and lifestyle brand powered by technology" from its website shows that it has solidified its position as a leading credit card issuer, with a unique business model that emphasizes high-spending consumers and premium services ("American Express History, Values, & Vision | About Amex").

In the decades before the American Express case, the credit card industry itself had undergone a rapid evolution. While Visa and Mastercard expanded by working with banks to issue cards, Amex took a different approach. Amex operates as a closed-loop system in contrast to Visa and Mastercard, which function as open networks. A closed-loop system means Amex issues its own cards to consumers and directly works with merchants to accept those cards; an open network means Visa and Mastercard let banks issue the cards, such as Chase Visa or Citi Mastercard. It is important to understand the difference between Amex and other major credit card companies because the Supreme Court's analysis heavily relied on this distinction. The Court assesses damages against the entire platform, not just one party (the merchant). This closed-loop model enables Amex to extract higher merchant fees, known as merchant discount rates, in exchange for providing access to wealthier customers who tend to spend more. Therefore, to protect this model, Amex implemented anti-steering provisions that prohibit merchants from nudging customers toward lower-cost alternatives, such as Visa or Mastercard. In other words, they require merchants that accept Amex cards to agree not to discourage customers from using their Amex cards. These provisions are central to the case at hand. The central question of this case study is whether Amex's anti-steering rules violated Section 1 of the Sherman Act by restraining trade.

III. Defining the Market and Network Effects

A critical aspect of any antitrust case is defining the relevant market. This is especially true in this case, where the outcome depends on whether the market should be analyzed as one-sided or two-sided. The market definition determines how competitive effects are measured and which harms are considered relevant under antitrust law.

The DOJ and other states argued that the market should be defined narrowly as the market for "merchant services," i.e., the services provided to merchants for processing credit card transactions. From this perspective, Amex's anti-steering rules raised merchant costs and reduced competition among card networks, thus violating Section 1 of the Sherman Act. However, because Amex acts as both the card issuer and the acquirer, it gives Amex greater control over pricing, data, and policy enforcement on both sides of its network. This integration defines Amex as a two-sided platform that facilitates interactions between cardholders and merchants. A two-sided platform connects two distinct groups of users who derive value from each other's presence on the platform (Kagan). As the Supreme Court emphasized, harm to one party must be assessed against potential benefits to another party to constitute antitrust harm (*Ohio v. American Express Co.* | *585 U.S. ___ (2018)* 2). However, this did not apply in this case. For instance, increasing merchant fees could subsidize the benefits of cardholder rewards.

To understand the concept of this type of platform better, the two-sided market theory developed by Rochet and Tirole in "Platform Competition in Two-Sided Markets" explains how platforms must balance pricing and access across two interdependent user groups. When talking about a two-sided market, indirect network effects come into the discussion. The two sides are the subsidizer and the profit-maker. Here, the cardholder is the former and the merchant is the latter. Indirect network effects mean that an increase in the number of one side adds value to the other side ("What are network effects?"). For example, more merchants accepting Amex cards make the platform more attractive to cardholders, while more cardholders make it more appealing for merchants to accept Amex. The presence of indirect network effects is often used to justify certain pricing structures, which Amex cited in defense of its business model.

Rochet and Tirole also emphasize that in such markets, the total price charged by the platform is less important than the price structure, i.e., how the price is divided between the two parties. Here, Amex charges merchants higher fees while subsidizing cardholders with rewards. This pricing balance is not arbitrary; it's shaped by how much each side contributes to the platform and how sensitive they are to price. But Rochet and Tirole also show that when a platform has market power, it can skew this balance, burdening one side in order to benefit the other. This insight was central to the DOJ's argument that Amex's anti-steering rules effectively blocked merchants from encouraging price-based competition, which may have kept merchant fees artificially high.

Yet, drawing on Rochet and Tirole's theory, the Supreme Court emphasized that in two-sided markets, antitrust harm must be assessed by looking at the net effects across both sides of the platform. On this basis, the Court accepted a broader market definition and ruled that the plaintiffs needed to prove harm to both merchants and cardholders (*Ohio v. American Express Co. | 585 U.S. ___ (2018)* 15-16). This market definition effectively raised the bar for antitrust enforcement in platform markets.

IV. Anti-Steering Provisions and Competitive Effects

The anti-steering provisions at the center of the case were embedded in Amex's merchant contracts. While not prohibiting merchants from accepting other cards, they effectively prevented price-based competition at the point of sale. For example, merchants cannot offer discounts to customers or show the relative costs of different cards (Francisco et al. 2). They helped sustain the Amex business model by offering substantial rewards to cardholders from the high fees charged by merchants. From the merchant's perspective, this meant they were locked into accepting Amex's high fees without being able to guide customers toward alternatives that could save them money. As mentioned in the previous paragraph, the indirect network effect is shown here. Amex's strategy is to attract high-income cardholders by offering exclusive benefits, concierge services, travel rewards, and cashback. Cardholders, especially those with higher incomes who value rewards and perks, are motivated to prefer Amex. In turn, merchants are under pressure to accept Amex despite the higher costs in order to gain access to this lucrative customer base.

From the DOJ's perspective, this system created serious problems for competition. The government argued that these rules shielded Amex from price competition, allowing it to maintain higher merchant fees without fear of losing business to lower-cost rivals. Therefore, they suppress price competition and block efficient consumer choices. In fact, the District Court found that Amex had imposed at least 20 separate fee increases between 2005 and 2010, all under the name of "value recapture," without seeing merchants drop out in significant numbers (Francisco et al.11). The department also presented that the District Court argued that merchants would pass these higher fees onto consumers through increased retail prices. In the DOJ's argument section, the DOJ answered "yes" to the question presented in this Court, "whether the district court's undisturbed factual findings established a prima facie case that the anti-steering rules unreasonably restrain trade" (Francisco et al. 18).

Another major concern raised by the DOJ was how Amex's anti-steering rules hurt market entry. For example, Discover had tried to enter the market by offering merchants a lower-cost alternative. But because the anti-steering rules prevented merchants from encouraging customers to use Discover, they couldn't redirect enough transaction volume to make Discover's low-fee model sustainable. As a result, Discover abandoned this pricing strategy and raised its fees to match Amex, Visa, and MasterCard. In this way, the rules not only protected Amex but also consolidated the dominance of the four major networks and made the market less competitive overall.

Amex, however, countered that these fees were necessary to fund cardholder rewards and services, which in turn boosted consumer demand and transaction volumes. The company argued that anti-steering provisions preserved the integrity of its business model and ensured a balanced value exchange across both sides of the platform.

Whether you see Amex's rules as a clever way to keep the system running smoothly or as a tactic to avoid competing on price depends a lot on how you weigh these cross-side effects. But for the DOJ, the bottom line was clear: the anti-steering provisions made it harder for lower-cost rivals to compete, raised costs across the board, and limited consumer choice—all of which are core concerns in antitrust enforcement.

V. District Court vs. Supreme Court Rulings

In 2010, the DOJ and 11 states filed a lawsuit against Amex, Visa, and Mastercard over anti-steering rules (Francisco et al.). Visa and Mastercard settled; however, Amex continued litigation. The District Court found Amex liable for antitrust violations under Section 1 of the Sherman Act. Importantly, the District Court did not require proof of harm to cardholders.

However, the Second Circuit reversed the decision, siding with Amex. In the end, the U.S. Supreme Court maintained Amex's victory with a 5-4 decision. The majority opinion, authored by Justice Thomas, emphasized that the relevant market must include both sides of the platform. Because credit card companies "sell transactions," not just services to merchants, the Court argued that plaintiffs needed to demonstrate net harm across both sides of the platform. Also, they failed to provide reliable measures of Amex's transaction pricing or profit margins, nor did they demonstrate that overall credit-card transaction volume declined as a result of the anti-steering provisions (*Ohio v. American Express Co. | 585 U.S. ___ (2018)* 3). Furthermore, the opinion concluded that Amex's higher merchant fees were not evidence of market power, but rather reflected the platform's strategy of attracting wealthier cardholders who tend to spend more, benefits that merchants value. In the end, the Court saw Amex's pricing strategy as a fair way of dividing value between merchants and cardholders, rather than proof of anticompetitive behavior.

In contrast, Justice Breyer's dissent warned that the majority's framework gave excessive deference to platform business models and created a dangerous loophole in antitrust enforcement. It would provide enforcers with an impossible burden to prove net harm to both parties, even in cases where conduct clearly stifled competition for merchants here. Breyer stressed that higher prices and suppressed competition on one side should not be ignored just because there are benefits on the other. He also argued that the Sherman Act does not require plaintiffs to prove harm to every market participant, only that a restraint "tends to obstruct the free play of competition." He emphasized that the law protects competition, not necessarily both sides of a platform in perfect balance (*Ohio v. American Express Co., dissent, slip op. | 585 U.S. ___ (2018)* 7-9). In summary, Justice Breyer's dissent reflects a more traditional antitrust approach: if a business practice restricts competition on its face, particularly by raising prices and blocking market entry, then it should not be exempt simply because the company operates a two-sided platform. His critique underscores the tension between modern economic models and the legal goals of antitrust law, which prioritize consumer welfare, market access, and competitive freedom.

VI. Comparative Cases and Implications

The Amex decision has had a noticeable impact on how courts and regulators approach antitrust cases involving platform businesses, especially in the digital space. There are two significant examples of the impact this case had on sentencing. First is the Apple App Store litigation. Developers, particularly Epic Games, challenged Apple's 30% commission and its rules prohibiting apps from directing users to alternative payment systems. Then, Apple defended its policies by claiming they were necessary for security, consistency, and maintaining a high-quality user experience. These reasons are very similar to Amex's defense and emphasize that platform rules are essential to keeping the system balanced for all participants. In the end, the Ninth Circuit acknowledged that the App Store functions as a two-sided platform and concluded that Apple didn't violate federal antitrust laws under current standards (*Epic Games, Inc. v. Apple Inc.*).

The second example is the opposite of the first one. The regulators in Europe have taken a different approach. In the Google Shopping case, the European Commission found that Google had used its dominant position to give an unfair advantage to its own comparison shopping service in search results. Unlike U.S. courts, the Commission didn't accept Google's platform justifications and focused on how the behavior harmed rival services and reduced consumer choice instead. At last, Google was fined €2.42 billion, and the ruling made it clear that cross-platform efficiencies or theoretical consumer benefits were not enough to excuse self-preferencing ("Antitrust: Commission fines Google €2.42 billion for abusing dominance as a search engine by giving an illegal advantage to own comparison shopping service").

These two cases highlight a growing divergence in how different jurisdictions approach platform behavior. U.S. courts tend to give more respect to platforms' defenses, especially in terms of quality, innovation, or safety. On the other hand, European regulators are more willing to intervene, even when platforms claim user-side benefits. The Amex ruling, by requiring proof of harm on both sides of a platform, has made it much harder for U.S. agencies to challenge exclusionary behavior using traditional antitrust arguments, especially in industries where platform logic and cross-group benefits are built into the business model.

Since Amex, lower courts have also struggled to apply its logic consistently (Fujii II.A.3). Some tech companies have argued that their platforms, such as Google's ad exchanges, deserve Amex-style protection by citing indirect network effects, even when those effects are largely theoretical. Fujii called this trend a sign of "analytical confusion" where platforms stretch Amex's reasoning to avoid scrutiny even though users may not benefit meaningfully from the alleged other side of the market. This pattern has opened the door for companies to "platformize" nearly any business model, using the language of two-sided markets to insulate themselves from antitrust enforcement.

VII. Policy Implications and Critique

As mentioned in the previous section, the Supreme Court's decision in Amex caused a significant change in the ruling. It also raised serious concerns about the future of antitrust enforcement, especially when it comes to platform markets. One of the main criticisms is that by requiring plaintiffs to show harm to both sides of a two-sided platform, the Court has created a standard that is almost impossible to meet. As Michael Katz argues in the 2019 Competition Policy International (CPI) antitrust chronicle, this burden risks weakening the entire foundation of antitrust law by making it harder to challenge harmful practices that might only affect one group, like merchants. He critiqued the Supreme Court's majority opinion for misapplying economic theory and ignoring factual evidence. Not only that, 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. In many cases, platform businesses operate in ways where harm and benefit are not evenly distributed, and insisting on proof of net harm across both sides may let anticompetitive behavior go unchecked.

Katz also points out that the Amex ruling could invite strategic behavior from dominant platforms. If a firm can show theoretical benefits to one side of its market, often with little real evidence, it may avoid scrutiny altogether, even if its practices clearly suppress competition on the other side. This makes enforcement not only more difficult but potentially less meaningful in practice. His main opinion was in agreement with Justice Breyer, with both of them dissenting (Katz 6).

Another critique Benjamin Klein also published his opinion under his CPI antitrust chronicle. He adds another important layer to the debate. His main point is that "antitrust analysis of vertical contract restraints used in two-sided platforms should be conducted in the same way that vertical restraints are now analyzed under established U.S. antitrust law" (Klein 2). While acknowledging that vertical restraints in platform settings deserve careful analysis, he warns that the Court's treatment of vertical contracts in Amex was overly simplistic. In particular, he argues that the decision did not fully explore whether Amex's anti-steering rules had legitimate pro-competitive justifications or if they simply locked in market power. According to Klein, the courts should be more willing to ask whether these kinds of restrictions actually improve platform efficiency or if they just make it harder for rivals to compete.

Combining these two criticisms, they suggest that courts and policymakers need to be more thoughtful about how platform economics interacts with antitrust principles. Instead of automatically accepting any claimed benefit on one side of a platform as a valid defense, future cases should take a closer look at how these platforms actually use their power. The key question should be whether a restriction is truly making the market more competitive, or just helping a dominant firm hold onto its position. The Amex decision makes it clear that applying old antitrust rules to today's platforms isn't always straightforward. As these kinds of markets continue to grow, finding the right balance will only become more important.

VIII. Conclusion

The Amex case illustrates just how much the way we define a market can shape the outcome of an antitrust case. While the DOJ showed clear harm to merchants, the Supreme Court ultimately focused on the bigger picture of how the platform worked for both merchants and cardholders. Because Amex operates as a two-sided platform, the Court said it wasn't enough to prove harm to one side; instead, the DOJ had to show that the entire platform, taken as a whole, was worse off. That higher standard changed everything.

This case ended up being a turning point for how antitrust law applies to platform-based businesses. It introduced a much tougher burden for enforcement agencies, especially in markets where value is created through complex network effects. It really highlights how important economic framing can be. Something as technical as market definition can end up determining whether a practice is seen as illegal or just part of a competitive strategy.

It also raises bigger questions for the future. As more companies, from credit card firms to tech giants, operate multi-sided platforms, it becomes harder to pin down exactly where harm is happening. Sometimes one group benefits while another is hurt, and that doesn't fit neatly into older legal frameworks. Going forward, regulators will need to think more carefully about how to measure harm in these kinds of markets and whether the current tools of antitrust law are enough to keep up.

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