

Supreme Court Issues Landmark Decision on Two-Sided Markets

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On Monday, June 25, the Supreme Court by a 5-4 decision in [Ohio v. Am. Express Co.](#) held that American Express's ("AmEx") anti-steering provisions do not violate Section 1 of the Sherman Act. This case has important implications for determining antitrust liability in "two-sided markets" like credit card networks and digital platforms that have at least two types of customers, such as merchants or advertisers and consumers.

The most significant element of the Court's holding is that, for purposes of determining competitive effects of conduct in a two-sided market, the relevant market consists of both sides of the market when the market exhibits significant indirect network effects (i.e., significant competitive effects or interdependency among multiple customer types). Accordingly, to satisfy their initial burden under the rule of reason, plaintiffs must demonstrate that the challenged restraint has a substantial anticompetitive effect across the *entire* platform. "Evidence of a price increase on one side of a two-sided transaction platform cannot by itself demonstrate an anticompetitive exercise of market power." *Id.* at 15. The Court's decision adds new factors to the already fact-intensive, rule-of-reason analysis as applied to critical sectors of the economy.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Arthur J. Burke

+1 212 450 4352
+1 650 752 2005
arthur.burke@davispolk.com

Arthur F. Golden

+1 212 450 4388
arthur.golden@davispolk.com

Ronan P. Harty

+1 212 450 4870
ronan.harty@davispolk.com

Howard Shelanski

+1 202 962 7060
howard.shelanski@davispolk.com

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