

American Express's Antisteering Provisions Survive Antitrust Scrutiny

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Like other credit card companies, American Express (AMEX) permits cardholders to purchase things on credit. However, AMEX encourages cardholder spending by providing more benefits to its members, and that results in higher fees charged to merchants. Merchants, in response, sometimes encouraged customers to use other cards, called steering. AMEX in turn put antisteering provisions into its merchant contracts. The government challenged those provisions as being in violation of the antitrust laws in the [Sherman Act](#). The district court agreed with the competitors that the credit card market is two separate markets, one with consumers and the other with merchants, and AMEX's antisteering provision interfered with the latter market. The Second Circuit disagreed, finding there to be just one overall credit card market, and the provisions were permissible. The Court, in a 5-4 opinion by Justice Thomas, affirmed both aspects of the Second Circuit's reasoning. The Court held that the relevant market in this case was the transaction between the consumer and the merchant facilitated by the credit card company, and thus there was no reason to consider the interaction with the merchants separately. The Court further analyzed that the antisteering provision in question did not reduce competition in the credit card market. Justice Breyer, joined by Justices Ginsburg, Sotomayor, and Kagan, dissented, arguing that AMEX's ability to increase its merchant fees numerous times, among other evidence, demonstrated the uncompetitive effects of the provision. A link to the opinion in *Ohio v. American Express Co.* is [here](#).

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