

In *Ohio v. American Express*, the Supreme Court held in a 5-4 decision that American Express's so-called antisteering provision does not violate Section 1 of the Sherman Act. Under this antisteering provision, American Express prohibits its merchants from attempting to steer the merchants' customers to Amex's credit card competitors, whether by imposing special restrictions, conditions, disadvantages, or fees on Amex cards; or by promoting other cards more than Amex. In concluding Amex's antisteering provision does not have anticompetitive effects, the Supreme Court held that lower courts must consider both sides of a two-sided market at Step One of the Rule of Reason analysis. A two-sided market offers different products or services at the same time to two different groups. Buyers on either side of the market depend on the participation of the buyers on the other side. As a corollary, sellers in a two-sided market cannot make sales on one side of the market without a critical mass of sales on the other side of the market. One example is a health insurance company, which must contract with both patients and healthcare providers. The amount that a service provider in a two-sided market charges on one side of the market typically influences what it charges on the other side of the market. The Supreme Court thus held in *American Express* that, when evaluating whether a practice has increased prices and decreased output in a two-sided market, courts must consider both sides of the market: an increase on one side (like higher transaction costs for merchants) may be offset by a decrease on the other side (like higher rebates to consumers). On this basis, it affirmed the Second Circuit.

Justice Thomas wrote the majority opinion, joined by the Chief Justice and Justices Kennedy, Alito, and Gorsuch. Justice Breyer wrote a dissenting opinion, joined by Justices Ginsburg, Kagan, and Sotomayor. In the dissenters' view, the pro-competitive benefits from a restraint of trade on one side of a two-sided market experienced in the other side of the market should be taken into account at later steps in the Rule of Reason analysis, and not at the threshold inquiry of whether the challenged conduct has anticompetitive effects at all.