The Federal Trade Commission's Hearings on Competition and Consumer Protection in the 21st Century, Platforms, Comment of the Global Antitrust Institute, Antonin Scalia Law School, George Mason University

October 15, 2018

This Comment is submitted for consideration in relation to the Federal Trade Commission's ("FTC") Hearings on Competition and Consumer Protection in the 21st Century. We submit this Comment based upon our extensive experience and expertise in antitrust law and economics.[1] As an organization committed to promoting sound economic analysis as the foundation of antitrust enforcement and competition policy, the Global Antitrust Institute commends the FTC for holding these hearings and for inviting discussion concerning a range of important topics.

In this Comment, we discuss the economic analysis of platforms including both academic consensus and disputes, as relevant to the Supreme Court's decision in *Ohio et*

[1] The Global Antitrust Institute (GAI), a division of the Antonin Scalia Law School at George Mason University (Scalia Law), is a leading international platform for economic education and research that focuses upon the legal and economic analysis of key antitrust issues confronting competition agencies and courts around the world. University Professor Joshua D. Wright, Ph.D. (economics), is the Executive Director of the GAI and a former U.S. Federal Trade Commissioner. John M. Yun, Ph.D. (economics), is the Director of Economic Education, Associate Professor of Law at Scalia Law, and former Acting Deputy Assistant Director in the Bureau of Economics, Antitrust Division, at the U.S. Federal Trade Commission. Professor of Law Douglas H. Ginsburg is a Senior Judge, United States Court of Appeals for the District of Columbia Circuit, Chairman of the GAI's International Board of Advisors, and a former Assistant Attorney General in charge of the Antitrust Division of the U.S. Department of Justice. Tad Lipsky is the Director of GAI's Competition Advocacy Program, Adjunct Professor at Scalia Law, a former Deputy Assistant Attorney General for Antitrust and a former Acting Director, Bureau of Competition, U.S. Federal Trade Commission. The GAI gratefully acknowledges substantial assistance in the preparation of this Comment provided by Scalia Law student Anora Wang.

al. v. American Express ("*Amex*"),[2] in assessing whether a platform's conduct tends to create or maintain monopoly power; the *Amex* Court's economically sound approach to competitive effects analyses of "transaction platforms;" and finally, the applicability of *Amex*'s integrated approach to non-transaction platforms.

In *Amex*, what is likely to stand as a pivotal antitrust decision, the Court provided guidance on proper rule-of-reason antitrust analysis of multi-sided platforms.[3] The Court adopted an "integrated" approach to defining relevant product markets and assessing competitive effects and required consideration of all sides in a plaintiff's *prima facie* case in a burden-shifting scheme. The *Amex* Court, however, left open the possibility that its ruling is narrowly aimed at "transaction platforms" as a special kind that has distinct features (*i.e.*, fixed proportion of consumption on each side, unidirectional indirect network effects, and the absence of non-platform competitors). We argue that the Court's distinctions do not and should not limit the application of its economically sound "integrated" approach to non-transaction platforms, because the meaningful economic difference is the multi-sidedness that encompasses *all* platforms. At the minimum, even if a plaintiff separately defines the relevant product market for each side of a platform—transaction or otherwise—an integrated *effects* analysis must still be undertaken because it is the only approach that

[2] *Ohio v. Am. Express Co.*, 138 S. Ct. 2274, 201 L. Ed. 2d 678 (2018).
[3] The term "two/multi-sided market" is often used interchangeably with "two/multi-sided platform." We avoid the former term due to the potential confusion with relevant market classifications in antitrust.

satisfies the requirements for finding an anticompetitive harm as understood by antitrust laws.

Consensus and Disputes Over Economic Analysis of Platforms

As an initial matter, there is more than one useful way to examine a platform.[4] For instance, Evans and Schmalensee offer a fairly comprehensive definition when they state that a platform "has (a) two or more groups of customers; (b) who need each other in some way; (c) but who cannot capture the value from their mutual attraction on their own; and (d) rely on the catalyst [i.e., platform] to facilitate value creating interactions between them."[5] In contrast, by focusing on "direct interactions," Andrei Hagiu and Julian Wright offer a narrower definition: platforms "enable direct interactions between" two or more groups where each group is "affiliated with the platform" in some manner (typically through platform-specific investments).[6] Indeed, competing definitions emphasize the features of different platforms (*e.g.*, direct/indirect interaction), and cumulatively inform our current understanding of platforms. More

---

[4] *See*, *e.g.*, Michael Katz & Jonathan Sallet, *Multisided Platforms and Antitrust Enforcement*, 127 YALE L.J. 2142, 2151 (2018) ("Given the lack of definitional consensus regarding multisided platforms, coupled with the prospective applicability of the existing definitions to a vast range of firms, it would be a mistake for antitrust enforcement to dramatically differ based on the threshold, and easily manipulable, question of whether a defendant is classified as a multisided platform."); *Brief of 28 Professors of Antitrust Law as Amici Curiae Supporting Petitioners* at 28, *Ohio v. Am. Express Co.*, 138 S. Ct. 2274 (No. 16–1454), 2017 WL 6492850, at *28 (Dec. 14, 2017) [hereinafter, "BRIEF OF 28 ANTITRUST PROFESSORS"] ("Creating a special rule that permits cross-market balancing of benefits and harms for 'two-sided markets' will also lead to vexing questions about how even to define which markets are 'two-sided.'").

[5] Davis S. Evans & Richard Schmalensee, THE ANTITRUST ANALYSIS OF MULTI-SIDED PLATFORM BUSINESSES 409 (2015) (*citing* Davis S. Evans & Richard Schmalensee, *The Industrial Organization of Markets with Two–Sided Platforms*, 3 COMPETITION POL'Y INT'L 150 (2007)).

[6] Andrei Hagiu & Julian Wright, *Multi-Sided Platforms*, 43 INT'L J. INDUS. ORG. 162, 163 (2015).

important, although described in different terms, economists do have a consensus that platforms involve "cross-group effects" (*i.e.*, "indirect network effects"), which occur when the size and intensity of participation on one side affects welfare on another side. Although cross-group effects can be strong or weak; can go in both directions or in just one direction; can be positive or negative; and are hard to measure, it is those effects that define platforms.

Beyond the consensus that cross-group effects are a defining feature of platforms, antitrust scholars and courts disagree on *how* best to assess a platform's alleged anticompetitive conduct accounting for the cross-group effects.[7] The antitrust community is roughly divided into two schools of thought on questions of how to apply analytical tools of market definition and the analysis of competitive effects to platforms.

The first school argues that platforms can and should be assessed by limiting and separately considering the relevant product market analysis on each side, what we call a "separate markets" approach to market definition.[8] For instance, this approach, as

---

[7] *See*, *e.g.*, Patrick Ward, *Testing for Multisided Platform Effects in Antitrust Market Definition* 84 U. CHI. L. REV. 2059, 2077 (2017) ("Judicial treatment of multisidedness during market definition is nascent, and courts have predictably differed in how to navigate the topic."); Vassilis Hatzopoulos, THE COLLABORATIVE ECONOMY AND EU LAW 108 (2018) ("Two-sided markets have been treated inconsistently by the Commission." (finding a similar lack of agreement for competition matters in EU)).

[8] *See*, *e.g.*, Katz & Sallet, *supra* note 4; *Brief of 28 Professors of Antitrust Law*, *supra* note 4; *Brief for Amici Curiae John M. Connor et al. in Support of Petitioners*, *Ohio v. Am. Express Co.*, 138 S. Ct. 2274 (No. 16–1454), 2017 WL 6492474 (Dec. 14, 2017) [hereinafter, "CONNOR BRIEF"]. For a detailed overview of the two schools of thought, *see* Joshua D. Wright & John M. Yun, *Burdens and Balancing in Multisided Markets: The First Principles Approach of Ohio et al. v. American Express* (forthcoming in REV. INDUS. ORG., 2018).

applied to payment card platforms, will define two distinct product markets, namely, one with respect to cardholders and one with respect to merchants.[9] Moreover, this first school also typically extends the separation analysis further to the assessment of competitive effects, advocating what we call a "separate effects" approach. As applied in a rule-of-reason analysis, the "separate effects" approach will treat *any* effect that makes a user group worse off somewhere on a platform—for example, a price increase to merchants—as sufficient to show antitrust harm for the purpose of establishing a *prima facie* case,[10] and will consider countervailing welfare gains on another side of a platform only as an efficiency "defense" *after* shifting the burden of proof to defendants. Notably, those in this broadly termed "separate" school do consider cross-group effects as relevant, but they disagree with the second school on who bears the burden to assess the cross-group effects and on how and when they are to be shown.

The second school of thought, in contrast, argues that platforms are inherently defined by the interrelationships among the various sides of the platform and therefore courts and agencies must *explicitly* consider cross-group effects and *generally* include all sides when defining markets—*i.e.*, adopting an "integrated markets" approach to market definition.[11] For instance, American Express will be considered as a platform

---

[9] *See* Brief of 28 Law Professors, *supra* note 4, at 17. However, there is a general recognition that cross-group effects must still be considered to some degree, even if separate markets are defined. *See*, *e.g.*, Katz & Sallet, *supra* note 4.

[10] *See* Brief of 28 Law Professors, *supra* note 4, at 14.

[11] *See*, *e.g.*, James D. Ratliff & Daniel L. Rubinfeld, *Is there a market for organic search engine results and can their manipulation give rise to antitrust liability?*, 10 J. COMPETITION LAW & ECON. 517 (2014); Ward, *supra*

operating in a single product market.[12] Following an integrated market definition, finding harm to only one side of a platform is insufficient to meet the plaintiff's *prima facie* burden and a proper competitive effects analysis must jointly consider all sides of the platform—*i.e.*, follow an "integrated effects" approach. Thus, the "integrated effects" approach will not treat competitive effects on another side of a platform merely as a consideration for a potential "efficiencies" defense after a showing of harm, but rather as critical to determining whether there is competitive harm in the first place.

The differences between the two schools of thought, as relevant to competitive effects analysis and the *prima facie* burden, are extremely important. Liability in a rule-of-reason case requires a finding of "harm to competition"—the only kind of harm recognized by antitrust laws (as distinct from injury to competitors or any other class of market participants). One consequence of this fundamental recognition that harm to competition is the central element of any antitrust violation is that harm to a specific group of consumers does not necessarily establish cognizable antitrust harm. The distinction between harm to a group of consumers and "competitive harm" or "anticompetitive effects" cognizable by the antitrust laws is important for understanding the optimality of antitrust rules governing the conduct of platforms.

---

note 7; *Brief for Amici Curiae Prof. David S. Evans and Prof. Richard Schmalensee in Support of Respondents*, *Ohio v. Am. Express Co.*, 138 S. Ct. 2274 (No. 16–1454), 2018 WL 798389 (Jan. 23, 2018) [hereinafter, "EVANS & SCHMALENSEE BRIEF"]; *Brief for Amici Curiae J. Gregory Sidak and Robert D. Willig in Support of Respondents*, *Ohio v. Am. Express Co.*, 138 S. Ct. 2274 (No. 16–1454), 2018 WL 565325 (Jan. 23, 2018) [hereinafter, "SIDAK & WILLIG BRIEF"].

[12] *See* Sidak & Willig Brief, *supra* note 11.

Therefore, in the division between the two schools lies the real question for antitrust courts on how to apply antitrust laws to platforms, including overcoming difficulties in defining markets and assessing competitive effects.

It is against this background—lacking a consensus or clear guidance on proper legal analysis and burden assignment—that the Supreme Court took the *Amex* case to address directly the analytical difficulties presented by platforms. We analyze the *Amex* decision below and argue that its adoption of integrated approaches is economically sound.

Amex Court's Economically Sound Approach to Integrated Analyses

Although the *Amex* case has been closely watched in the antitrust community, a high-level summary of the facts will aid discussion. The specific issue before the Court in *Amex* was whether the "anti-steering" provisions that American Express places in its contracts with merchants violate Section 1 of the Sherman Act. For cardholders and merchants to transact using credit card services, credit card companies charge merchants a fee, part of which is also used to fund various "rewards" to cardholders. Although Visa and Mastercard also offer some high-reward/high cost cards, American Express generally provides cardholders with higher rewards and charges merchants higher fees than its rivals.[13] This higher fee creates an incentive for merchants to "steer"

[13] *Ohio v. Am. Express Co.*, 138 S.Ct. 2274, 2282 ("To compete for the valuable cardholders that Amex attracts, both Visa and MasterCard have introduced premium cards that, like Amex, charge merchants higher fees and offer cardholders better rewards.").

customers to a credit card with a lower fee. To prevent steering, American Express placed "anti-steering" provisions in its contracts with merchants, which were the central issue in the antitrust allegations against American Express.[14]

The Court specifically addressed the issue of (1) defining the relevant product market(s) when there are two or more "sides" to a platform as well as (2) assigning legal burdens under the "three-step" burden paradigm of a rule-of-reason analysis.[15] We offer our assessment of the Court's decision and reasoning on each of these two issues.

First, we find the Court correctly recognized that a platform's exercise of market power cannot be realized on just one side if we presume cross-group effects are significant enough to be relevant. A showing of monopoly power—the power to reduce *market-wide* output and increase the market price[16]—cannot be satisfied by evidence of a price effect on only one side of a given platform. Antitrust law requires that the plaintiff show conduct likely to harm competition—that is, the acquisition or maintenance of monopoly power—in order to carry its burden of production. To that

[14] *Id.* at 2283. Note that both Visa and MasterCard also had and were sued for their "anti-steering" provisions in their contracts with merchants before they settled cases with the Department of Justice in 2011. *See United States v. Am. Express Co.*, 838 F.3d 179, 192 (2d. Cir. 2016).

[15] Within a three-step framework, a court at Step One, determines whether there is harm to competition; this is the *prima facie* burden. If harm to competition is established, then, at Step Two, the burden is shifted to the defendant to submit evidence of procompetitive efficiencies that offset the harm. If such efficiencies are identified, at Step Three the decisionmaker weighs these two countervailing effects. *See Ohio v. Am. Express Co.*, 138 S.Ct. at 2290-91 (*citing FTC v. Indiana Federation of Dentists*, 476 U.S. 447, 459, 106 S.Ct. 2009, 90 L.Ed.2d 445 (1986)).

[16] *See* Benjamin Klein, *Market Power in Aftermarkets*, 17 MANAGERIAL & DECISION ECON. 143, 156 (1996) ("instead of defining the degree of antitrust market power possessed by a firm in terms of the firm's *own* elasticity of demand, it is more useful to define a firm's antitrust market power in terms of whether changes in the firm's prices have any significant effect on *market* quantities and prices.").

end, evidence of an increase in price or other effects that make one group worse off cannot meet that burden. This is particularly relevant for multisided markets because there are two or more distinct group of consumers.

Antitrust law does not proscribe all conduct that harms consumers; it prohibits only conduct that harms consumers when it harms competition—that is, harm caused by the creation or maintenance of monopoly power. For instance, price discrimination harms some groups of consumers but benefits others—yet, it is generally not the type of conduct that results in a restriction of market output and increase in market price.[17] Another example is an efficient merger that drives out a less-efficient rival, where consumers who preferred the differentiated product of the rival would be worse-off—although consumers, as a whole, are better off.[18] Indeed, it is not unusual for a decision in a competitive market to harm some group of consumers but benefit others; indeed, that is a fundamental feature of competition when products are differentiated. Thus, the focus of antitrust laws is to condemn conduct that improperly creates or maintains monopoly power and to distinguish between harm to a group of consumers and "competitive harm" or "anticompetitive effects" cognizable by the antitrust laws.

---

[17] *Id.* at 155 ("[M]arket power is not necessary for a firm to successfully engage in discriminatory pricing. All that is necessary is that the firm face a negatively sloped demand for its products, as all firms selling unique products do. Although such a negatively sloped demand and ability to price discriminate would not exist under the assumptions of perfect competition, it must be distinguished from the negatively sloped demand and ability to price discriminate that is present because a firm possesses a large share of the market.").

[18] *See* Kenneth Heyer, *Welfare standards and merger analysis: Why not the best?*, 8 COMPETITION POL'Y INT'L 146, 155 (2012).

Finally, the Court rightly focused on changes in output—rather than price alone—as a proxy for changes in consumer welfare. In a platform context, price is a significantly noisier signal of consumer welfare than it is in a single-sided market. Prices might appear simultaneously as predatory on one side (the side receiving the "subsidy") and supra-competitive on the other side (the side doing the subsidizing). In contrast, the output levels on both sides are either identical or at least highly correlated.[19] In *Amex*, the Court explicitly recognized that the two user groups on the platform, cardholders and merchants, share the same level of output—namely, transactions. This shared output level inextricably binds the two sides. The same holds for other transaction platforms such as Uber and eBay, where the level of output is the same regardless of the side of the platform analyzed.[20] Consequently, there is little justification for discussing welfare effects (typically measured through price and quantity changes) on one side of a platform while ignoring the effects on the other side—even if separate markets are defined. It also follows, given the importance of

---

[19] The common level of output is less obvious for non-transaction platforms like advertising. Consider an advertising platform such as a search engine. Output can be determined either by the platform itself (*e.g.*, the number of hours on the air), whether users participate or not, or by users directly determining the platform's output level (*e.g.*, the number of search results served). The point remains, however, that the amount of advertising is principally determined by the number of hours on the air or the number of search results served. What ultimately matters in terms of welfare, even for non-transaction platforms, is the level of market output.

[20] *See* Benjamin Klein *et al.*, *Competition in Two-Sided Markets: The Antitrust Economics of Payment Card Interchange Fees*, 73 ANTITRUST L.J. 571, 580 (2006) ("[T]he two sides of a payment card system are not only interdependent, as are the two sides of the newspaper market, but their consumption of payment card transactions must be directly proportional. The two sides of the market can be thought of as providing inputs into the supply by the payment system of this single product.").

analyzing output effects for platforms, that within the three-step rule of reason analysis, a plaintiff fails its *prima facie* burden of establishing anticompetitive harm if it does not assess both sides.[21]

In sum, the *Amex* Court handed down two economically sound and important teachings: (1) any *prima facie* antitrust assessment of competitive harm must consider the impact to consumers on all sides of a platform regardless of market definition; and (2) *output* effects, rather than *price* effects, should be the primary focus of competitive effects analyses involving transaction platforms. Therefore, the *Amex* Court properly adopted the "integrated markets" approach by requiring the definition of the relevant product market to include all sides of a platform, at least for transaction platforms, and also properly required an "integrated effects" approach to account for all sides in assessing competitive effects of the platform's conduct.[22]

---

[21] On this point, various law and economics scholars have stated that "no economic basis exists for establishing a presumption that 'harm' on one side of a two-sided platform is sufficient to demonstrate that market output has been restricted, or that consumer welfare has otherwise been harmed." *Brief for Amici Curiae Antitrust Law & Economics Scholars in Support of Respondents* at 19, *Ohio v. Am. Express Co.*, 138 S. Ct. 2274 (No. 16–1454), 2018 WL 582320, at *19 (Jan. 23, 2018) [hereinafter, "LAW & ECONOMICS SCHOLARS BRIEF"].

[22] *See, e.g.*, *Ohio v. Am. Express Co.*, 138 S.Ct. at 2288 ("On the other side of the market, Amex uses its higher merchant fees to offer its cardholders a more robust rewards program, which is necessary to maintain cardholder loyalty and encourage the level of spending that makes Amex valuable to merchants.").

Applying *Amex* to Both Transaction and Non-Transaction Platforms

The Supreme Court's *Amex* opinion recognized that a platform can have various shapes and sizes as long as it embodies cross-group effects in its operation. Perhaps significantly, the Court implied a distinction between transaction and non-transaction platforms.[23] It thereby raised the questions: What are the meaningful economic differences between transaction and non-transaction platforms? And does the logic the Court used in defining an integrated market for transaction platforms extend to non-transaction platforms? More important, even if non-transaction markets should be assessed as separate, non-integrated, markets, does the Court's reasoning suggest the competitive effects analysis should be materially different for the two types of platforms?

The Court paid special attention to three features that potentially limits ruling to transaction platforms.[24] We think none of these features should limit its economically sound assessment of competitive effects to transaction platforms alone.

---

[23] The Court in *Amex* cited Filistrucchi *et al.* in making a distinction between "transaction" and "non-transaction" platforms. *See* Lapo Filistrucchi *et al.*, *Market Definition in Two-Sided Markets: Theory and Practice*, 10 J. COMPETITION L. & ECON. 293 (2014). As the name implies, transaction platforms, including payment card systems, ride sharing apps, and eBay, involve a direct, commercial transaction between the two sides. In contrast, non-transaction platforms such as newspapers and search engines, which bring together consumers and advertisers, facilitate an engagement, at some level, between the two groups that lacks a direct, commercial exchange. Yet, as Schmalensee & Evans' definition highlights, a non-transaction platform is still a catalyst that brings together two groups that unlocks value for both groups.

[24] *See* Joshua D. Wright & John M. Yun, *Why the Supreme Court's Ohio v. American Express Decision Applies to All Multi-Sided Platforms*, at *10-12 (forthcoming).

The first feature the Court identified in *Amex* is that, "[b]ecause cardholders and merchants jointly consume a single product, payment card transactions, their consumption of payment card transactions must be directly proportional."[25] While payment card platforms are distinct for having a fixed proportion of consumption on the two sides, the importance of this distinction can be overstated. For a non-transaction platform—such as an online search engine having advertisers on one side and content viewers on another—the number of advertising clicks will be highly correlated with the number of search users/queries. Consequently, the larger point is that in order to understand the relative participation level for one side of a platform—even for non-transaction platforms – it is still necessary to assess the participation level of the other side.[26] Profit maximization still depends on a joint assessment of the pricing and volume on multiple sides.[27] Whether the volume on each side is a precise 1-to-1 matching or something highly correlated does not change this fundamental fact.

The second feature that the *Amex* Court highlighted, using the example of a newspaper, is that "indirect network effects operate in only one direction; newspaper readers are largely indifferent to the amount of advertising that a newspaper

---

[25] *Ohio v. Am. Express Co.*, 138 S.Ct. at 2286 (*citing* Klein *et al.*, *supra* note 20, at 583).

[26] Although, it must be recognized that the cross-group effects could *potentially* only go in one direction. We discuss this issue in the following paragraph.

[27] *See* Jean-Charles Rochet & Jean Tirole, *Two-Sided Markets: A Progress Report* (Institut d'Économie Industrielle (IDEI), IDEI Working Papers 275, 2005), *published in* 37 RAND J. ECON. 645 (2006).

contains."[28] However, this distinction does not necessarily hold for other non-transaction platforms, such as Craigslist, which readers use specifically to find advertisers. It is important to note that non-transaction platforms are not uniform in the strength and direction of the cross-group effects. While the Court certainly did not imply that all non-transaction platforms are the same, the sole use of newspapers to illustrate the point could create some confusion.

A third feature the *Amex* Court identified is that "only other two-sided platforms can compete with a two-sided platform for transactions."[29] As a corollary, the Court states, "[n]ontransaction platforms, by contrast, often do compete with companies that do not operate on both sides of their platform."[30] Here, however, it appears that the Court made an erroneous distinction, as transaction platforms do face a broader group of competitors. For instance, Uber as a transaction platform competes to various degrees with non-platforms, including taxis, subways, and buses—as well as other platforms, such as Lyft. The same holds for American Express, at it competes with alternative payment methods including debit cards, checks, and cash, which are not multi-sided platforms. Nonetheless, the Court's broader point is correct that "competition cannot be accurately assessed by looking at only one side of the platform

---

[28] *Ohio v. Am. Express Co.*, 138 S. Ct. at 2286 (*citing* Filistrucchi, *supra* note 23, at 321, 323, and n. 99; Klein *et al.*, *supra* note 20, at 583).
[29] *Id.* at 2287 (*citing* Filistrucchi, *supra* note 23, at 301).
[30] *Id.* at 2287, n. 9 (*citing* Filistrucchi, *supra* note 23, at 301).

in isolation."[31] Furthermore, the Court's explicit point on non-transaction platforms facing a broader group of competitors— that they "compete with companies that do not operate on both sides of their platform"—will have profound implications for future antitrust cases. Given the Court's teaching in *Amex*, for allegations of competitive harm to advertisers involving non-transaction platforms—for instance, the Google search engine—the relevant product market could be credibly broader than just the specific type of media platform and to include other advertising channels such as social media; thus, a search engine-only market should be rejected as too narrow.

Conclusion

The Supreme Court in *Amex* recognized a "two-sided platform" as any firm that provides services to two different groups who depend on the platform to intermediate between them.[32] This broad recognition is consistent with economists' consensus that multisided platforms have "cross-group effects," a defining feature that, broadly, sets them apart from single-sided markets. However, "cross-group effects" can be strong or weak given the variety of forms a platform's operations can take and can be difficult to measure. Likely entrenched in this measurement difficulty, there are disputes over how to best define the relevant product market and analyze competitive effects for antitrust purposes. In broad terms, academia is divided into two schools of thoughts: (1) the

---

[31] *Id.* at 2287.
[32] *Id.* at 2280.

separate market/effect school and (2) the integrated market/effect school. There can be nuanced differences between the two approaches—*e.g.*, analysis of competitive effects can still be integrated even if markets are defined separately. However, the market definition debate, combined with formalistic legal presumptions concerning "out-of-market" effects, too often obfuscates rather than illuminates competitive effects analysis. For courts and enforcers to determine whether a platform's conduct is potentially anticompetitive — that is, causing harms cognizable by the antitrust laws—it is much more economically sound and instructive to adopt an "integrated" approach to analyzing competitive effects. Moreover, given the noisy and often incomplete price signals, the primary emphasis in analyzing allegations of competitive harm involving platforms should be on output levels. Logically following these two important insights, courts should demand that a plaintiff account for the competitive reality on both sides rather than only one side in order to make a *prima facie* case for antitrust harm.

For these reasons, we believe the Supreme Court's approach to market definition and the assessment of competitive effects in *Amex* is economically sound and generally in line with an integrated market/effect approach. Moreover, because the real economic difference lies in the multi-sidedness that encompasses *all* forms of platforms, the *Amex* Court's economically sound integrated approach should also apply to non-transaction platforms in future cases.