

Two Sides to Every Story: Trying and Winning a Two-Sided Market Case

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WHEN THE UNITED STATES Supreme Court handed down the opinion in *Ohio v. American Express Co.* (“*Amex*”),¹ there was a cavalcade of doomsaying, much of it seemingly justified, expressing outrage at the decision’s repudiation of one hundred years of Rule of Reason analysis. The outrage was particularly acute from the plaintiffs’ bar. Winning a traditional Rule of Reason case was hard enough on plaintiffs who had to prevail on the market power and relevant market elements and also show net anticompetitive harm flowing from the challenged restraint. Now, under *Amex*, on top of all of that, plaintiffs had to show that “injury” to one side of a market was not necessary to, or offset by, benefits on an entirely different side of the market. This burden, as Justice Breyer’s dissent asserted, was made out of whole cloth, was not grounded in precedent, and would dramatically impair enforcement of the antitrust laws.² Simply put, it was hard enough to show injury to one market under the *ancien regime*, but now a plaintiff had to show injury either to an overall platform market or both sides of a two-sided market. Moreover, plaintiffs not only had to muster and deal with evidence of benefits netting out harms *within* a market, but now also had to address net harm between what under traditional antitrust principles would be considered *different markets*.

But as Churchill famously noted, “when the perspective of time has lengthened, all stands in a different setting. There is a new proportion. There is another scale of values.”³ *Amex*, rather than foreclosing opportunities for plaintiffs, may have actually broadened them. For example, interactions in one market where goods or services appear to be “free” may now be challenged based on the monetization of those interactions on the other side of a platform marketplace. But how do plaintiffs grapple with the arcane lexicon of *Amex* before

a lay trier of fact? How can they win at trial in a two-sided market case? How can they make the complex simple and compelling? Likewise, how can defendants try—and win—these cases? What role do experts play in persuading the jury? How can experts help demystify “two-sided market” jargon and concepts. What role do percipient witnesses play? What is the correct relative balance between each set of witnesses?

We had the good fortune of trying, for a plaintiff, the first jury trial of a two-sided market monopolization case. We thought we would share our perspectives on how parties can try these cases to win.

Two-Sided Market Doctrine in the Wake of *Amex*

We begin with a brief summary of the decision in *Amex* and subsequent doctrinal developments.

In *Amex*, the Justice Department (DOJ) and several States challenged Amex’s “anti-steering” rules, which prohibited merchants from discouraging shoppers from using Amex credit or charge cards by, for example, offering discounts to shoppers for using a different card.⁴ For evidence of anti-competitive effects, DOJ and the States relied on proof that, because Amex typically charged a higher merchant fee than other card issuers, Amex’s anti-steering policies increased merchant fees.⁵ The Court held that this proof was insufficient to demonstrate anticompetitive effects because Amex is a “two-sided transaction platform,” and plaintiffs did not show that the *net* price of Amex credit-card *transactions* was supracompetitive or that the output of transactions had been reduced.⁶

As the Court explained, “two-sided platforms” are businesses that “offer[] different products or services to two different groups who both depend on the platform to inter-mediate between them.”⁷ Those platforms are distinct from other businesses because “the value of the services” that the platform provides “increases as the number of participants on both sides of the platform increases.”⁸ The Amex credit card platform, for example, becomes more valuable to cardholders when more merchants accept the card and, likewise, becomes more valuable to merchants when more cardholders use the card to pay them. Because of these so-called “indirect network effects,” two-sided platforms “must be sensitive to the prices that they charge each side” of the platform; a

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loss of participation on either side “risk[s] a feedback loop of declining demand” across the platform.⁹ Given the interdependence between prices on each side, “[p]rice increases on one side of the platform . . . do not suggest anticompetitive effects without some evidence that they have increased the overall cost of the platform’s services.”¹⁰

Applying the new paradigm, the Court concluded that DOJ and the States had offered no evidence about whether the fees Amex charged merchants, even if higher than other card issuers’ fees, were necessary to or offset by cardholder benefits, which were more robust than the benefits provided by other card issuers.¹¹ In other words, the plaintiffs did not show that the net price of transactions on the platform was higher than the net price charged by other card issuers or otherwise above a competitive level. Nor did the plaintiffs show that “Amex’s antisteering provisions . . . reduced the number of credit-card transactions, or otherwise stifled competition in the credit-card market.”¹²

As to defining the relevant market in *other cases* involving two-sided platforms, the Court held that although it is “not *always* necessary to consider both sides,” it *is* necessary in any case involving a two-sided “transaction platform.”¹³ Transaction platforms are a special type of two-sided platform that “facilitate a single, simultaneous transaction between participants” on each side.¹⁴ For instance, a credit-card transaction platform “can sell its services only if a merchant and cardholder both simultaneously choose to use the network. . . . It cannot sell transaction services to either cardholders or merchants individually.”¹⁵ As a result, two-sided transaction platforms “exhibit more pronounced indirect network effects and interconnected pricing and demand.”¹⁶ In contrast, newspapers “arguably operate a two-sided platform because the value of an advertisement increases as more people read the newspaper,” but the indirect network effects only operate in one direction: “newspaper readers are largely indifferent to the amount of advertising that a newspaper contains.”¹⁷ Therefore, newspaper advertising “behaves much like a one-sided market and should be analyzed as such.”¹⁸

The upshot is that, after *Amex*, two-sided platforms that facilitate single, simultaneous transactions (like credit cards) must be analyzed as a single, two-sided market, while two-sided platforms that do not exhibit indirect network effects operating in both directions (like newspapers) likely do not.

Post-Amex Developments

In the immediate aftermath of the Court’s decision in *Amex*, many commentators focused on the new, apparently heightened burden on plaintiffs to prove net anticompetitive harm across a two-sided platform.¹⁹ But since *Amex*, plaintiffs have demonstrated that it *is* possible to meet this burden. And other aspects of the *Amex* decision, it seems, actually may benefit plaintiffs.

Meeting the Amex Burden. In the 2022 trial in *US Airways v. Sabre*—a case tried twice, once before *Amex* and once after—we obtained a verdict for US Airways (and its

successor in interest, American Airlines) in a monopolization case against Sabre, a two-sided platform that connects travel agents with airlines.²⁰ The *Sabre* case demonstrates how a plaintiff can prove anticompetitive effects in a two-sided market by showing both (1) supracompetitive net prices, and (2) non-price effects, like stagnant technology.

The Supreme Court decided *Amex* after the first *Sabre* trial but before the Second Circuit decided the parties’ appeals.²¹ Though the Second Circuit vacated US Airways’ initial victory because the jury instructions did not comply with the (later-decided) *Amex* decision, the court remanded for a new trial because US Airways had presented exactly the kind of evidence required to show harm to competition under *Amex*: a supracompetitive net price, taking into account payments on both sides of the platform, and “market harms beyond supracompetitive pricing,” including that Sabre’s “contractual restraints made entry into the marketplace extraordinarily difficult, . . . reduced the quality of options available in the marketplace and led to technological stagnation”—“all types of harm that are cognizable when analyzing both sides of a two-sided platform.”²²

Competition Between One- and Two-Sided Platforms.

In explaining his reasoning for holding that two-sided transaction markets are special, Justice Thomas noted—in a passage many consider dicta²³—that “[o]nly other two-sided platforms can compete with a two-sided platform for transactions.”²⁴ The statement has received significant criticism, and may disadvantage either plaintiffs or defendants, depending on the circumstances.

Justice Thomas’ statement played a critical role in another case involving Sabre—*United States v. Sabre Corp.*, DOJ’s challenge to the merger of Sabre and Farelogix, a company that provided technology solutions to airlines to connect them to travel agents directly or through intermediaries like Sabre.²⁵ Despite being “persuaded that at various points Sabre has viewed [Farelogix] as a competitive threat” and agreeing that the “evidence suggests that Sabre will have the incentive to raise prices, reduce availability of [Farelogix], and stifle innovation” in the wake of the merger, the court held that *Amex* precluded it from enjoining the merger.²⁶ According to the court, because of *Amex*, “as a matter of antitrust law, Sabre, which is a two-sided platform facilitating transactions between airlines and travel agencies, does not compete with Farelogix, which indisputably only interacts with airlines and is not a two-sided platform.”²⁷ This aspect of *Amex* is probably far from settled.

Though Justice Thomas’ statement may for now be a hurdle to the government in merger litigation, it has the potential to be a boon to plaintiffs in other antitrust actions. For example, in *Davitashvili v. Grubhub Inc.*—a case challenging most-favored-nation clauses allegedly imposed by restaurant delivery platforms Grubhub, Uber, and Postmates—the court rejected the platforms’ challenge to the plaintiffs’ alleged product markets, which included separate markets for orders on delivery platforms and direct

orders from restaurants, because restaurants that receive direct orders are not two-sided platforms.²⁸ More generally, the proposition that two-sided platforms do not compete against one-sided platforms tends to narrow the relevant product market—potentially making it easier for a plaintiff to show that a defendant has market power.²⁹

Challenging “Free” Services. Under traditional antitrust principles, it may sometimes be difficult to challenge conduct by firms that offer “free” goods and services because the benefit provided to consumers is obvious and direct (i.e., receiving a free product), whereas potential detriments to consumers are indirect or diffuse (e.g., opportunity costs or potential loss of privacy).³⁰ Under *Amex’s* two-sided market framework, interactions in one market where goods or services appear to be “free” may now be challenged more easily based on the monetization of those interactions on the second and less price-elastic side of the platform.

Two-Sided Market Trials: The Plaintiff’s Toolkit

One of the keys to winning a two-sided market trial (or any antitrust trial for that matter) is explaining complex economic concepts in way that is compelling and accessible to the lay factfinder without oversimplifying or sacrificing rigor. Fortunately, there is an intuitive core underlying most important two-sided concepts. It is up to the advocate—along with the testifying economists and fact witnesses—to bring out that intuitive narrative.

Following are some of the key allegations in *Sabre* and a discussion of some important two-sided concepts using that case as an example of how a plaintiff can try and win a two-sided market case.

Key Allegations in US Airways v. Sabre. Sabre is a Global Distribution System (GDS), a type of two-sided transaction platform that connects airlines with travel agencies. US Airways alleged that Sabre monopolized the market for GDS services to Sabre-subscribing traditional travel agents by engaging in several exclusionary acts that affected both sides of the platform. On the airline side, Sabre built most-favored-nation clauses into its contracts with airlines, prohibiting airlines from offering lower fares through other distribution channels—a policy that Sabre enforced by punishing non-compliant

airlines through biasing search results, imposing punitive fees, and threatening to remove flights altogether. On the travel agent side, Sabre made massive “incentive” payments to agents to keep them loyal to Sabre and erected technological barriers to using other platforms or alternative means of booking.

US Airways argued at trial that the purpose and effect of Sabre’s conduct was to lock in both travel agents and airlines to the Sabre platform, to exclude potential competitors from competing by offering lower prices or better technology, and to extract supracompetitive booking fees from airlines.

Single-Homing and Multi-Homing. Single-homing and multi-homing are exotic-sounding terms that actually describe very intuitive concepts, and understanding single- and multi-homing is frequently the key to understanding competitive dynamics in two-sided markets. When users on different sides of the platform use only one platform to connect with each other, they are “single-homing.” When users can take advantage of multiple options to connect with each other, they are “multi-homing.” The competitive implications are intuitive and straight-forward: a platform that provides the exclusive pathway for users on different sides to connect may be able to exercise “gatekeeper power” and extract high fees; a platform that is just one of many possible connection pathways will face competitive pressure that forces it to charge competitive fees. Hence, viewed through the lens of a plaintiff, there may be a strong incentive for platforms to ensure single-homing—the rub is in how they do that.

To be sure, antitrust is highly fact-specific, and the single-homing narrative may not fit the details of every multi-sided market, but it fit the facts of *Sabre*. Sabre-subscribing travel agents almost exclusively used Sabre to book travel for their corporate clients, meaning that airlines had only one pathway—or “bridge,” as our economists analogized—to reach the set of corporate clients served by Sabre-subscribing travel agents (see demonstrative below). We bolstered our economists’ testimony with fact-witness accounts of Sabre’s power over airlines: as one airline executive testified, Sabre “had almost a complete lock on corporate travel,” so airlines “could not walk away.” And because Sabre derived so much power from being the sole “bridge” connecting airlines and Sabre-subscribing travel agents, it was able to charge monopoly-level booking fees.



Trial demonstratives explaining how single-homing leads to gatekeeper power.

Moreover, almost all of Sabre’s exclusionary conduct—punishing airlines for trying to connect to travel agents through channels other than Sabre, prohibiting airlines from fostering the development of other channels by offering unique content, “bribing” travel agents for using Sabre exclusively—could be characterized as an effort to preserve single-homing and prevent multi-homing. By explaining how Sabre maintained single-homing and preserved its power to act as a gatekeeper and charge airlines excessive fees for connecting with travel agents, we presented a relatively simple economic framework that encompassed much of the relevant fact evidence presented in the case.

Net Price. Less straightforward is how to show harm to prices, especially in relation to a counterfactual or so-called “but for” world. As explained above, one of the key teachings of *Amex* is that it is insufficient for the plaintiff to show competitive harm to just one side of a two-sided platform. If relying on price effects, the plaintiff must show net harm by showing that the **net price**—taking into account payments on all sides of the platform—is above the competitive level.³¹

The Sabre platform charged high fees to airlines and paid “incentive” payments to travel agents for each booking. Thus, to calculate the net price, we subtracted the incentive payment to travel agents from the booking fee charged to airlines, resulting in the net amount that Sabre earned for each transaction. To make this concept easy to understand for the jury, we explained that the net price is simply what Sabre “keeps” after receiving the booking fee from the airline and making the incentive payment to the travel agency.

To show that the net price was *supracompetitive*, we compared the actual net price to the net price that would likely have prevailed in a competitive market unmarred by monopoly power—which our expert calculated by deriving the net price that would have resulted in economic profits that Sabre would be expected to earn in a competitive market. While focusing on both sides of the market (rather than just on the fee charged to airlines) made for a more complicated economic analysis, it also allowed us to provide the jury with a more complete, and ultimately more compelling, narrative.

First, taking into account the incentives Sabre paid to travel agents foreclosed the potential doubt in jurors’ minds that we

were leaving out something important—is it really an anticompetitive overcharge if a significant portion of it is used to reward other platform users? Focusing on the “net price” thus allowed us to reassure the jury that Sabre was not just overcharging airlines to subsidize payments to travel agents, but instead was keeping a significant chunk of monopoly rents for itself.

Second, a focus on the travel agent side of the platform allowed us to highlight that something was amiss in this market. If Sabre’s platform was state-of-the-art and provided so much value, why did it need to pay travel agents to use it? The peculiar flow of payments underscored our narrative that Sabre distorted the expected competitive dynamics of the marketplace.

Third, providing the jury with a complete economic narrative—again taking into account both sides of the market—bolstered our factual narrative about Sabre’s exclusionary intent. Alongside economic testimony about the peculiarity of Sabre’s payment flows, we highlighted testimony from Sabre executives demonstrating how Sabre’s payment of large “incentives” to travel agents was intended to exclude competition and allow it to extract large fees from airlines. For example, one executive stated in an email that Sabre’s business “model” was to “drink beer, play golf and pay agency incentives.” Other executives were even more explicit about Sabre’s exclusionary intent. One stated in a presentation that “extortion plus bribery works!” And another noted in an email that “maintaining GDS incentives to agencies creates a barrier to entry for new entrants.” This powerful intent evidence helped bring life to the economic concepts at the heart of the case.

But-For World: It’s Not Just About the Price, But Also Who Pays It. In a one-sided market case, constructing the but-for world frequently centers on estimating the price customers would have paid but for the challenged conduct. In two-sided markets, the task is more difficult: not only is it necessary to estimate the but-for net price, but also how that price would realistically have been *allocated* between the two sides of the market. As explained above, US Airway’s economist calculated the net price that Sabre would have charged but for the challenged conduct, but that left open the question of whether that price would be paid by airlines, travel agents, or some combination of the two.

The economic concepts that determine the allocation of the net fee between the two sides are the relative demand elasticities and strength of indirect network effects on the two sides of the market.³² That is a mouthful, but fortunately it can be explained in a fairly intuitive and accessible way.

- **Elasticity of demand** simply measures how price-sensitive each side of the market is: intuitively, a platform trying to maximize the number of connections it facilitates in a competitive market is expected to charge the more price-sensitive side a lower price and the less price-sensitive side a higher price.
- The strength of **indirect network effects** can be conceptualized as how much one side values the other. If adding more travel agents makes the platform much more valuable to airlines (e.g., adding 10% additional



Net price trial demonstrative.

travel agents increases the number of bookings by 20%), the indirect network effects on the travel agent side are strong (convex). If adding more travel agents increases the number of booking proportionately (e.g., adding 10% additional travel agents increases the number of transactions by 10%), the indirect network effects are not strong (they are linear). Intuitively, the side that is valued more by the other side (the one with the stronger network effects) is expected to pay less for using the platform.

With those principles in mind, predicting the allocation of the net price in the but-for world came down to answering two questions: Would airlines or travel agents be more price-sensitive in the but-for world? And which side of the platform would find it more valuable to have more participants on the other side?

As to price sensitivity, US Airways experts' explained that airlines would be more price-sensitive in the but-for world because in a competitive market, airlines could sell fares to travel agents through a variety of channels, and the airlines would not really care if the travel agent purchased fares through one channel or another. Consequently, airlines would not be willing to pay Sabre any more than the cost of using other distribution channels (unless the Sabre platform provided some non-monetary advantage that the other platforms did not). Travel agents, on the other hand, would be less sensitive to the price of using the platform: if airlines could offer unique fares on particular channels, a travel agent's customers who are motivated to find the lowest price would demand that the travel agent use whichever channel allowed it to get the best deal for the customer.

As to indirect network effects, travel agents would place a lot of value on having different airlines available on the same platform (in part because that would increase the number of travel options that travel agents could offer to their customers), while airlines would be largely indifferent about whether travel agents all used the same platform or purchased fares through different platforms. Consequently, as a matter of both economics and intuition, travel agents would pay most of the net price in a competitive but-for world.

Two-Side Market Trials: The Defendant's Toolkit

Two-sided markets also provide many opportunities for successful advocacy on the defense side.

Restraints Necessary to Maximize Platform Output.

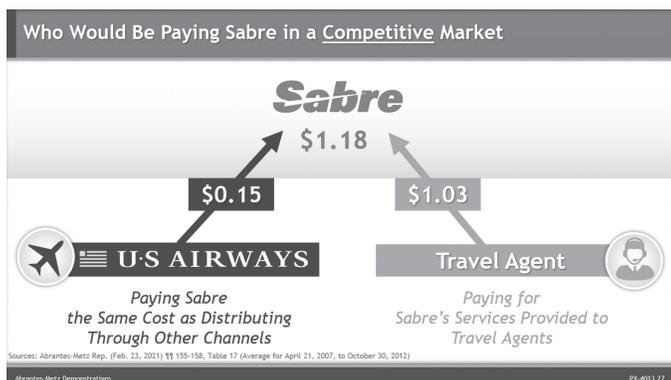
For a defense advocate, the usual task in a two-sided case—assuming that the defendant has successfully characterized the platform as two-sided—is to explain why the conduct that plaintiff claims is anticompetitive is actually a core component of maintaining a healthy platform and maximizing the platform's output.

One of the key business challenges for running a successful platform is ensuring that each side can find transaction partners easily and that the transactions go well (economist Catherine Tucker refers to this as “coring”).³³ For example, a ride-sharing platform connecting drivers and riders may want to make sure that there are plenty of drivers (so that riders do not have to wait too long for a ride) and plenty of riders (so that drivers find value in the platform), that drivers are not criminals (and do not pose a threat to the riders), and that the transaction goes well for all involved (e.g., riders pay and drivers receive the amount they expect, and cars are reasonably clean). Some of the actions necessary to ensure that a platform attracts participants on both sides and that transactions on the platform go well may involve imposing restrictions on one or both sides: perhaps the platform chooses to limit the drivers that may participate (only those who pass background checks), or limit the methods of payment riders may use (to ensure that drivers get paid), or impose minimum standards for cars used by drivers. These are “restraints”—but restraints implemented to increase output (number of rides) rather than impair the ability of rival platforms to compete.

Along the same lines, a nascent platform may choose to charge a below-cost net price (perhaps even paying participants on one side to join the platform) in order to overcome the “chicken-and-egg” problem—participants on one side of the market will not be interested in joining the platform unless there are a sufficient number of participants on the other side and vice versa. Charging below-cost prices in this case is not done to drive out rival platforms and then recoup losses by charging monopoly rents (the predicates for predatory pricing), but to enable the start-up platform to attract enough initial users to make the platform viable and add a new competitor to the marketplace.

Defendants thus have a powerful narrative to present in many cases: the challenged conduct is procompetitive because it allows the platform to facilitate more transactions (both on the platform itself and marketwide). Two-sided doctrine and economics help tell this story:

- Taking all sides of the market into account helps show that restraints that one side may dislike may help increase marketwide output;
- Indirect network effects help explain why it is difficult for a nascent platform to attract initial users (and why below-cost pricing may be needed to “seed” the platform); and



Trial demonstrative showing allocation of net price in competitive market.

- The economic incentive of the platform operator to ensure that the platform attracts participants on both sides and facilitates transactions that leave both sides happy generally aligns with the competition policy goal of maximizing marketwide output.

The key concepts can be crystalized into a simple narrative that marries jury appeal and economic theory: the platform does what it does to attract more transactions, which is good for the platform but also good for competition and the market at large. Not every case will fit this narrative of course, but the opportunity to tell a powerful “two-sided” story is frequently available to defendants.

Multi-homing and Competition Between Platforms.

Just as single-homing is a powerful concept in the plaintiff’s toolkit, the potential or ease of multi-homing can be a boon to the defense advocate. Multi-homing allows the defendant to make several powerful arguments:

- The platform faces competitive pressure because market participants can find ways to connect without using the platform;
- Switching costs are likely low because market participants split their transactions between multiple platforms (and directing more business to a platform that a customer already uses is usually easier than switching to an entirely new platform the customer has never used before); and
- Entry is usually easier because a nascent platform can get started by persuading customers to shift just a portion of the business to the platform—i.e., give the new platform a try while keeping most of their business with the incumbent platform.

Defense counsel will be well-served to investigate whether multi-homing is prevalent, and if so, to take full advantage of this fact.

Conclusion

We no longer live in a world where the prospect of trying a two-sided market case presents challenges akin to scaling Mount Everest. Plaintiffs can try these cases and win—the *U.S. Airways v. Sabre* and *Epic v. Google* cases are Exhibit A on that score. And defendants can try them and win, as *Epic v. Apple* showed. With challenges of high technology seemingly ubiquitous in the antitrust docket, these cases will not be the last word on trying—and winning—a two-sided market case. ■

¹⁰ *Id.* at 2286.

¹¹ *Id.* at 2288.

¹² *Id.* at 2287.

¹³ *Id.* at 2286 (emphasis added).

¹⁴ *Id.* at 2286.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ See, e.g., Dennis W. Carlton, *The Anticompetitive Effects of Vertical Most-Favored-Nation Restraints and the Error of Amex*, 2019 COLUM. BUS. L. REV. 93 (2019) (“I suspect that placing the burden on the plaintiff in the way the Court proposes will make it more difficult for plaintiffs to prevail, even in cases where there is a clear interference in the process of competition with no offsetting justification.”).

²⁰ *US Airways, Inc. v. Sabre Holdings Corp.*, No. 11-cv-02725 (S.D.N.Y. May 19, 2022), ECF No. 1208.

²¹ The first trial centered on a Section 1 challenge to Sabre’s most-favored-nation clauses, not US Airways’ broader monopolization claim, which was initially dismissed. The Second Circuit reinstated US Airways’ monopolization claim before the second trial and also rejected Sabre’s argument that US Airways had presented insufficient evidence under *Amex*. See *US Airways, Inc. v. Sabre Holdings Corp.*, 938 F.3d 43, 61–62, 64–65 (2d Cir. 2019)

²² 938 F.3d at 61–62 (quotation omitted).

²³ See, e.g., Herbert Hovenkamp, , *The Looming Crisis in Antitrust Economics*, 101 BOS. UNIV. L. REV. 489, 505 (2021); Kacyn H. Fujii, *The Impact of Amex and Its Progeny on Technology Platforms*, 120 MICH. L. REV. 691, 707 (2022).

²⁴ *Amex*, 138 S. Ct. at 2287.

²⁵ *United States v. Sabre Corp.*, 452 F. Supp. 3d 97 (D. Del. 2020). O’Melveny represented American Airlines as a third party in this merger litigation.

²⁶ *Id.* at 146.

²⁷ *Id.* at 136. Sabre and Farelogix eventually abandoned the proposed merger after it was blocked by the UK Competition & Markets Authority.

²⁸ *Davitashvili v. Grubhub Inc.*, No. 20-CV-3000 (LAK), 2022 WL 958051, at *8 (S.D.N.Y. Mar. 30, 2022).

²⁹ See Geoffrey A. Manne, *In Defence of the Supreme Court’s ‘Single Market’ Definition in Ohio v. American Express*, 7 J. OF ANTITRUST ENFORCEMENT 104, 126 (2019) (“[I]n some cases, the Court’s analysis might yield much narrower market definitions that might ordinarily be the case. It might suggest that, in a hypothetical merger of Uber and Lyft, traditional competitors like taxis or black cars are not actually competitors to the ride-sharing firms, yielding a much narrower market definition and a higher likelihood of presumptive illegality.”).

³⁰ See Michal S. Gal and Daniel L. Rubinfeld, *The Hidden Cost of Free Goods: Implications for Antitrust Enforcement*, 80 ANTITRUST L. J. 521, 523 (2016) (“Free goods often provide real benefits to consumers and are clearly pro-competitive. However, this is not always so. Under some circumstances the provision of free goods raises complex questions with regard to their overall welfare effects. Despite the fact that the consumer does not pay a direct price, there are indirect prices that reflect the opportunity cost associated with the consumption of free goods.”).

³¹ *Amex*, 138 S. Ct. at 2287. As noted above, a plaintiff may also establish net harm by showing a reduction in platform output, or that the challenged conduct “otherwise stifled competition.” *Id.*

³² See *Amex*, 138 S. Ct. at 2285–86 (“Due to indirect network effects, two-sided platforms cannot raise prices on one side without risking a feedback loop of declining demand. . . . And the fact that two-sided platforms charge one side a price that is below or above cost reflects differences in the two sides’ demand elasticity, not market power or anticompetitive pricing.”) (citing David S. Evans & Richard Schmalensee, *Markets With Two-Sided Platforms*, 1 ISSUES IN COMPETITION L. & POL’Y 667, 674-75 (2008); David S. Evans & Michael Noel, *Defining Antitrust Markets When Firms Operate Two-Sided Platforms*, 2005 COLUM. BUS. L. REV. 667, 680-81 (2005)).

³³ See Catherine Tucker, *How Platforms Create Value Through Coring and Implications for Market Definition*, ANTITRUST CHRONICLE 16 (July 2022).

¹ *Ohio v. Am. Express Co.*, 138 S. Ct. 2274 (2018).

² *Id.* at 2294-95 (Breyer, J., dissenting).

³ WINSTON CHURCHILL, BLOOD, TOIL, TEARS AND SWEAT: THE GREAT SPEECHES 194 (2002).

⁴ 138 S. Ct. at 2280, 2283.

⁵ *Id.* at 2287.

⁶ *Id.* at 2287–88.

⁷ *Id.* at 2280.

⁸ *Id.* at 2281.

⁹ *Id.* at 2281, 2285.