



United States v. American Express Co.

July 7, 2014



Credit Card Fees Cost Merchants Over \$50 Billion Each Year.

— PX2482, Nilson Report No. 1041 (May 2014)



Amex's Anti-Steering Rules Obstruct Competition Among All Four Credit Card Networks

Card acceptance

3.1 Card acceptance You must accept the Card as payment for goods and services (other than goods and services prohibited under section 3.2, "Prohibited uses of the Card," (if applicable)) for charitable contributions made, at all of your Establishment's locations expressly permitted by state statute. You are jointly and severally liable for the obligations of your Establishment under the Agreement.

By accepting the Card at your Establishment, you are promising your customers with convenience and flexibility in choosing their method of payment.

3.2 Treatment of the American Express Brand For the past 190 years, American Express has been a brand that is synonymous with trust, integrity, security, quality, and customer service. We work diligently to uphold our reputation, and restrict Merchants from engaging in activities that would harm our business or brand.

Do not, as expressly permitted by Applicable Law, you must not:

- Indicate or imply that you prefer, directly or indirectly, any Other Payment Products over our Card.
- try to dissuade Cardmembers from using the Card.
- criticize or mischaracterize the Card or any of our services or programs.
- try to persuade or prompt Cardmembers to use any Other Payment Products or any other method of payment (e.g., payment by check).
- impose any restrictions, conditions, disadvantages or fees when the Card is accepted that are not imposed equally on all Other Payment Products, except for electronic funds transfer, or cash and check.
- engage in activities that harm our business or the American Express Brand (or both), or
- promote any Other Payment Products (except your own private label card that you issue for use solely at your Establishment) more actively than you promote our Card.

The use of these policies related to customer identification, and other information, is subject to Applicable Law and the Agreement.

16 April 2014

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Except as expressly permitted by Applicable Law, you must not:

- indicate or imply that you prefer, directly or indirectly, any Other Payment Products over our Card,
- try to dissuade Cardmembers from using the Card,
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- try to persuade or prompt Cardmembers to use any Other Payment Products or any other method of payment (e.g., payment by check),
- impose any restrictions, conditions, disadvantages or fees when the Card is accepted that are not imposed equally on all Other Payment Products, except for electronic funds transfer, or cash and check,
- engage in activities that harm our business or the American Express Brand (or both), or
- promote any Other Payment Products (except your own private label card that you issue for use solely at your Establishment) more actively than you promote our Card.

PX0002



Sherman Act Rule of Reason Analysis Is Three Steps

Step 1 (Plaintiffs)

Adverse effect on competition

Either Through:

- Direct path – actual anti-competitive effects
- Indirect path
 - Market definition
 - Market power
 - Likely anti-competitive effects

Step 2 (Defendant)

Possible pro-competitive effects

Step 3 (Plaintiffs)

Whether any pro-competitive effect could be achieved by less anti-competitive means



The Evidence Will Show That Amex's Anti-Steering Rules Violate the Sherman Act

Actual Anti-Competitive Effects

There is direct evidence that Amex's Anti-Steering Rules have actual anti-competitive effects.

Market Definition

The relevant antitrust product market is general purpose credit and charge card network services to merchants; within that market, there is a distinct relevant market for card network services to Travel & Entertainment (T&E) merchants.

Market Power

Amex's market power is demonstrated through (1) customer insistence, (2) price increases, and (3) market share.

Amex's Defenses

Amex lacks valid pro-competitive effects or other defenses.



Clear Evidence:

- (1) Amex's Anti-Steering Rules Exist.**
- (2) Amex's Anti-Steering Rules Prevent Competition over Merchant Fees.**



Amex's Anti-Steering Rules Obstruct Competition

Amex's Anti-Steering Rules limit merchants from encouraging their customers to use credit cards that cost merchants less:

- No discounts
- No incentives
- No expression of preference
- No ability to influence consumer choice
- Not even truthful price disclosure



**Amex's Anti-Steering Rules obstruct competition
among all four credit card networks at all
merchants that accept Amex.**



Merchants Will Testify About Various Steering Possibilities

- Airline: Offer award miles or in-flight benefits
- Car rental company: Offer free upgrades, unlimited mileage, or rewards points
- Tour operator: Offer free breakfast or discounts on transportation between airports and hotels
- Retailer: Use signage to communicate payment preferences



Amex's Expert Agrees That Merchants Would Steer Absent Amex's Anti-Steering Rules

An Ex
American Expre

another payment method would have only a very small negative impact on Amex's overall strategy to attract and retain highly desirable cardmembers, and that this merchant's share of this small negative impact would be less than the merchant's private gain from steering.

However, if many individual merchants make this same calculation and steer their Amex cardmember customers, then the cumulative impact would be less to each merchant that would outweigh the merchant's private gain. Amex's strategy would obligate merchants would lose the advantage of that strategy. The ability to contractually limit steering discourages this free-riding prisoners dilemma dynamic.

V. Banning the Ability of Amex to Contract for Limitations on Steering Would Undermine Quality Differentiation in Electronic Payment Networks and Could Lead to Less Competition

A general observation is that markets should accommodate efforts by firms to differentiate themselves in a quality dimension. American Express offers differentiated products to both merchants and cardmembers. Giving merchants the unilateral power to steer would undermine quality differentiation in electronic payment networks.

Payment networks and issuers compete for both the patronage of consumers and acceptance by merchants by striving to maximize the transactions consummated over their respective networks. This competition takes the form, in part, of choices about the level of merchant discount rates and the degree to which, and precisely how and with what programs, discount and other services must be delivered to cardholders.

If merchants had unilateral freedom to steer customers at the point of sale, it is likely that they would encourage customers to use the card that has the lowest merchant discount fee. Nearly all consumers with an American Express Card also carry Visa and/or MasterCard credit cards. It would be easy for merchants to insist that a consumer use a Visa or MasterCard instead of an American Express card. If such steering were pervasive, it might force Amex to charge a lower merchant discount fee and thereby lose its ability to invest in differentiated products and services, or simply force Amex to allow its cardmembers and merchant customers to steer. Indeed, as explained in the following section, such steering could occur even if Amex charges a discount fee that is less than the fee charged for a rival

Page 45

“If merchants had unfettered freedom to steer customers at the point of sale, **it is likely that they would encourage customers to use the card that has the lowest merchant discount fee. . . .** If such steering were pervasive, it might force Amex to charge a lower merchant discount fee. . . .”



Steering Is a Normal Competitive Process



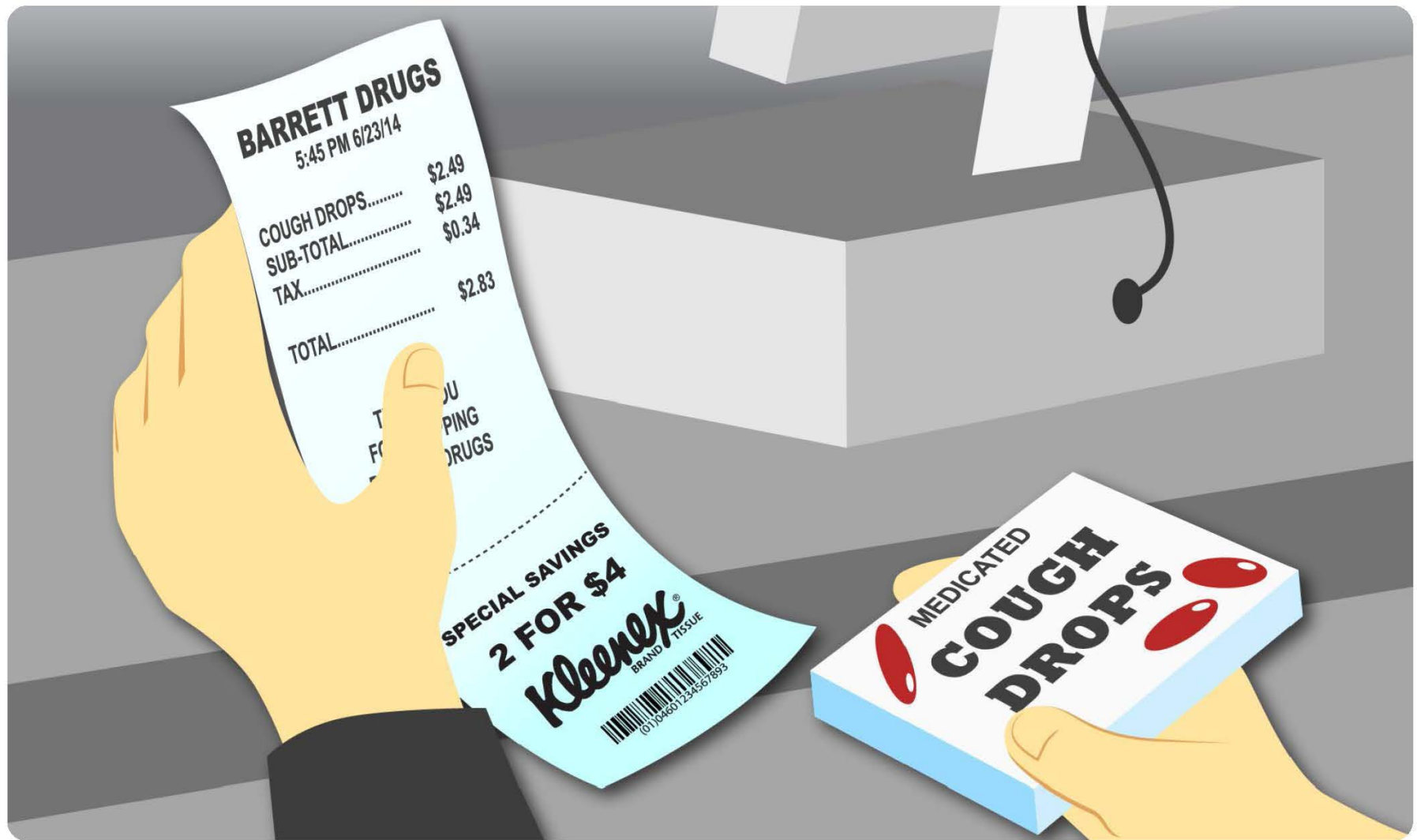


Steering Is a Normal Competitive Process





Steering Is a Normal Competitive Process





Discover Offered Lower Prices Than the Other Card Networks

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163 FEDERAL SUPPLEMENT, 24 SERIES

UNITED STATES OF America,
Plaintiff,

v.

VISA U.S.A. INC., Visa International
Corp., and MasterCard International
Incorporated, Defendants.

No. 98 CIV. 7076(BSJ).

United States District Court,

S.D. New York.

Oct. 9, 2001.

United States Department of Justice
The United States Department of Justice
has filed a lawsuit against Visa U.S.A. Inc.,
Visa International Corp., and MasterCard
International Incorporated. The lawsuit
alleges that these companies have conspired
to restrain trade and monopolize the
market for credit cards. The lawsuit was
filed in the United States District Court
for the Southern District of New York.

Ordered accordingly.

1. Monopolies (12/13)

To analyze defendant's conduct
under Sherman Act, (7) et seq.,
plaintiff must first determine relevant
market. Sherman Act, § 1 et seq.,
as amended, 15 U.S.C.A. § 1 et seq.

2. Monopolies (12/13)

"Relevant product market," which
court must determine in order to analyze
defendant's conduct for alleged violations
of Sherman Act, is composed of products
that have reasonable interchangeability, in
eyes of consumers, with what defendant
sells. Sherman Act, § 1 et seq., as amend-
ed, 15 U.S.C.A. § 1 et seq.

See publication Words and Phrases
for other judicial constructions
and definitions.

U.S. v. VISA U.S.A. INC.
Case No. 98 CIV. 7076(BSJ) (S.D.N.Y. 2001)

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features and other services for cardholders
and merchants. (See Schmalensee Dir.
Test, at 114-16, 131-32; Tr. 4450-4451
(Dahir).)

Each association is managed by a Board
of Directors (elected by its members) and
by a management team. This team is
responsible for day-to-day operations and
has certain authority delegated by the
Board. Because the owners of the associa-
tions are also the customers, and vice ver-
sa, the associations are necessarily cus-
tomer-driven. (See Tr. 4452-53 (Dahir, Visa
U.S.A.).) By contrast, American Express
and Discover are for-profit companies that
operate as "closed loop," vertically inte-
grated systems. They promote their
brands and operate their networks to pro-
cess transactions and (unlike the associa-
tions) also issue cards and enlist mer-
chants to accept those cards. Neither
American Express nor Discover needs to
set interchange fees because they are both
the issuer and acquirer on all transactions
and keep the full amount of the merchant
discount fee. American Express' average
merchant discount rate in 1999 was ap-
proximately 2.74 percent compared to Dis-
cover's rate of approximately 1.5 percent
and Visa's and MasterCard's rates of ap-
proximately 2 percent. (See id. at 2719
(Golub, American Express); 2081, 3007-08
(Neims, Discover); Ex. D-4982 at
AMEX0001290771; Ex. D-1983 at
VUT00001692.)

Because of these different business
structures in the payment card industry,
competition takes place at two interrelated
levels—the network services level (where
Visa, MasterCard, American Express and
Discover compete) and the issuing level
(where American Express and Discover
compete with each other and with thou-
sands of Visa and MasterCard member
banks.) Competition among systems
plays a major role in determining the

overall quality of the brand, encompassing
system-level investments in brand adver-
tising, the creation of new products and
features and cost-saving increases in the
efficiency of the electronic backbone of the
networks. (See Schmalensee Dir. Test, at
126.) Competition among issuers largely
determines the prices that consumers pay
and the variety of card features they can
obtain. Individual issuers in the associa-
tions also sometimes invest separately in
their own advertising and in the creation
of new products. Unlike the concentrated
network market, no single issuer domi-
nates the industry; the largest credit and
charge card issuers have only small shares
of total industry output. (See id. at 119 &
Table 4.)

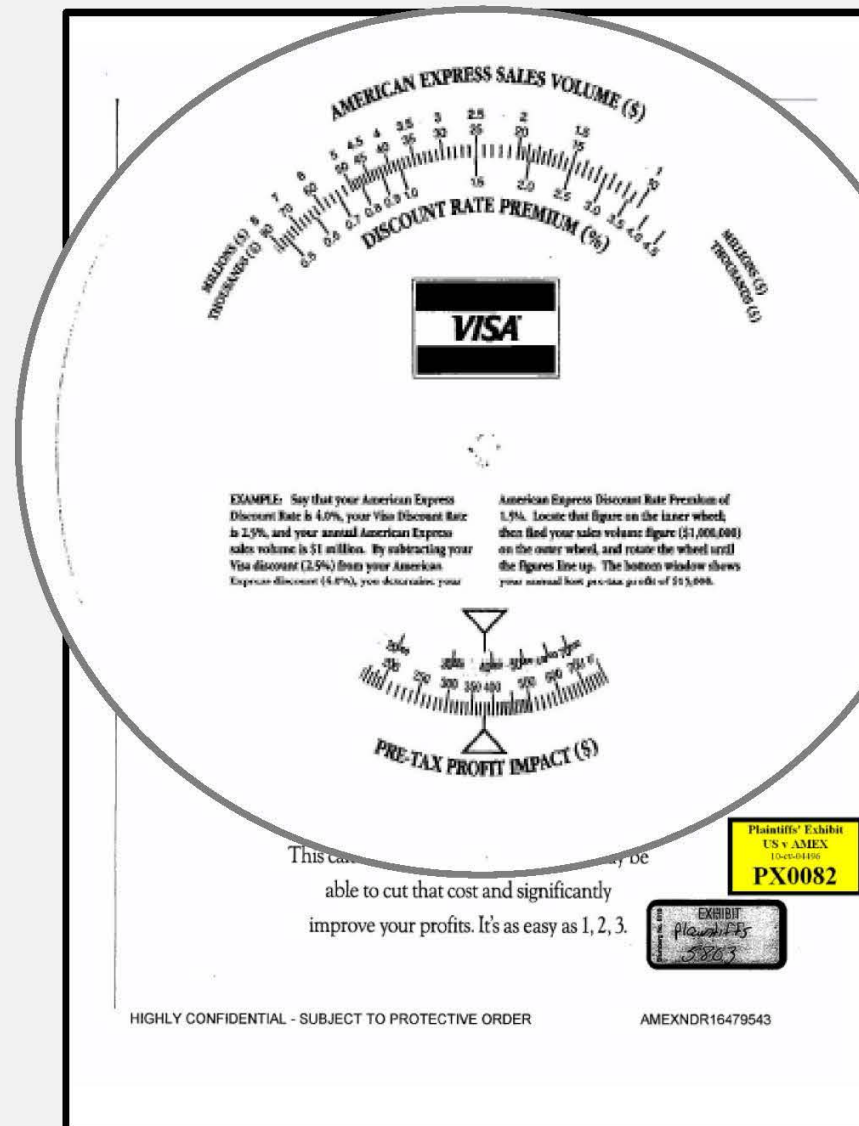
American Express is the largest issuer
of credit and charge cards in the United
States as measured by transaction vol-
ume—\$186 billion in fiscal year 1999.
Consistent with the successful perfor-
mance of its card business, American Ex-
press is highly profitable and it regularly
pays its return on equity and earnings
per share. (See Tr. 4452-53 (Dahir, Visa
U.S.A.).) In 1999, American Express was
the fifth largest issuer in 1999 with \$70.08
billion outstanding. In 1999, measured by
the number of cards outstanding (48 mil-
lion), Discover placed among the top three
issuers in the United States. (See Tr.
3028-31, 3067-68 (Neims, Discover); Ex.
D-1712; Ex. D-1859; Ex. D-4462.)

It was not until the 1970's that the
growth of the payment card industry was
significantly facilitated by the formation
and growth of what would become the Visa
and MasterCard associations. (See
Schmalensee Dir. Test, at 132-133.) Be-
fore the existence of these joint ventures
there were no national credit cards, and

“American Express’ average merchant discount rate in 1999 was approximately 2.73 percent compared to Discover’s rate of approximately 1.5 percent and Visa’s and MasterCard’s rates of approximately 2 percent.”



Visa's "Profit Wheel" Encouraged Merchants to Steer to Visa and Save Money



PX0082



Amex Considered Pro-Competitive Responses to Visa's Campaigns

“How to persuade Visa, associations, service establishments, and CVBs not to participate in any kind of card preference campaign/program.”

- “Create a compelling tagline that is superior to preference”
- “Negotiate long term contracts with key partners that incent them not to participate in preference campaigns...”
- “Cut discount rate to zero in any market where Visa invests in preference”
- “Lower discount rate for SEs who agree not to participate in preference campaigns”
- “Incent merchant to ask for Amex”
- “Offer aggressive pricing incentives”

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- Special
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On Monday, March 30 we conducted
unique creative brainstorming process
following problems:

How to persuade Visa, associations,
participate in any kind of card prefer

Note:
By “participation” we mean engaging
shift share of transactions/spending a

Participants:

Kerry Hatch
Les Goldberg
Lloyd Wirshiba
Bob Barach
Gail Wasserman
Steve Zacks
Harvey Kipnis (Brouner)
John Seifert (Ogilvy)
Bill Jeffway (Ogilvy)

Possible Target Audience(s) for Ant

- All merchants
- Major hotel establishments (partic
- Major tourism players (e.g. Disney
- Likely representatives of CVB ex
- Associations
- Visa
- Cardmembers

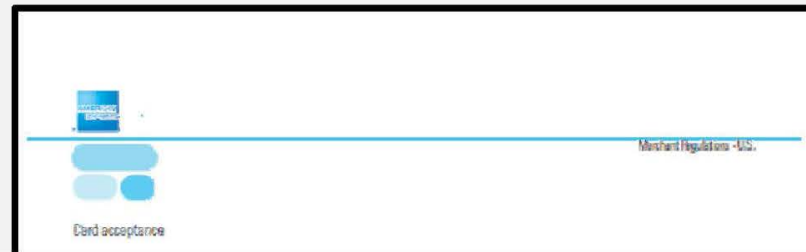
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PX0163

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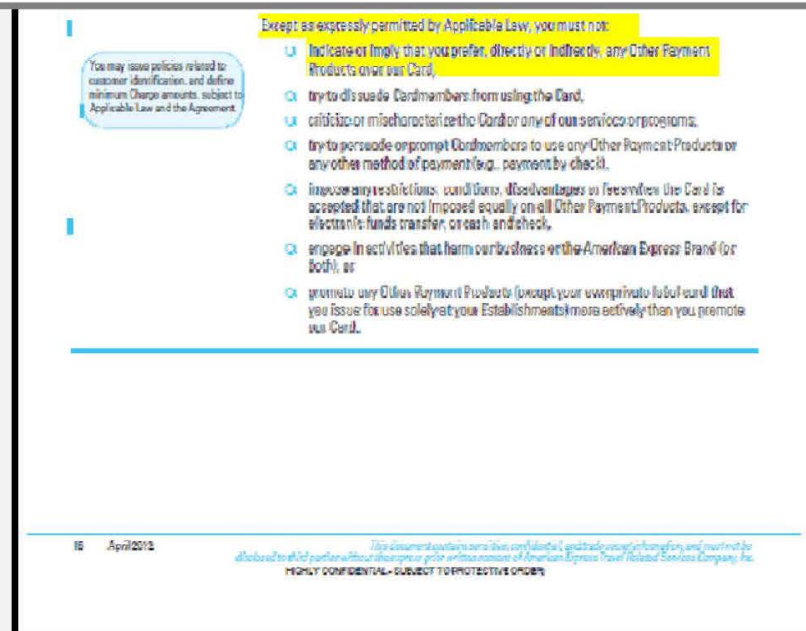


Amex Also Responded to Preference Campaigns By Expanding Its Anti-Steering Rules



Except as expressly permitted by Applicable Law, you must not:

- indicate or imply that you prefer, directly or indirectly, any Other Payment Products over our Card,



PX0002



Amex “Thwarted” Visa’s “We Prefer” Campaign

Strategy Book
Memorandum

Date: May 9, 1997
City: New York
Office: Chairman

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FOR INTERNAL USE ONLY

Subject: AMERICAN EXPRESS COMPANY
1997 FIRST QUARTER ASSESSMENT

To: All American Express Managers

From: Harvey Golub and Ken Chenault

Following is a summary of the results of the 1997 First Quarter Assessment, as well as some of the key findings and recommendations. Ken's new strategy will now be implemented.

As an organization, we are producing results that we are proud of. We are also producing results that we are proud of.

We are also producing results that we are proud of. We are also producing results that we are proud of.

The first quarter of 1997 was a very successful one for American Express. We have achieved our goals and exceeded our expectations. We have also achieved our goals and exceeded our expectations.

HIGHLY CONFIDENTIAL Subject to Protective Order

1997 First Quarter Assessment Page 7

- We lost several small accounts, such as Ken's Communications and the Deluxe Corporation corporate card accounts, and CIS Technology and Octel's travel business.

ESTABLISHMENT SERVICES

Establishment Services has seen outstanding results in the number of merchants signed so far this year. American Express Cards are now accepted in 91.5% of establishments where our cardmembers do their plastic spending.

Accomplishments

- Signings were up 19 percent versus the same period last year, including key merchants like Rite Aid, the second largest drug store in the United States, and Ethan Allen, a leading furniture store. We also made progress in signing merchants in new industries such as supermarkets (Dominick's and Kings), health care (Corning Medical Labs) and telecommunications (AirTouch Cellular).
- We launched the Instant Merchant Activation System with our largest External Sales Agent – First Data Merchant Services. This leading-edge technology enables us to set up a newly signed merchant virtually immediately after receiving their data, versus activation that used to take anywhere from two to 14 days.
- We launched a new distribution channel that allows merchants to submit charges and gain authorization directly over the Internet. This gateway, which is based on industry standard protocol, allows merchants to avoid third-party user charges and provides safe and fast transaction support.
- Several merchant processes were revised to drive desired merchant behavior, improve our economics and align with industry practices. We are charging a fee to merchants who obtain authorizations by phone rather than electronically. We also charge a fee to merchants whom we pay by check. We expect these fees to incent merchants to convert to Electronic Data Capture (EDC) and automated payment (ACH). This quarter, we began retaining the discount amount on chargebacks, which can occur when a cardmember disputes a charge.
- We thwarted a nationwide Visa marketing campaign in key markets including New York, Boston and Chicago. Visa had approached merchant associations and businesses affiliated with major U.S. shopping streets to participate in "Famous Streets," a nationwide preference campaign scheduled to run during the summer. Establishment Services, with the support of our State Government Affairs colleagues, persuaded merchants not to participate. This is one win in an ongoing battle with Visa.

Disappointments/Challenges

- We need to do everything in our power to increase our knowledge of the markets Visa is targeting, and maintain and strengthen our relationships with merchants and merchant associations in those markets to try to counter these efforts.

SMALL BUSINESS SERVICES (SBS), GOVERNMENT CARD AND CONSUMER TRAVEL

Small Business Services is continuing to perform well, developing new products to meet the needs of small business customers, and executing against this strategy. New credit cards – Gold Corporate Optima® and Delta SkyMiles® Corporate Card – are

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AMEX0001630183

“To All American Express Managers”

“From Harvey Golub and Ken Chenault”

“We thwarted a nationwide Visa marketing campaign in key markets . . .” (emphasis added).

PX0152



Visa Fought Back and Encouraged T&E Merchants Not to Accept Amex's Expanded Anti-Steering Rules

Francine Schall

American Express is finally offering a concession to merchants. However, some restrictions apply.

Like another notable revolution, it started in Boston. A small group of restaurateurs, irritated by the cost of doing business with American Express, decided to speak out about it. Their voices were joined by others in cities across the United States. Before long, American Express had a full-fledged brood on its hands.

you to compromise your right to run your business as you see fit. If, like many merchants, you've been controlling your costs by steering your customers toward less expensive cards, you'll have to stop. In the process, you'll be giving up your most effective tool for negotiating more reasonable

"If, like many merchants, you've been controlling your costs by steering your customers toward less expensive cards, you'll have to stop."

TO PROTECTIVE ORDER

AmEx card for payment.

You may not voice criticism of any American Express service or program if a customer presents an AmEx card for payment.

You may not, directly or indirectly, express a preference for any other card over American Express.

You may not display another card's "identifying insignia" more prominently than that of American Express, and you must make your best effort to display additional AmEx insignia or decals.

You may not initiate and execute any payment-card promotion without giving American Express the right of first refusal, or, after running an AmEx promotion, run a similar promotion with another card for six months thereafter.

The implications of this agreement are far-reaching and more than a little bit disturbing.

THE GREEN CARD GIVETH, THE GREEN CARD TAKETH AWAY

In return for AmEx's "generosity" the company expects

speech, your freedom of movement or your freedom to make your own business decisions.

So if American Express offers you a break on your discount rate, by all means take it. But bear in mind that you don't have to sign any agreement you don't agree with. Get out your red pencil. Cross out or charge any part of the proposal that you see as an infringement on your rights. What will happen? One of two things, probably.

They may not agree. But American Express might be forced back to the bargaining table with a better offer and a more flexible attitude.

Or they may agree—in which case you'll pocket a handy little discount-rate reduction without giving up your freedom.

At Visa, we'd be delighted to see that happen. After all, anything that helps your business is good business for us, too.

So talk to your AmEx representative. Stand up for your rights. In the long run, it could be worth substantial money to you.

It's everywhere you want to be!



© Visa U.S.A. Inc. 1997

VU 0341553

PX1366



The Evidence Will Show That Amex's Anti-Steering Rules Violate the Sherman Act

Actual Anti-Competitive Effects

There is direct evidence that Amex's Anti-Steering Rules have actual anti-competitive effects.



Market Definition

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Market Power

Amex's market power is demonstrated through (1) customer insistence, (2) price increases, and (3) market share.

Amex's Defenses

Amex lacks valid pro-competitive effects or other defenses.



Many Consumers Do Not Substitute Between Credit and Debit

Document Redacted
in Whole



District Court in *U.S. v. Visa* Defined Market as “General Purpose Card Network Services”

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163 FEDERAL SUPPLEMENT, 2d SERIES

UNITED STATES of America,
Plaintiff,

v.

VISA U.S.A. INC., Visa International
Corp., and MasterCard International
Incorporated, Defendants.

No. 98 CIV. 7076(BSD).

United States District Court,

2. Monopolies (9-12/13)

“Relevant product market,” which court must determine in order to analyze defendant’s conduct for alleged violations of Sherman Act, is composed of products that have reasonable interchangeability, in eyes of consumers, with what defendant sells. Sherman Act, § 1 et seq., as amended, 15 U.S.C.A. § 1 et seq.

See publication Words and Phrases for other judicial constructions.

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163 FEDERAL SUPPLEMENT, 2d SERIES

of volume for [the] New Premium Product” was MasterCard, Discover, and American Express. (Ex. P-0822 at VU 1871788.) There was no indication that the new premium card would displace consumer spending on cash, checks, debit cards or private label cards. In these documents, defendants calculate their “market” shares among general purpose card networks only. No percentages for cash, checks, debit or store cards are included in these calculations and pie charts.⁹

Finally, although it is literally true that, in a general sense, cash and checks compete with general purpose cards as an option for payment by consumers and that growth in payments via cards takes share from cash and checks in some instances, cash and checks do not drive many of the means of competition in the general purpose card market. In this respect, Prof. Katz’s analogy of the general purpose card market to that for airplane travel is illustrative. Prof. Katz argues that while it is true that at the margin there is some competition for customers among planes, trains, cars and buses, the reality is that airplane travel is a distinct product in which airlines are the principal drivers of competition. Any airline that had monopoly power over airline travel could raise prices or limit output without significant concern about competition from other forms of transportation. The same holds true for competition among general purpose credit and charge cards. (See M. Katz Dir. Test. ¶¶ 11, 127.)

Accordingly, because card consumers have very little sensitivity to price increases

es in the card market and because neither consumers nor the defendants view debit, cash and checks as reasonably interchangeable with credit cards, general purpose cards constitute a product market.

2. General Purpose Card Network Services Constitute a Relevant Product Market

[7] More importantly, general purpose card network services also constitute a product market because merchant consumers exhibit little price sensitivity and the networks provide core services that cannot reasonably be replaced by other sources. General purpose card networks provide the infrastructure and mechanisms through which general purpose card transactions are conducted, including the authorization, settlement, and clearance of transactions. (See Tr. 3197 (B. Katz, Visa U.S.A./Visa Int’l); Afriek (MasterCard) Dep. at 11-12, 14-19.) Merchant acceptance of a card brand is also defined and controlled at the system level and the merchant discount rate is established, directly or indirectly, by the networks. (See Tr. 6134-35 (Pindyck, MasterCard); Tr. 2218-19 (Saunders, Household/Fleet); Flanagan (MasterCard) Dep. at 50-51.) These basic or core functions are indispensably done at the network level. (See Tr. 5079-80; 5084-85 (Schmalensee).)

Professor Katz also used the Merger Guidelines price sensitivity test to confirm the existence of a network services market. He noted that because costs attributable to system services are less than two

9. See, e.g., Ex. P-1103 at MCJ000254 (1996 MasterCard U.S. region board minutes stating “with respect to share trends, Mr. Heuer noted that MasterCard has held its general purpose card dollar volume share over the past three years, but has experienced some share loss when compared only to Visa”); Ex. P-0750 (1998 letter to Visa U.S.A. CEO Carl Pascarella, per his request, providing U.S.

market share of general purpose cards); Ex. P-0758 at 1 (1999 Visa U.S.A. board document providing “Visa’s market share of cards in circulation of major all-purpose cards”); Ex. P-1180 (1999 Visa U.S.A. board document calculating “card volume . . . market shares” for general purpose card brands); Ex. P-0793 at VU 1017663; Ex. P-0709; Stock (Visa U.S.A.) Dep. at 105-13.

“[G]eneral purpose card network services also constitute a product market because merchant consumers exhibit little price sensitivity and the networks provide core services that cannot reasonably be replaced by other sources.”



Amex Agreed in Its *U.S. v. Visa* Amicus Brief

ARGUMENT

I. BY-LAW 2.10(E) AND THE CPP ARE UNLAWFUL AND SHOULD BE REMOVED

The market at issue in this case is the market for supplying network products and services to general purpose credit and charge card issuers (“network services”). Credit and charge card networks *sell* network services to issuers, and the issuers *buy* network services from

“The market at issue in this case is the market for supplying network products and services to general purpose credit and charge card issuers (‘network services’).”

competition necessarily means higher prices for network services for banks and higher prices for credit and charge cards for the banks’ customers, U.S. consumers.

- The supply of network services to bank issuers is limited to those provided by Visa and MasterCard. Output in the network services market as a whole is reduced accordingly.
- Issuing banks are limited in the range of card products they can produce, and consumers are correspondingly limited in the range of products they can obtain. Consumer choice in the market is thus restrained.
- Horizontal competition among bank issuers is equally limited; each bank has agreed not to compete against the others by offering a different network brand or the different features a different network would provide.

The “justifications” advanced for these restrictions are illegitimate in principle.

No matter how expressed, the Visa/MasterCard complaints that AXP will compete by offering banks an attractive issuers’ rate (and thus a lower net price for network services), or by “cherry-



Amex Alleged the Same Relevant Market in Its 2004 Complaint in *Amex v. Visa*

Case 1:04-cv-08967-BSJ-DFE Document 1 Filed 11/15/04 Page 17 of 45

VI. FACTUAL BACKGROUND

A. The Relevant Markets

65. Defendants' antitrust violations have occurred in the market in which the card

“A. The Relevant Markets

65. Defendants' antitrust violations have occurred in the market in which the card networks provide authorization, clearance, and settlement services for general purpose card payment transactions in the United States. Through those violations, Defendants have harmed competition in, among other markets, the general purpose card network services market”

easily and readily substituted for each other by consumers.

68. General purpose cards do not include cards that can only be used at a single

“68. General purpose cards do not include . . . debit cards[.]”



Amex Identified Debit as a “Separate and Distinct” Market in Its *Amex v. Visa* Complaint

Case 1:04-cv-08967-BSJ-DFE Document 1 Filed 11/15/04 Page 40 of 45

“The ‘debit card network services market’ in the United States constitutes a separate and distinct ‘Relevant Market.’ The debit card network services market is the market in which authorization, clearance, and settlement services are performed for debit card transactions.”

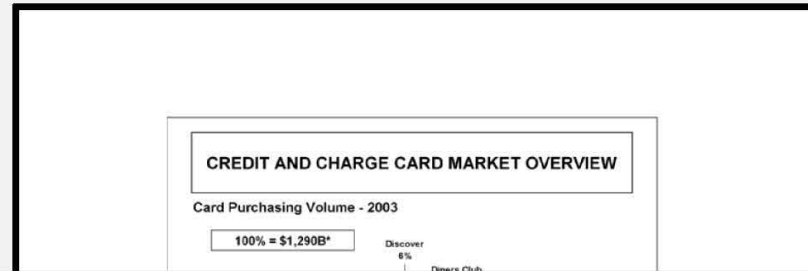
“Unlike credit and charge cards, debit cards promptly access money directly from a cardholder’s checking or deposit account, thereby strongly differentiating debit cards from general purpose credit and charge cards.”

152. Unlike credit and charge cards, debit cards promptly access money directly from a cardholder’s checking or deposit account, thereby strongly differentiating debit cards from general purpose credit and charge cards. Consumers do not consider debit cards to be reasonably interchangeable with general purpose credit and charge cards.

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Amex's 2005 Statements to the Federal Reserve Identified the Same Market



“We consider our market to be general purpose charge and credit cards; debit is a different market.”

Q: Have these numbers changed over time?

A: In 1985, we had 25% market share. The decrease to today is a result of several factors:

- ☐ We did not enter the lending industry until 1987 with the introduction of Optima;
- ☐ Visa and MC have grown;
- ☐ and the universe of plastic accepting industries has grown to include everyday spend segments such as supermarkets and gas stations, which for many years we chose not to enter.

Q: Do these numbers include debit?

A: This information does not include debit. If it did, our numbers would be much smaller, since we do not issue debit cards. We consider our market to be general purpose charge and credit cards; debit is a different market.

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AMEX-DOJ-10141641

PX0254



Amex Provided Explanation for Its Relevant Market in Its 2007 *Amex v. Visa* Expert Report

Document Redacted
in Whole



Amex Changed Its Position on Debit in Its 2010 10-K Submitted After The Complaint Was Filed

2009 10-K

Table of Contents

offer reward or rebate programs, services for small business owners, "teaser" promotional interest rates for both credit card acquisition and balance transfers, and co-branded arrangements with partners that offer benefits to cardholders. In recent years we have encountered increasingly intense competition in the small business sector, as competitors have targeted OPEN's customer base and our leadership position in providing financial services to small businesses.

Most financial institutions that offer demand deposit accounts also issue debit cards to permit depositors to access their funds. Use of debit cards for point-of-sale purchases has grown as most financial institutions have replaced ATM cards with general-purpose debit cards bearing either the Visa or MasterCard logo. As a result, the purchase volume and number of transactions made with debit cards in the United States has grown more rapidly than credit and charge card transactions. Debit cards are marketed as replacements for cash and checks, and transactions made with debit cards are typically for small dollar amounts. **The ability to substitute debit cards for credit and charge cards is limited** because there is no credit extended and the consumer must have sufficient funds in his or her demand deposit account to pay for the purchase at the time of the transaction as opposed to charge cards where payment is due at the end of the month or credit cards where payment can be extended over a period of time. We do not currently issue point-of-sale debit cards for use on the American Express network.

The principal competitive factors that affect the card-issuing business include:

- features and the quality of the services, including rewards programs, provided to Cardmembers

"The ability to substitute debit cards for credit and charge cards is limited"

such as mobile payments. For a discussion concerning our recent acquisition of Revolution Money Inc. in the emerging payments area, please see "Enterprise Growth" beginning on page 34 below.

Financing Activities

The Company meets its funding needs through a variety of sources, including cash or assets that are readily convertible into cash, deposits placed with the Company's U.S. banks, unsecured medium- and long-term notes, asset securitizations, and long-term committed bank borrowing facilities in certain non-U.S. markets.

American Express Credit Corporation, a wholly owned subsidiary of TRS, along with its subsidiaries ("Credco"), acquires the majority of charge card receivables arising from the use of corporate Cards issued in the

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PX1408

2010 10-K

Table of Contents

Some of the highlights of our OPEN business in 2010 include:

- Launch of InsuranceEdge, an integrated solution designed to help small business owners research, review, compare and purchase commercial insurance appropriate for their business needs.
- Launch of SearchManager, a solution that simplifies the way business owners can manage their online advertising campaigns.
- Launch of a new mobile platform for OPEN Forum.
- Expansion of the OPEN Savings program through new partnerships with AirTran Airways, OfficeMax, Hewlett Packard and FireDog tech support.
- Launch and development of the first ever Small Business SaturdaySM, a day to support local businesses that create jobs, boost the economy and preserve neighborhoods around the country by providing an incentive for Cardmembers to spend at their local businesses.
- Expansion of OPEN for Government Contracts: Victory in ProcurementSM (VIP) for Small Business by holding proprietary events across the U.S. designed to help business owners access government contracts as a means to grow their business.

Card-Issuing Business — Competition

Our proprietary Card business encounters substantial and intense competition in the United States and internationally. As a card issuer, we compete in the United States with financial institutions (such as Citibank, Bank of America, JPMorgan Chase, and Capital One Financial) that issue general-purpose charge and revolving credit cards, and Discover Financial Services, which issues the Discover Card on the Discover Business Services network. We also encounter competition from businesses that issue their own cards or otherwise extend credit to their customers, such as retailers and airline associations, although these cards are generally accepted only at limited locations. Because of continuing consolidations among banking and financial services companies and credit card portfolio acquisitions by major card issuers, there are now a smaller number of significant issuers. The largest competing issuers have continued to grow, in several cases by acquiring card portfolios, and also by cross-selling through their retail branch networks.

In recent years, we have encountered increasingly intense competition in the small business sector, as competitors have targeted OPEN's customer base and our leadership position in providing financial services and other fee-based solutions to small businesses. Competing card issuers offer a variety of products and services to attract cardholders, including premium cards with enhanced services or lines of credit, airline frequent flyer program mileage credits, cash rebates and other reward or rebate programs, services for small business owners, "teaser" promotional interest rates for both credit card acquisition and balance transfers, and co-branded arrangements with partners that offer benefits to cardholders.

Most financial institutions that offer demand deposit accounts also issue debit cards to permit depositors to access their funds. Use of debit cards for point-of-sale purchases has grown as most financial institutions have replaced ATM cards with general-purpose debit cards bearing either the Visa or MasterCard logo. As a result, the purchase volume and number of transactions made with debit cards in the United States has grown more rapidly than credit and charge card transactions. Debit cards were marketed as replacements for cash and checks, and transactions made with debit cards have typically been for smaller dollar amounts. **There is no credit extended when a debit card is used and the consumer must have sufficient funds in his or her demand deposit account to pay for the purchase at the time of the transaction as opposed to charge cards where payment is due at the end of the billing period or credit cards where payment can be extended over a period of time. However, debit cards are also perceived as an alternative to credit or charge cards and used in that manner.** We do not offer a debit card linked to a deposit account, but we do issue various types of prepaid cards. As the payments industry continues to evolve, we are also facing increasing competition from non-traditional players, such as online networks, telecom providers, or software-as-a-service providers that leverage new technologies and customers' existing charge and credit card accounts and bank relationships to create payment or other fee-based solutions. In addition, the evolution of payment products in emerging markets may

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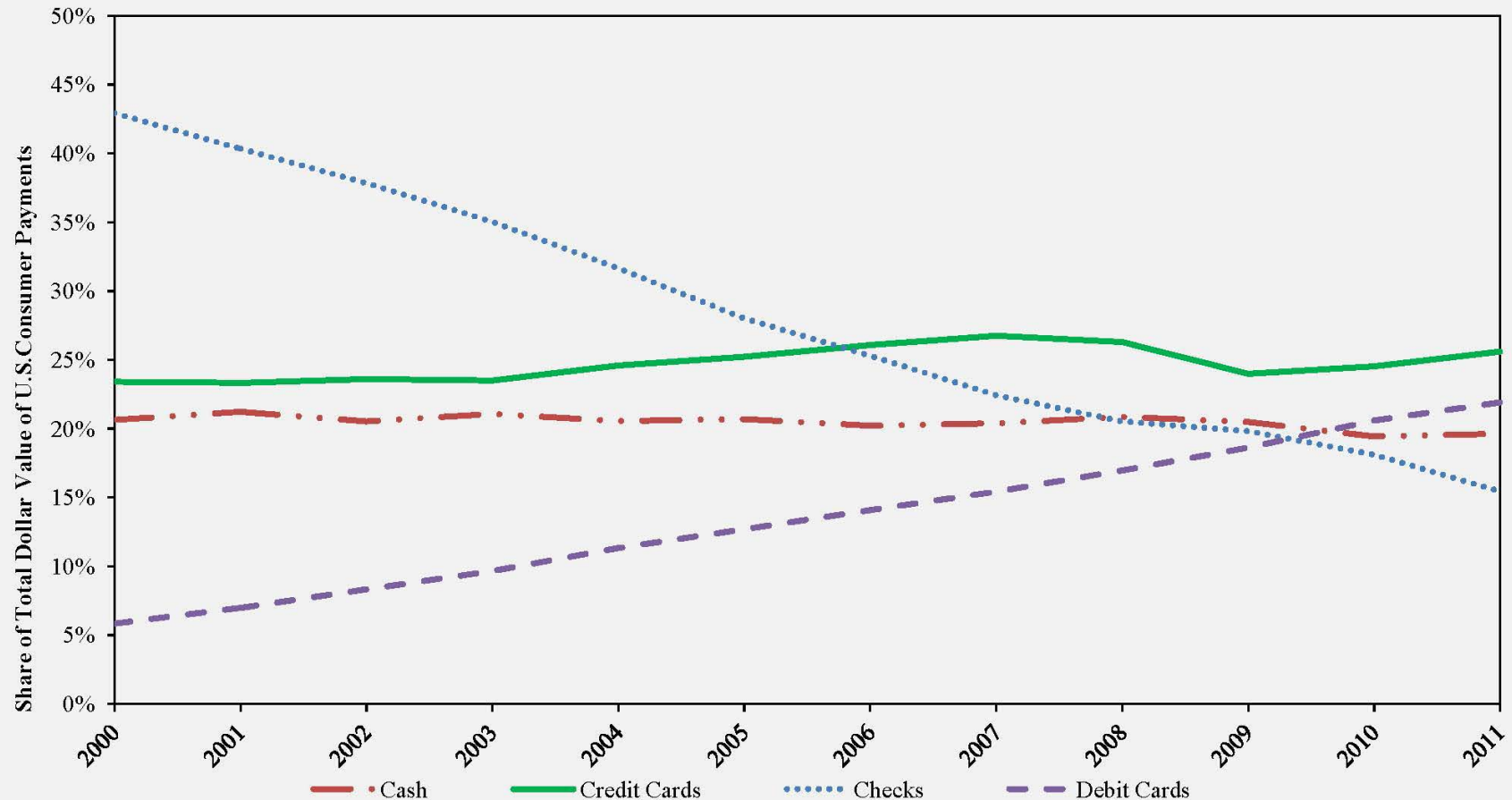
"[D]ebit cards are also perceived as an alternative to credit or charge cards and used in that manner."

PX1409



Growth in Debit Card Usage Has Come at Expense of Check Usage

Shares of Total Dollar Value of U.S. Consumer Payments
Cash, Checks, Credit Cards, and Debit Cards: 2000 - 2011



Notes: The percentages for checks, cash, credit cards and debit cards do not add up to 100%. There are other types of payment methods that are not displayed in the graph. 2000 to 2003 and 2005 to 2006 reflect revised figures from later issues of *The Nilson Report*.

Sources: PX1519, PX1522, PX1525, PX1528, PX1531, PX1534, PX1537, and PX1541.



Amex's Internal Structure Until Recently Included Travel and Entertainment Organization

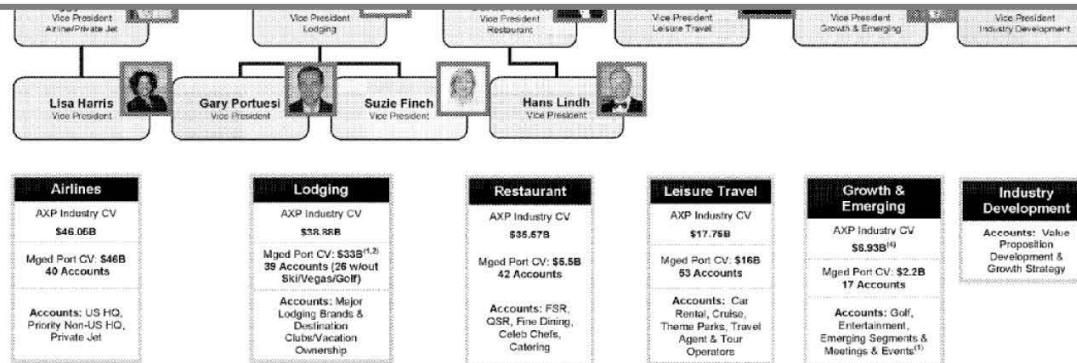
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TEI Leadership Team

Our team is responsible for managing TEI industries amounting to \$145.19B in 8+4 CV, 31% of MSUS 8+4 CV and a marginal contribution that is 41.2% of MSUS, as of Q1 2008

Shane Berry
SVP/COO

“Our team is responsible for managing TEI industries”



1) M&E CV is part of the Lodging Portfolio CV only 2) Included Ski, Vegas and Golf in CV and Count since they are in TEI through Oct 3) Above excludes managed associations (e.g.: lodging-3, G&E - 2). 4) Industry CV includes Entertainment only. Financial Sources: AXP Ind CV = 6-4, Managed Port CV = FY Goal as per Scorecard

AMEX-DOJ-10012862



The Evidence Will Show That Amex's Anti-Steering Rules Violate the Sherman Act

Actual Anti-Competitive Effects

There is direct evidence that Amex's Anti-Steering Rules have actual anti-competitive effects.



Market Definition

The relevant antitrust product market is general purpose credit and charge card network services to merchants; within that market, there is a distinct relevant market for card network services to Travel & Entertainment (T&E) merchants.



Market Power

Amex's market power is demonstrated through (1) customer insistence, (2) price increases, and (3) market share.

Amex's Defenses

Amex lacks valid pro-competitive effects or other defenses.



U.S. v. Visa Provides a Road Map for Market Power Analysis

“Market power has been defined by the Supreme Court to mean the ‘power to control prices or exclude competition.’”

— *U.S. v. Visa*, 344 F.3d 229, 239 (2d Cir. 2003) (quoting *U.S. v. Du Pont Co.*, 351 U.S. 377, 391 (1956)).



Amex Explained the Exercise of Market Power in Its *U.S. v. Visa* Amicus Brief

“Defendants have plainly exercised the power to force a purchaser to do something that he would not do in a competitive market.”

— PX1478, Brief of American Express Co. as Amicus Curiae at 7, *U.S. v. Visa U.S.A., Inc.*, 163 F. Supp. 2d 332 (S.D.N.Y. 2001) (No. 98 Civ. 7076 (BSJ)) (citing *Eastman Kodak Co. v. ITS*, 504 U.S. 451, 464 (1992) (internal quotations omitted).



U.S. v. Visa Provides a Road Map for Market Power Analysis

U.S. v. Visa

344 F.3d 229, 239-40 (2d Cir. 2003)

- **Customer insistence:**
“[M]erchants . . . could not refuse to accept Visa or MasterCard . . . because of consumer preference.”
- **Price increases:** “[D]espite recent increases in . . . fees, no merchant had discontinued acceptance.”
- **Market share:** Defendants had “large shares of a highly concentrated market . . . MasterCard [] accounted for approximately 26%.”



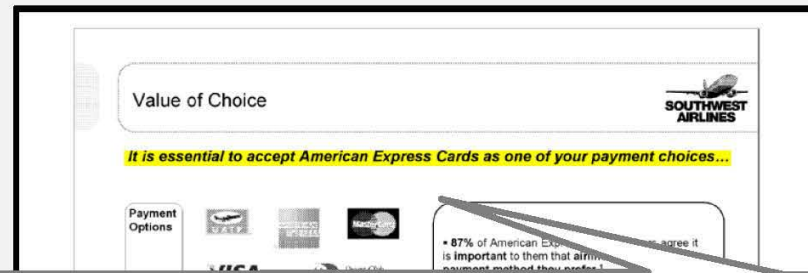
U.S. v. Visa Market Power Road Map

Customer Insistence

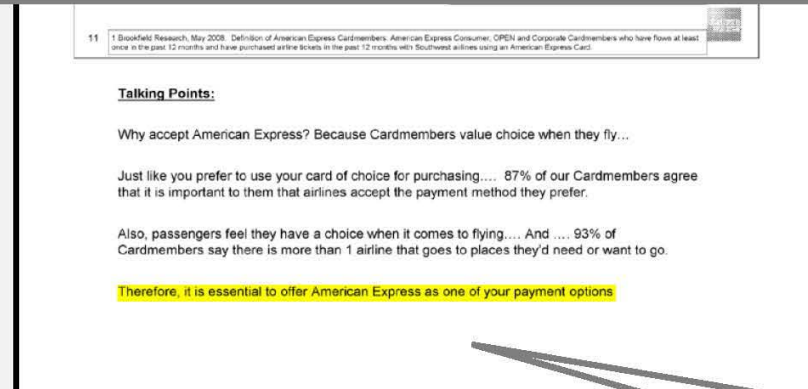
“[M]erchants . . . could not refuse to accept Visa or MasterCard . . . because of consumer preference.”



Amex Told Southwest That Its Acceptance “Is Essential”



“It is essential to accept American Express Cards as one of your payment choices...”



“Therefore, it is essential to offer American Express as one of your payment options”



Amex Communicated to Other Airlines That “It Is Essential to Accept American Express”

“It is essential to accept American Express as one of your payment choices...”

PX1218

Enhanced Alaska Airlines Value Proposition

As a result of our recent value story research, we have an enhanced value proposition that should convince American Airlines to resign in 2009

It is essential to accept American Express as one of your payment choices...

Payment Options: VISA, AMERICAN EXPRESS, MASTERCARD

Flight Options: Alaska Airlines

90% of American Express Cardmembers agree it is important to them that airlines accept the payment method they prefer.¹

Passengers also have choice when it comes to flying...

PX0769

American Express Cardmembers who “jet” with JetBlue Airways

It is essential to accept American Express as one of your payment choices...

Payment Options: VISA, AMERICAN EXPRESS, MASTERCARD

Flight Options: JetBlue Airways

92% of American Express Cardmembers agree it is important to them that airlines accept the payment method they prefer.¹

Passengers also have choice when it comes to flying...

PX0517

Enhanced American Airlines Value Proposition

As a result of our recent value story research, we have an enhanced value proposition that should convince American Airlines to resign in 2009

It is essential to accept American Express as one of your payment choices...

Payment Options: VISA, AMERICAN EXPRESS, MASTERCARD

Flight Options: American Airlines

87% of American Express Cardmembers agree it is important to them that airlines accept the payment method they prefer.¹

Passengers also have choice when it comes to flying...

PX1252

Cardmember Loyalty

American Express Cardmembers are more loyal, highly-insistent customers who prefer to use the Card for Airline purchases.

It is essential to accept American Express Cards as one of your payment choices...

Payment Options: VISA, AMERICAN EXPRESS, MASTERCARD

Flight Options: Continental Airlines

90% of American Express Cardmembers agree it is important to them that airlines accept the payment method they prefer.¹

Passengers also have choice when it comes to flying...

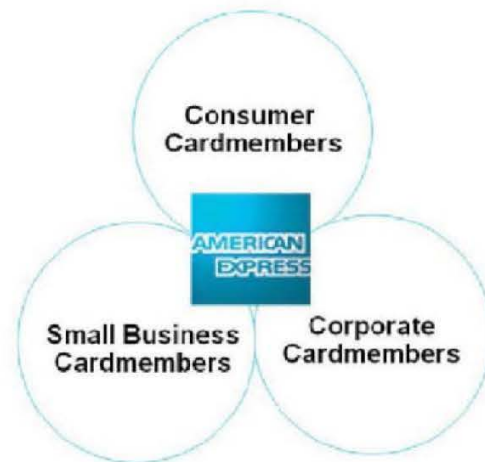


Insistent Amex Cardholders Fall into Three Groups



AMERICAN EXPRESS LOYALTY GROUPS

The rewards and affinity programs of our network Card issuers are designed to attract even more loyal and insistent Cardmembers to the American Express network. By partnering with American Express, merchants can benefit from our loyal and high-spending customers.



Consumer Cards
Rewards & Affinity Groups

Small Business Cards
Five times as many cards in force as
the next-largest issuer

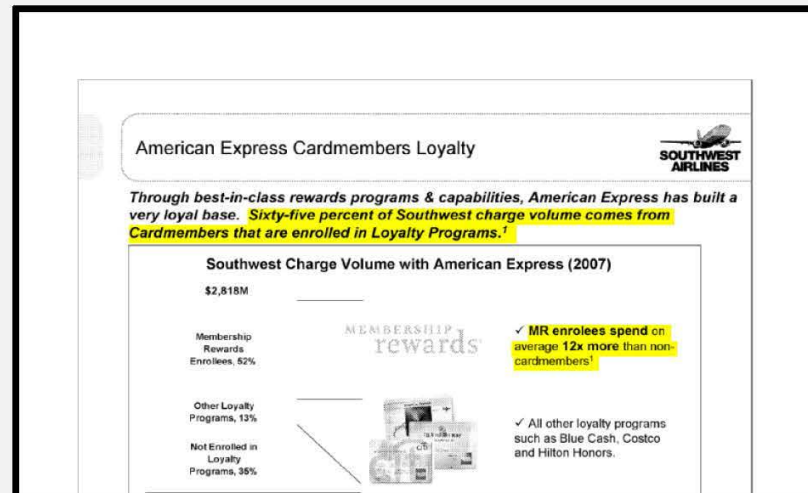
Corporate Cards
Relationships with more than 65% of
Fortune 500 companies



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Amex Explained Insistence of Its Membership Rewards Cardholders



“Sixty-five percent of Southwest charge volume comes from Cardmembers that are enrolled in Loyalty Programs.”

The breakout below shows that MR our flagship rewards program in which you are a partner, delivers 52% of your CV. MR has been a significant player in our partnership to date. there is so

“MR enrolees [*sic*] spend on average 12x more than non-cardmembers.”

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PX0007



Many Amex Cardholders Would Spend Less or Not at All if Amex Were Not Accepted by a Merchant

Used (Card) In Prior Month (Continued)

Impact Of Card Acceptance (Continued)

- 52% of American Express Cardmembers say they purchase more often from merchants who accept American Express than with merchants who do not.
- 49% of American Express Cardmembers say they spend more money with merchants who accept American Express than with merchants who do not.
- 63% of American Express Cardmembers say they have a more positive opinion of merchants who accept American Express than they do of merchants that do not.

66% of American Express Cardmembers say they would choose a merchant that accepts American Express over that does not.

“39% of American Express Cardmembers say they would not have purchased and/or would have spent less if American Express had not been accepted on their last purchase occasion.”

- 9% of American Express Cardmembers say they would no longer purchase from a merchant where they had used American Express if American Express was no longer accepted there.
- 52% of American Express Cardmembers say they would no longer purchase or would spend less at a merchant where they had used American Express if American Express was no longer accepted there.
- 58% of American Express Cardmembers say they would feel less positive about a merchant where they had used American Express if American Express was no longer accepted there.

7

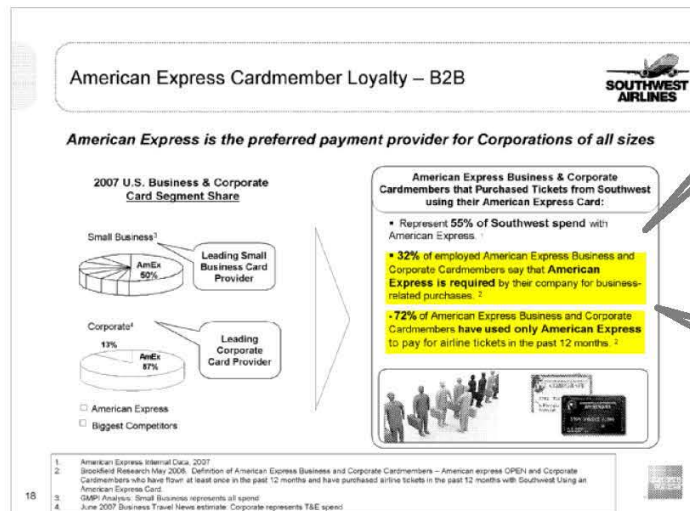
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PX0815



Amex Explained Its Corporate Insistence



Talking Points:

Major player in the corporate card market- important driver of volume in the B2B segment. Amex has a 50% share in small business and a 87% share in corporate.

What is in the box tells us how our customers are purchasing tickets from you. 55% of SW spend is on AmEx, and 32% who are buying tickets are required to do such by their corporations.

Considering managing distribution costs are important to you – this is the customer you value

Positive impact on your revenue and represents your most profitable customer which is why you to continue to partner with us.

“32% of employed American Express Business and Corporate Cardmembers say that **American Express is required** by their company for business-related purchases.”

“72% of American Express Business and Corporate Cardmembers **have used only American Express** to pay for airline tickets in the past 12 months.”

“Amex has a 50% share in small business and a 87% share in corporate.”



Significant Number of Merchant's Sales "At Risk" If Don't Take Amex

Loyal Corporate Cardmembers

Loyal corporate Cardmembers drive significant revenue for American Airlines

Corporate Cardmembers

Total B2B CV =

- 32% of employed American Express Corporate Cardmembers say that American Express is required by their company for business-related purchases! 32% x
- 21% of employed American Express Corporate Cardmembers say that their company has a required policy for airline use! 21% x

Loyal American Express Corporate Cardmembers Represent in revenue

“... insistent Amex Corporate CMs [cardmembers] represent [REDACTED] in revenue to AA [American Airlines] each year. Note: You can also position this as the portion ‘at risk’ if AA does not accept the Card.”

Loyal Consumer Cardmembers

Loyal consumer Cardmembers drive additional revenue for American Airlines

Loyal Consumer Cardmembers

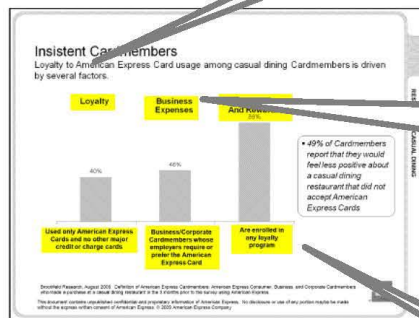
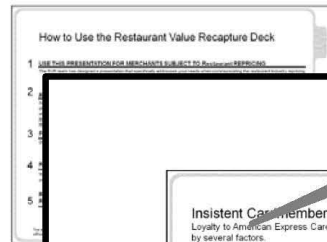
Total Consumer CV =

- 91% of American Express Consumer Cardmembers say they have more than 1 airline that goes to places they need or want to go! 91% x
- 79% of American Express Consumer Cardmembers agree they would choose an airline that accepts American Express over one that does not, all things being equal! 79% x
- 38% of American Express Consumer Cardmembers agree that they are more loyal to American Express than they are to American Airlines! 38% x

“Insistent Amex consumer CMs [cardmembers] represent [REDACTED] in revenue to AA [American Airlines] each year. Note: You can also position this as the portion of ‘at risk’ if AA does not accept the Card.”



Amex Explains Its Sources of Insistent Cardholders to Casual Dining Merchants



Casual Restaurant: Insistent Cardmembers

Coaching Tips:

Loyalty groups are highly insistent, and have an overall less positive experience when they cannot use their preferred form of payment.

“Loyalty: 40%

Used only American Express Cards and no other major credit or charge cards”

“Business Expenses: 46%

Business/Corporate Cardmembers whose employers require or prefer the American Express Card”

“Earning Points and Rewards: 89%

Are enrolled in any loyalty program”

“Loyalty groups are highly insistent, and have an overall less positive experience when they cannot use their preferred form of payment.”

PX0957

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Amex Calculated How Much of Walgreens' Amex Business Was at Risk If Walgreens Cancelled

“AXP has commissioned research to understand the insistence of key Cardmember populations and, specifically, the impact within the drug store industry of Card non-acceptance.”

and, specifically, the impact within the drug store industry of Card non-acceptance.

- 56% of *Membership Rewards* enrollees would stop shopping or would shop less if a drug store did not accept AXP
- 52% of Personal Cardmembers would stop shopping or would shop less if a drug store did not accept AXP
- 50% of Corporate Cardmembers would stop shopping or would shop less if a drug store did not accept AXP
- 34% of Small Business Cardmembers would stop shopping or would shop less if a drug store did not accept AXP

Core Customer Segments Spending at WAG	2004F Charge Volume Generated by Segment	based on research cited above		of those who would change behavior, how would change		
		% of Customers Who Would Change Behavior ¹	% That Would Stop Shopping	% That Would Shop Less ²	Sales at Risk if Cancelled Card Acceptance	% of Sales at Risk by Segment
Personal Cardmembers (Loyalty Cards)	REDACTED					
Personal Cardmembers						
Corporate Cardmembers (Large & Middle Market)						
Small Business Cardmembers						
Foreign Cardmembers						
Total						



Amex Found 41% of Walgreens' Amex Charge Volume "At Risk" Without Amex Acceptance

“In total, nearly [REDACTED], or 41%, of Walgreens charge volume would be at risk if American Express were no longer accepted.”

Personal Cardmembers (Loyalty)	\$	REDACTED	
Personal Cardmembers (Non-Loyalty)	\$		
Corporate Cardmembers (Large & Middle Market)	\$		
Small Business Cardmembers	\$		
Foreign Cardmembers	\$		
Total	\$		
AXP Marketing to Protect Drug Store Industry Charge Volume (REDACTED	in sales at risk)
Total Sales at Risk		REDACTED	

Source: AB Research Associates; ¹"Shop Less" defined as a 50% reduction in spend

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PX0048



Amex Prepared to Steer Its Cardholders Away from Walgreens

CVS/pharmacy

Receive a \$25 CVS/pharmacy Gift Card on new or transferred prescriptions when you use your American Express® Card at CVS/pharmacy.

Offer valid 1/15/05 to 2/12/05 Prescription No. _____ Pharmacist Initials _____

TERMS AND CONDITIONS: Purchase must be paid for on your American Express Card. Receive a \$25.00 CVS Gift Card when your prescription is dispensed. It cannot be used to pay for this purchase but can be used just like cash on future purchases at CVS/pharmacy. Law prohibits use by persons enrolled in, or for any prescriptions reimbursed by, any publicly (state, federally) funded healthcare programs. Coupons cannot be used on any item reimbursable by public aid programs. Limit one Gift Card per Cardmember. Offer not available in MD, NJ, and NY. CVS will not honor any facsimile, photocopy, or any other reproduction of this coupon. Not valid for any other prescriptions previously filled at any CVS/pharmacy. American Express does not issue and is not connected to or responsible for the CVS ExtraCard or benefits on that card. Expires 2/12/05.

FOR THE CVS/pharmacy NEAREST YOU, CALL 1-800-SHOP CVS OR VISIT CVS.COM



Plaintiffs' Exhibit
US v. AMEX
10-cv-01450
PX0077

PX0077



Amex Uses Insistence to Set Prices

Merchants receive value from Amex acceptance, and quantifying that value enables us to estimate the highest 'rational' price they should be willing to pay for accepting our cards.

estimate the highest 'rational' price they should be willing to pay for accepting our cards.

Quantifiable Sources of Value that a merchant derives from AMEX

Incremental revenue

➤ Cardm Busine

- Some
mer
othe
- Oth
wou
form

➤ New C may co cooper

➤ Cardmember insistence (Consumer, Small Business & Corporate)

- Some of our CMs will only spend at a merchant, if they can use their Amex card; otherwise, they will walk away
- Other Amex CMs will spend less than they would, if they were obliged to use another form of payment

is on

accepting
on costs
ome higher
to bank

Incremental Revenue

Price Premium



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U.S. v. Visa Market Power Road Map

Price increases

“[D]espite recent increases in . . . fees, no merchant had discontinued acceptance.”



Amex Imposed Price Increases Across Wide Range of Industries

Cumulative Merchant Impact of the VR Program

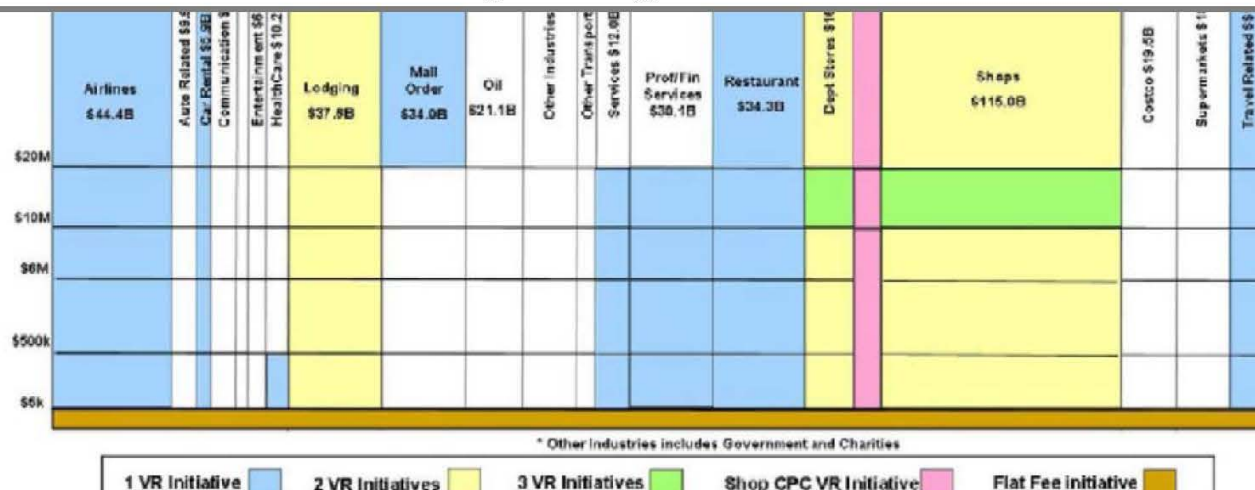


Through the various Value Recapture initiatives that have been implemented since 2006, we have raised rates on 65% of the total MSUS charge volume.

CHARGE VOLUME BY MERCHANT SIZE & INDUSTRY (U.S., 2008, \$B, 100% = \$468B)

Education \$5.0B

“Through the various Value Recapture Initiatives . . . we have raised rates on 65% of total MSUS [Merchant Services United States] charge volume.”



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Amex Profited Over \$1 Billion from Price Increases

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2006-2010 U
*Does not include

- 2010 Initiatives
- 2009 Initiatives
- 2008 Initiatives
- 2007 Initiatives
- 2006 Initiatives

\$77
\$77
US CV 2006
Actual: \$400B
BP Impact 1.9 bps

Cumulative '06-'10 Benefit

2010: \$46 MM

2009: \$162 MM

2008: \$144 MM

2007: \$275 MM

2006: \$672MM

\$1.3B

Incremental PTI

2010

Cumulative '06-'10 Benefit

2010: \$46 MM

2009: \$162 MM

2008: \$144 MM

2007: \$275 MM

2006: \$672MM

\$1.3B

Incremental PTI

10 (Forecast)
59B
Improvement to the US weighted average Discount Rate.
Senior Management

PX0357



Amex Implemented Price Increases With Continued Merchant Acceptance

SHANE BERRY

“Senior Vice President, National Client Group
Jun. 2009 – Present”

“100% merchant retention”

- Prescribed retrospectives with entity key senior merchants including Travelocity, Universal Studios, JetBlue, Macys and many more
- Established a strong culture for this new organization resulting in an energized and highly customer centric winning team
- Facilitated significant partnering across the Blue Box to drive superior results e.g. GNS/Macys, CTN – Travel Agent share shift and Travelocity RFP, multiple MR partnerships, issuer engagement with Restaurant, BIP with GCC, Gift Card RFP with the Post Office etc.

“Senior Vice President, Travel & Entertainment Industries
Oct. 2007 – Jun. 2009”

- **Amex and client testimonials**
- Introduced Scorecard methodology to drive focus and key success metrics including charge volume expansion. Charge volume growth performance significantly exceeded goals
- Introduced formal account planning and relationship manager as mandatory annual business practices

“100% merchant retention”

PX0070



Pricing

REDACTED

"Please indicate your level of satisfaction with AXP Pricing"

REDACTED

REDACTED

"Do you agree with the statement:
"Increasing American Express' Share of My Total Charge Volumes Would
Have a Positive Impact on My Business?"

REDACTED

* caution: small sample size.

Note: Merchant satisfaction on a scale of 1–10, where 1—completely dissatisfied and 10—completely satisfied. The levels of satisfaction are defined as follows: low (1–3), medium (4–7), and high (8–10). 'a' and 'b' indicate significant differences in mean scores at the 90% confidence interval.

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Price/Value Satisfaction



1 Perceived value is: **REDACTED**

Price/Value Satisfaction with Amex
(% Top 3 Box)

“Please think about both value and cost. For American Express and VISA/Mastercard, how would you rate the value you receive given the price you pay?”

REDACTED

B5. Please think about both value and cost. For American Express and VISA/Mastercard, how would you rate the value you receive given the price you pay?

Green Font: Amex significantly outperforms Visa/MC

Red Font: Visa/MC significantly outperforms Amex

Source: Merchant Satisfaction Research, Q3 2010

AXP Restricted



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PX0043



U.S. v. Visa Market Power Road Map

Market share

Defendants had “large shares of a highly concentrated market . . . MasterCard [] accounted for approximately 26%.”



Amex's Market Share = MC's Market Share in *U.S. v. Visa*

Amex's Share of Credit and Charge Card

Purchase Volume:

- **26% across all merchants**
- **34% across Travel & Entertainment merchants**



Amex Agreed that MC Had Market Power in *U.S. v. Visa* and *Amex v. Visa*

Case 1:04-cv-00667-DWM Document 1 Filed 11/15/04 Page 20 of 45

“ . . . MasterCard’s share was approximately 26%.”

Visa and MasterCard together controlled over 73 percent of the dollar volume of general purpose card transactions in the United States; Visa’s share was approximately 47 percent, and

“Visa and MasterCard have exercised market power in the general purpose card network services market. Because significant numbers of customers would not shop at merchants who do not accept their general purpose cards, merchants would be forced to accept Visa and MasterCard even in the face of significant price increases.”

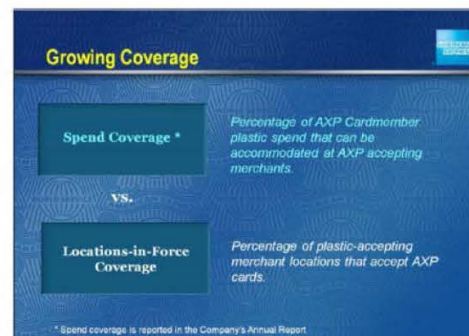
Discover (in 1985).

82. Visa and MasterCard have exercised market power in the general purpose card network services market. Because significant numbers of customers would not shop at merchants who do not accept their general purpose cards, merchants would be forced to accept Visa and MasterCard even in the face of significant price increases. In recent years, Visa and MasterCard have raised the interchange rates they charge to merchants several times without losing merchant customers. In fact, the Visa and MasterCard networks have continued to expand their merchant acceptance rates notwithstanding these interchange rate increases.

83. Moreover, Visa and MasterCard “have demonstrated their power in the network services market by effectively precluding their largest competitor [American Express] from



Amex Defines “Spend Coverage”



“Percentage of AXP Cardmember plastic spend that can be accommodated at AXP accepting merchants.”

LIF coverage, on the other hand, refers to the percentage of general plastic accepting merchant locations that also accept Amex.

The basic difference between spend coverage and LIF coverage is that spend measures the volume spent at merchants. LIF on the other hand looks at the actual number of plastic accepting merchants.

DO NOT ADVANCE SLIDE

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Amex Reports Its “Spend Coverage” in Its 10-K Filing

program, third-party service agents identify potential new merchants and provide payment processing services to merchants on our behalf for Card transactions, while we retain the Card acceptance agreement with participating merchants, determine the merchant pricing, and receive the same transactional information we always have received through our closed-loop network. This program simplifies Card processing for small- and medium-sized merchants by providing them with a single source for statements, settlement and customer service. We have similar arrangements in Spain and Mexico.

During 2013, we also launched a program called OptBlueSM in order to expand Card acceptance by U.S. small merchants that have a projected American Express charge volume of less than \$1 million per year. Under OptBlue, third-party service agents will have the Card acceptance agreement with the merchant and

“We estimate that, as of the end of 2013, our merchant network in the United States accommodated more than 90 percent of our Card Members’ general-purpose card spending.”

merchant network in the United States accommodated more than 90 percent of our Card Members’ general-purpose card spending. Our international spend coverage is more limited, although we continue to expand our merchant network in locations outside the United States. We estimate that our international merchant network as a whole accommodated approximately 80 percent of our Card Members’ general-purpose card spending. These percentages are based on comparing our Card Members’ spending on our network currently with our estimate of what our Card Members would spend on our network if all merchants that accept general-purpose credit and charge cards accepted American Express Cards.

Discount Revenue

We earn “discount” revenue from fees charged to merchants for accepting Cards as payment for goods or services sold. The merchant discount, or discount rate, is a fee charged to the merchant for accepting Cards and is generally expressed as a percentage of the Charge amount. In some instances, an additional flat transaction fee is assessed as part of the merchant discount. The merchant discount is generally deducted from the amount of the payment that the “merchant acquirer” (in most cases, TRS or one of its subsidiaries) pays to a merchant for Charges submitted. A merchant acquirer is the entity that contracts for Card acceptance with the merchant, accepts transactions from the merchant, pays the merchant for these transactions and submits the transactions to the American Express network, which submits the transactions to the appropriate Card issuer. When a Card Member presents the Card for payment, the merchant creates a record of charge for the transaction and submits it to the merchant acquirer for payment. To the extent that TRS or one of its subsidiaries is the merchant acquirer, the merchant discount is recorded by us as discount revenue at the time the transaction is received by us. We may



Amex Is Accepted at Merchants Representing Over 90% of Credit Card Spend



2010 Spend Coverage

- AXP Spend Coverage is calculated annually for inclusion in the 10K Report. Below is a summary of the analysis
 - Absolute Spend Coverage for international proprietary markets is up YOY, driving an increase in total International in 2010 to 86%
 - US spend coverage has increased YOY driven by AXP's DBV growing at a faster rate than the spend universe

	<u>2009</u>	<u>2010</u>
Proprietary International	86%	87%
GNS	82%	82%
Total International	85%	86%
US	92%	94%

US

2009

92%

2010

94%



Most Non-Acceptors Are Small Merchants



“The group under \$10K represents 75% of [Amex’s] coverage gap against Visa/MasterCard . . . Remember these are merchants probably half the size of the florist.”

Importantly though, the group under \$10K represents 75% of our coverage gap against Visa / MasterCard. 90% of the suppression. 90% of merchant turnover and is highly unprofitable... remember these are merchants probably

The group under \$5k “represents two-thirds of our coverage gap.”

Over the past 18 months we've done three sets of research against this segment through surveys, interviews and focus groups... let me share a minute of their feedback.

SHOW VIDEO

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Amex Recognizes That a Higher Price May Result in Less Coverage

Proposed Pricing Architecture

“100% coverage and premium price may be incompatible”

- Each component or value to be identified, assessed and priced (and sold and delivered) accordingly
- Testing, and defending pricing tables is the only way to “prove” that our price is “fully valued”
 - 100% coverage and premium price may be incompatible
- Multiple relationships should be encouraged, but priced independently to avoid “domino” or “house of cards” effect



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Ninety-Eight of Top 100 Retailers Accept Amex

Of the 100 largest retailers in the United States in 2010, ninety-eight accept general purpose credit cards. **All ninety-eight** accept American Express.



U.S. v. Visa Provides a Road Map for Market Power Analysis

U.S. v. Visa

344 F.3d 229, 239-40 (2d Cir. 2003)

- **Customer insistence:** “[M]erchants . . . could not refuse to accept Visa or MasterCard . . . because of consumer preference.”
- **Price increases:** “[D]espite recent increases in . . . fees, no merchant had discontinued acceptance.”
- **Market share:** Defendants had “large shares of a highly concentrated market . . . MasterCard [] accounted for approximately 26%.”

U.S. v. American Express

(EDNY 2014)

- **Customer insistence:** Amex to airlines: “It is essential to accept American Express Cards.”
- **Price increases:** Amex imposed “Value Recapture” price increases on 65% of charge volume “purely . . . because we can” with little loss of acceptance.
- **Market share:** Amex now has 26% of an equally concentrated market.



The Evidence Will Show That Amex's Anti-Steering Rules Violate the Sherman Act

Actual Anti-Competitive Effects

There is direct evidence that Amex's Anti-Steering Rules have actual anti-competitive effects.



Market Definition

The relevant antitrust product market is general purpose credit and charge card network services to merchants; within that market, there is a distinct relevant market for card network services to Travel & Entertainment (T&E) merchants.



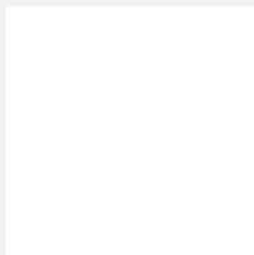
Market Power

Amex's market power is demonstrated through (1) customer insistence, (2) price increases, and (3) market share.



Amex's Defenses

Amex lacks valid pro-competitive effects or other defenses.





Amex Steers to “Preferred” Travel Suppliers and Steers Away from “Non-Preferred” Suppliers

From: Jud Linville
To: Russell Macin@AMEX

“Hilton is non-preferred within Amex Corporate Travel... To become preferred within Amex Travel, a supplier must agree to pay a Business Development Agreement [BDA] fee... It is the price of entry for any supplier who wants to list their product within our network.”

Travel, a supplier must agree to pay a Business Development Agreement fee. The BDA, as we call it, is purposely not linked to any volume or market share commitments on our part. **It is the price of entry for any supplier who wants to become a preferred vendor and list their product within our network.**

This is a principle we established 3 years ago, for all airlines, car companies and hotels. With no exceptions. Our suppliers don't necessarily like this principle, and they all want to tie payments to

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volume or share growth, but we hold very firm on this. BDAs have become a major source of travel revenue, and we have been able to sustain and grow this revenue, despite a 40% drop in travel volume over the last 3 years. If BDAs had been tied to volume, as Hilton requests, we would have seen a sharp erosion of this revenue stream. It's only because we are so steadfast on this principle, that we have been able to keep the BDAs alive and well. (BDA revenue today is over \$110MM in the US alone).

Separately, Embassy Suites, a Hilton brand, proactively chose to become an Amex preferred supplier just this year. Embassy Suites pays a BDA that is not tied to volume or share.

Our second principle is that we try to sell and promote only preferred suppliers, and we actively sell away from non-preferred suppliers. This reinforces the value of the BDA for suppliers that are willing to pay, and it gives teeth to the whole Preferred Supplier program. Very few suppliers elect to be non-preferred with Amex,

“Our second principle is that **we try to sell and promote only preferred suppliers, and we actively sell away from non-preferred suppliers.** This reinforces the value of the BDA for suppliers that are willing to pay, and it gives teeth to the whole Preferred Supplier program” (emphasis added).



Amex Steered Away From Northwest Airlines and Shifted Share

Stick #1 – Travel Share Shift (NW Benchmark)

“08/04: NWA [Northwest Airlines] communicated a new GDS [Global Distribution System] fee effective 9/01/04”

GDS fee effective 9/01/04

“AXP Travel immediately replied, resulting in 10-16% decrease in NWA booking within 2 weeks”

On preferred NWA globally at
POS

NWA Share “Stick” Share

Contacted 100% of the top NWA

“NWA lost [REDACTED] within one week”

accounts with NWA activity

- NWA rescinded GDS fee on 9/02/04 -
One factor was the decrease in bookings

“NWA rescinded GDS fee on 09/02/04 – One factor was the decrease in bookings from AXP travel”

American Express Proprietary & Confidential

PX0064



Amex's Own Witness Operates "Clean" Stores



PX2424



Amex Could Charge Merchants for Any Additional Benefits

“When payment is possible, free-riding is not a problem because the ‘ride’ is not free.”

— *Chicago Prof’l Sports Ltd. P’ship v. NBA*, 961 F.2d 667, 675 (7th Cir. 1992) (Easterbrook, J.)



“At bottom the NCAA’s position is that ticket sales for most college games are unable to compete in a free market. . . . By seeking to insulate live ticket sales from the full spectrum of competition because of its assumption that the product itself is insufficiently attractive to consumers, petitioner forwards a justification that is inconsistent with the basic policy of the Sherman Act.”

– *NCAA v. Bd. of Regents of Univ. of Oklahoma*, 468 U.S. 85, 116-17 (1984).



The Evidence Will Show That Amex's Anti-Steering Rules Violate the Sherman Act

Actual Anti-Competitive Effects

There is direct evidence that Amex's Anti-Steering Rules have anti-competitive effects.



Market Definition

The relevant antitrust product market is general purpose credit and charge card network services to merchants; within that market, there is a distinct relevant market for card network services to Travel & Entertainment (T&E) merchants.



Market Power

Amex's market power is demonstrated through (1) customer insistence, (2) price increases, and (3) market share.



Amex's Defenses

Amex lacks valid pro-competitive effects or other defenses.

