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The Evolution of Antitrust Doctrine After Ohio v. Amex and the Apple v. Pepper Decision That Should Have Been
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If the Supreme Court's recent decision in *Apple Inc. v. Pepper* (*Apple*) had hewed to the precedent established by Ohio v. American Express Co. (*Amex*), it would have begun its antitrust inquiry with the observation that the relevant market for the provision of app services is an integrated one, in which the overall effect of Apple's conduct on both app users and app developers must be evaluated. A crucial implication of the Amex decision is that participants on both sides of a transactional platform are part of the same relevant market, and the terms of their relationship to the platform are inextricably intertwined.

We believe the Amex Court was correct in deciding that effects falling on the "other" side of a tightly integrated, two-sided market from challenged conduct must be addressed by the plaintiff in making its prima facie case. But that outcome entails a market definition that places both sides of such a market in the same relevant market for antitrust analysis.

As a result, the Amex Court's holding should also have required a finding in Apple that an app user on one side of the platform who transacts with an app developer on the other side of the market, in a transaction made possible and directly intermediated by Apple's App Store, is similarly deemed to be in the same market for standing purposes.

Under the proper conception of the market, it is difficult to maintain that either side does not have standing to sue the platform for alleged anticompetitive conduct relating to the terms of its overall pricing structure, whether the specific terms at issue apply directly to that side or not. Both end users and app developers are "direct" purchasers from Apple—of superficially different products, but in a single, inextricably interrelated market. Both groups should have standing and should be able to establish antitrust injury—harm to competition—by showing harm to either group, as long as they can establish the requisite interrelatedness of the two sides of the market.

As we discuss, such a result would have been consistent with the way antitrust doctrine has long evolved—in both its substantive and its procedural aspects—to reflect new economic knowledge, particularly with respect to such "nonstandard" business models.

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