The US Supreme Court is Set to Rule on Yet Another Credit Card Topic and What it Means to the Credit Team

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In March of this year, the US Supreme Court made a significant ruling, finding that New York's no-credit card surcharge law violated commercial free speech. This paved the way for companies to levy a credit card surcharge fee on customers to recover some or all of their interchange fees.

Now the US Supreme Court has on its docket the legal issue of whether suppliers accepting multiple card brands may steer card paying customers to a cheaper card brand, in an attempt to limit their cost of acceptance (or the customer's cost if surcharged). The litigation involves a provision in the AmEx merchant agreement that bars merchants (suppliers)from steering customers to a lower priced brand and whether it violates the Sherman Antitrust Act.

Credit Cards are Customer Preferred Payment Form in B2B Space

Credit and finance teams appreciate that credit card use continues its steep rise, both with existing and new customers, and also understand that credit cards are the most expensive payment channel. The credit team accepting multiple card brands (Visa, MasterCard, American Express and Discover) often find a meaningful difference in card brands' interchange fees.

For the credit team absorbing the interchange fee, as opposed to surcharging, it's in their financial interest to steer the customer to the least expensive card brand. However, the AmEx merchant agreement prohibits such merchant from steering away from AmEx cards.

Does Merchant Agreement Rule Violate Antitrust Law

The US Supreme Court will consider whether AmEx's merchant agreement, which bars merchants (suppliers) from influencing customers to use card brands that charge lower interchange fees, is an antitrust violation. The AmEx merchant agreement states that merchants (suppliers) that choose to accept AmEx cards cannot steer customers to other card brands, even if those brands are cheaper. Rather, AmEx requires merchants to accept all brands equally.

For case background, in 2010, the United States and the attorneys general of seventeen states brought an antitrust enforcement action against Visa, MasterCard and AmEx, challenging its rules preventing suppliers from steering customers to cheaper cards, alleging that the rule constituted an anticompetitive restraint that violates the Sherman Act antitrust legislation. Visa and MasterCard settled, agreeing to remove the restriction. In the matter of MasterCard's restriction on accepting a lower-priced credit card for payment, the District Court found that AmEx had breached the Sherman Act.

The District Court found that through this provision, AmEx harmed competition by preventing any meaningful means of controlling merchants' card acceptance costs, short of dropping acceptance of AmEx cards. In 2016, the 2nd Circuit Court of Appeals reversed the District Court's ruling.

As the matter is now before the US Supreme Court, if it reverses the Court of Appeals, suppliers will be legally allowed to ask customers to use an alternative credit card brand. We expect a ruling on this matter from the US Supreme Court in the first or second quarter of 2018.

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