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A CRITICAL ANALYSIS ON ANTITRUST LAWS IN UNITED STATES

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Abstract

In a nutshell, the purpose of US antitrust laws is to prevent businesses from engaging in practices that lower market competition or establish or sustain monopolies. These statutes prohibit particular mergers and corporate practices in broad strokes, but it is up to the courts to determine, case by case, which mergers and practices are unlawful. From horse-and-buggy eras to the internet era, courts have applied antitrust rules to evolving marketplaces. While US antitrust laws have evolved throughout the years, their overarching goal remains the same: to safeguard consumer-beneficial competition by providing firms with robust incentives to maximize efficiency, maintain low prices, and maintain high quality. "Modern consumer-welfare antitrust law" has been beneficial to the American people, notwithstanding its poor application (as are all legal institutions).

Keywords: Antitrust laws, antitrust investigation, US

1. Introduction

Let us start with a quick overview of the important federal antitrust laws before moving on to the realities of antitrust enforcement, the history of antitrust enforcement in the United States, and the current controversy surrounding antitrust policy.

Sherman[1] (1890), "the Federal Trade Commission[2] (1914)", and the Clayton[3] (1914) Antitrust Acts are the three main federal antitrust acts. Antitrust laws are not only enforced by federal authorities, but also by state attorneys general and private plaintiffs in the majority of states.

[1] "Sherman Anti-Trust Act (1890)"
[2] "Federal Trade Commission". "The Antitrust Laws, https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/antitrust-laws"
[3] "The Clayton Antitrust Act of 1914, 15 U.S.C. 12-27"

1.1 The Sherman Act[4]

Significant accumulations in financial wealth, such as those found in relies on like Standard Oil Trust and dominant firms like US Steel and specific railroads, were crucial in driving the rapid growth of the national economy in the final decades of the 19th century. Worries regarding their negative impact on human society and financial markets resulted in the creation of the initial "federal antitrust legislation, known as the Sherman antitrust Act[5] of 1890".

The Supreme Court ruled in 1911 that only "unreasonable" trade restrictions are forbidden by the Sherman Act[6]. There is no possible defense or explanation for these actions since they constitute per se breaches of Sherman Act section 1[7].

Despite its current potency, the Sherman Act was criticized for its early lack of enforcement by many who sought more targeted antitrust laws. Following the 1912 election, two new statutes were enacted: the Clayton Act[8] and the "Federal Trade Commission Act"[9].

1.2 "The Federal Trade Commission Act"[10]

To enforce its prohibitions on "unfair methods of competition" and "unfair or deceptive acts or practices," the "Federal Trade Commission (FTC)" was established by the "Federal Trade Commission Act"[11] of 1914, an expert administrative agency. Even while the FTC isn't officially responsible for enforcing the Sherman statute, it can sue businesses that engage in conduct that violates the statute under the "Federal Trade Commission Act".

[4] Ibid
[5] "Sherman Antitrust Act of 1890, 15 U.S.C. §§ 1-38"
[6] "Standard Oil Co. v. United States, 221 U.S. 1, 64 (1911)"
[7] "Section 1 of the Sherman Act (15 U.S.C. § 1)"
[8] Ibid
[9] "Federal Trade Commission Act (FTC Act) (15 USC 45)"
[10] "ibid"
[11] "Ibid"

1.3 The Clayton Act[12]

When the Sherman Act fails to expressly forbid certain commercial practices—like mergers or interlocking directorates—the 1914 Clayton Act[13] steps in to fill the void. The authority to enforce the Clayton Act rests with both the FTC and the DOJ. "The Robinson-Patman Act"[14] of 1936 revised the "Clayton Act" to make it illegal for merchants to engage in certain types of price gouging, service gouging, and allowance gouging. To ensure that the government is notified in advance of any major mergers or acquisitions, the "Hart-Scott-Rodino Antitrust Improvements Act"[15] 1976 made further amendments to the Clayton Act.

2. Practicalities of Antitrust Enforcement

A consumer or economic topic article, a legislative inquiry, information gathered from consumers or businesses, or a premerger notice file could prompt an investigation by an agency. The public is typically not allowed access to these investigations for the sake of confidentiality, which benefits the individuals and businesses involved as well as the inquiry itself. The government may try to get a corporation to voluntarily comply with its demands by getting into a consent order if it suspects a violation of law or that a merger could violate the law. Companies that sign consent orders are not required to acknowledge guilt, but they are required to cease the behaviors that are the subject of the complaint or address the anticompetitive elements of their merger.

If the FTC wants an injunction, civil fines, or consumer remedy, it can go straight to federal court in specific cases. Before conducting a thorough investigation into a merger in an administrative procedure, the FTC might pursue a temporary restraining order to halt the deal. This allows them to enforce mergers more effectively. This interim injunction will ensure that the market continues to operate as a competitive entity.

[12] "Ibid"
[13] "Ibid"
[14] "15 U.S.C. § 13."
[15] "Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a"

2.1 State Enforcement

On issues that are significant to local companies or customers, state attorneys general can be crucial in enforcing antitrust laws. They have the authority to sue federally for antitrust violations either as purchasers on behalf of their states or as parens patriae, representing citizens of their states. It is possible for state attorney generals to work with federal investigators during merger probes.

Additionally, state antitrust laws may be enforced through actions brought by the attorneys general of individual states. The highest court in the land has ruled that federal antitrust statutes do not supersede state antitrust laws. It is possible for state prohibitions to exceed federal prohibitions.

2.2 Issues of International Jurisdiction

When looking into international actions that affect American consumers, US and foreign competition agencies frequently work together. Furthermore, because to the increasing internationalization of US corporations and customers, federal antitrust efforts frequently necessitate collaboration with global authorities to advance rational strategies for competition policy. More than 130 international competition agencies are now operational. Regular contacts with key foreign agencies and joint work under the International Competition Network have helped the FTC and DOJ promote antitrust ideas that are sound and based on economics[16].

2.3 Exceptions to Antitrust Law

Certain American business operations are not subject to antitrust legislation. The antitrust law provides exceptions for specific governmental monopoly (such as the US Postal Service), for instance, only applies to heavily controlled federal exertion, and excludes actions that are authorised by a clearly stated state law. Over the years, scholars have criticized these antitrust exceptions, and courts have reduced their scope. They still limit the extensive implementation of procompetitive antitrust ideas in the US economy[17].

[16] "International Competition Network, accessed February 16, 2021", "https://www.internationalcompetitionnetwork.org/about/."
[17] "Herbert Hovenkamp, Federal Antitrust Policy: The Law of Competition and Its Practice, 6th ed. (St. Paul, MN: West Academic, 2020), 869–960".

3. "Federal Antitrust Enforcement Policy: A Brief History"

The policy for enforcing antitrust laws at the federal level has evolved throughout the years.

The Sherman Regulation Act was initially applied to labour unions, industrial cartels as well and an airline merger. The 1911 breakup of Standard Oil in 1911 and the USA Although cigarettes Company was the initial significant success in monopolisation. Nevertheless, worries during the Progressive Era that the Sherman Act was not adequately limiting unethical business behaviour resulted in the creation of the Clayton Act. This law specifically focuses on preventing anticompetitive mergers and condemning expected agreements. Additionally, the Act establishing the Federal Trade Commission was established, granting a group of government specialists the authority to examine business practices and prevent unlawful rivalry.

Following a pause during World War II, antitrust regulation focused on oligopoly—the concern that a few large corporations dominated significant industries and maintained their privileged positions over time.

In the 1970s and 1980s, Chicago school of law and economics researchers criticized antitrust enforcement policies as flawed, alleging that courts had unjustly penalized many effective business practices and harmless mergers[18].

Antitrust policy initiatives have exploded in 2020 and 2021, based on the neo-Branddeisian narrative. "New House Subcommittee on Antitrust, Commercial, and Administrative Law and Washington Center for Equitable Growth research received notice by late 2020"[19].

4. Conclusion

The United States' antitrust laws have developed via a century of judicial review and enforcement, with the help of reasonable economic analysis of individual cases. There is now an agreement in

[18] Robert H. Bork, The Antitrust Paradox, 1st ed. (New York: Basic Books, 1978).
[19] Bill Baer et al., Restoring Competition in the United States (Washington, DC: Washington Center for Equitable Growth, November 2020).

antitrust policy among courts and antitrust enforcers that consumer welfare enhancement should serve as the antitrust policy lodestar. But some have recently argued that antitrust policy has failed to address the predatory practices of large corporations or the deteriorating state of competition. Misconceptions about the nature of competition in the US market form the basis of Neo-Brandeisian ideas. Furthermore, the economy would suffer more than it would gain from those plans' adoption, and antitrust enforcement would be further clouded by the introduction of fresh uncertainties. Retaining the consensual consumer-welfare approach seems to be the more legal and economic choice than drastically altering antitrust rules, even though some small changes could be helpful.

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