

Antitrust Overview

A. Antitrust Law Defined

- collection of federal and state government laws that regulate the conduct and organization of business corporations, generally to promote competition for the benefit of consumers.

B. Primary Statutes

- Sherman Act of 1890
- Clayton Act of 1914
- Federal Trade Commission Act of 1914

C. Three major functions

(1) Section 1 of the Sherman Act

- prohibits price-fixing and the operation of cartels, and prohibits other collusive practices that unreasonably restrain trade.

(2) Section 7 of the Clayton Act

- restricts the mergers and acquisitions of organizations that would likely substantially lessen competition.

(3) Section 2 of the Sherman Act

- prohibits the abuse of monopoly power.

D. Federal antitrust laws provide for both civil and criminal enforcement of antitrust laws.

(1) Who may bring *civil* actions in the courts to enforce the antitrust laws?

- Federal Trade Commission
- Antitrust Division of the U.S. Department of Justice
- private parties who are sufficiently affected

(2) Who may bring *criminal* actions in the courts for violation of antitrust laws?

- U.S. Justice Department
- U.S. states that have antitrust statutes that govern commerce occurring solely within their state borders.

E. Antitrust law is applied to wide range of business practices

- market allocation
- bid rigging
- price fixing
- monopolies

(1) Market Allocation
 - scheme by two or more entities to keep their business activities to specific customers or geographic areas

(2) Bid Rigging
 - collusion to choose who will win a bid

- a. Bid Suppression
- b. Complementary Bidding
- c. Bid Rotation

(3) Price Fixing
 several companies come together to fix a price rather than letting market forces determine the price

(4) Monopolies
 - dominance of an industry or sector by one company cutting out the competition

Typical Monopolistic Behaviors:

- **Exclusive Supply Agreements**
 - prevents selling to competitors
- **Tying the Sale of Two Products**
 - purchase of dominant market product depends on buying another you may not want
- **Predatory Pricing**
 - undercutting of prices (e.g. below cost) in order to eliminate competitors and more than recoup losses later
- **Refusal to Deal**
 - use market dominance to prevent competition

F. Mergers and Acquisitions

- avoidance of monopolistic practices among firms by making them one firm and achieving same results

Potential Problem Scenarios:

(1) **Horizontal Mergers**

- merge with others selling same type of product to dominate the market (e.g. rum, cars)

(2) **Unilateral Effects**

- mergers between rival firms that offer close substitutes

(3) **Vertical Mergers**

- mergers between buyer and seller may have negative effect if it eliminates ability of competitors to acquire supplies

(4) **Competition Mergers**

- rampant preemptive mergers by dominant firms with small firms to become the most dominant

G. Core Practical Concerns

- collusion results in two major effects

(1) **Wealth Transfer**

- money goes from consumer to business

If corporation and stockholders receive money rather than consumers, society receives wealth either way. Thus perhaps of little concern? Being monopolist is profitable!

(2) **Reduction of Output**

If consumers can't afford a widget and therefore forgo buying it, fewer people in society will have benefit of the widget. "Deadweight loss" Should society care? Yes.

- What if the price does not go up?
- What if the price does not go up but massive negative effects in society occur?

H. Scope of antitrust laws - strongly debated!

- degree to which they should interfere in an enterprise's freedom to conduct business

versus

- degree to which they should protect smaller businesses, communities and consumers,

(1) **One view**
 (mostly closely associated with the
 "Chicago School of Economics")

- antitrust laws should focus solely on the benefits to
 consumers and overall efficiency

(2) **Other views**
 (a broad range of legal and economic
 theories)

- antitrust laws should also control economic power in
 the public interest

**Which is the predominant view in the U.S. Supreme
 Court today?**

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 Court today?**

... heavy shift from the 1970s forward to sole focus on the
 benefits to consumers and overall efficiency

Judge Robert Bork, Richard Posner, and other economic
 and legal theorists were heavily influential in moving
 focus way from company practices and instead focusing
 on consumer prices and efficiency in production

Who are primary beneficiaries under this approach?
