

Are Antitrust Laws Good for Technology?

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One economic and political “fact” that most people would assent to without much thought is that antitrust laws are a good thing. A recent headline suggests that Google is facing a possible inquiry by the U.S. Federal Trade Commission (FTC) over its Android operating system. So-called antitrust laws are ostensibly intended to benefit consumers by preventing large organizations and corporate cartels from raising prices “too high” or offering lousy products and services owing to a lack of competition. But is that the way it really works, even theoretically?

Fuzzy Lines

Good laws draw reasonably clear lines. In most cases, the act of intentional murder is well defined, and an individual who has committed such a crime knows it. In the case of antitrust, however, the lines are less clear. Has a company run afoul of the law if it garners a particular large market share? Or does it take prices that are a certain level above (or below) those of the competition? (But then, has the company formed a cartel if its prices are *too* close to those of the competition?) How many deals with distributors to exclude competitors does it take to be illegal? (The deals themselves are not necessarily illegal, though—you don’t see many fast-food chains selling both Coke and Pepsi.) A discussion of problems with antitrust laws at the Cato Institute website summarizes this situation:

Because of murky statutes and conflicting case law, companies can never be sure what constitutes permissible behavior. Normal business practices—price discounts, product improvements and exclusive contracting—can somehow morph into an antitrust violation when examined by government antitrust regulators. Companies can be accused of monopoly price gouging for charging more than their competitors, or accused of predatory pricing for charging less, or accused of collusion for charging the same.

This point, if no other, would tend to indicate that these laws are trouble. Thomas Claburn notes at *InformationWeek* that Google has been able to avoid FTC action with regard to its search business, but that “Google’s success at avoiding regulatory entanglements may be due in part to its well-funded lobbying efforts.” Lobbying one’s way out of murder is a bit harder to do, but in the case of antitrust, squishy boundaries enable regulators and investigators to easily claim that a case is strong or weak on the basis not of the facts but of the money that poured into this or that pocket.

But perhaps we might dismiss the legal ramifications of antitrust on a pragmatic basis if the results are good.

Antitrust: Protecting Consumers, or Protecting Competitors?

Presumably, antitrust fosters competition to protect consumers. Yet often, it's competitors that do the most griping in these cases. Marvin Ammori said in an article at *Wired* that antitrust laws don't ban monopolies per se; instead, they “only [spring] into action against a monopoly when it destroys the ability of another company to enter the market and compete. The key question, of course, is whether a particular monopoly is harming consumers—or merely harming its competitors for the benefit of those consumers.”

So, consider a hypothetical case where a technology company finds an economical way to offer some IT product or service that is far superior to the competition at a price that is less than what others charge for something similar. If that business model subsequently drives the competition out of business and is too strong for newcomers to match, presumably that company would run afoul of antitrust laws. But who would be the protesters in this case? Certainly not the individual or business consumers who rely on that company—they have absolutely no interest in paying more for lower quality. The grumbling would come from competitors, and antitrust action would necessarily harm consumers (the company would likely need to raise prices simply to cover the legal bills of defending against a government with unlimited resources.)

Perhaps the only major complaint against this reasoning is the matter of a market having a sole supplier. Data center operators and other IT professionals recognize the danger of vendor lock-in, particularly when that vendor is the only option. Yet if the market sufficiently values a diversity of suppliers, it will go to sufficient lengths to nurture alternative companies. In the server-chip market, for instance, Intel dominates and can charge relatively high prices for its processors. The market, however, recognizes the dilemma here and has pursued other options, such as ARM-based server processors. Now, if ARM vendors fail to deliver a product that satisfies the market by offering better performance per watt per dollar, that doesn't mean consumers are necessarily harmed—they still get a good product from Intel.

If Intel, however, were to decide to raise its prices sky high while going lax on quality or performance, the case for ARM or another potential competitor would quickly improve. So even theoretically in a real-world case, it's difficult to see the harm to customers from Intel's dominance of this market. And, of course, there's the question of why the FTC has imposed no sanctions against Intel for its expensive processors that so many companies purchase.

Where the Real Problems Are

Antitrust laws appear to be strong evidence that the federal government suffers from a bad case of projection. When one thinks of an organization that delivers lousy service at a ridiculous price, yet brooks no competitors whatsoever, the first example that may come to mind is government. Even pseudo-private institutions like the U.S. Post Office are exemplars of bad service. Moreover, industries that governments highly regulate—think health care and education—see astronomical (and rising) prices, yet are perennially criticized for their lack of performance.

Thus, it's ludicrous to expect a government to discern the complexities of markets and make solid, rational decisions about whether a company is being “anticompetitive.” Anticompetitive behavior is often a benefit to consumers—not a detriment. Does that mean that a market free

from antitrust meddling will please everyone? Absolutely not. Linux users will always gripe about the ostensible superiority of their favorite desktop OS to Windows, yet most people will still choose Windows. The reasoning of these customers may seem good or bad, but it's their choice. If individuals and businesses decided they should all switch to Linux, then perhaps Linux would earn the attention of the FTC. But no product will please everyone and, moreover, no product will be completely pleasing to anyone. That doesn't mean, however, that government bureaucrats—who enjoy monopoly privileges in their domain (which is increasingly all of life)—are in a position to decide what's best for consumers and for promoting competition.

Conclusions

This discussion only begins to cover the matter of antitrust laws and their effects on business. It so happens that technology has been one of the main industries in which antitrust has seen recent application. The Cato Institute offers a list of objections to antitrust laws that is worth investigating to provide a perspective that counters prevailing opinion. Perhaps the worst aspect of this matter, however, is the inability for a reasonable person to identify an offender versus a company doing “legitimate” business. When laws are so malleable that they can conceivably apply to any situation, particularly those involving successful businesses that serve customers well, then something is wrong.