THE DISPATCH

What Won't Solve the Baby Formula Crisis

Policymakers should reform the policies fueling market concentration and stagnation, not go on a baseless antitrust crusade.

Scott Lincicome

June 15, 2022

Dear Capitolisters,

Later today, I'll have the privilege of testifying before the Senate Judiciary Committee's Subcommittee on Competition Policy, Antitrust, and Consumer Rights on the topic of "Baby Formula and Beyond: The Impact of Consolidation on Families and Consumers." Antitrust and baby formula are issues we've discussed here (repeatedly), but not in the same column. So I'm sharing with you today a lightly edited (now with charts!) version of my opening statement below. Some of this will definitely sound familiar to avid readers, but I nevertheless hope you all enjoy it.

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Chair Klobuchar, Ranking Member Lee, and distinguished Senators:

Thank you for inviting me to testify today. My name is Scott Lincicome, and I am the director of general economics and trade at the Cato Institute, where I work on various economic issues, including international trade, subsidies and industrial policy, manufacturing and global supply chains, competition, and economic dynamism.

Today, I will discuss the current problems in the U.S. infant formula market and how we got here, with particular emphasis on market concentration and antitrust policy. As has been widely reported, the domestic infant formula market is concentrated and stagnant: prior to this year, two domestic brands accounted for almost 80 percent of U.S. formula sales, and there had not been a single new manufacturer registered with the Food and Drug Administration (FDA) in 15 years.

This has undoubtedly contributed to the current crisis: when the largest U.S. formula producer, Abbott Laboratories, initiated a voluntary recall and shut down a major factory in Michigan, there were no easy or immediate replacements to fill a gaping hole in the U.S. market. We've been scrambling ever since.

This troubling situation, however, does *not* justify new U.S. antitrust actions or expanded government powers to police anticompetitive practices in the United States. The main justification for antitrust action has traditionally been the existence of a "market failure"—natural imperfections in a relatively free, private marketplace, involving things like time lags, search or startup costs, information asymmetries, or other factors, that give a monopoly or oligopoly market power to keep prices elevated or competitors out. As the Supreme Court wrote in 1992, "The purpose of the [Sherman] Act is not to protect businesses from the working of the market; it is to protect the public from the failure of the market." In such cases, so the theory goes, government intervention in the market is needed to correct for the failure and restore consumer-friendly competition.

In the case of infant formula, however, today's producer concentration and any resulting problems therefrom are primarily the result of *federal government policy*, not any sort of natural, private market failure. In particular, U.S. policies in both the international and domestic market work together to all-but-ensure that the infant formula market here is stagnant and dominated by a small handful of large, domestic corporations.