

# Regulation and antitrust policy essay

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Antitrust policy is likely to play an important role in shaping the world economy. In recent years, more states within the United States, as well as many countries, have taken an active role in antitrust policy. With a larger amount of players in the antitrust regulation field, there are likely to be more conflicts as different states follow different policies. The problem is strengthened as commerce becomes more and more global. Lately, AOL sued for alleged damages following from the operations Microsoft took against Netscape, which the courts found to be anti-competitive. Can Microsoft's business practices be explained by the market conditions that it faces, as described by the Justice Department and accepted by the judge, or are its practices those of a monopolist behaving badly? If Microsoft is a monopolist, has it actually exercised its market power? If it has, has its exercise of that power reached a level that is or should be construed as illegal under the nation's antitrust laws? In other words, has Microsoft's exercise of market power harmed consumers, or just Microsoft's competitors? To answer these questions, I will consider the Microsoft case, which offers an ideal opportunity to analyze the issues of federalism in antitrust regulation. In the work, I will be concerned mainly with the issue of Microsoft's monopoly status in the operating system market.

Microsoft has some market power to affect price through its control of production of key software products (Scherer 91). Practically all American firms have market power to one extent or another, and they use the power they have to one degree or another. No firm of any consequence in this country or, for that matter, the world meets the requirements for the absence of market power under a market structure economists call perfect

competition. This is understandable because perfect competition is a classroom model of market behavior, or a means economists use for thinking about markets and for making tentative predictions concerning the consequences of changes in markets.

It was never intended to describe real-world markets with any reasonable degree of accuracy. All real-world markets, in other words, are necessarily imperfect by the standards of perfect competition. And no company should be judged by idealized conceptual standards. Companies should be judged by more realistic standards, like whether improvements in market structure are possible. Taking a close look at and dissecting the critics' charges against Microsoft does not mean that Microsoft has always operated with the best of business intentions and manners.

Microsoft does seem to be an aggressive competitor operating under the influence of business steroids. It drives hard bargains with its suppliers and buyers, apparently not always leaving much on the table for the firms with which it deals, which is hardly all bad for consumers. In fact, in their more venturesome moments, Microsoft's accusers in and out of the Justice Department not only deride Microsoft for attempting to expand its market but also accuse it of having a pathological will to dominate everything.

Like many of Bill Gates's critics, Netscape's Jim Clark repeatedly points to Gates's (and by extension, Microsoft's) aggressiveness. These problems should hardly be of concern to the Justice Department. As another judge in a federal appeals court ruled in a private antitrust case against Intel on the very day that Judge Jackson handed down his Findings of Fact, "[The]

Sherman act does not convert all harsh commercial actions into antitrust violations" (Fox 75).

The antitrust laws were never intended to ensure good business manners, only a healthy competitive environment. The legal system is simply not capable of fine-tuning people's everyday behavior with any degree of precision -and might very well do considerable harm in the process of trying. What is most distressing about this case is that there is a good chance that Microsoft would not be in this legal fix if Gates and other Microsoft executives had not, early in the 1990s, been so politically self-assured and had guarded their political flanks better by padding the pockets of politicians.

This is an unfortunate commentary on the trial for a couple of important reasons: First, people in business should not have to waste their company's resources fending off political attacks in court by unhappy competitors, especially when the competitors' argument that they need market protection doesn't square with economic logic. Second, and much more important, the political success of Microsoft's critics raises a new specter: We may now have to fear Microsoft in ways and to a degree never before imagined. In markets unfettered by political payoffs for protection from competition, if Microsoft acted like a feared monopolist, driving up prices and driving down the quality of its products, we are confident that its efforts would be soundly rebuked by market forces in a relatively short time. Competitors would enter and take over Microsoft's markets.

However, when companies are able to use politics to achieve their market goals, as Microsoft's critics have shown, once again, is possible, it also follows that Microsoft can use politics to pursue its own goals. Market rivals who are being beaten by a strong competitor have an incentive to use the country's antitrust laws to their advantage, especially when they are unable to control market forces by means of consortiums. Offended rivals may claim with much self-righteousness that competitors will monopolize markets if they are allowed to merge or that the low prices of much more efficient producers are "predatory" (Pitta 107). Even the threat of an antitrust lawsuit can work to the advantage of weaker competitors because the actual or threatened legal expenses incurred in an antitrust defense could encourage companies with the potential to become more dominant than they already are to instead curb production and raise their prices. This would benefit the rivals who make the bogus claims of antitrust violations. Microsoft has not been kind to rivals it has seen as a threat. Indeed, it seems to have tried to bury a few, most notably Netscape, but also other firms, such as Caldera, which has pursued its own private antitrust case against Microsoft. Caldera charged that Microsoft attempted to undermine the public's confidence in Caldera's DR-DOS by introducing error messages that would come up when DR-DOS was running with Windows.

This did happen, but only in a beta, or test, version of Windows that was not marketed. Caldera also claims that Microsoft integrated MS-DOS in its Windows graphical interface in order to destroy DR-DOS, which Caldera says Microsoft saw as a major threat, and by giving computer makers favorable per copy prices if they would pay that price for each computer (or processor)

shipped, regardless of whether the computer was shipped with MS-DOS, Windows, or some other operating system. Similarly, IBM charges that Microsoft used its market power in 1995 to dramatically raise the licensing fee it charged IBM for each copy of Windows, solely because IBM insisted on competing with Microsoft in the operating system market. Supposedly, IBM insisted on installing OS/2 and its newly acquired Lotus SmartSuite along with Windows 95 on its personal computers, which Microsoft didn't like.

Microsoft has been charged that it used its monopoly power to extend the market dominance to Internet browsers and thus to protect its operating system monopoly in four main ways: 1. Microsoft has engaged in illegal "predatory" (zero) pricing against its market rival Netscape with the intent to destroy any existing or potential threat to its operating system market. 2.

Microsoft has illegally tied Internet Explorer to Windows for the purpose of restricting Netscape's distribution of its browser, Navigator, and Netscape's ability to develop an alternative operating system platform. 3. Microsoft has illegally developed exclusionary contracts that have required computer manufacturers and Internet service providers to promote and distribute only Internet Explorer, thereby once again choking off competition from Netscape. . Microsoft has harmed consumers, by restricting consumer choice (which would be greater with both Internet Explorer and/or Navigator programs on their personal computers' hard drives and both icons on the desktop) and by impairing innovation in the software industry. The government wants the public to believe that Microsoft's monopoly is self-evident in its super high profits and its low predatory prices. This kind of reasoning has nothing to do with actual economic thought and concepts.

As Microsoft grew in products, sales, and market dominance in the late 1980s and early 1990s, its competitors became progressively more openly hostile, critical, and envious. However, there's a good chance that companies like IBM, AOL, Sun, and Oracle will regret their efforts to have the Justice Department get Microsoft on the grounds that Microsoft dominates its markets. All four firms have major shares of their markets. The old adage "What goes around often comes around" may well apply here. The Justice Department can take its pursuit of "equal justice for all" very seriously, which means IBM, AOL, Sun, or Oracle could very well be the next target of litigation for the crime of dominating its markets. Because antitrust enforcement in the past has been corrupted by politics and because Microsoft's competitors stand to benefit from the antitrust suit, we are naturally inclined to look for evidence that the Microsoft case has been influenced, if not corrupted, by politics. I can acknowledge that Microsoft has made some mistakes in how it has developed, marketed, and priced its products. But mistakes and bad manners do not necessarily make for the systematic exercise of monopoly power that should be corralled by an antitrust suit.

If they did, few companies - even Microsoft's accusers - would be immune from antitrust prosecution. Microsoft has made a lot of money, as fully noted. However, this is no reason to cast Microsoft neither as either the devil incarnate nor as an angel on the wing. More realistically, Microsoft is an aggressive but constrained competitor. The analysis presented here supports the argument that the role of states and the federal government in developing policy should be limited.

Studying the behavior of the states and individual companies in the high-profile United States v. Microsoft case illustrates why the legal limits on state authority are right. Works Cited Fox, Eleanor M. Antitrust and Regulatory Federalism: Races Up, Down, and Sideways, 2000, 75. Pitta, Julie.

Microsoft's Dark Shadow, Forbes, 1993, 107. Scherer, Michael. Competition Policies for an Integrated World Economy, 1994, 91-96.