The Antitrust Laws: A Primer

John H. Shenefield and Irwin M. Stelzer

Review Article by
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Shenefield and Stelzer have filled a void with a brief and expertly written description and interpretation of the antitrust statutes and related court decisions. Moreover, they offer extremely sagacious counsel to those who may be exposed to possible prosecution. Their enthusiasm regarding the salutary effects of the administration of the laws is difficult to comprehend, since, even now, there is not a well-defined economic objective to antitrust activities. The reviewer offers one for consideration, namely, the facilitation of the mobility of factors of production among markets by eliminating entrepreneurial-type barriers that deter entry and exit. (JEL L14)

Introduction

John H. Shenefield and Irwin M. Stelzer are two of the world’s foremost authorities in the field of antitrust. Their book, The Antitrust Laws: A Primer [1993], is remarkable for its comprehensive but concise coverage. The book’s primary purposes are to make the antitrust laws more comprehensible to laymen and to [p. 96] "show that the statutes and the court decisions flowing from them are sufficiently consistent to provide a reasonable guide to business behavior."

The authors are eminently successful in generating an awareness of the nature of the statutes and court decisions relating to antitrust. Moreover, their insights and admonishments are profound, and the lucidity and engaging style with which the book is written are enviable. But they do not provide convincing evidence that the statutes and court decisions are sufficiently consistent; that, without them, it would be necessary for government to [p. 2] "arrogate to itself the function of deciding what gets produced, where, and by whom;" that [p. 10] "they do no less than establish the economic framework within which most Americans operate;" or that they are the [p. 2] "Magna Carta of free enterprise."

This is not to say that the statutes and their enforcement have not affected or do not now affect the behavior of American businesses. But they have not done so to any greater extent than the U.S. Food and Drug Administration or the U.S. Tax Code in conjunction with the activities of the Internal Revenue Service. Moreover, it can be argued that their

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effects have not always been what was intended or what might be considered economically beneficial. Before discussing the proper role of antitrust, a brief description of the contents of the book will be presented.

A Summary of *A Primer*

The authors introduce their topic with an enthusiastic endorsement of the antitrust laws, their effectiveness, and their importance. According to the authors, [p. 2] "by preserving competition, the antitrust laws minimize government intervention in business affairs," and "the several laws and court decisions we describe in the following pages contain the rules of the competitive game."

In discussing the philosophic origins of antitrust in the second chapter, Adam Smith's invisible hand is invoked in justifying free markets whose superior working properties are attributed to competition by the authors. A section on the "Historical Background" is followed by a commendable attempt to reconcile the apparently conflicting objectives of antitrust that have been revealed in pronouncements by jurists and scholars. The conclusion of the authors is that [p. 13] "courts and prosecutors will surely focus on the economic goal [of, presumably, maximizing efficiency and consumer welfare by maintaining competition], but the philosophical and historical underpinnings of the antitrust laws demand that they be sensitive to noneconomic goals as well." Thus, their reconciliation depends in no small way upon a faith in the questionable ability of courts and prosecutors to properly focus.

The presentation and first approximation interpretation of the Sherman, Clayton, and Federal Trade Commission Acts in Chapter 3 are unsurpassed in the literature for their clarity and consistency as is to be expected from two first-rate economic thinkers. So much so that the reader may be ill-prepared for the vagaries of the courts' pronouncements or the courts' intellectual contortions that are expertly described in the succeeding chapters.

The various ways and means whereby the antitrust laws may be enforced are discussed in Chapter 4. The fact that the laws may be enforced through two agencies of the U.S. government, state governments, and court action instituted by private parties is cited. The chapter also notes that the federal agencies issue guidelines which vary through time. The procedures for picking and prosecuting targets and settling cases are subsequently described. These descriptions appropriately contain such qualifying words as "frequently," "generally," and "on occasion" but unintentionally reflect an environment of uncertainty.

Chapter 5 describes the framework within which [p. 29] "suspicious conduct is analyzed under the antitrust laws to determine whether it will produce injury to competition." The topic headings consist of "The Product Market," "The Geographic Market," "The Competitors," and "Market Power." These materials could easily be required reading in a college industrial organization or microeconomic theory course.

Problems with the antitrust laws begin to emerge with the discussion of the meaning of attempted monopolization and monopolization under Section 2 of the Sherman Act in