Antitrust Busters (Book Review)

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The Causes and Consequences of Antitrust: The Public Choice Perspective, edited by Fred S. McChesney and William F. Shughart II, Chicago: University of Chicago Press, 379 pages

Thirty years ago, economists began to analyze carefully the effects of government regulation and found, almost without exception, that such regulation reduced competition and raised prices. Whether in surface transportation, airline seats, milk, or cab rides, the story was the same. One big exception was natural gas, where a too-low federal price ceiling created a serious shortage instead.

It was only natural that curious economists would widen the net to look at the effects of antitrust regulation. Beginning in the early 1970s, economists studying antitrust found that it often created monopoly by preventing companies from pricing too low or expanding too much. Antitrust authorities, they found, often were more interested in preserving competitors than in preserving competition.

Economists also found that regulated industries often lobbied for the anti-competitive regulation in the first place. Consumers never asked for an Interstate Commerce Commission to prevent new truckers from entering the business. Nor had consumers been heard from when the federal government set up milk marketing boards to restrict the supply of milk and drive up the price. The main players were truckers and milk producers, who wanted to limit competition. Quite naturally, then, some curious economists began to wonder how we ended up with antitrust laws.

Fred S. McChesney, a law and economics professor at Emory University, and William F. Shughart II, an economics professor at the University of Mississippi, were two pioneers in antitrust research. This book brings together, in one place, evidence of the harm done by antitrust and of the special interest lobbying that led to its adoption and that guides the antitrust agencies' policies. The book is a major step towards correcting a deficiency in economists' and the public's understanding of antitrust.

Part One presents evidence by various researchers that is inconsistent with the standard public interest view of antitrust. Part One's most striking article is Paul Rubin's "What Do Economists Think of Antitrust?: A Random Walk Down Pennsylvania Avenue." Rubin uses a simple but marvelously clever methodology. He takes all the antitrust articles cited in a major industrial organization textbook by Frederic M. Scherer and David Ross. Rubin notes that Scherer is a leading proponent of antitrust and that, therefore, any bias in the cases cited in the book would be in favor of cases where the antitrust authorities were acting to preserve or increase competition.

Rubin then summarizes each case and categorizes them, by the standards of the author writing about the case, as justified or unjustified. The bottom line: In the view of the economists writing the articles, there were 14 justified cases and nine unjustified ones. Moreover, the plaintiffs won a lower percentage of the justified cases (64 percent) than of the unjustified ones (78 percent). Concludes Rubin: "Factors other than a search for efficiency must be driving antitrust policy."

The articles in Part Two assess antitrust's actual effects. George Bittlingmayer examines the great merger wave between 1898 and 1902, in which more than 2,500 manufacturing and mining firms disappeared through merger. Economists have long been puzzled about what caused that wave: Bittlingmayer argues it was caused by antitrust. You probably thought that antitrust enforcement prevented mergers. It does now, but as Bittlingmayer shows, the Sherman Antitrust Act was used to prevent companies from making loose cartel agreements. So, prevented from colluding, the firms merged.

Not that cartels necessarily hurt consumers. In line with a recent strand in economics that University of Chicago economist Lester Telser began, Bittlingmayer argues that cartels can be an efficient way of preventing ruinous competition when firms' fixed costs are very high and their variable costs are low. If you doubt that that's a problem, take a look at airline profits since deregulation. The added cost of taking another passenger is close to zero, which is why airlines get into so many price wars and are often on the verge of bankruptcy.

Another article in Part Two by two of my former students, Espen Eckbo and Peggy Wier, finds that antitrust authorities do block mergers, but that the ones they block are pro-competitive. Eckbo and Wier point out that if a merger is pro-competitive--and therefore likely to reduce profits, to the benefit of consumers--then the stock price of the once-competing firms should fall when the merger is announced and rise when the government prevents it. This, they find, is what happened.

So promoting efficiency doesn't motivate the antitrust authorities to pursue cases. Part Three investigates what does. "Antitrust Pork Barrel" by Roger Faith, Donald Leavens, and Robert Tollison argues that political influence is an important determinant of actions by the Federal Trade Commission. Bottom line: If you want the FTC to hassle your competitor, move your firm to a congressional district whose member sits on a committee that controls the FTC's budget.

The real dynamite in Part Three is in the opening footnote to "Bureaucracy and Politics in FTC Merger Challenges" by Malcolm Coate, Richard Higgins, and McChesney. The footnote states: "We have reluctantly agreed to recite the following, written by the FTC's Office of General Counsel:" and then goes on to quote a statement that the FTC disagrees with the article's method and conclusions. Although McChesney doesn't write this in the book, he told me that the FTC's general counsel threatened to bring criminal charges against him if he "published" (the legal term for making public, which would include sending off the manuscript to a journal) his results. The FTC claimed McChesney was using confidential data but cast doubt on its own statement by agreeing to allow publication with the disclaimer.

The article shows that congressional pressure does affect the FTC's decisions to challenge mergers, something that even a casual observer of the Washington scene will have noticed, but a conclusion for which little econometric evidence had ever been presented. They show that one additional congressional hearing raises the probability of a merger challenge by 4.2 percentage points. Moreover, by separating out the effect of the FTC's lawyers' and economists' recommendations to the commission, the authors show that the political influence occurs at the commissioner level, not below. No wonder the FTC was upset.

If the Sherman Act and Clayton Act didn't address a pressing public interest, why were they passed? Part Four addresses that issue. In "Antitrust Before the Sherman Act," Donald Boudreaux, Thomas DiLorenzo, and Steven Parker write that the major groups that lobbied for a Missouri antitrust law in the 1880s--a precursor to the federal Sherman Act--were rural cattlemen and butchers who wanted to "thwart competition from the newly centralized meat-processing facilities in Chicago." They find that between 1880 and 1890, Missouri beef prices fell by 13 percent and cattle output rose by 50 percent. Although the price fall by itself is consistent with the idea that the central meat-processing facilities were a monopoly buyer of beef, the increase in output is evidence against. Disappointingly absent from the book is DiLorenzo's earlier article in which he demonstrated that most of the industries supposedly monopolized by the trusts--bituminous coal, lead, leather, linseed oil, liquor, petroleum, salt, sugar, and steel--had falling prices and rising output in the decade before the Sherman Act.

Also disappointingly absent is Bittlingmayer's article sketching out the connection between increased antitrust enforcement and the 1929 stock market crash. The reader is left hungering for more when he reads, in a related Bittlingmayer article, the following: "Hoover's new approach [on antitrust], which was quickly backed up with stricter enforcement, explains the crash...." When someone dismisses almost everyone's beliefs about the causes of one of the most important events of the century, most readers, including this one, want to see some evidence. When the cause is said to be antitrust, you would think that a book trying to wage a war against antitrust would contain that evidence.

I have always wondered why a profession that is skeptical of airline regulation and trucking regulation has been so unskeptical about antitrust regulation. One reason may be that economists do a large fraction of their consulting for antitrust plaintiffs and defendants.

A second possible reason economists have not been skeptical about antitrust is that few of the economists who have researched or read about the individual trees in the antitrust forest have been aware of how strong a case there really is against antitrust. The Causes and Consequences of Antitrust will do much to remedy that defect.