The Case Against The Microsoft Suit

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Back in 1975, an intense, bespectacled man who coöwned a small firm in a budding industry imagined a future in which people at every desk in every office would have a small computer on which they would use his software. That prescient man was Bill Gates; the company was Microsoft. But even Mr. Gates did not foresee a future in which the chief antitrust prosecutor of the United States and his counterparts in the governments of 20 U.S. states would sue him for charging prices that are too low. In his recent comments, Mr. Gates has revealed a touching naïveté about the antitrust laws. He seems to have assumed that they were proconsumer, and he saw his company doing things that helped consumers, even the least technical of us, log on to the digital age.

But the reality is that one of antitrust's major uses has been to penalize successful competitors. Sometimes the suits are brought by federal enforcers of antitrust laws. More often they are brought by bitter losers in the competitive process. According to Georgetown University's Steven Salop, a top antitrust official in the Carter administration's Federal Trade Commission, and New York University's Lawrence J. White, chief economist in the Justice Department's Antitrust Division under Ronald Reagan, the second most common kind of private antitrust suit is one brought by competitors. And competitors are unlikely to bother suing rivals that keep their output low and prices high.

Microsoft is the ultimate competitor, setting the price of its browser, Internet Explorer, at zero. True to historical form, Microsoft's main competitor in the browser market, Netscape, is upset at such low-price competition and is applauding the Clinton administration's lawsuit. Netscape's support of the suit is prima facie evidence that the suit is anticompetitive.

Leverage playing field

But isn't Microsoft leveraging its Windows operating system monopoly to create a new browser monopoly? No. Until about 40 years ago, the standard economic argument was that you could extend your monopoly from Product A to Product B by requiring purchasers of A to buy B. But as antitrust scholar and former federal judge Robert Bork showed in his 1978 book, The Antitrust Paradox, this seldom works, because charging a premium for B reduces the price you can charge for A.

But in any case, the standard economic argument about extending monopolies is inapplicable to Microsoft's case. Why? Microsoft doesn't charge anything for Product B, Internet Explorer. Of course, the company benefits from giving it away: Microsoft wants to make it easy for computer manufacturers to install the browser so that PC buyers will use Windows applications instead of software written for Netscape Navigator and will use goods and services sold over the Internet by Microsoft and its partners. Is this monopolistic? No more so than a shopping-mall owner's providing free parking and then collecting higher rents from retailers that value the increased shopping.

So how to account for the fact that Mr. Bork is working for Netscape and egging on the Justice Department? I can't. It is inconsistent with everything he has stood for. To his credit, Mr. Bork explicitly rejects the government's reasoning. In the May 22 Wall Street Journal, he wrote: "This is not a case about 'leveraging' or 'tie-ins,' as it is frequently described, even by government lawyers who understand the case." So what is the lawsuit about? Mr. Bork says Microsoft is engaged in predatory pricing, giving its browser away to knock Netscape out of the market. But economists have shown that predatory pricing doesn't typically make sense, because the losses are often larger to the predator than to the prey and because, once the predator raises prices, anyone who has bought the prey's assets at fire-sale prices becomes a low-cost competitor.

The most famous allegation of predatory pricing was made against John D. Rockefeller and Standard Oil of New Jersey. But in a 1958 article in the Journal of Law and Economics, University of Washington economist John S. McGee concluded, after studying the transcript of Standard Oil's 1911 trial, that there was no evidence that Standard was guilty of such tactics.

Mr. Bork knows all this. In The Antitrust Paradox, after summarizing McGee's and other economists' skeptical findings on predatory pricing, Mr. Bork concluded that it "seems unwise, therefore, to construct rules about a phenomenon [predatory pricing] that probably does not exist or which, should it exist in very rare cases, the courts would have grave difficulty distinguishing from competitive price behavior."

Redmond Baron

No one disputes that Microsoft, right now, has a lock on the market for operating systems. But Mr. Gates and company got it the old-fashioned way: they earned it. Microsoft is reaping the rewards of its innovation, and the only way it will be able to maintain its "monopoly" is by constantly innovating and keeping prices low. Some have compared Microsoft and Mr. Gates to Standard Oil and Rockefeller. The analogy is apt, but not the way antibusiness critics think it is. Between 1880 and 1890, while Rockefeller was consolidating the petroleum industry, output rose by 393 percent and prices fell by 61 percent.