



POLICY SPOTLIGHT

Is Weak Antitrust Enforcement Harming American Competition?

ALDEN F. ABBOTT | APRIL 2022

The goal of US antitrust laws, broadly speaking, is to curb the efforts of firms to reduce competition in the marketplace or to create or maintain monopolies. In recent years, various critics have claimed that competition in the American economy has declined owing in large part to ineffective antitrust enforcement. These claims do not stand up to scrutiny. Accordingly, current proposals to transform and expand antitrust enforcement are inappropriate and should be rejected.

CRITICS PROPOSE ANTITRUST POLICY OVERHAUL

President Joseph R. Biden Jr. and new leaders at the federal antitrust agencies (the Justice Department and the Federal Trade Commission [FTC]) have claimed that competition has declined. They have vowed to pursue much tougher antitrust enforcement through more aggressive cases and possible rules.

They also recommend that antitrust policy focus less on consumer welfare, which for over 40 years has been recognized by the Supreme Court as the guiding principle of American antitrust policy.

Congress has also been active. It is considering various legislative proposals that would make it easier to challenge mergers and monopolies and limit the commercial freedom of certain big high-tech firms, including Google, Facebook, Amazon, and Apple.

The critics of recent antitrust enforcement are wrong. Competition has not declined, and consumer-welfare-based antitrust enforcement is highly effective.

COMPETITION IS ROBUST

Scholarly research demonstrates that, in reality, US competitive conditions have remained robust.

The 2020 *Economic Report of the President* concludes that “the argument that the U.S. economy is suffering from insufficient competition is built on a weak empirical foundation and questionable assumptions.”¹

Former senior Justice Department antitrust economist Gregory Werden explains that analyses claiming that industrial concentration (the share of industry output controlled by a few firms) has risen are highly misleading and say nothing about the robustness of American competition.

Most recently, quantitative research published by another prominent economist, Robert Kulick, finds that there has been no recent general trend of increased concentration. Moreover, industries where concentration has risen have enjoyed high economic growth and job creation.

In short, the assertion that American competition is declining lacks merit.

ANTITRUST ENFORCEMENT IS STRONG

The continued strength of American competition reflects effective, not lax, antitrust enforcement.

In recent decades, the FTC and the Justice Department have enjoyed substantial success in challenging mergers and other forms of anticompetitive behavior in courts and in litigation settlements.

For example, the FTC won every litigated hospital merger case but one in the 21st century. The Justice Department won 7 and lost 0 fully litigated civil antitrust cases in 2010–2019 and successfully settled 123 other matters. Consumer welfare considerations have been a feature of all agency enforcement actions.

CURRENT ANTITRUST POLICY SHOULD NOT CHANGE

The successful record of the agencies and the reality of a highly competitive American economy wholly undermine the case for aggressive new antitrust enforcement, which would downplay consumer welfare considerations. These circumstances also counsel against proposed legislation that would expand antitrust prohibitions.

Such uncalled-for changes in policy would create business uncertainty. They would also deter a great deal of commercial conduct aimed at expanding market opportunities or creating new markets. The result would be a less vibrant American economy, with both businesses and consumers being the losers.

FURTHER READING

Alden F. Abbott, “Toward a Dynamic Consumer Welfare Standard for Contemporary U.S. Antitrust Enforcement,” *Truth on the Market*, March 24, 2022.

Alden F. Abbott, “The Consumer Welfare Standard and Antitrust Enforcement: A Response,” *ProMarket*, March 14, 2022.

Alden F. Abbott, “US Antitrust Laws: A Primer” (Mercatus Policy Brief, Mercatus Center at George Mason University, Arlington, VA, March 2021).

Thomas Lambert, “Tech Platforms and Market Power: What’s the Optimal Policy Response?” (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, November 2021).

Tracy C. Miller and Alden F. Abbott, “Antitrust Policy and the Consumer Welfare Standard” (Mercatus Policy Spotlight, Mercatus Center at George Mason University, Arlington, VA, March 2021).

NOTES

1. White House, *Economic Report of the President*, February 2020, 217.

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