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Antitrust and the Multinational Corporation: Competition or Cartels

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The writer understands only too well some of the competitive problems faced by the American firm trying to compete abroad against foreign firms that, thanks to the help of their own governments, are able to keep it out of *their* markets while biting deeply into *its* domestic market back in the United States. Governor Connally gave a particularly striking example of this problem in a speech to the American Bar Association in April of 1973, one involving the television industry. By 1970, Japanese manufacturers of television sets had captured some 28 percent of the United States market for television receivers, the cutting edge of this assault on our domestic market being, of course, their keenly competitive prices. In their own home market, however, these same Japanese manufacturers were selling their large-screen Panasonic TV sets for $1,200 to $1,600.

Meanwhile, our American producers, having started offshore production to get their costs down to a competitive level, naturally felt that what was good for the goose was good for the gander—they wanted to compete for some of that high-price Japanese market. But of course they weren't allowed in. Somehow or another, they just could not obtain the necessary exchange licenses; they could not get their repair parts into the country; and "administrative guidance" from the Japanese government was used to persuade the Japanese distributors that they did not want to handle American TV sets.

Eventually, however, it dawned on the Japanese consumers that they were being overcharged for their TV sets. A housewives' organization was formed, consumer boycotts were launched against the Japanese stores, and the Japanese government was eventually persuaded to file an action against their own producers for price-fixing and monopolization. The Japanese consumer is reportedly buying TV receivers at a somewhat lower price these days—and the Japanese TV manufacturers are doubtless something less than wildly enthusiastic about that fact.

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There are other handicaps imposed on the American firm competing abroad. Putting aside the generally lower labor costs incurred by foreign competitors—and putting aside things like greater transportation costs and the routine trade quotas, tariffs, and subsidies that governments typically employ to protect their domestic firms from outside competition—the American exporter often finds himself selling in a market that is "rigged" against him by various kinds of cartel arrangements that would not be tolerated under American antitrust laws. The natural reaction is to haul out a certain old motto that says: "If you can't lick 'em, join 'em." Becoming a member of a foreign cartel would presumably allow our American firms to get a higher average price for the products they sell abroad and this, in turn, would arguably have a number of beneficial effects for America—an improved balance-of-payments position, more money for investment in R&D and plant expansion, and so forth.

There are other arguments for permitting our firms to compete abroad by the prevailing foreign rules of the game rather than by the more restrictive standards of American antitrust. Many product markets have now become global, spanning continents with no particular regard for national boundaries. The telephone, satellite TV, the supersonic jet airplane, and some other marvels of technology have tightly compressed our earlier ideas of time and space. With markets themselves now worldwide in scope, it seems entirely natural that business firms should also be multinational in their operations. Size no longer frightens us. Big technology requires big firms to harness it—to exploit its full potential for enriching the lives of not only Americans but of the citizens of the other countries of the world. The technology wrought by the business corporation in these last decades of the 20th century has raised our own standards of living immensely and we want to share its benefits with the other members of the human family.

Having come to terms with the idea of business size, some believe that we should go the next step and come to similar terms with the idea of monopoly—the idea of a market served by either a single firm or by so small a group of firms that prices are no longer held to the low levels that are typically found in the more competitive industries.

Again the argument is the same. Eliminate competition and prices can be raised. With higher prices, more profits will be earned. These additional profits, in turn, can be plowed back into more research and development, into more and bigger plants, into the penetration of still more distant markets—all of which enhances not only the number of workers employed, but the quantity and quality of goods and services that can be produced by each of those workers. In its most extreme form, this argument implies that a world supplied by a handful of—or perhaps by only one or two—international monopolies would be a more prosperous world than one served by the hundreds of thousands of business enterprises present in this year 1974.

All of these arguments in favor of the large firm are further supported by the familiar economic principle called "economies of scale." The trouble with cottage industries, as the writer has emphasized elsewhere recently, is that they produce very humble cottages. Economists have known for a couple of hundred years—and businessmen have known from the beginning of business itself—that there is a connection between how big a firm is and how *efficient* it can be.

Up to some point at least, more size clearly means more efficiency. It is no secret, for example, that the very tiniest of firms in most industries tend to be rather inefficient—to have unit costs that are substantially higher than those of their larger competitors. They frequently cannot afford, for example, some of the larger, more efficient machines and equipment; their sales volume is generally too small to support the kind of technical and management personnel that is needed to minimize cost; and their production runs are generally too short to realize all the efficiencies of large-scale operations.

Given all of these factors in support of industrial bigness—and, by implication, bigness on a multinational scale—one has to ask finally whether the country's antitrust laws make any real economic sense in the last quarter of the 20th century. Has the march of technology taken us to the point where the cost of maintaining competition in each of our great industries is simply too high?

The writer has asked this question of himself. And he has also asked it of his colleagues at the FTC and its staff attorneys and economists.

The response from the supporters of antitrust goes something like this. First, they are in full agreement with the principle that more size generally means more efficiency up to a point. They put great stress, however, on the qualifying phrase, "up to a point." Some of the utilities aside, there is apparently no industry in the United States in which a firm needs a full 100 percent of the domestic market in order to reach the maximum in productive efficiency—to get unit costs down to the technological minimum. The economists point out that ours is a large country, one with geographically broad markets and a large and affluent population. This great purchasing power of our roughly 210 million American consumers allegedly makes it possible for the bulk of our manufacturing firms to reach quite a large absolute size without becoming particularly large in relative terms—that is, without becoming large in relation to the size of the particular industries they operate in.

In the automobile industry, for example, we have been told by Mr. Romney and others that a firm needs to produce a minimum of about 400,000 to 600,000 cars per year in order to operate efficiently, to get production costs down near the most efficient level. Since Americans buy some 10 million autos per year, this implies that a firm needs a market share of at least 4 to 6 percent in order to minimize production costs in this particular industry.

A similar situation apparently prevails in most American industries. A 1956 study of 20 large industries in this country by a leading industrial-organization economist concluded, for example, that only one of them—typewriters—required a market share as high as 20 percent in order to realize all potential economies at the plant level.[1] Only two other such industries—tractors and copper—were found to require a market share of more than 10 percent in order to realize the lowest possible production costs. In 10 of those 20 major industries, all economies of scale in the production process are allegedly exhausted at a market share of no more than 2 percent. After than point, unit costs reportedly remain at that same level no matter how much larger the firm gets. The dictates of efficiency do vary widely from one industry to another—from a report 12.5 percent in the tractor industry, to as much as 7.5 percent in the automobile industry, to 5 percent in the detergent industry, to 1.7 percent in the steel industry. But it never reaches, the writer is assured, the 100 percent mark.

The scholars here emphasize, in other words, a rule that enjoys a good deal of currency in other areas of life—the importance of moderation in all things. What begins as an unqualified virtue quickly becomes, if pushed to extremes, an injurious vice. If a firm continues to grow beyond the needs of efficiency in its particular industry, we are told, inefficiencies start to set in. A firm with such a large market share that it has no serious competition is supposedly subject to a peculiar economic law of its own, one that emphasizes the inefficiencies and wastes associated with monopoly. Adam Smith, the original expounder of *laissez-faire* economics, summed it up this way: "Monopoly," he wrote in 1776, "is a great enemy to good management, which can never be universally established but in consequence of that free and universal competition which forces everybody to have recourse to it for the sake of self-defense."[2]

Modern economists explore this question by looking at the profitability of firms of different sizes in the same industry. If the very largest producer of widgets is also the most profitable, one can of course argue that this superior profitability is due to either (a) superior efficiency or (b) monopoly power. If the largest firm in that industry is not the most profitable, however, the general conclusion can only be, we are told, that size and efficiency are unrelated in the production of that particular product. As one scholar in this field has phrased it: "Since it can hardly be contended that the largest firms possess *less* monopoly power than their smaller rivals, the only possible explanation for their poorer

[1]DR. JOE S. BAIN, BARRIERS TO NEW COMPETITION 84 (1956). Bain's findings are summarized in Sherman and Tollison, *Public Policy Toward Oligopoly: Dissolution and Scale Economies*, 4 ANTITRUST LAW & ECONOMICS REVIEW 83-84 (Summer 1971).

[2]ADAM SMITH, THE WEALTH OF NATIONS 147 (1776) (Modern Lib. ed., 1937).

profit performance is poorer efficiency."[3]

A recent study of 30 major American industries reported that, in 16 of them, there was no discernible relationship between size and profitability—the largest firms in those industries were no more profitable on the average than their smaller competitors.[4] In the other 14 industries studied, there was a relationship between size and profitability but it was not a consistent relationship. In six of them, the biggest firms were also the most profitable; in eight of them, however, the smaller firms were more profitable than the giants. General Motors is of course the most profitable company in the automobile industry. But Alcoa, the largest firm in the aluminum industry, is reportedly the least profitable of the country's aluminum producers. Anaconda is also said to be the least profitable firm in its industry. In liquor, a firm one fifth the size of the industry leader is the most profitable. The same in meat packing. In plumbing fixtures, the industry leader is less profitable than three firms that are less than one fifth its size.[5]

The antitrusters have a second major objection to the thesis that industrial bigness equates with economic goodness. They say, in substance, that the very largest firms are not only less efficient than their middle-size competitors, but that they also tend to be technologically backward. Larger firms spend more on R&D but, according to the antitrusters, they spend the bulk of it on "marketing" innovations rather than basic scientific research.

A famous study of 61 important inventions of the 20th century reported, for example, that only 16 of them came from the country's large corporations.[6] Well over half of these key inventions were the work, we are told, of the solitary inventor, the individual human being alone in his study or laboratory. Great organizations, whatever their capacity for performing routine commercial operations, are said to be inherently disadvantaged when it comes to inventive activity. Invention "is essentially a thinking process," the act of a single man rather than an organization. "The divine spark," as one scholar has put it, "leaps from the finger of God to the finger of Adam," not to that of a research committee.[7]

Once again we are assured that it is the smaller or the medium-size firm, not the industry leader, that is the general carrier of new technology. The larger firms, allegedly suffering from what one commentator calls "corporate arteriosclerosis" and anxious to protect their investments in the existing technology, not only do relatively little real inventing themselves but tend to be rather unre-

[3] JOHN M. BLAIR, ECONOMIC CONCENTRATION: STRUCTURE, BEHAVIOR, AND PUBLIC POLICY 181 (New York: Harcourt Brace, 1972).

[4] *Id.* pp. 178-184.

[5] *Id.* pp. 181-184.

[6] *Id.* p. 209.

[7] A. Whitney Griswold, quoted in BLAIR, *id.* p. 244.

ceptive to the real inventors who come knocking on their doors. The man who invented xerography, for example—Chester F. Carlson—was repeatedly turned away from the doors of even such sophisticated firms as IBM, Eastman Kodak, and Remington Rand.[8] The firm that finally took him in was of course the Haloid Company, a tiny enterprise with a net income at the time (1946) of roughly $100,000 and declining sales in its own market. That small firm, now known as Xerox, reportedly took a chance on Carlson's invention precisely because of its relative poverty, not in spite of it.[9]

The conclusion of the antitrusters, then, is straight-forward: If America wants to go on being number one in technological progress, it should go very slow indeed in letting its smaller firms be gobbled up or driven out of business by its larger ones.

And of course the antitrusters extend this argument into the foreign commerce area, because they believe that what happens abroad is likely to spill back over into our domestic markets. A basic strategy in the operation of cartels is simply to carve up the world market—"I'll stay out of your territory if you'll stay out of mine." A group of American exporting firms might agree with a European cartel, for example, not only with regard to how they were going to divide up the European market but the rest of the world as well, including the United States.

Under our Export Trade Act,[10] American exporters are permitted to join together in an "association" if the "sole purpose" of that association is the promotion of export trade, and if it does not have the effect of either restraining trade *in the United States* or hurting the export trade of one of its domestic competitors. It specifically prohibits, for example, "any act which artificially or intentionally enhances or depresses prices within the United States. . . ." Would an agreement by a group of American manufacturers of TV sets to stay out of the Japanese TV market in exchange for an agreement by the Japanese TV manufacturers to stay out of the United States market have the effect of "artificially or intentionally enhancing prices" in the United States? The antitrusters would undoubtedly say "yes" and promptly file suit if any such agreement should actually be made. If one believes that a lessening of competition causes prices to rise, then one would also be likely to expect a withdrawal of Sony and its colleagues from our shores to be followed by a substantial increase in the prices paid by American consumers for TV sets.

The antitrust people point to a distinction here that seems to be one of considerable importance in this debate on antitrust and the multinational corporation. American antitrust is designed to protect the American consumer

[8]Erwin A. Blackstone, *The Copying-Machine Industry: Innovations, Patents, and Pricing*, ANTITRUST LAW & ECONOMICS REVIEW, Vol. 6, No. 1 (1972).

[9]*Id.* p. 106.

[10]15 U.S.C. 61, *et seq.*

and the American businessman, not the foreign consumer or the foreign businessman. This means, the writer is assured, that it is perfectly lawful for a group of American firms to get together for the purpose of competing with foreign firms and foreign cartels. It is not lawful, however, to join up with a foreign cartel or enter into any other kind of anticompetitive arrangement with a foreign firm if the effect of it all is to injure either American consumers or American businessmen.

The antitrusters deny, in other words, that there is anything in the American antitrust laws that limits the ability of American firms doing business abroad to compete more effectively with foreigners. They say that American firms are free to get together, for example, and bargain jointly for a lower price from foreign sellers. They are free to pool their resources in order to lower their costs and thus undersell their foreign competitors. It is only when they join their foreign competitors—and when the arrangements they make with those foreigners spill back over onto either the American consumer or some other American businessman—that they have an antitrust problem.

This matter of the alleged "spillover" effects of international cartels is again, the writer is told, at the nub of this entire controversy. American firms who join foreign cartels are likely to learn, the antitrusters fear, some very bad economic habits. If they get used to fixing prices and dividing up markets abroad, will they lose the urge to compete among themselves at home? In other words, collusion is allegedly habit-forming. And once one is "hooked" on it, the old will to compete—whether at home or abroad—reportedly starts to erode. A tough competitive business firm—once an economic athlete without an ounce of excess costs on its sinewy corporate frame—gradually becomes, the antitrusters say, a flabby industrial citizen in its home country as well as abroad, one with neither the desire nor the capacity to run with the swift or fight with the strong. This has already happened to the foreign firms, according to our antitrust people. Protected from the rigors of competition by their various private cartel arrangements and by the protective props supplied by their own governments, many foreign companies allegedly have higher-than-necessary costs and thus tend to be relative pushovers when they come up against our own more muscular firms.

The point to be emphasized here, in short, is that the antitrust people agree that the world has gotten very small, that the difference between "here" and "there" is no longer as great as it once was. The conclusion they draw is that—again— if one wants to give the American consumer whatever benefits are to be realized from a competitive market economy, a great deal of care must be exercised in permitting or encouraging cartels in other parts of the rapidly-shrinking world we live in.

The writer is an optimistic man and he believes that a solution can be found to all these problems that will do equal justice to the needs of our multinational business firms and the needs of our domestic consumers. The American public has no objection to corporate bigness, as such. But it doesn't like monopoly. The average American breadwinner knows that he has to compete every day for the bread he puts on his family's table. And if he has to compete for everything he gets, he wants to see everyone else—and especially the fellow he associates with "big business"—scramble for his, too.

Competition might keep us a little leaner and thinner than we might like to be but it probably will not kill any of us. The genius of American business is to look whatever obstacles that might come along squarely in the eye and climb right up and over them. We have some precious institutions in this country, one of them being the idea that our economic markets ought to be fair, open and competitive. The writer does not think that the point has been reached where we have to give up that idea in order to get our share of any market on the face of the earth. We'll get our share and we will do it the American way—by being what we have always been, the finest, most efficient businessmen in the world.