

INFORM. INSPIRE. DEVELOP CIVIC LEADERS.

THE POLICY CIRCLE

ANTITRUST LAWS



➤ WHAT ARE ANTITRUST LAWS? ◀

ANTITRUST LAWS ARE REGULATIONS INTENDED TO ENSURE FAIR COMPETITION ACROSS A VARIETY OF INDUSTRIES. BEFORE THE 1980S, REGULATORS FOCUSED ON A FIRM'S MARKET SHARE IN A GIVEN INDUSTRY. SINCE THEN, THEY HAVE ALLOWED MORE MERGERS AND FOCUSED ON HARM TO CONSUMER WELFARE LIKE A GROUP OF COMPANIES DIVIDING UP A MARKET AND RAISING PRICES.

ANTITRUST LAWS ARE MAINLY ENFORCED AT THE FEDERAL LEVEL BY THE DEPARTMENT OF JUSTICE AND THE FEDERAL TRADE COMMISSION, BUT MANY STATES ALSO HAVE THEIR OWN ANTITRUST REGULATIONS ENFORCED BY THE STATE ATTORNEY GENERAL.



THE DEPARTMENT OF JUSTICE HANDLES CRIMINAL AND CIVIL ANTITRUST CASES, AS WELL AS CASES INVOLVING INDUSTRIES SUCH AS AIRLINES, BANKING, RAILROADS, AND TELECOMMUNICATIONS. THE FEDERAL TRADE COMMISSION HANDLES CASES RELATING TO SEGMENTS OF THE ECONOMY WHERE CONSUMER SPENDING IS HIGHEST, SUCH AS HEALTH CARE, FOOD, AND INTERNET SERVICES.

SOME STATISTICS INDICATE THAT THERE HAS BEEN CORPORATE CONSOLIDATION IN OVER 75% OF U.S. INDUSTRIES OVER THE PAST TWO DECADES. ACCORDING TO THE WORLD COMPETITIVENESS RANKING, THE US ECONOMY AS A WHOLE HAS BECOME LESS COMPETITIVE; IT PLACED FIRST ON THIS INDEX IN 2018, BUT FELL TO 10TH PLACE IN 2020 AND 2021.

WHETHER OR NOT A COMPANY HAS MONOPOLY POWER DEPENDS ON HOW THE MARKET IS DEFINED. AMAZON CONTROLS 38% OF THE U.S E-COMMERCE MARKET, BUT ONLY ABOUT 4% OF THE OVERALL RETAIL SECTOR. THE DEPARTMENT OF JUSTICE DEFINES MONOPOLY POWER IN THE DIGITAL MARKET AS A 66% THRESHOLD.

BIG TECH COMPANIES SUCH AS AMAZON, FACEBOOK, AND GOOGLE HAVE ATTRACTED THE MOST PUBLIC CRITICISM ON ANTITRUST GROUNDS. BETWEEN AUGUST 2019 AND FEBRUARY 2021, GALLUP SURVEYS FOUND THAT THE PERCENTAGE OF AMERICANS WHO WANT TO REGULATE BIG TECH FIRMS INCREASED FROM 48% TO 57%.

KEY LEGISLATION

THE SHERMAN ANTITRUST ACT (1890)

AMERICA'S FIRST NATIONAL-LEVEL ANTITRUST ACT CRIMINALIZES CONSPIRACIES TO PREVENT COMPETITION BY RESTRAIN TRADE OR FORMING MONOPOLIES. HOWEVER, PRESIDENTS AND THE COURTS INTERPRET AND ENFORCE THE LAW IN A LAX WAY, ALLOWING MONOPOLIES AND TRUSTS UNTIL THE 1910S

THE FEDERAL TRADE COMMISSION ACT (1914)

THIS ACT CREATED THE FTC, THE FEDERAL AGENCY WHICH REGULATES ANTITRUST ISSUES AND OUTLAWS "UNFAIR METHODS OF COMPETITION" AND "UNFAIR OR DECEPTIVE ACTS OR PRACTICES. GENERALLY, ANY BUSINESS PRACTICE WHICH VIOLATES THE FTC ACT IS ALSO IN VIOLATION OF THE SHERMAN AND CLAYTON ANTITRUST ACTS.

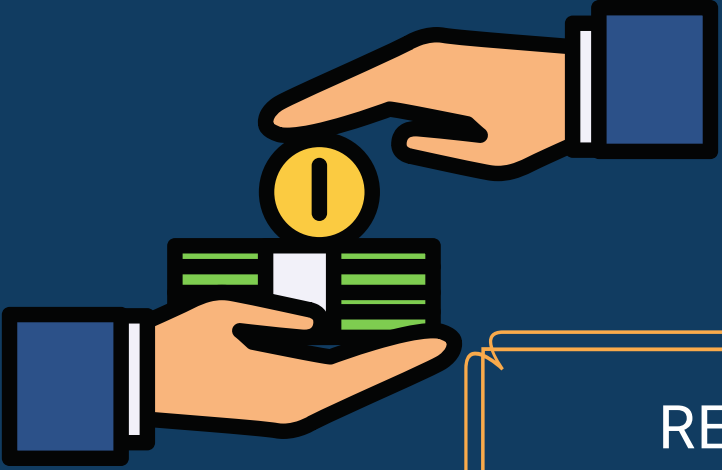
THE CLAYTON ACT (1914)

THIS ACT EXPLICITLY BANS ANTI-COMPETITIVE PRACTICES NOT MENTIONED IN THE SHERMAN ANTITRUST ACT LIKE MERGERS THAT WOULD ELIMINATE COMPETITION IN MUCH OF THE COUNTRY, OR THE SAME PERSON MAKING BUSINESS FOR 2 OR MORE COMPETING COMPANIES.

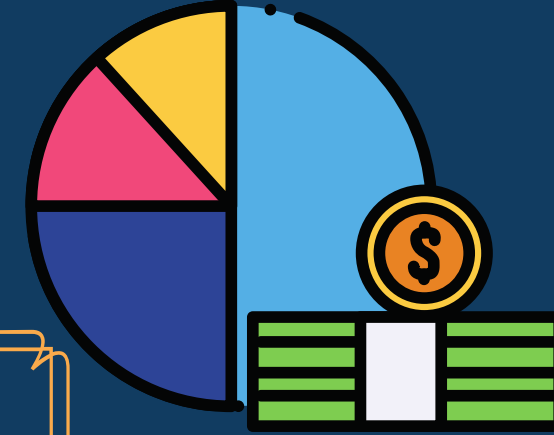
HOW ANTITRUST LAW IS ENFORCED

THE ANTITRUST LAWS ON THE BOOKS HAVE CHANGED VERY LITTLE IN THE PAST CENTURY. MAJOR CHANGES IN THE ENFORCEMENT AND INTERPRETATION OF ANTITRUST LAW HAVE COME FROM THE DEPARTMENT OF JUSTICE, WHICH IS PART OF THE EXECUTIVE BRANCH, AND COURT RULINGS ON CASES INVOLVING ANTITRUST LAW.





➤ FRAMING THE ISSUE ◀



REGULATORS CAN PRIORITIZE OR EMPHASIZE A FEW DIFFERENT FACTORS IN THE INTERPRETATION AND ENFORCEMENT OF ANTI-TRUST LAW SUCH AS THE SIZE OF A COMPANY IN TERMS OF ITS MARKET SHARE; ANTICOMPETITIVE BUSINESS PRACTICES, REGARDLESS OF HOW BIG OR SMALL A FIRM IS; AND EVIDENCE OF HARM TO CONSUMER WELFARE SUCH AS HIGHER PRICES.

WHAT ROLE CAN ANTITRUST LAW PLAY IN ADDRESSING SUPPLY CHAIN ISSUES?

VERTICAL INTEGRATION, WHEN COMPANIES MERGE WITH OR BUY OUT THEIR SUPPLIERS AND DISTRIBUTORS, HAS MADE SUPPLY CHAINS RELIANT ON A SMALL NUMBER OF COMPANIES. SOME ARGUE THIS IS DRIVING UP PRICES, AND THAT COMPETITION AMONG MORE COMPANIES COULD HELP REDUCE SUPPLY CHAIN ISSUES. OTHERS ARGUE HIGH PRICES ARE THE RESULT OF THE WORKINGS OF SUPPLY AND DEMAND

IS DISPROPORTIONATE MARKET SHARE A SUFFICIENT REASON TO BREAK UP LARGER COMPANIES, EVEN WITHOUT EVIDENCE OF ANTI-COMPETITIVE BEHAVIOR? SOME THINK LARGE COMPANIES CAN USE THEIR SIZE TO LIMIT ENTRY TO COMPETITORS AND FIX PRICES. OTHERS ARGUE MARKET CONCENTRATION DOES NOT ALWAYS INDICATE A LACK OF COMPETITION, AND LARGER COMPANIES MAY ALSO OFFER PLATFORMS FOR SMALLER COMPANIES TO EXPAND.

HOW SHOULD ANTITRUST LAW APPLY TO BIG TECH COMPANIES?

ANTITRUST HAS FOCUSED ON BIG TECH DUE TO THE FACT THAT THESE COMPANIES INTERACT WITH CONSUMERS' DAILY LIVES MORE THAN THE AVERAGE COMPANY. THESE COMPANIES HAVE A SIGNIFICANT AMOUNT OF MARKET SHARE, LEADING SOME TO CALL FOR THEM TO BE BROKEN UP TO PROMOTE COMPETITION. BUT OTHER CONCERNS, LIKE DATA PRIVACY AND CONTENT MODERATION, ARE ALSO BEING CONFLATED WITH ANTITRUST LEGISLATION.





SOLUTIONS



POLICIES THAT PROMOTE A LEVEL PLAYING FIELD FOR ALL BUSINESS

ELECTED OFFICIALS, THE COURT SYSTEM, SMALL BUSINESS OWNERS, CONSUMER ADVOCACY GROUPS, AND INDUSTRY-BASED ASSOCIATIONS ALL HAVE A ROLE TO PLAY IN ENSURING A MORE COMPETITIVE ECONOMY AND PREVENTING FIRMS FROM ELIMINATING THEIR COMPETITION THROUGH ANTI-COMPETITIVE BEHAVIORS. ANTITRUST LITIGATION WHERE FIRMS SEEK DAMAGES FROM ANOTHER COMPANY FOR ANTI-COMPETITIVE BUSINESS PRACTICES IS A MAJOR AREA OF ANTITRUST ACTIVITY.

REDUCING BARRIERS TO ENTRY FOR NEW STARTUPS AND SMALL BUSINESSES

STATES AND COMMUNITIES CAN ALSO SPUR GREATER COMPETITION BY STREAMLINING THE BUREAUCRATIC PROCESS OF REGISTERING A NEW BUSINESS, PROVIDING MENTORSHIP OPPORTUNITIES WITH SMALL BUSINESS OWNERS, AND MAKING RESOURCES ON ENTREPRENEURSHIP AVAILABALE THROUGH PUBLIC LIBRARIES, COMMUNITY COLLEGES, AND CHAMBERS OF COMMERCE.

SUPPLY CHAIN RESILIENCY AND THE IMPORTANCE OF COMPETITION

ALTHOUGH LARGER COMPANIES CAN PROVIDE GOODS AND SERVICES MORE EFFICIENTLY, THESE FIRMS CAN BECOME SUPPLY CHAIN BOTTLENECKS FOR THE LARGER ECONOMY IF CONSUMERS AND BUSINESS PARTNERS DON'T HAVE ALTERNATIVE SUPPLIERS TO FALL BACK ON.

➤ WHAT YOU CAN DO ◀

MEASURE -

DOES YOUR STATE HAVE A DIVISION OR OFFICE OF CONSUMER AFFAIRS? DO YOU KNOW YOUR STATE'S ANTITRUST LAWS? WHAT ANTITRUST LITIGATION HAS OCCURRED IN YOUR STATE? DO YOU KNOW THE STATE OF MARKET CONCENTRATION AND COMPETITION IN YOUR STATE'S ECONOMY, OR ONE OF ITS MAJOR INDUSTRIES?




IDENTIFY -

WHO IS YOUR STATE'S ATTORNEY GENERAL? WHAT STEPS HAVE YOUR STATE OR LOCAL OFFICIALS TAKEN TO ADDRESS ANTITRUST ISSUES? WHAT PART OF YOUR STATE GOVERNMENT IS RESPONSIBLE FOR CONSUMER AFFAIRS?



REACH OUT -

FIND ALLIES IN YOUR COMMUNITY OR IN NEARBY TOWNS AND ELSEWHERE IN THE STATE. FOSTER COLLABORATIVE RELATIONSHIPS WITH LOCAL BUSINESSES BY REACHING OUT AND DISCUSSING HOW BUSINESS OWNERS FEEL ABOUT COMPETITION POLICY.



PLAN -

SET MILESTONES BASED ON YOUR STATE'S LEGISLATIVE CALENDAR OR LOCAL COMMUNITY CALENDAR.



EXECUTE -

DISCUSS THE THE ROLE OF SMALL AND LARGE BUSINESSES ON THE ECONOMY WITH FAMILY, FRIENDS, AND NEIGHBORS. TALK TO SMALL BUSINESS OWNERS AND ENTREPRENEURS IN YOUR COMMUNITY TO UNDERSTAND THEIR PERSPECTIVES ON ANTITRUST RULES, REGULATIONS, AND THE POWER OF LARGER FIRMS. VISIT THE FTC'S WEBSITE TO STAY UP TO DATE ON THE MOST RECENT POLICY PAY ATTENTION TO OPEN COMMENT PERIODS THAT ALLOW INDIVIDUAL CITIZENS TO COMMENT ON PROPOSED REGULATIONS. KEEP TRACK OF POTENTIAL ANTITRUST LEGISLATION.

