Antitrust: The Case for Repeal. By Dominick T. Armentano. Auburn, Ala.: Mises Institute, 1999

Most economists would, given the opportunity, offer some proposal to reform antitrust policy. Some would contend that this or that aspect of antitrust law should be eliminated or more weakly enforced. Only a brave few, however, deliver a deadly blow to the antitrust beast. In the revised second edition of his book *Antitrust: The Case for Repeal*, Dominick T. Armentano is not content to attack only one aspect of antitrust policy. Professor Armentano proceeds to demolish the very foundations of antitrust policy. No excuse for antitrust intervention remains standing—not predatory pricing, not tying agreements, not even price fixing. Lighter fare than his excellent book *Antitrust and Monopoly* (1990), Armentano's *Case for Repeal* provides a coherent, accessible Austrian perspective on senseless and unjust antitrust law.

Armentano's first chapter focuses on the Microsoft case. His cogent analysis of path dependence as an aspect of the Department of Justice's attack is similar to, and draws from, earlier work by Liebowitz and Margolis (1990, 1995). Armentano's concerns are much broader, however, and he uncovers the grievous errors in the government's understanding of the competitive process they claim to be promoting. Microsoft's decision to integrate its web browser into its Windows operating system was an effort to compete more effectively with its rival Netscape. If its innovation is judged by consumers to be superior, and is attained without legally restricting the entry of other firms, why should the Department of Justice balk at a resulting increase in market share? Antitrust intervention is an assault on efficiency and revealed consumer preferences.

In addition to the Microsoft case, Armentano considers several other key cases throughout the book: *Standard Oil* (decided 1911), *Alcoa* (1945), *AT&T* (1982), *Staples-Office Depot* (1997), and others. With each case Armentano refutes another argument for antitrust. In contrast to many neoclassical critiques of antitrust, the approach in *The Case for Repeal* is not empirical. Basing his views on sound economic theory, Armentano finds the weapons of logic quite sufficient to dismantle commonly accepted antitrust theory.

Rothbardian monopoly theory, summarized in an appendix to chapter three, is generally consistent with Armentano's own approach. In Rothbard's understanding of the market, information is never perfect, all sellers have some influence over price, and goods are never completely homogeneous (Rothbard 1993, pp. 560-660). Where information is imperfect, discovery matters. Antitrust authorities

might regard an increase in price (or a decrease in price) as monopolizing behavior, when in fact the change could be due to the discovery of new information about the market. Firms make mistakes, produce too much at times, and must reduce output and raise price. Because static equilibrium conditions can never exist in the disequilibrium of the actual market, and no demand curve is perfectly elastic, the conditions of perfect competition can never obtain. Comparing "competitive" and "monopoly" prices is therefore an exercise in futility—there are no independent criteria that would allow us to distinguish between the two.

Furthermore, in a world of subjective costs and benefits, antitrust authorities seeking to deter activities that reduce social welfare and social efficiency cannot have the information necessary to make good decisions. This last point is relevant when considering the "rule of reason" reforms that some have advocated for antitrust regulation. The "rule of reason" approach, which implies that the government ought to permit an activity when the social gains are expected to outweigh the social losses, fails for lack of sufficient information. Costs and benefits are not cardinally measurable, foreclosing any possibility of antitrust authorities summing up individual costs and benefits into useful aggregates. "Individual consumer and producer utility and surplus may exist, but these notions cannot be mathematically manipulated to allow any regulatory rule-of-reason judgments" (pp. 49, 50).

Looking at profits to determine if a monopoly exists and what its social costs might be is also problematic. Accounting profit is used to estimate economic profit, a theoretically illegitimate procedure. Even if this obstacle could somehow be overcome, the mere existence of monopoly profits does not justify government intervention. Government involvement in the marketplace is so widespread that the legal monopolies it forms "might well be inexorably intertwined in the actual business world: tariffs, quotas, licensing, and other legal restrictions always tend to generate economic rents in markets that are otherwise openly competitive" (p. 44).

Could we find in this a justification for keeping antitrust law on the books? Some have suggested that we turn antitrust law against the government by using it to break up government-enforced monopolies. Armentano maintains that this is ill-advised. As long as antitrust regulation exists, the danger remains that it will be turned against private business.

Armentano closes his book by contending that antitrust law violates basic principles of liberty. Even if it could be shown that efficiency dictates necessary legal constraints on market structure, antitrust law clearly interferes with essential rights to private property. Armentano writes:

> The antitrust prohibition of price discrimination, merging, price fixing, and even free-market monopolization prevents freely contracting parties who hold legitimate rights to property from making, or refusing to make, certain contractual arrangements that they believe to be in their best interests. . . . [P]rivate and peaceful activities such as price discrimination, merging, tying, and price fixing violate no property rights in the ordinary sense of the term; that is, they do not necessarily involve force, fraud, or misrepresentation. (pp. 99, 100)

It is entirely appropriate that low-cost sellers be rewarded with market share. Competition, in the sense that there are no legal barriers to entry, still exists even if an industry is highly concentrated. To interfere with the competitive process, to prosecute firms that undercut the prices of their rivals, "is blatantly protectionist of the existing market structure of suppliers" (p. 70). This, perhaps, is the real story of

antitrust. Armentano shows quite effectively that no public interest rationale exists for antitrust regulation. Case after case reveals a common thread—outwitted, outperformed rivals seeking to use the brute force of government to put down their opposition. "Antitrust's dirty little secret," charges Professor Armentano, "is that the laws have been employed consistently to hamper successful business organizations and protect their less efficient rivals. One would be hard-pressed to discover a more immoral or irrational public policy toward business, or one more worthy of repeal" (p. 12) .

References

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