Economic Power and Antitrust Agencies’ Duty to Curtail It

Adi Ayal
Phd Law, Phd Economics
Bar Ilan University
Antitrust History
Economic vs. Market Power

The Trusts: economic power with some market power

Initial focus on the cross-market components

Market power gaining prominence in antitrust analysis, requiring market definition, price and output analysis

Mathematic convenience and quest for objective and scientific assessment
Risks of Economic Power

Political Effects: the market for influence

• Economies of scale
• Economies of scope
• Contagion and cascade effects
• Collective cognitive dissonance and norm-shifting
• Regulated and regulation-intensive industries
Risks of Economic Power

Economic Effects: Interdependent Markets
Oligopoly of conglomerates: fear of trespassing
Networks of complements: advertising, services, credit
Multi-market contact: tacit collusion
Competition as Democracy in Action

“Antitrust is founded on a theory of hostility toward private concentration of power so great, that even a democratic government can be entrusted with it only in exceptional circumstances” (Adams and Brock)

Trader freedom and the “feel” of competition

Competition as a protected process, rather than proxy.

Stability and “Too Big to Fail”

"what was good for our country was good for General Motors and vice versa. The difference did not exist. Our company is too big. It goes with the welfare of the country.“ (Wilson)

Conglomerates as families: internal support and short-to-medium term stability

Long term risk: systemic (in oligopoly) and specific (in size)
Stability and “Too Big to Fail”

The main problem: TBTF firms during their lifetimes, not in their death throes. Bailouts are not the problem.

Size and economic centrality as proxies for political influence.

Shared reputation and credible threats: supporting exchange as well as intimidation.
Antitrust Enforcement: Should We Get Involved?

Risk to professionalism and risk of politicization
Love of technocracy, and the illusion of objectivity

But…

Protection of competition: both within and across markets

‘Last man standing’: prevention of accumulated power and political influence

Expertise in balancing efficiencies and understanding market effects
Antitrust Enforcement: Should We Get Involved?

If yes, then how?

• Applying stricter scrutiny to conglomerate mergers
• Contextual privatization: spreading the wealth (and power)
• Examining business alliances and trans-nationals
• In the extreme, dissolution and separation of at-risk industries (financial/real; regulated monopolies; infrastructure and privatized industries)

And always with care! Conglomerates are not evil!