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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

EXPLORING THE EFFECTS OF ANTITRUST LAWS ON COMBINATIONS AND SMALL BUSINESS, WITH THE GOAL OF PROMOTING ECONOMIC GROWTH AND DEVELOPMENT.

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Abstract

Antitrust laws are crucial in the economic marketplace since their primary objective is to enhance consumer welfare. Antitrust laws exist to encourage fair and free competition in the market. These were first presented by the American government as the Sherman antitrust act, which was eventually adopted as a form of competition law by many nations. This article emphasizes the importance of antitrust rules in promoting democracy and economic prosperity, with a focus on economic product distribution. Antitrust laws protect the public interest by prohibiting predatory pricing and providing consumers with preferences and access to creative incentives, thereby removing monopolies in the marketplace. Simultaneously, this study explains the considerable effects of antitrust regulations on small businesses. Many economists contended that antitrust rules harm small businesses by imposing discriminatory conditions and being unfavorable to small business owners. They further said that antitrust benefits primarily large power firms and that such power is exploited against small businesses. This article also investigates the principles of antitrust laws, which ban firms from combining and affecting many companies from mergers and acquisitions, which are in the interest of consumers. Antitrust laws assume that mergers and acquisitions diminish competition and lead to monopolies, while in actuality, mergers and acquisitions enhance the economic market in a variety of ways. Finally, the article summarizes the benefits and drawbacks of antitrust laws, including case studies and proposals for changing antitrust laws to benefit both firms and consumers in the marketplace.

Keywords: Antitrust laws, mergers and acquisitions, economic markets, competition law, Sherman Act, Small Business.

Need and scope of the study

It is essential to understand the issue of antitrust laws about markets since it illustrates the transition of traditional markets to modern-day markets, which aids in knowing where the economy and consumer welfare is growing in any case. This is a significant concept because, without antitrust rules, the market is dominated by monopolies and unfair trading practices. The study's scope demonstrates the issues antitrust laws face in current policies, as well as the numerous benefits they provide in each sector through improving customer well-being. Antitrust rules are always needed in the market to prevent illegal mergers, expand markets, protect consumers and buyers from anticompetitive effects, and ensure unbiased competition.

Introduction

Sir John Sherman of the United States invented the term "antitrust law" in 1890 with the intention of protecting the economy from malpractices such as price fixing, cartel agreements, and other anti-competitive behaviors. In addition to the Sherman Act, the Clayton Act and the Federal Trade Commission Act were enacted to regulate markets and safeguard consumer welfare. The background behind the evolution of antitrust laws was because of the railroad industry which was first introduced as interstate commerce Act, 1887. After the American Civil War in the nineteenth century, i.e. after 1865, Congress made significant modifications in unregulated operations and reconstructed new legislation, which included antitrust laws. Prior to 1887, railroads were privately owned and all railway firms were individually controlled, resulting in a monopoly in the railway service business. The railroad monopoly increased market conflict and led to unjust price setting, removal of competition, and market dominance, as well as the absence of consumer preferences in services. The export and import markets had also suffered as a result of the railroad monopoly due to unfair price setting, which finally led to economic disaster, and high rates of charges levied on goods transported in railroads. The Wabash case¹ was a historic decision in which the Supreme Court decided that states cannot regulate railroads or any interstate commerce since it was demonstrated that state regulations are ineffective in formulating laws and lead to monopoly and created the interstate commerce act, 1887 with the five-member committee. After enacting the interstate commerce act, they focused on price setting and disallowed exorbitant prices, which reduced market traffic. Later in the years, the Sherman Act, of 1890, took place, with which America witnessed the first competition policies and regulations governing anti-competitive practices and illegal combinations. In recent years, several economists and legislators

¹ Wabash, St. Louis & Pacific Railway Company v. Illinois, 118 U.S. 557 (1886).

have argued that antitrust laws are impeding the free flow of economic markets in a variety of ways, including limiting combinations and negatively impacting small businesses. However, the goal of antitrust laws is to promote innovation and eliminate unfair price fixing, but many individuals argue that antitrust rules interfere with the free market and limit its effectiveness. Back in the 18th century, Adam Smith's book "An Inquiry into the Nature and Causes of the Wealth of Nations"² shed light on modern-day concerns of antitrust laws and competition policies, mentioning how greed and unfair competition in the market harms society in economic growth and production. Adam Smith maintained his faith in economic independence, and the formation of antitrust laws demonstrates his beliefs. He believed that markets could not be controlled by anyone, which is why antitrust laws are so closely linked to democracy and economic prosperity, thus competition policies are socially beneficial. According to research, antitrust laws have a direct impact on production factors, both positively and negatively. The reforms in antitrust legislation have boosted productivity development. Antitrust laws influenced the total factor of production in growth, particularly following the implementation of economic reforms (i.e. LPGs). Furthermore, the outcome and performance of antitrust laws in all of the aforementioned aims is to comprehend the full examination of antitrust laws in various market sectors.

Research objectives

- To examine the antitrust laws prohibiting combinations and the reasons for such prohibition.
- To determine economic growth and the role of antitrust laws in economic promotion while also limiting economic growth.
- To comprehend the importance of antitrust laws in small businesses and their impact on competition policies.

1. Antitrust laws restricting combinations

Concept of gun jumping

Gun jumping refers to illegal behaviors that occur before regulatory permission, and these activities include pre-merger transactions, merger limitations, and market anti-competition. The concept of gun jumping is the most serious concern in antitrust combinations. This idea is detrimental to merger deals in a variety of ways, including price fixing, removal of competition, bid rigging, and cartels. There are two sorts of gun leaping: substantial gun jumping and

² Smith, Adam (1723-1790), An Inquiry into the Nature and Causes of the Wealth of Nations (1994).

procedural gun jumping. Substantial gun jumping³ parties work together to disseminate information before the competition authority approves a certain merger. This material includes sensitive matters, publicizing the combination, and encouraging customers. This form of gun jumping has a negative impact on corporate merger control and company management. The second category is procedural gun jumping⁴, which occurs when parties neglect to report the combination to the competition authority, whether consciously or unknowingly. Notifying merger transactions is critical because regulatory boards examine the legally binding nature of such a combination. Hart-scott-radino act is the regulatory authority in antitrust to look after the premerger activities between the companies.

According to the Clayton Antitrust Act, mergers reduce competition and produce monopolies, which is why antitrust regulations are cautious about mergers. Horizontal mergers, in particular, are thought to create competitive mergers. Horizontal mergers are those that occur between companies that operate in the same industry. These types of mergers create prospective market gains, which pose a direct threat to consumers. Coca-Cola and Pepsi, for example, are the two market leaders, and a merger could reduce competition. The most well-known horizontal merger is that of Vodafone and Idea Cellular⁵. The FTC uses the “per se rule” to determine horizontal mergers and create pro-competitive actions. The Supreme Court of the United States established three standards to decide whether horizontal mergers are anticompetitive: the per se rule⁶, the rule of reason⁷, and the quick-look approach⁸. Mergers are scrutinized under the per se rule based on their competition in the product market and geographic market in order to eliminate price fixing and cartels. In order to apply the rule of reason, it must be demonstrated that the merger has significant adverse effects. If the per se rule is applied, the rule of reason cannot be applied. The quick look approach is a hybrid of the per se rule and the rule of reason; in this situation, the court considers the pro-competitive grounds. Back in the 1890s, mergers also restrained trade policies in the United States, prompting the Clayton Act of 1914 to enhance the Sherman antitrust statute by banning pre-merger agreements and substantial gun jumping. However, it has recently been demonstrated that antitrust rules are not wholly against mergers because they produce innovation in the market, which strengthens the market's capabilities and incentives. Antitrust authorities

³ Titan International/ Titan Europe Ltd., Combination Registration No. C-2013/02/109

⁴ United States v Smithfield Foods and Premium Standard Farms 1:10-CV- 00120 (DDC Jan 21, 2010)

⁵ Vodafone/ Idea Cellular, Combination Registration No. C-2020/08/762

⁶ Northern Pacific R. Co. v. United States, 356 U.S. 1 (1958)

⁷ Tata Engineering and Locomotive Co. Ltd v. Registrar of Restrictive Trade Agreement, (1977) 47 Comp Cas 520 SC.

⁸ United States v. Topco, 405 U.S. 596 (1972)

must authorize mergers that aim to maintain market competition, allowing consumers access to new markets. Similarly, horizontal mergers might be harmful, but with the correct business activity, they can increase market dominance.

2. Antitrust laws in the promotion of democratic government and economic growth, as well as product distribution economics

Antitrust legislation promotes economic growth and innovation while also benefiting both consumers and the government by boosting economic efficiency in the country. Prior to the implementation of antitrust rules, nations experienced significant economic downturns due to restricted resources and monopolized markets; nevertheless, free trade practices, protection against abuse of dominant position, and anti-cartels would improve economic policies and productivity. Trade and antitrust policy are inextricably linked, as both promote product distribution and economic growth. Antitrust laws defend domestic and foreign trade by imposing prohibitions on price fixing, tying agreements, and refusals to deal, and thereby benefit the economy greatly. The goal of antitrust law is to enhance consumer welfare and to regulate economic power, but the coin has two sides. Many economists argued that antitrust laws were also harmful to the economy because when markets are restricted, the entry of new producers is constrained, resulting in a loss of economic efficiency. When market competition is limited, prices for manufacturing and distribution rise, resulting in inflation. It is critical to recognize that antitrust laws are not completely responsible for economic growth and development because their main purpose is to control market fairness rather than to remove property or economic instability in the country. Antitrust laws indirectly create economic efficiency because systematic expansion in the internal market system leads to the development of macroeconomics. For example, 1. production and distribution of high-quality goods and services at reasonable rates, 2. domestic or international mergers enhance market share, 3. innovation creation, and 4. licensed market production. Antitrust laws have now been enacted by more than half of the world's countries, including several industrialized nations such as China, the United Kingdom, and the United States. In comparison, sophisticated nations that implement antitrust laws have secured markets and increased economic efficiency. Antitrust laws are also a political problem since they reflect intentions in growing market share, but they are currently limited and lack proficient legislation in antitrust policies. Focusing on the positive effects of antitrust laws on the expanding economy, corporations become more productive in order to compete in the market. Price changes in supply and distribution benefit both producers and consumers in terms of profit, as producers are also customers at the beginning of the market. Antitrust laws, by fostering fair competition in the market, will prevent markets

from contracting due to their desire to improve and profit; in this way, the economy will benefit in the long run from microeconomics. According to the government, antitrust laws are crucial in the economy since they highlight which sectors need to be reorganized and the weak and strong flow of capital. Last but not least, there is the reward of invention. In this technology-driven era, investments in technological breakthroughs are more welcomed, and manufacturers and customers are eager for new products; hence, antitrust rules assist the economy. Thus, in order to avoid an imbalance between antitrust laws and economic development, certain steps must be taken for growth, such as the elimination of cartels, the protection of competition rather than competitors, the government and firms working together, and the imposition of greater penalties for antitrust violations.

3. Antitrust laws effects on small business

Running a small business in today's competitive environment is a struggle for small business entrepreneurs. Antitrust laws generally target major companies and their market dominance, preventing small businesses from competing at all. Antitrust laws are evolved from monopoly markets since it allows all rivals, including small businesses, to compete, yet market dominance by larger competitors is always more focused on by antitrust authorities than small entities. Following an extensive economic crisis during the pandemic, small businesses are expanding over the world; yet, local businesses and entrepreneurs face unfavorable consequences from legislation and antitrust authorities since they lack specific regulations governing them. When opposed to small company organizations, larger market entities have easier access to marketplaces and customers. Eastman Kodak⁹ exemplifies the dominance of major corporations over small businesses, as well as their commercial methods applied against small businesses. This is a clear illustration of market monopolization due to its market dominance. In this case, Kodak was involved in refusal to sell and tying agreements, which had a significant impact on the revenue and loss of the ISOs (Independent service organizations). The district court found in favor of Kodak Eastman, but the United States Supreme Court overturned the district and ninth courts' decisions and issued rules on Sherman Act Sec. 1¹⁰. With this case, many small company organizations concluded that enterprise size counts and that larger companies benefit from

⁹ Eastman Kodak Co. v. Image Technical Servs., Inc., 504 U.S. 451 (1992)

¹⁰ Sherman antitrust Act, (1890), sec.1:Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

antitrust legislation. In terms of cost benefits, large enterprises can demand price changes, and because of their market dominance, it is easier to gain profits from consumers for price differentiation, however small businesses find it difficult because raising prices may result in losses. It is the responsibility of small business organizations to keep potential competitors alive. Acquisitions of small company entities by larger firms fully limits startup growth, resulting in fewer enterprises in competition and, eventually, loss of innovation. However, this is not the case with mergers because combining with larger corporations increases the value and profitability of the smaller entities. When large companies exceed their influence, it may result in abuse of dominating positions and discrimination against smaller firms. Vertical agreements are a big source of concern for small businesses since giant corporations are increasingly targeting small businesses with exclusive supply and distribution agreements. When there is accountability in the market, only the consumer benefits, hence it is the role of antitrust laws to safeguard the consumer by encouraging market fairness. More concentrated market causes difficulties for small businesses to compete and for new enterprises to enter the market. The acquisition of Instagram and WhatsApp by Facebook is a similar scenario of huge firms joining forces; in such cases, new social media apps cannot compete.

Conclusions

To summarize, antitrust rules have a beneficial and detrimental impact on mergers, small businesses, and economic growth. When it comes to the economic nature of antitrust laws, it is a contradiction because there are adequate laws and research indicating antitrust rules promote and safeguard economic growth, but when these laws are misused, their primary impact is on the economy and same with horizontal mergers. Thus, the above sections outline both economic and noneconomic strategies to antitrust rules, as well as the contradictions between safeguarding them. In this analysis, economic efficiency benefits from antitrust laws and is supported by them for the practical execution of antitrust laws and economic development and growth. A strong antitrust framework not only protects consumers interests and supports a vibrant entrepreneurial ecosystem, but it also ensures a long-term sustainable and profitable economy. Overall, the exploration of the effects of antitrust laws on combinations and small firms emphasizes the critical role that these regulations play in supporting healthy competition and economic growth and development.

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