

Anti-trust: New Directions, New Strategies: The Flawed Basic Concepts*

By

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I believe that the “new direction” of antitrust should be its *elimination*—based on the strategy of beginning with the thorough discrediting of its underlying concepts in the realm of political philosophy and economic theory and then proceeding to the repeal of all the legislation on which antitrust rests in practice, such legislation by then having lost the support of its philosophical and theoretical foundations.

I believe that the starting point, or at least an essential part of it, must be the critique of the badly flawed concepts of freedom of entry, monopoly, and competition that underlie the theory and practice of antitrust, a critique that will show that the enforcement of antitrust laws routinely serves to *violate* the freedom of entry properly understood and thereby *promote* monopoly properly understood. As for competition, it must be shown that the support for antitrust rests on a concept of competition so confused that it abandons all reference to the actual phenomenon of competition, indeed, finds the actual phenomenon of competition—which, of course, is a species of rivalry—to be *antithetical* to its concept of competition. Antitrust’s concept of competition, it must be shown, derives from a Platonic dream world in which competition comes to stand for the conditions—mainly the existence of an enormous number of individually insignificant sellers of a perfectly interchangeable, homogeneous good—required for profit-seeking businessmen voluntarily to drive price to equality with marginal cost, an equality which for its part can be held to be desirable only from a thoroughly collectivist perspective that distorts the nature of private property and of prices no less than that of competition.

Let me begin with the concepts of freedom of entry and monopoly that underlie the antitrust laws. And here I want to acknowledge my indebtedness to Ayn Rand’s essay “Man’s Rights,” in particular its critique of the prevailing concepts of freedom of speech

and press and censorship. I will show that the prevailing concepts of freedom of entry and monopoly are subject to the same essential criticisms.

Rand attacks the view that freedom of speech and press mean that one has the right to say anything one likes, anywhere, at any time and that censorship exists when this alleged right is denied. In Rand's view, not only do I not have any right to deliver a speech in your bedroom at 2 AM, against your will—not only is my freedom of speech not violated when you refuse to allow me to do so, not only are you not censoring my views when you refuse to allow me to express them in your home at such time—but no one has the right to the presentation of a radio or television show against the will of the show's sponsors, and no one has the right to the publication of a book or a newspaper column against the will of the owners of the publishing house or newspaper. There are no rights entailing the use of others' property against their will. Recognition of any such alleged rights entails the self-contradiction of an alleged right to enslave. For that is what is present in any claim that others must provide the material implementation of one's rights against their will. On this basis, Rand argues, there are no rights to houses, automobiles, jobs, education, or medical care. There is only the right to take the actions necessary to earn such things and to purchase them from willing sellers. Every action entailing the cooperation of other people, Rand argues, must be based on their voluntary consent, including the use of their property.

When is the freedom of speech or press violated, when does censorship exist, according to Rand? Her answer is when and to the extent that the individual *has* the necessary voluntary cooperation of others in his endeavor and then *is forcibly prevented from speaking or publishing his views by the government*, or with the sanction of the

government. Thus, for example, if you invite me into your home to address a group of your friends, or into a public lecture hall or college classroom that you own or are authorized by the owner to use, and the government prevents me from speaking or allows hoodlums to prevent me—*then* my freedom of speech is violated. Similarly, if you own a publishing house or newspaper, or are acting with the consent of the owner, and you wish to publish my book or column, but are stopped from doing so by the government, then my freedom of the press is violated. In cases of this kind, I *am* the victim of censorship.

Turning now to the concept of freedom of entry, we must not equate the freedom of entry with the mere *ability* to enter an industry and conclude that to the extent people are unable to enter an industry for any reason, such as, notably, the lack of the necessary capital, the freedom of entry is violated. Thus, for example, if it takes a minimum investment of, say, a billion dollars, to have any hope of competing in the automobile industry, it does not follow at all that the automobile industry lacks freedom of entry or that my freedom of entry as an individual is violated or infringed in any way because I personally cannot raise the necessary billion. My freedom of entry is no more violated by the fact that I don't possess and cannot raise the necessary capital than my freedom of speech or press is violated because I don't own a television station or newspaper and cannot gain the support of one.

Under what circumstances would freedom of entry be violated? It would be violated if I did possess or could raise the necessary capital, and, of course, met the other requirements of being able to compete, such as having assembled the necessary management and workers with the necessary skills, technological and otherwise, *and then was forcibly prevented from entering the industry by the government. That* would be the

counterpart of censorship. It could also be properly described as *monopoly*. For I would be confronted with a market, or part of a market, that was closed to me by the essential element of the initiation of physical force by the government—a market from which I was forcibly excluded and that in consequence was made the monopoly of others.

Now violations of the freedom of entry and the concomitant establishment of monopoly are *routine consequences of the antitrust laws*. Again and again, they forcibly exclude from markets precisely those firms that in their absence would be in them, namely, the firms that do possess the necessary capital and meet all the other requirements for competing. Every antitrust decision to prohibit a merger or to force a divestiture is a decision to forcibly exclude from a market or part of a market a firm that would otherwise be in that market. It is a decision that violates the freedom of entry and/or the freedom of competition of that firm and monopolizes the market against it.

As I've written, the antitrust laws' "concept of the violation of freedom is frustration of arbitrary desires by facts of reality. It does not see as a violation of freedom the frustration of competence and ability by the initiation of physical force (*Capitalism*, p. 387)." For example, if I lack the capital even to start a grocery store, but would like to produce automobiles, the mentality underlying the antitrust laws complains of my lack of freedom of entry into the automobile industry. That same mentality, however, does not see any violation of the freedom of entry if General Motors is prohibited by a government agency from entering the segment of the automobile market presently served by another automobile company. Yet such prohibition is the meaning of routine government decisions to prohibit mergers or acquisitions, and would almost surely take place if General Motors were to attempt to merge with any other major automobile manufacturer.

I want to say that a proper understanding of the concept of monopoly implies that *monopoly need not exist merely because there is just one seller, and may exist when there are many thousands of sellers.* Alcoa before World War II was the only producer of aluminum ingot in the United States. However, it achieved and maintained that position by means of its competitive efficiency, in the face of the legal freedom of entry of all other producers, i.e., by achieving and maintaining lower costs of production than potential competitors and by selling at lower prices than its potential competitors required to achieve profitability.

By the same token, there may be many thousands of producers protected by a tariff, say, that gives a monopoly of the domestic market to domestic producers. Indeed, monopoly can exist in circumstances in which many thousands of inefficient small producers are protected from the competition of the very small number of producers who would ultimately replace them, indeed from the competition of perhaps just the *one* producer who would replace them all. If there were thousands of small aluminum producers protected against the competition of Alcoa, that would be the case. They would be the monopolists, not Alcoa. Monopoly does not depend on the number of producers. It should be understood as *a market or part of a market that is reserved to the exclusive possession of one or more producers by means of the initiation of physical force by the government, or with the sanction of the government.*

To make an important contemporary application of the concept, enactment of the government's plan to break Microsoft into two separate companies, one confined to operating systems, and the other to application software, would constitute the

monopolization of one or the other of these two branches of software production against Bill Gates, who would be forcibly excluded from the production of the one or the other.

A quick word on high capital requirements: So far from representing any kind of barrier to competition, *they are the result of competition*. They are the result of the fact that to compete, one must match competitors' low prices, and that to be able to be profitable at those low prices, one must have low costs of production. High capital investment is typically required to achieve those low costs of production. By the same token, high capital requirements could be eliminated, and thus the ideal of the supporters of antitrust achieved, if the prices of products were high enough to cover the high costs of production accompanying small capital investments. If, for example, automobiles were produced one at a time, by hand, in barn-like structures, as they were at the beginning of the twentieth century, we might have thousands of small automobile companies, and everyone with a few million dollars would be able to enter the automobile industry. That would make the supporters of antitrust happy, because in their deluded world it would represent an approximation of pure competition. In the real world, however, it would represent the absence of the competition that has so greatly improved the automobile industry.

A few quick words on competition. Under capitalism, the quest for high profits leads to continuous innovations in the form of improved products and more efficient methods of production. Again and again, competition eliminates the premium rates of profit and serves to pass the entire benefit of the innovations on to the consumers, who buy progressively better products at progressively lower real prices. Premium rates of profit continue to be earned only by virtue of the introduction of still further innovations.

Over the course of the twentieth century, this process of innovation and competition served to lower real prices probably on the order of well over ninety percent. The magnitude can be inferred from the fact that in 1900 the average worker worked approximately 60 hours a week and obtained the average standard of living of 1900. In the year 2000, the average worker worked approximately 40 hours a week and obtained the at least ten-times higher average standard of living of 2000. Thus, for two-thirds the work, the average worker received ten times the goods and services, which implies a fall in real prices to $6^{2/3}$ percent of their initial level, i.e., by $93^{1/3}$ percent.

This incredible real-world price competition is ignored by contemporary, “microeconomic” theory and the supporters of antitrust. Their concept of price competition is the equality of price and marginal cost, which big business does not achieve. And because it does not, it is denounced for lacking price competition.

The equality of price and marginal cost is an absurd standard. Think of the empty seats you often see in movie theaters, at athletic events, or on airplanes, buses, or trains. Ask yourself what is the marginal cost of admitting or carrying one more customer in such cases. Obviously it's zero or close to zero. The effect of price having to equal marginal cost in such cases would simply be to prevent the existence of the industry, unless, of course, the government were to nationalize or otherwise subsidize it while it charged a price equal to marginal cost. In the case of almost all other industries, such as steel or automobiles, marginal cost is constant over long stretches of output. The effect of having to charge a price equal to marginal cost in such circumstances would be to prevent the coverage of fixed costs. The result would be smaller industries to the point of ensuring prices high enough to cover full costs often enough to stop further decline in the

amount of capital invested. The resulting situation would be one of repeated bottlenecks in the economic system owing to lack of fixed capacity. That too would hardly serve to justify price equal marginal cost as any kind of rational standard for economic activity.

Such are the intellectual foundations of antitrust—disgraceful to the point of being laughable.

Thank you.