The Dangerous Push to Put "Big Is Bad" at the Center of Antitrust Law

Steve Pociask*

Antitrust policy — the general rules of fair business competition and conduct — is central to how an economy operates. Poorly conceived antitrust laws can strangle an economy as surely as well-designed antitrust laws can provide a guide path for well-functioning competitive markets. This piece discusses the economic fallacy that large companies are an unwelcome presence in the private sector, lead to monopolization and market power, and negatively impact competition and consumer benefits. As this ConsumerGram shows, as well-accepted economic thought supports the notion that large and dominant firms are often necessary to maximize consumer benefits. Therefore, legislative efforts that focus on firms merely because of their size are doomed to undermine consumer welfare.

Background

For half a century, the "consumer welfare standard" has been used by courts and federal regulators to identify and correct anti-competitive business practices. As the name suggests, the consumer welfare standard imposes a simple test: Are consumers harmed — by reduced output, decreased product quality, or higher prices — by the market structure under scrutiny?

However, in America today, support is building in Congress for a radical re-orientation of our antitrust policy. Instead of focusing on the well-being of consumers, this movement wants

---

* Steve Pociask is president and CEO of the American Consumer Institute, an education and research nonprofit organization. For more information on the Institute, visit www.TheAmericanConsumer.Org or follow us on Twitter @ConsumerPal.

antitrust decisions to be guided by the assumption that large corporations are necessarily harmful to society. To restore economic efficiency, lower prices, and spur innovation, the argument goes, the government must step in to break them up. This "big is bad" philosophy is sweeping across the U.S., setting its sights on tech giants and other large corporations.

Although concentrated corporate power is a valid concern for lawmakers, the "big is bad" doctrine is a blunt and ineffective instrument for checking anti-competitive behavior. Supplanting the time-tested consumer welfare standard with a "big is bad" test would jeopardize our economy's dynamism and put consumer welfare at risk.

Perfect Competition is Not Perfect

The economic literature does not support the notion that large corporations will necessarily lead to negative economic consequences.[1] In some cases, market concentration is necessary to improve market outcomes and increase consumer welfare.[2] While a high degree of market concentration may sometimes be indicative of a potential problem, it is not dispositive evidence of consumer harm. Without evidence of consumer harm – a consumer welfare test – concentration is not an end point that justifies government intervention.

Large corporations with substantial market concentration are often unfavorably compared to the model of perfect competition in which there is a very large number of firms that compete to offer identical products. Under the perfect competition model economists assume that there is no investment or fixed costs, no patents or technical change, no price competition, no product differentiation, and no economies of scale or scope. The implications of this point to an important question: how poor would society be without innovative products?

[1] Erwin Blackstone, Larry F. Darby, and Joseph P. Fuhr, Jr., "The Case of Duopoly: Industry Structure is Not A Sufficient Basis for Imposing Regulation," *Regulation*, Winter 2011-12.
[2] Ibid.

Perfect competition bears little resemblance to America's markets and should never be used as a public policy goal. As such, perfectly competitive markets would not have the scale and scope to produce smartphones; a perfectly competitive pharmaceutical industry would never have the ability to mass produce new life-saving drugs; and a perfectly competitive manufacturing industry would never have the ability to invest in factories and assembly lines that could rollout affordable cars, refrigerators, ovens, and airplanes. If an infinitesimal number of text messaging services existed, how would one consumer communicate with another? Would there be personal computers and would search platforms still be free? Would social media platforms even exist in the absence of scale economies?

What do mainstream economists actually think when it comes to the many economic theories and models surrounding the potential evils of market concentration? There is a widespread agreement among economists that market concentration and structure is not a sufficient condition to warrant the imposition of regulations nor stricter antitrust enforcement.[3] As a noted economist and author of a classic economic text on industrial organization wrote:

> "Economists have developed literally dozens of oligopoly pricing theories—some simple, some marvels of mathematical complexity. This proliferation of theories is mirrored by an equally rich array of behavioral patterns actually observed under oligopoly. Casual observation suggests that virtually anything can happen."[4]

This point was further emphasized by Nobel economist George Stigler who wrote with some admonishment -- "No one has the right, few the ability, to lure economists into reading another article on oligopoly theory without some advance indication of its alleged contribution."[5] The takeaway here is that economists have long understood that perfectly competitive markets are not necessarily desirable, and that highly concentrated markets do not necessarily produce undesirable economic outcomes nor do they inevitably lead to diminished consumer welfare.

[3] Ibid.
[4] F. M. Scherer, *Industrial Market Structure and Economic Performance*, 1st ed., Rand McNally, 1970.
[5] George J. Stigler, "A theory of Oligopoly," *Journal of Political Economy*, Vol. 72, 1964.

In fact, the government sometimes deliberately enables the creation of monopolies to encourage innovation. For example, our system of copyrights, patents, and trademarks protects intellectual property by providing a degree of monopoly protection to reward those willing to take financial risks to bring new innovative products and services to market. Even without explicit government protection, the process of innovation is bound to create temporary monopolies, such as when "first movers" enter and create new markets. It takes time for competitors to emulate new ideas. Rather than a sign of market power, the size of a company may be more an indication of its ability to innovate rapidly and be successful in providing the goods and services that consumers demand. Should antitrust laws punish success?

Big Can Be Very Good for Consumers

Imperfectly competitive markets, where firms of different sizes offer a wide range of differentiated products, can achieve significant economies of scale and scope, enabling them to reduce per-unit production costs, increase productivity, and lower consumer prices. This scale requirement is especially true for companies with high fixed costs and for companies that derive much of their value from building networks of users, like Facebook and Twitter. Consider how tedious and counterproductive it would be if the government imposed a cap of 10,000 users on social media companies, forcing consumers to manage multiple accounts on several platforms in order to stay in touch with family and friends. Think about how impractical and costly these services would be, compared to free social media services that are available to consumers today – because scale matters for network economies.

Companies in concentrated markets also know that the cost of complacency is high. Many once-dominant companies — like Netscape, Prodigy, and Myspace — faded into obsolescence when they failed to innovate fast enough to retain consumers. More recently, Facebook's hegemony in social media has sharply declined as competitors like TikTok have siphoned away many of its younger users. That's why the largest companies in the U.S. invest enormous resources in research and development. Among the world's publicly-traded corporations, Amazon and Alphabet (Google's parent company) spent more than $70 billion in

R&D in 2020, equivalent to about 12% of their revenue. Together, these two companies were granted more than 4,000 patents in 2020 alone. Other major companies across every industry also heavily invest in R&D, which translates into new features, products, and services for consumers to enjoy.

The structure-conduct-performance (SCP) model, which is widely used to analyze firm behavior, shows that industry performance is more important in determining favorable outcomes than market concentration. Regardless of market structure, decreasing prices, improving quality, and increasing innovation are signs that companies are competing for customers and, as a result, consumer welfare is being improved. Without specific empirical evidence of the exploitation of market power, there is no economic justification for antitrust intervention. Far from undermining consumer choice and welfare, large companies often deliver better outcomes than the perfectly competitive firms described on the pages of textbooks.

One recent study estimates that proposals in Congress aimed at breaking up the five largest tech companies — Google, Apple, Facebook, Amazon, and Microsoft — would cost the U.S. economy $300 billion. "These cost increases would ultimately be passed through and borne by the consumers and business users of the platforms. The effect on US consumers would be higher retail prices and the loss of free and valued services. The effect on small-to-medium businesses would be higher operating costs, the loss of free and valued services, and the loss of revenue channels," the authors warn.

Dangers of Excessively Strict Antitrust Enforcement

A coherent "big is bad" doctrine would need to develop clear, objective thresholds — based on revenue, profits, users, number of employees, or some other measure— that trigger antitrust intervention. Without consumer welfare as the guiding principle, what rationale would be used to establish such rules? If Google and Amazon are too big, why not Adobe and Netflix, or Walmart and Costco? Since the legislation puts company size as the only relevant metric to adjudicate antitrust disputes, it's difficult to see where the logic ends.

Should the government decide the optimal scale of every industry? History provides ample evidence that such centrally-planned economies stifle innovation and growth. Moreover, this approach will undermine consumer interests in a particularly fast-growing dynamic market.

The “big is bad” test also ignores important nuances within and across industries. Antitrust regulators often confront narrow, complicated questions that depend on the nature of the product, the level of information available to consumers, and other factors. As Andrea O’Sullivan, a technology policy expert, asks: “Does Apple harm users by selectively charging developers a fee to list software on its app store? How about Amazon’s branded products? They may be cheaper than others on their marketplace, but does the company’s river of sales data give Amazon an unfair advantage? Most Google and Facebook users don’t pay prices at all, but their advertisers do. Do their actions harm any party to this ‘dual-sided market’?” While the consumer welfare standard provides a clear framework for analyzing these questions, the “big is bad” doctrine gives little guidance.

Moreover, many startups have a goal of getting their firm or innovation bought out by larger companies. If mergers and acquisitions are clamped down on through a “big is bad” mindset, entrepreneurs will be less willing to invest in long-shot ideas.

Overly Aggressive Antitrust Enforcement Breeds “Rent-Seeking”

Weakening the consumer welfare standard may also open the door for political and ideological motives to exert greater influence over antitrust decisions. The lack of clear guidelines — and the threat of abrupt changes to antitrust enforcement with every swing of the political pendulum in Washington — would create significant uncertainty in the business community. Entrepreneurs with innovative approaches and fresh business models will think twice before taking a chance on a venture that could attract the wrath of regulators. How many inventions would go unused or disruptive ideas squashed? These costs would be unseen, but the economic damage could be substantial.

More troubling, entrusting the government with sweeping powers to disrupt companies may give the largest corporations even more influence. The most connected, well-heeled, politically-savvy companies are able to exert their political influence on the regulatory process far more effectively than up-and-coming innovators. A vague “big is bad” antitrust policy could easily be weaponized by entrenched interests to prevent competitors from gaining a foothold. How much consumer welfare would have been lost if Windows had used its clout to prevent Apple from surging onto the scene, or if GM had persuaded regulators to limit Tesla’s growth?

Summary: For the Benefit of Consumers, Keep the Consumer Welfare Standard

Since the 1970s, the U.S. has enjoyed astonishing advances in technology and living standards. It is no coincidence that this remarkable growth occurred during a period when the consumer welfare standard guided antitrust policy. The consumer welfare standard is grounded in simple, objective principles that protect the public’s interests. While corporate size may make anti-competitive practices more likely, the consumer welfare standard recognizes that market concentration can also deliver benefits, such as lower prices and faster innovation.

Expanding the role of antitrust law through a “big is bad” mindset would create additional costs and risks, which, ironically, may adversely affect market competition by elevating bureaucratic control over consumer choice.

Sound antitrust policy must allow disruptive innovation to occur. No one knows which corporate giants will be gone in the next decade, nor which new services, platforms and applications will emerge. In the end, is the diffusion of market power across a handful of large firms more concerning than concentrating all of that power in the hands of a single government agency?