11.2: History of Antitrust Law

What if the two largest manufacturers of soft drinks, Coca Cola Co. and PepsiCo, merged? It is likely that the mega-company that resulted would dominate the soft drink industry, squeezing out all of the other smaller competitors.

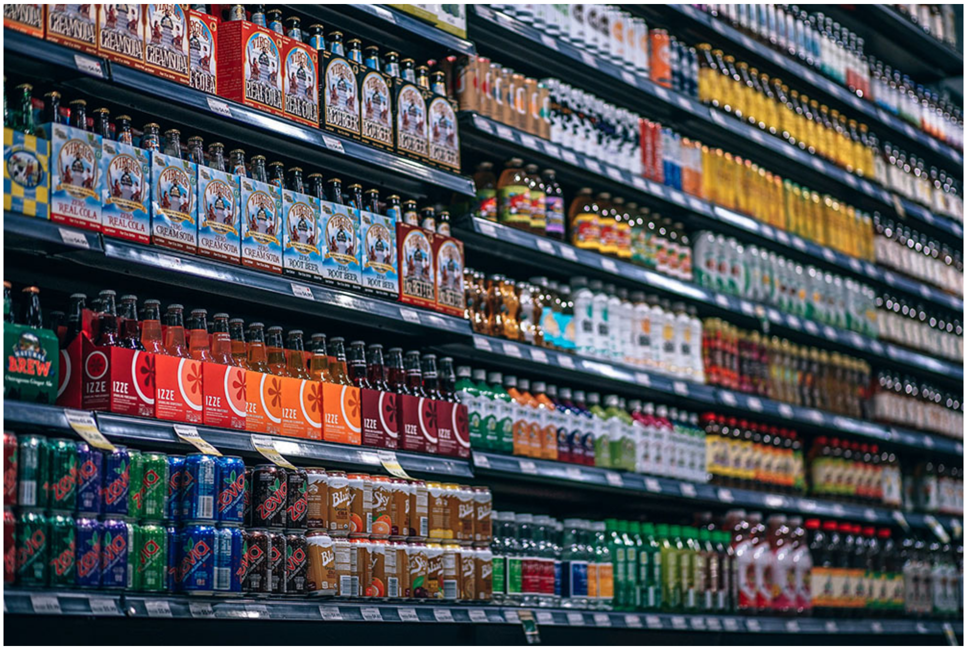

Figure 11.2.1: Without antitrust laws, the shelves would have fewer products for consumers to choose from. Image: Beverages, Bottles, Shelf. (Credit: igorovsyannyko/ pixabay/ License: CC0)

In the late 1800s, concern over this kind of merger, as well as other attempts by large companies to create monopolies or to control the market, led state and federal lawmakers to take steps to reduce the risks associated with this type of practice.

Business Trusts

During the late 1800s, the United States became concerned about the development of corporate monopolies dominating the manufacturing and mining industries (Jurist, n.d.). The end of the Civil War marked the beginning of large advances in industrialization. Many large companies formed, especially in the oil and steel industries, which were two industries that the country was beginning to heavily rely on. Manufacturing and distributing companies grew at a fast pace in a wide variety of industries, ranging from sugar to beef to tobacco (West, n.d.). The problem was that the growth occurred so rapidly that supply exceeded demand. This outcome increased competition, and many companies sought to reduce the number of competitors through forms of **restraint of trade** such as price-fixing, monopolies, and mergers (West, n.d.).

Figure 11.2.2: The oil industry expanded quicker than demand, causing companies to try to remove competition. (Credit: 15299/ pixabay/ License: CC0)

Some of the competitors were larger and more powerful than others, and they sought to limit the competition in the market by taking steps to reduce the number of smaller companies who were trying to compete with them (Federal Trade Commission, n.d.). Some of the larger companies banded together to create **business trusts**. A business trust is a trust agreement that allows businesses to maintain profits as beneficiaries, but legal ownership and management of the company's property is maintained through the power of trustees (West, n.d.). These trusts allowed businesses that were members of the trust to grow larger, as they cooperated with one another and shut out other competitors (West, n.d.).

Unfair Business Practices

Companies tried to create situations that would drive some competitors out of business while solidifying their own share of the market. This effort resulted in mergers and consolidation practices that placed the largest share of the industries under the control of just a few, thereby increasing their power. Since the trusts were able to fix prices and could afford to take some losses, they would drive prices down until competitors were forced out of business because they could not afford to operate at the lower rates (West. n.d.).

The markets began to consolidate under just a few companies because the smaller competitors continued to go out of business. The smaller competitors could not compete with the pricing and other practices that the trusts allowed the cooperative businesses to maintain. This design restricted free trade practices for both businesses and consumers. The few businesses in the trust, in turn, became more powerful, thus prompting the government to look for measures to control the situation (Federal Trade Commission, n.d.). The government determined that laws needed to be created to prevent this form of trade restriction.

Rule of Reason

Unfair business practices did not reside solely with business trusts. Issues also occurred in agreements between competitors, contracts entered into between sellers and buyers, and practices that created or maintained cartels, monopolies, and mergers (West, n.d.). There were no specific laws that regulated these practices, so the courts were not entirely sure how to deal with them. Initially, courts seemed to swing both ways, both accepting and condemning certain forms of restraint of trade. Rulings were not consistent from state to state, and guidelines needed to be established. The guiding condition seemed to be whether or not the restraints prevented other merchants from entering the market (West, n.d.).

The courts used the **rule of reason** as the standard. The rule of reason explored the goal of the contract, which was considered either naked restraint or ancillary restraint. **Naked restraint** occurs as contracts promote a general restraint of competition. If the restraint was created with a goal of long-term impact without boundaries, it was considered to be a naked restraint (West, nd.). **Ancillary restraint** occurs as the restriction is limited in time and geography (West, n.d.). With ancillary restraint, the restraint would be short-term and limited in scope. The courts tended to frown upon naked restraint, but were less consistent with ancillary restraint. Initially, there did not seem to be a comprehensive common law applied similarly from state to state (West, n.d.). This problem was concerning enough to warrant a solution, and in 1890, the first antitrust law was enacted (Jurist, n.d.).

Antitrust Laws

Antitrust laws regulate economic competition in an effort to maintain fair trade practices (West, n.d.). They were created to prevent the restraints on trade created by trusts and other large company practices. These restraints often resulted in price-fixing, control of production, and control of geographical markets (Jurist, n.d.). Many states recognized these outcomes as a threat to fair business practices. The federal government also recognized this issue and developed antitrust laws in 1887 as a result of a Standard Oil trust that was formed. The Standard Oil Trust occurred as oil companies transferred their stocks to a trustee to create a more powerful block of oil companies that prevented other oil companies from effectively competing with them (West, n.d.).

The first antitrust law created was the Sherman Antitrust Act in 1890, which became the basis for subsequent antitrust laws (Jurist, 2013). The Sherman Act was a good start, but it was not comprehensive enough to prevent trusts, and large companies continued to exert strong control over industries. At the turn of the century, a few large companies controlled almost half of all of the nation's manufacturing assets (West, n.d.). It became evident that more legislation was necessary. President Theodore Roosevelt dubbed himself a "trustbuster," and he began a campaign to create more effective legal endeavors (West, n.d.). Additional antitrust acts were passed in 1914, including the Clayton Act and the Federal Trade Commission Act. These acts are still in effect, and since 1914, they have been amended by Congress to continue to expand upon and solidify the coverage. It is estimated that antitrust laws save consumers millions of dollars a year, as they prohibit business practices that unfairly raise prices on goods and services (United States Department of Justice, n.d.).

Conclusion

The original purpose of antitrust legislation, i.e., to foster competition that results in lower prices, more products, and more equal distribution of wealth between producers, remains relevant today (West, n.d.). Yet, large companies still seek advantages in trade and work to put competitors out of business. It is important to maintain unrestrained trade and prevent the few from having too much power over the many.

Sources

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