Monopoly, Markets, and the Law: Antitrust Explained

Introduction

The U.S. health care system has many moving parts, including local medical practices, integrated care systems, health insurers, and more. At its core, a standard set of laws dictates how these parts should behave and the consequences for not acting correctly. These are the antitrust laws, which describe the rules and limits governing firms competing in a market to provide goods and services to U.S. consumers. But what do these laws actually say about competition, and how does this apply to the modern health care system?

Antitrust Law

The term *antitrust* **originated in** the 19th century, when large firms and corporations dominated various facets of the American economy and consumers faced high prices for everyday items, sparking concern among lawmakers and regulators. Efforts began to rein in firms that cooperated to control the supply, price, and distribution of goods (a.k.a. trusts), and three key pieces of legislation were developed:

- **The Sherman Act** (1890)
    - Prohibited several anticompetitive behaviors, such as "every contract, combination, or conspiracy in restraint of trade" and "[any] monopolization, attempted monopolization, or conspiracy or combination to monopolize," with up to a $100 million penalty for firms and $1 million penalty for individuals who committed violations. Violators also faced a prison sentence of up to 10 years for engaging in anticompetitive behavior.
- **The Federal Trade Commission Act** (1914)
    - Created the Federal Trade Commission (FTC) to oversee competitive practices in markets and instituted a prohibition on "unfair methods of competition" and "unfair or deceptive acts or practices."
- **The Clayton Act** (1914)
    - Addressed regulatory gaps in the Sherman Act (e.g., a single individual making business decisions for multiple competitors in a market) and instituted a prohibition on mergers or acquisitions that "may be substantially to lessen competition, or to tend to create a monopoly."

Together, these laws formed the foundation of antitrust enforcement in the United States and provided a framework for states to develop their own antitrust laws, enabling them to combat emerging anticompetitive practices. **Click here** to view an interactive map of various antitrust laws across different states.

Typically, antitrust laws **try to prevent**:

- **Price fixing:** an agreement among competitors to set the price at which a good or service is sold.
- **Market allocation agreements:** an agreement among competitors to divide up a market and not compete in certain geographic locations.
- **Group boycotts:** an agreement among competitors to not do business with a specific individual, business, or entity.
- **Bid rigging:** an agreement among competitors to preemptively decide who will submit the winning bid during a competitive bidding process.
- **Exclusive dealing arrangements:** an agreement where a buyer decides to buy exclusively from a supplier.
- **Price discrimination:** charging different prices to similarly situated buyers.
- **Product tying:** making the purchase of one item conditioned on the purchase of another item from the same seller.
- **Monopolization:** consolidating market power so that other competitors don't stand a reasonable chance to compete in the market.

It's never a straightforward task to determine whether a firm's conduct constitutes a violation of antitrust law or is just simple marketplace competition. However, it is essential to remember that the primary objective of antitrust law is to **promote and protect competition**. If a firm's actions or conduct harm competition in a particular market (e.g., buying up competitors, raising barriers to entry for new competitors, coordinating against another competitor or supplier), then the firm may be breaking antitrust law, and its conduct would need to be rectified.

Enforcement

Enforcement of antitrust laws varies depending on the state and the jurisdiction under which the violation falls. For example, at the state level, **state attorneys general** can enforce antitrust laws and use both civil and criminal enforcement. The main difference between a civil enforcement and criminal enforcement approach is that civil enforcement typically doesn't involve criminal penalties (e.g., prison time, criminal fines, or both). Civil enforcement penalties are more common than criminal enforcement penalties, although violating antitrust laws can result in both.

At the federal level, the FTC and U.S. Department of Justice (DOJ) typically handle anticompetitive violations. These typically involve violations that affect interstate commerce, but the FTC and DOJ cooperate with state attorneys general to **investigate infractions and prosecute violators** engaged in anticompetitive conduct. Both the DOJ and FTC can bring civil charges against violators of antitrust law, but only the DOJ can bring criminal charges. Consumers can alert both the FTC and DOJ and their state's attorney general about suspected anticompetitive practices; however, the state attorney general may play a more significant role in issues affecting local businesses or consumers. Some past examples of antitrust enforcement have included:

- **Carilion Clinic, Virginia**
  - In 2009, Carilion Clinic, a major health system in southwest Virginia, acquired two competing outpatient imaging and surgical services in the area and was challenged by the FTC for engaging in anticompetitive behavior. The complaint alleged that Carilion Clinic reduced competition by acquiring two competing imaging and surgical practices and left only one other competitor in the market (an HCA Hospital). The FTC maintained that these actions would harm patients by driving up prices for outpatient imaging and surgical services and weakening incentives for operational efficiency, low prices, and high-quality services. Ultimately, Carilion Clinic was ordered to divest itself of the practices it had acquired and restore them as viable, independent competitors in the market.
- **Renown Health, Nevada**
  - Between 2010 and 2011, Renown Health, an acute care hospital services provider, acquired two large cardiology groups in the Reno, Nevada, area and effectively employed 88% of cardiologists in the Reno area. In addition, Renown Health incorporated noncompete clauses into its contracts with cardiologists, preventing them from joining competing medical groups in the Reno area. The FTC claimed that these actions by Renown Health undeniably harmed competition for cardiology services in the Reno area and could result in higher prices for patients, as price competition was weak, and Renown Health's bargaining power with insurers could drive up prices for cardiology services. The FTC ordered Renown Health to release its cardiologists from noncompete agreements, allowing up to 10 of them to join other competing cardiology practices in the area.
- **Sutter Health, California**
  - In 2019, Sutter Health, a large hospital system in Northern California, agreed to pay $575 million to resolve allegations of anticompetitive prices that may have led to greater health care costs for Northern California consumers compared with other areas of the state. The settlement resulted from lawsuits filed by the state attorney general, as well as class action lawsuits brought by private organizations. In addition to the monetary settlement, Sutter Health was also required to revise charges for out-of-network services; share pricing, quality, and cost information with insurers and employers; revise contracts to halt all-or-nothing deals where insurers and employers had to obtain additional services or lose access to hospitals, clinics, and other services in Sutter Health's network; and more. A study of C-section deliveries in Sacramento, California, where Sutter Health is based, found that it costs more than $27,000, making Northern California one of the most expensive regions in the country to have a baby.

Reporting

Investigations into possible antitrust violations typically **start from complaints** made by consumers, competitors, whistleblowers, industry watchdogs, or other industry stakeholders. All states have communication methods available for the office of their attorney general, where consumers and other interested parties can report potential anticompetitive conduct in their region. The FTC and DOJ also have communication methods available for consumers and others to submit complaints about suspected anticompetitive conduct in their region. Both groups at the federal and state levels tend to work together on antitrust cases. They can often bring formal charges together against an entity found to have violated provisions in federal or state antitrust laws.

- **Antitrust Division | Department of Justice**
- **Enforcement | Federal Trade Commission**
- **State Attorney General Office Contact**

Conclusion

Antitrust law plays an important role in preserving competition and protecting consumers from exploitative behavior by powerful businesses and individuals. Regulating agencies at both the federal and state levels investigate alleged anticompetitive behavior and enforce penalties against verified violations. Consumers, businesses, watchdogs, and others contribute to these efforts by observing suspicious behavior and reporting potential anticompetitive practices to state or federal regulators. Together, industry stakeholders can ensure that health care markets function properly and protect patients from exploitative and unfair practices.

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