

In the economic article “Use of Antitrust to Subvert Competition”, the authors William J. Baumol and Janusz A. Ordover argue the effectiveness of antitrust institutions and the impacts of their activities. The authors make claim to possible abuse of the antitrust process by firms and detail the subsequent effects that can result to impede competition, efficiency and productivity growth. The concept of rent seeking is prevalent throughout the article and is referred as the endeavor by entrepreneurs to secure monopoly profits. The authors outline the methods adopted by rent seekers in seeking protection through antitrust laws in a manipulative attempt to subvert competition and gain monopoly profits within their respective industry. The economic costs and social costs are rampant throughout the paper and act as the motivation for this argument.

The authors also make note of the trade-offs that antitrust institutions and rent seekers alike need to consider when undertaking or pursuing their activities. The authors to support their claims use examples of previous cases. The authors also put a number of suggestions for reform forward as they endeavor to find possible solutions to the problems they believe exist. To a large extent, the authors accomplish the objectives of their article in explaining the given problem and find suitable remedies for them. There lack of comprehension of antitrust laws and the legal system in general does however reduce their ability to provide any definitive solution.

The foundations for the argument the authors make is set early in the piece. The authors suggest that a certain ‘specter’ or omen exists, to the knowledge of those involved, namely antitrust institutions, that has and can continue to undermine the desired impacts of antitrust activity. The basis of the argument presented is focused on assessing whether

the agency or institution with the power and responsibility of enforcing competition, can be taken advantage of by those who wish to abuse it, consistent with their own interests. The authors outline a number of social costs that arise from the antitrust process and the protectionist methods of antitrust institutions. Reference is made to a common observation among economists, this being the threats and scrutiny that successful firms endure. The success of any firm, whether it is measured in terms of economies of scale achieved, superior efficiency or low prices, will come under constant scrutiny and often criticism by competitors and ruling bodies. As one firm attains economic rent through profit generated through the sale of goods and services above variable cost, competitors of that firm will often make substantial claims and in some cases take legal action against the firm achieving economic rent on the basis of anti-competitive practices. This is a significant reference made by the authors and lays the foundation for much of their argument. Within this context, the authors bring forward the idea that the antitrust process is flawed with loopholes that are making it very difficult for antitrust policy to achieve desired objectives through legislation and activity. The authors accomplish their objective of providing economic theory that details the use of protection through antitrust processes as a means of rent seeking, with mention made to the subsequent costs to society and the economy through the inefficient use of resources. One of the more substantial social costs mentioned is the cost to society of economic waste. As industry participants vie for market share and act in self-interest, private lawsuits and other costly exercises can result. A great amount of resources in the form of capital and labor are used up in this process, often without generating any beneficial social or economic outcomes. Other social costs that result from protectionism sought by rent seekers that the authors

unveil include the cost of inefficiencies that result from firms dependent on protection as well as the effect that protectionism can have on “the immediate objectives, and hence the organization of the firm”. Whilst the authors are unable to give any indication of the exact magnitude of such costs, their theory is sufficient in supporting their argument and justifying the implications/consequences of antitrust impacts, through protectionist activities, on the economy.

The authors assess a number of antitrust provisions that illustrate the ways in which businesses are encouraged, mainly the result of industry dynamics, to seek protectionism from antitrust institutions. They give several examples of such provisions. Trebled damages; vagueness of antitrust criteria; and severity of the tests of anti-competitiveness are extensively analysed by the authors and help in supporting the claims they are making. The issue of trebled damages, compensation paid by the defendant to the plaintiff in a private antitrust suit, awarded at a multiple of three for damages incurred to the plaintiff as a subsequent outcome of the defendant's activities, is assessed by the authors. Their conclusions focus on the thought that this current system( current at the time the article was written) can and has acted as an incentive for protectionist activity.

The matter of vagueness in the antitrust criteria is examined at reasonable depth, as the authors give regard to the difficulty associated with any attempts to precisely define a socially and economically balanced standard for acceptable behavior. The authors argue that this vagueness can lead to much confusion for firms and further act as a catalyst of intimidation through the continuous threat of civil lawsuits. The authors give credence to

the Areeda-Turner test as one that can help explain and uncover the circumstances present.

The final provision mentioned, the issue of the severity of tests used when evaluating anti-competitiveness, is less effective as a means of supporting the authors' claims. The authors make several references to the rules governing such matters and the effects that these rules are having without actually specifying what rules they are referring to.

However, they do propose a strong argument on the idea that rules do not merely occur, instead those individuals and organizations that stand to gain from them generate their initiation. It is argued that firms in a position of power can, if beneficial to them, have a manipulative effect on the antitrust mechanism. This endeavor is often a case of subverting competition.

The author's use of case examples to support their claims and arguments about the antitrust process is very effective. They give simple descriptions of several cases that have proved defining in the area of antitrust and showed the ways in which firms have strategically used the antitrust processes to their advantage. The GM v Toyota joint venture, the case of MCI v AT&T (where MCI challenged AT&T monopoly of long distance telecommunications), Marathon Oil Co. v Mobil Corp and Grumman Corp v LTV Corp are analysed and the outcomes from each case helped the authors cover the broad ranges of their argument.

The authors also consider alternative enforcement procedures that have been adopted and practiced in Japan and in the EEC countries. Comparative analysis is also used against

the current system in the United States. This is not very effective as each of the countries analysed have vastly different legal structures and systems at which the foundation of antitrust policy is derived.

Against the backdrop of the provisions that are encouraging protectionism, the authors conclude their article with a number of plausible solutions to the problem of finding some sort of balance in social optimum between conflicting objectives, namely the trade-off that exists in the search for true competition. The suggestions that the authors make are not stated with much conviction, though reference is made by the authors of their lack of competence in such relevant areas as the law. The ideas proposed by the authors do however seem very reasonable and are consistent with the concerns they have mounted throughout the article.