Introduction:

The power of the government to regulate or prevent any form of white collar crimes is very limited. This is especially true of criminal act such as antitrust violations. This case study will examine the regulatory failure of antitrust laws in relation to the prosecution of IBM corporations. The ambiguity of Section 2 of the Sherman Act can be seen to contribute to the failure to criminally prosecute any corporations for such violations.

Regulatory failure in brief:

Allegations of violations of antitrust laws by IBM are still presently presented before the courts but they have never been criminal charged with any criminal violations (Fisse 1983: 197). This is just some examples of the failure of regulations in antitrust laws that has failed to prosecute or criminally charged larger corporations with non compliancy associated with the antitrust laws. This can be contributed to the wider definition of antitrust laws and the difficulty in proving such violations have occurred. This is clearly evident in the Section 2 of the Sherman Act, which emphasize the need to provide prove for "monopolization" and the intent. The courts have traditionally given these regulations broad definitions in defining what has been violated (Bequai 1979: 96). Due to these difficulties, larger corporations like IBM have gotten away on numerous associations with any criminal violations but were punished with just mere civil fines.

Background facts on IBM:

International Business Machines Corporation (IBM) became giant in the fields of electronic data processing by the mid- 1950s after having achieved great success in the punch-card tabulating machine business in the 1930s. Their image can be seen as having superior products at lower price than their competitors. IBM"S customers were portrayed as loyal and satisfied with the service provided by their products.

How and Why Failure has occurred:

IBM's success, particularly with their system/260, was a major cause for distrust and suspicion both by their competitors and the federal government. Preliminary inquiry was made in the mid 1960s by the U.S. Department of Justice various antitrust allegations by IBM. The complaint for the case U.S. v. IBM was filed in the U.S District Court, Southern District of New York on January 17, 1969 by the Justice Department. The law suit alleged that IBM has violated the Section 2 of the Sherman Act by monopolizing or attempting to monopolize the general purpose electronic digital computer system market, especially computers designed for primarily the use of businesses. The key charges against IBM were

1. IBM planned to and did eliminate emerging competition that would threaten the erosion of IBM's monopoly power by implementing and executing business strategies which were not illegal, but did not benefit consumer by providing better price, product or service.

2. IBM had hindered the development of service and peripherals competitors by maintaining a single price policy for its machines, software and support services. It also has granted discount for universities and other educational institutions and by doing so, it has influenced those places to select IBM computers.

3. IBM introduced underpriced models knowing that they could not be produced on time and did this to prevent the placement of competitor's machines. For examples, IBM had announced new systems such as System/360 claiming that it was superior product and its introduction was imminent when in fact, it was not due for completion any time soon.

The actual trail of the antitrust lawsuit against IBM commenced in 1975, and spanned period of over six years until the Reagan Administration dropped the case (Fisse & Braithwaite 1983: 199). The case was later withdrawn by William F. Baxter, assistant attorney general in charge of the Antitrust Division, Department of Justice in 1982 (Fisse & Braithwaite 1983: 201) . Baxter signed a Stipulation of Dismissal that stated the government's charges were without merit. His reasoning for dismissing the case was that Antitrust Division's view regarding Section 2 of the violations had evolved since the commencement of the lawsuit; the government was backing off antitrust actions. He also believed that the cost of continuation would be too high and the government was unlikely to win the case. He maintained that IBM had achieved its large market share legally without resorting to predatory practices, and that Section 2 could not filed against a company because of its success. It was later discovered that Baxter had failed to disclose that he had been employed by IBM as a consultant in defending IBM private antitrust cases. Judge David Edelstein, who presided over the IBM trail, publicly attacked Baxter for failure to disclose his involvement in other IBM antitrust cases (Fisse & Braithwaite 1983: 201).

The Sherman Acts of 1890 makes criminal "any acts or contract in the form of trust or conspiracy that would result in the restraint of trade" and "the monopolies or attempt to monopolies any product markets" (Clinard & Yeager 1980: 134). This act outlawed activities such as price fixing, market divisions by competitors and restricting resale territories. The purpose of Sherman Act was to stop the spread of business monopoly and to restore effective competition to the marketplace (Jamieson 1994: 29).

The key issue in this case is the issue of monopolization by IBM. Section 2 of the Sherman Act is particularly relevant in antitrust lawsuit against IBM. This section of the Sherman Acts prohibits monopolies or any attempts to establish a monopoly over any area of interstate or foreign commerce (Bequai 1979: 96). Violation of Section 2 could be found if monopolists use predatory or coercive tools to gain control of a market. The U.S. antitrust law implies that "monopolization" under Section 2 of Sherman Act is illegal if offender took anti-competitive actions to acquire, preserve or enhance its monopoly. For "monopolization" plaintiff have to prove that the defendant

1. Processed market power
2. Wilfully acquired or maintained this monopoly power as distinguished from acquisition through superior product, business acumen, or historical accident (Bequai 1979: 97). This also raises problems in determining what amount constituted requisite monopolistic power. It is believe that company that has control over 90 percent of the market can be said to have monopolistic power over the sector's economy. In some cases U.S. Supreme Court held that 60 percent control is sufficient, while other courts believe that 75 percent is enough (Bequai 1979: 97). Much of this determination depends on the facts of the case, the market itself, and the product involved (Bequai

1979: 97). For “monopolization” to be illegal under U.S. antitrust law, it is not sufficient enough for a company to “monopolize” a market by possessing large portion of the shares (enough if is 100 percent). Violations of Section 2 of the Sherman Act requires evidences showing that the means employed, if successful would have been sufficient to bring about monopoly control. The onus is on the prosecutors to provide proof of such intent. Such proof is therefore very difficult to establish, and the means employ to proof such things is unfair, as it is measured by the standards of acceptable business practice (Bequai 1979: 97).

Section 2 of the Sherman Act has proving the difficulties in successfully criminal prosecuting IBM. The U.S. government first attempt to prosecute IBM in the 1952 for its involvement and attempts to monopolise the computer market has resulted in a consent decree signed by IBM. They agreed to take certain actions that would aim at preventing violation any antitrust regulations. These policies include the following (Fisse & Braithwaite 1983: 198):

1. To sell as well as lease equipment without discrimination and sale prices reasonably related to lease charges.

a. To disclose prices and terms for sale and lease in order solicitations.

b. To fill orders without discriminating between purchase and lease customers and, to the extent practicable, in order of their receipt.

c. To offer purchasers the same services provided without separate charge to lease customers.

d. To offer training to outsiders in or entering the repair and maintenance business, and to sell to them IBM equipment owners certain technical documents, instruction manual, and replacement parts.

e. To allow customers to alter or attach equipment and to provide instruction manual.

f. Not to require customers to purchase additional IBM machines in order to get the machines they want.

2. to license certain data processing patent at reasonable royalties and to limit consultant agreements with inventors and engineers to one year.

3. to license certain card machinery patents without charge

4. To transfer its service bureau business to a wholly-owned subsidiary and not to engage in service bureau business on its own nor to furnish tabulating or data processing equipment to its own unless agree upon by other service bureaus.

5. To refrain from acquiring used machines except through trade- in or credit against sums payable to IBM and to offer those to second-hand dealers.

This agreement was later re-opening by Control Data Corporation filed antitrust law suit against IBM. Control Data alleged that IBM had sold "paper machines and phantom computers" to deter customers from buying Control Data's CDC computers (Fisse & Braithwaite 1983: 198). This was apparent when Control Data began marketing the 6600 in 1964; IBM tried to control the sector by announcing that it would soon be releasing an even bigger, better and cheaper machine (the 360/91). Orders were taken for the new machines, but by 1967 the project was abandoned. It was later revealed that IBM motto for the new project was "a competition- stopper" which "should be deliberately done as a money-loser" (Fisse & Braithwaite 1983: 199). Following this allegation, the Justice Department became involved, charging IBM with monopolizing the computer market and the uses of various actions in

restricting competition. The U.S. government further emphasised the fact that IBM intended to seek monopoly by eliminating or threatening rival firms into submission. The antitrust suit against IBM was later settled out of court by Control Data; IBM agreed to pay $101 million and agreed to sell the IBM subsidiary (the Service Bureau Corporation) to Control Data. The suit was later dismissed due to the U.S. attorney William F. Baxter instance that IBM have not violated any laws in Section 2 of the Sherman Acts, and the believed that the cost of continuing the suit would be too great. His earlier involvements with IBM were widely publicized after the case has been dismissed. One have to think William decision for dismissal of the suit against IBM was more personal than professional.

Clearly the failure of federal government to prosecute IBM on various occasions with any criminal intent has demonstrated the incompetents of any antitrust regulations. Some suggested that the definitional ambiguities of the final legislation were the result of Senator Sherman's own uncertainty over how to deal with the issue (Jamieson 1994: 29). Other claim that the influence of big business has influenced the final decision of the act, resulting in lack of absolute definition terms such as trust, combination, or restraint of trade" (Jamieson 1994: 29). Another factor which contributed to the failure of prosecuting violators is the decision to hand over jurisdiction of antitrust matters to the Attorney General to purse through the means of the courts and common laws. The courts is knowingly to exhibited several character tics that will contribute to the failure of these regulations. The courts have the ability to discriminate among particular cases, the pluralistic mode of reasoning, and the tendency toward incremental, and the adversary system. These characteristics permit the assertion of the principle of public control while minimizing the violence that

control would do to the principle of private decision making in the economic sector (Jamieson 1994: 29-30). Corporations may use political power to ensure favourable antitrust legislation or positive decision by regulatory agencies (Jamieson 1994: 36).Clearly in the case against IBM, the Attorney General lawyer William F. Baxter has the final said in relation to this case.

Conclusion:

The Section 2 of the Sherman Act failed to stop or prevent larger corporations such as IBM from attempting to monopolize the sector. Even after all the antitrust lawsuits made by private entities and the government against IBM, this has not affected the profit of IBM products as it still remains one of the largest computer corporations today. The failure to criminally prosecute such violations has contributed to this continuing success of IBM.

References:

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