Antitrust: Sherman’s March Across The Globe

BY CLYDE WAYNE CREWS JR.

President Bush’s bipartisan Antitrust Modernization Commission held its first meeting in July. But after 114 years, America’s antitrust regulatory regime is overdue for a overhaul, not a box. This committee of the heads of Europe’s antitrust regulators nailing Microsoft’s $1 billion (€621 million) for a dominance as assailed as impermissible and constituting market abuse.

Antitrust regulations were first enacted as a way to prevent monopolization and restraint of trade. But, by elevating government intervention above the market’s competitive discipline, antitrust has allowed disgruntled firms to mount legal attacks against their most successful competitors. Particularly given today’s global economy is that other governments are now emulating U.S. antitrust regulations to “protect” their own industries. The Sherman Antitrust Act of 1890 was brought to us lumpen by 20th-century própétition’s restraint of trade. But, by elevating government intervention above the market’s competitive discipline, antitrust has allowed disgruntled firms to mount legal attacks against their most successful competitors. Particularly given today’s global economy is that other governments are now emulating U.S. antitrust regulations to “protect” their own industries.

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Putting business on the beach

Even Google was accused of unfairly prioritizing links— so as consumers can’t migrate to another search engine. In its most extreme applications—like proposals to break up Microsoft—antitrust regulation doesn’t simply pick winners and losers, it dictates entire business models by reorganizing industry itself.

Merging mergers

Despite earlier attempts to “modernize,” smokestack-era antitrust law is alive and kicking in non-technol- ogy sectors too. Washington regulators halted the Heinz-Beechut baby food merger to prevent the monopoliza- tion of pureed fruits and vegetables. The Staples-Office Depot business supply “superstore” merger was nixed. The Philip Morris-Nabisco merger required selling off the “intense mints” business. (Ice Breakers’ breath fresheners were apparently poised to take over the economy.) The U.S. Federal Trade Commis- sion (FTC) has even consid- ered whether premium ice cream and jarred pickles are monopolizable markets!

No economy can afford the antitrust albatross, especially in an age of advanced global trade. Yet too many bureaucrats make their liv- ing at antitrust to be recep- tive to the “kill it” message. Denigrating antitrust is to- day what arguing for Social Security privatization was 20 years ago. Those who “know better” look at you like you have two heads. But the case must be made, much as the Washington-based Ca- to Institute, among too few others, advocated Social Se- curity privatization when the idea was considered ex- treme. Fortunately, the ex- ample of Chile’s remarkable success means that at least that model of liberalization stands a chance at broader adoption. Is an antitrust anal- ogue possible?

The actual extreme notion is the idea that government coercion can replace competitive market discipline. Consider the Lens Crafters-Feaarle eyewear merger: It is now on hold because the U.S. regulators think eyeglass prices might rise in the “chain store market.” Yet price increases, if they happen, create new tiers of economic activity that com- petitors rush to fill. They are important signals. It seems like socialism must fail cat- astrophically in every single niche before people finally let go of it.

Antitrust activism in a glo- bal information economy will cost decades in lost pro- duction and market evolution. For example, in frontier industries like nanotechnol- ogy, bioengineering, and space science, cooperation among competitors can be crucial in coping with un- certainties, sharing research and product ideas. But antitrust regards most coopera- tion among competitors as illegal collusion.

Voluntarism

Yet that cooperation can create a rising tide of re- source and wealth creation, just as cooperation between individuals confers bene- fits (marriages, tandem homes). Government research and development is often praised, but market “col- lusion” might work better than today’s alternative of having governments spread research across dozens of universities, national labs, and bureaucracies.

Competition, properly un- derstood, has little to do with the number of competitors and industry concentration ratios that bewitch government commis- sions. Improper expression is simply “volun- tarism.” Markets are the sum of competition and volun- teer agreements between firms. Suppliers, businesscus- tomaries, and consumers have ample incentive to monitor and influence corporate volun- teer efforts without antitrust regulations. Unlike voluntarism, antitrust entails confis- cation, restraint, and forced aid of competitors. Antitrust doesn’t create or assure com- petitive outcomes, it pre- vents them.

Bush’s Antitrust Modernization Commission, hopefully, European re- formers— can ask fundamental questions rethink the wisdom of antitrust, or they can tinker. The presumption that trustbuster activ- ity improves upon market processes deserves reex- amination. The agenda should not be to recast and polish antitrust, but to prevent the further global spread of a co- lonial model.

The American commis- sion’s most immediate goal must be to encourage our overseas trading partners not to embrace the antitrust activism that we’ve perpet- uated— and seek a similar agenda at home. Given the current focus on antitrust by the Bush administration and Congress, all regulators face historic op- portunity to start us on the road to ending a century- old campaign that squan- ders so much of the world’s wealth creation. Most reg- ulars will probably won’t say it outright, but the antitrust laws are an anticompetitive interest group luxury the world cannot—and never could—afford. Maybe, finally, we will see John Sher- man’s March across the globe.

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New EU Iron Lady: Gates’ Friend or Foe?

BY AJOBE DREW

Nellie Kroes, the newly appointed EU Competition Commissioner, is a tremendous catch for the Brussels Commission. For one thing, she is not afraid of the titans that she will face. But the main story is her howl as the singing lady that the Netherland’s “Knickel Nellie,” a pragmatic and determined politician in the mould of Margaret Thatcher, but also to her close links to the pri- vate sector. She will be faced with numerous challenges from day one in the job.

Kroes is the Netherlands’ former minister of Transport and Public Works and a member of the liberal- conservative VVD party. She has a reputation for being tough and durable, but also to her close links to the private sector. She will be faced with numerous challenges from day one in the job.

Kroes awarded Gates an honorary degree from the Nijenrode Business School in 1996, but may now have to change track as her role requires. She will be responsible for monitor- ing any anti-competitive behaviour and tackling reform of the law on dominance.

Kroes has an experienced career. She has extraordinary experience as a member of government, comment- ed Commission President Jose Bar- roso at her recent conference. “She knows business and the private sector.” In addition to her po- litical experience she has been very influential in both the academic and cor- porate worlds, serving as president of Nijenrode University and holding directorships at several high-profile companies including Volvo, Thales, NMU, Lucent Technologies and P&O Nedloyd. She was identi- fied as the Netherlands’ most pow- erful woman by the Financial Times in 1998. So what is expected of Ms Kroes?

Due to her corporate connections, political commentators predict she may not be able to follow the lead of her prede- cessor Mario Monti. Monti was a tough enforcer of merger, anti- trust and State Aid laws, banning a merger between General Electric and Honeywell. He also fined Micro- soft $470 million in March of this year and said that it had to disclose soft- ware secrets. Microsoft has since appealed this decision and the le- gal proceedings are expected to be lengthy. A European court is expect- ed to make a ruling on the case close to the time that Kroes takes over.

Will she succeed in her new role? Her career so far is anything to go by, the answer is a resounding yes. An ex-collaborator of hers, Karel Van Miert, EU Transport Commissioner in the early 1990s, believes she will do her utmost in the job. “She is a tough lady who will behave in an independent and coherent way.” Kroes’ next challenge will be to present her programme to the Eu- ropean Parliament. Kroes must obtain her approval before she can officially direct and enforce competition law for the five years to come. If ‘Nichel Nellie’ performs in her future career as she has up to now, interesting times are certain- ly ahead.