

Rulings on Antitrust in Technology

Antitrust law has been a very important judicial and ethical issue in the United States since the late 19th Century. The United States government has prosecuted numerous corporations for having a monopoly on their respective markets or sharing information and opinions with their competitors to better control the market. These “anticompetitive” actions were sanctioned illegal and immoral by the US government long before technological companies like Microsoft and Google, yet the Department of Justice has had quite a few run-ins with such companies as of late. One notable case was that of United States v. Microsoft processed during the late 1990s and this case set a precedent for the prosecution of many other up-and-coming or rapidly growing tech companies. This huge case turned the heads of the nation toward the “evil” monopolistic practices of a technological giant. And since, there has been much debate over the ethical implications of the prevention, or lack thereof, of trusts and monopolies in what was meant to be a Capitalist system. But, since the legislation stands against such business practices, there has continued to be cases involving the prosecution of many other large tech companies, including Intel, AMD, and Google. And the idea that a technological corporation could gain too much power in the market or the lives of its customers is a fear that has been lurking in the shadows of these cases all along.

To begin to dive into the behemoth that is the Microsoft Antitrust Case, one must first understand the basis on which Microsoft was prosecuted. In the early 19th century, America’s economy was soaring. Technology was being developed and a

few very large companies were rising to power. These were companies that held control of vital resources at the time—resources like oil, steel, railroads, etc. At the time in the US's uncontrolled market, these companies formed agreements between each other also known as trusts, which were thought to be unfair in the realm of business. Senator John Sherman brought to fruition the resulting legislation, dubbed The Sherman Antitrust Act of 1890. This act outlined a doctrine of protecting consumers from actions deliberately intended to destroy competition in a certain market, whether that was through trusts or a plain and simple monopolistic control ("Sherman Antitrust Act 1890" par. 1). Now, here lies an interesting problem in the realm of ethical economics. Many believed, and still believe, Capitalism should be allowed to live in its truest form (The European Governments of the time had adopted some true Laissez Faire policies), and measures to protect consumers against such super-competitive companies are in fact more of a hindrance than help. It is far beyond the scope of this paper to decide the correct answer, but one must realize that the US had adopted this policy of maintaining control of monopolies and trusts. Thus we have the basis for antitrust prosecutions through the 19th and 20th centuries in the United States and the basis for the US Department of Justice's prosecution of Microsoft throughout the 90s.

The case of *United States v. Microsoft* was a string of civil suits filed against Microsoft Corporation throughout the last decade of the 20th century. The suits began with formal complaints filed to the Federal Trade Commission by certain companies throughout the Silicon Valley. Much of the attention Microsoft received from the Federal Trade Commission (FTC) and the Department of Justice (DOJ) had

Tyler Benziger
Jeevan Maathur

to do with its interactions with competitors who produced alternate operating systems for Intel x86 machines or alternate web browsers for Microsoft's operating system or any other OS. Civil actions were filed, and ultimately the Corporation was prosecuted by the DOJ for violating sections 1 and 2 of the Sherman Antitrust Act (Heilemann). This was an obvious set back for Microsoft with respect to publicity and possible measures of accountability. As a result, Bill Gates himself was rather obnoxious and uncooperative in his deposition as were other higher-ups of the company as they were brought to the stand (Gates Deposition). Ultimately Judge Jackson's final judgment found that Microsoft had indeed been intentionally gain monopolistic control in the realms of its operating system and its Internet browsing application, and he mandated that Microsoft be broken into two separate companies, one dealing with its OS and the other on its alternate software applications. There was of course an appeal, and the sentence of dividing the company was dropped (although the Judge's Findings of Fact were not overturned), and a settlement was reached ("United States v. Microsoft").

Judge Jackson's Findings of Fact focus heavily on Microsoft's Internet Explorer and their alleged attempts to abolish competition between that piece of software and Netscape's own Navigator (Jackson FF 89). Many of Jackson's Findings of Fact were ripped to shreds by techno-buffs and economists. One economist, Alan Reynolds, picked apart the entire document in his book *The Microsoft Antitrust Appeal*. In this book he moves through each section of Judge Jackson's so-called Facts and explains very eloquently why it is contradictory to previous arguments or to a technological concept altogether. According to Reynolds, the Judge makes many

fatal errors from misunderstanding Internet standards like HTML and TCP/IP protocols all the way to completely misguided suggestions of obscuring the Window's own Desktop on boot (Reynolds pp. 81). These Findings of Fact have been the basis for a very long list of complaints about the validity of the case's final judgment.

Altogether, the case left a bad taste in the mouths of economists and technological companies. It cannot be denied, however that the company did hold a large share of the Intel-based OS market. Microsoft had risen so fast and other tech companies of today have done the same in their own rights. Again, there are always questions of what constitutes an economic market and a monopoly therein. For example, a new application is invented—one that allows the user to wirelessly activate their home toaster oven. No other company has an application like it, and the company that has invented it is making money hand over fist. Is it a monopoly over the wireless-activation-of-toaster-oven-application market? Or is that a justifiable market at all? Economists and technologists have asked these types of questions again and again as new software and technology companies have risen to power throughout the first decade of the 21st century and these new companies have had to answer for their monopolistic control over these brand new markets.

One such company who has quickly risen to amass an overwhelming market share in a related technological industry is Intel. A number of Intel's business moves have led them into serious questioning and lawsuits regarding antitrust law. In the case of *Intel Corporation v. Advanced Micro Devices, Inc.*, AMD claimed in 2005 that Intel had engaged in unfair competition by offering rebates exclusively to select

Japanese PC manufacturers who agreed to limit their purchases of microprocessors manufactured by competing companies including AMD and Transmute Corp., a smaller manufacturer (“AMD Files antitrust suit against Intel”). Specifically, AMD claimed that Intel’s aggressive pricing practices were a violation of section 2 of the Sherman Antitrust Act since Intel bundled its “contestable” and “uncontestable” microprocessors. AMD asserted that at any given time, an OEM must obtain most of its microprocessor requirements from Intel. Intel retorted that these claims were “factually incorrect and irrelevant,” saying that OEMs have the ability to purchase from AMD, but the fact that they choose to purchase primarily from Intel does not imply monopolistic behavior. Additionally, Intel claimed that it was merely exploiting competitive advantages available to it, saying that they were not guilty of predatory conduct. In their defense, they quoted the Supreme Court on the topic of antitrust suits stating that it would be “ironic if the standards for predatory pricing liability were so low that antitrust suits themselves became a tool for keeping prices high” (“Intel and AMD: A long history in court”). In this case, Intel ultimately settled with AMD in November 2009, agreeing to pay \$1.2 billion to settle all existing legal disputes between the two companies. Although a judge never formally ruled upon this case, this was not the first time that Intel faced and AMD faced off in court regarding antitrust practices. In August 1991, AMD filed a similar antitrust lawsuit against Intel, claiming that they had participated in “unlawful acts designed to secure and maintain a monopoly.” In this case, it was ruled that Intel had breached its cross-licensing contract with AMD, awarding \$10 million “plus a royalty-free

Tyler Benziger
Jeevan Maathur

license to use any Intel patents used in AMD's own 386-style processor" ("Intel Settles Lawsuit With AMD").

The ongoing legal struggle between Intel and AMD is similar to the lawsuit that Microsoft faced in 1998 since both situations were based exclusively on the second section of the Sherman Antitrust Act. Similar to the Microsoft case, technological enthusiasts argued that this case was unfounded on the basis that many of the facts compiled by AMD were incorrect in regards to monopolization and bundling. An important distinction in this case is the involvement of the manufacturers including Dell, HP, Gateway, Acer, Sony, and others. Since Microsoft's case dealt exclusively with its software applications of Internet browsing and operating systems, manufacturing companies were not involved in the process as extensively as they were in this case.

A more current antitrust case involves Google, Inc. facing scrutiny in Congress as the antitrust subcommittee looks to determine whether Google abuses its power in online search. Taking place in September 2011, in a televised discussion between Google's Eric Schmidt and senator Mike Lee of the U.S. Senate Judiciary Subcommittee, when Lee analyzes Google's consistent high rankings regarding product search, Schmidt assures Lee that they have not "cooked" anything. However, Lee condescendingly replies that Google must then have an "uncanny natural attraction" to the high rankings. Lee's primary argument was that Google's product search placements were consistently ranking higher than competing price comparison websites including Nexttab, Pricegrabber, and Shopper in most online shopping categories ("Google faces antitrust glare on Capitol Hill"). Schmidt argued

that Google Product Search is exclusively about getting the user to a specific product. The other product comparison sites featured in Lee's study were ranked lower because they instead compared the product in question to other similar products, according to Schmidt. In their written testimony to Congress, Google claims that consumers have a vast array of options from which they can access shopping information. They assert that well known shopping sites including Amazon, Wal-Mart, and eBay are essentially search engines that allow consumers to find products completely detached from Google's services. Additionally, they reported that the sponsored results on the Google search are based on how much an advertiser is willing to pay for a specific placement, since it is a simple traffic auction, which Google does not control or fix in any way ("Eric Schmidt defends Google in Senate antitrust hearing").

Overall, the case of *United States v. Microsoft* has some striking differences between those of Google and Intel. However, they are all centered on the notion that since these companies dominate their respective industries, they must pay extensive attention to the details of the Sherman Act and must engage in fair business practices that do not hinder the efforts of their competition. Some argue that the government's intervention in business is uncalled-for—that a perfectly unaltered market is best for consumers. But the government's intentions have always been to protect consumers from an evil monopoly. One can see how easily a company like Google could become something like Orwell's *Big Brother*. So there is merit on both sides of the argument, and ultimately it is up to the public's interpretations of the interaction of the DOJ and these technological corporations.

Tyler Benziger
Jeevan Maathur

That is, as a society, should we support a free market no matter the risk, or should we cower in fear from these pending “super monopolies”?

Bibliography

"Gates Deposition Audio and Video". *Groklaw*. 20 Aug 2009. <<http://www.groklaw.net/staticpages/index.php?page=GatesDepo>>

Heilemann, John. *Pride Before the Fall*. New York, NY: HarperCollins Publishers, Inc., 2001. Print.

Jackson, Thomas. United States. United States of America Department of Justice. *Findings of fact : United States of America v. Microsoft Corporation*. Washington D.C.: United States Department of Justice, 1999. Web. <<http://www.justice.gov/atr/cases/f3800/msjudgex.htm>>.

Reynolds, Alan. *The Microsoft Antitrust Appeal*. Westfield, IN: Hudson Institute, Inc., 2001. Print.

"Sherman Anti-Trust Act (1890)." *Our Documents*. N.p., n.d. Web. 17 Nov 2011. <<http://www.ourdocuments.gov/doc.php?flash=true&doc=51>>.

"The New Generation of American Monopolies." *24/7 Wallstreet*. 22 Mar 2011: 1-3. Web. 14 Nov. 2011. <<http://247wallst.com/2011/03/22/the-new-generation-of-american-monopolies/>>.

United States. United States of America Department of Justice. *United States v. Adobe Systems, Inc., Apple Inc., Google Inc., Intel Corporation, Intuit, Inc., and Pixar Final Judgement*. 2011. Web. <<http://www.justice.gov/atr/cases/f272300/272393.htm>>.

United States. United States of America Department of Justice. *United States v. Microsoft Corporation Final Judgement*. 2002. Web. <<http://www.justice.gov/atr/cases/f200400/200457.pdf>>.

United States. United States of America Department of Justice. *United States v. Google Inc. and ITA Software, Inc. Final Judgement*. 2011. Web. <<http://www.justice.gov/atr/cases/f275800/275897.pdf>>.

"AMD files antitrust suit against Intel", *CNET.com*, 28 June 2005. Web. 14 Nov. 2011. <http://news.cnet.com/AMD-files-antitrust-suit-against-Intel/2100-1001_3-5765844.html>

"Intel and AMD: A long history in court", *CNET.com*, 28 June 2005. Web. 14 Nov. 2011. <http://news.cnet.com/Intel-and-AMD-A-long-history-in-court/2100-1014_3-5767146.html?tag=nw.20>

"Intel Settles Lawsuit With AMD", *NationalJournal.com Tech Daily Dose*, 12 November 2009. Web. 14 Nov. 2011.

Tyler Benziger
Jeevan Maathur

<<http://techdailydose.nationaljournal.com/2009/11/intel-settles-lawsuit-with-amd.php>>

“Google faces antitrust glare on Capitol Hill”, *WashingtonPost.com*, 20 September 2011. Web. 14 Nov. 2011. <http://www.washingtonpost.com/business/economy/google-faces-antitrust-glare-on-capitol-hill/2011/09/20/gIQAFUuKjK_story.html>

“Eric Schmidt defends Google in Senate antitrust hearing”, *LATimes.com*, 22 September 2011. Web. 14 Nov. 2011. <<http://articles.latimes.com/2011/sep/22/business/la-fi-google-antitrust-20110922>>