U.S. CHAMBER OF COMMERCE

AMERICA'S ANTITRUST LAWS MYTH VS. FACTS

America's antitrust laws have ensured competition thrives, providing consumers with the benefits of lower prices, higher quality products and services, more choices, and greater innovation.

However, some seek to rewrite these laws to undermine the consumer's ability to pick winners and losers in the marketplace. Before Congress starts making unnecessary and harmful changes to existing antitrust laws, it's important to set a few things straight.

MYTH: Antitrust is a law enforcement tool, not a regulatory tool.

FACT: It is rooted in the idea that competitive markets are self-policing and that consumers benefits when there is vigorous, even ruthless, competition. Where competition in the market is damaged by certain competitor's action, antitrust steps in on fact specific grounds and corrects the action of a particular company or group of companies. Antitrust is designed to restore the self-policing power of competition in the market. Regulation on the other hand is about imposing an outcome in the "market."

MYTH: The antitrust laws have a hard time keeping up with the modern economy.

FACT: Antitrust laws endorse a timeless process that can be universally applied to every sector of the economy. The rule of reason is a process that relies on concrete theories of harm that are supported by sound economic analysis that can test the validity of those theories. Economic analysis is used to evaluate the procompetitive effects of a potential merger or specific conduct in the market and weighs that against any anticompetitive effects. Only when the anticompetitive effect is greater than any procompetitive effect is antitrust enforcement warranted.

MYTH: Antitrust is only about price and output.

FACT: U.S. antitrust law has long considered not only price and output but also quality and innovation. A long list of cases shows that the consumer welfare standard considers a host of factors beyond price, including reduced quality, variety, service, or diminished innovation.

MYTH: Antitrust is concerned with fairness.

FACT: What is "fair" is not an objective or administrable standard recognized by the antitrust laws. Antitrust law is based in economics, requiring theories of harm with testable implications—something sa vague and subjective "fairness" standard cannot do. Fairness is something left to regulation, which seeks to steer market outcomes, not antitrust which allows competition in the marketplace for consumers to shape market outcomes.

MYTH: Monopiles are illegal.

FACT: The U.S. Supreme Court has long held that the mere possession of monopoly power, and any associated charging of monopoly prices, is not only not unlawful; it is an important element of the free-market system. The opportunity to charge monopoly prices at least for a short period is what attracts business acumen in the first place; it induces risk taking that produces innovation and economic growth. To safeguard the incentive to innovate, the possession of monopoly power is not unlawful unless it is accompanied by anticompetitive conduct. In other words, conduct that is distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident.

MYTH: Mergers must seek permission and receive approval before they can be consummated.

FACT: All mergers are presumed legal. No permission is required. What is required for transactions that reach certain thresholds is notification. Upon notification, the antitrust agency can review the transaction, if it takes issue with the transaction the burden to block the transaction falls on the government to ultimately challenge the merger in court."