EconoFact Chats: Are Past Anti-Trust Approaches Appropriate Today?
Naomi Lamoreaux, Yale University
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Michael Klein
I'm Michael Klein, executive editor of EconoFact, a nonpartisan, web-based publication of the Fletcher School at Tufts University. At EconoFact, we bring key facts and incisive analysis to the national debate on economic and social policies, publishing work from leading economists across the country. You can learn more about us and see our work at www.econofact.org.

Michael Klein
Apple, Alphabet, Amazon, Meta. Many people think these companies have too much economic and political power. About a century ago, we could have made a similar list. That would have included most prominently John D. Rockefeller's Standard Oil. And we could have also added the American Tobacco Companies, and the National Packing Company, a merger of three large meat packing companies. Popular concerns about these large companies during the Progressive Era led to antitrust actions by the government. Does that episode hold lessons for us today? To provide historical perspective on antitrust policy, I'm very pleased to welcome to Econofact Chats Naomi Lamoreaux. She is a senior research scholar at the University of Michigan Law School, and the Stanley B. Resor Professor Emeritus of Economics, and Professor Emeritus of History at Yale University. Naomi has written extensively on the history of antitrust. And Naomi, thank you for joining me today.

Naomi Lamoreaux
Thank you, Michael. I'm really glad to be here.

Michael Klein
Naomi, to start off, what are the economic arguments for breaking up large companies?

Naomi Lamoreaux
Well, I think there's two main arguments. The first is the familiar one that monopoly power leads to high prices and is bad for consumers. But the second is that it stifles innovation. And that's because to maintain market power, you have to erect barriers to entry. And that keeps out new firms that might enter the industry…and bring new innovation into the production process.

Michael Klein
Is there also an argument that the high prices might actually attract entrance?

Naomi Lamoreaux
Well, high prices under normal circumstances would attract entrance. But if there's barriers to entry, then entrance can't get there, to take advantage of the high prices and compete them away.

Michael Klein
There's also a political dimension to these concerns, right?

Naomi Lamoreaux
Oh, absolutely. There's a great fear that companies that earn large profits as a result of their market power will use those profits to influence the political process, so that it doesn't interfere with their ability to earn large profits; or could be used to block regulations that protect consumers, that protect the environment, that protect workers. So those are big worries.

Michael Klein
And that political dimension, that's one way in which there are the barriers to entry that you mentioned, correct?

Naomi Lamoreaux
Oh, yes, yeah.

Michael Klein
So as I mentioned in the introduction, the most prominent monopoly in the late 19th century and early 20th century was Standard Oil. Can you describe the reach of this company, and what actions its president, John D. Rockefeller, took to increase its market power?

Naomi Lamoreaux
Well, in a nutshell, John D. Rockefeller, Standard's president, made a deal with the railroads. So railroads were always trying to restrict competition in their industry as well, and they were not very successful. So they had this idea in the business of shipping oil that they would use large firms to enforce their cartel. And their initial plan to do that failed, but Standard stepped in and made a deal with the railroads, where the railroads would give him a cut on his shipping costs in exchange for helping them enforce their own cartel. And that cost advantage that Standard had became the weapon that John D. Rockefeller used to force other firms either to sell to him or go broke. And so he was a ruthless user of that cost advantage that he got from the railroads. That kind of ruthless behavior was really characteristic of the period. It's a period we call the Gilded Age, as a result, and it was dominated by people we call robber barons, and Rockefeller was one of the biggest of them all.

Michael Klein
And then the Gilded Age gave way to the Progressive Era. What prompted this response? Did people just sort of recognize what was going on and become up in arms about it?

Naomi Lamoreaux
Oh, yes. People saw what was going on. They saw a firm like Standard Oil go from a 4% share of the market to a 90% share of the petroleum refining market in a space of 10 years through this ruthless behavior. They also saw Standard engaging in all kinds of what seemed to be nefarious political contributions. And so they wanted to put a stop to this kind of economic and political power. And so people organized, agitated for legislation. They had some victories in the 1880s at the state level. And then at the federal level, they got the Interstate Commerce Act against railroads in 1888, the Sherman Antitrust Act against large firms like Standard in 1890. And then those actions really came into their own, really grew stronger in the early 20th century. And as a result, that period is known as the Progressive Era.

Michael Klein
So you used the word ruthless several times.

Naomi Lamoreaux
Yes, they were ruthless!

Michael Klein
They were ruthless! So some people could say, well, they were just competitive, but it's kind of like not playing by the rules of the game. Even, you know, implicit rules at that time using those kinds of tactics, right?

Naomi Lamoreaux
That's exactly right. It was considered unfair.

Michael Klein
You have a really good article on this topic in the Journal of Economic Perspectives that I found really informative. And one of the things I found especially interesting in that article was the effort of President Theodore Roosevelt and his followers to divide big businesses into good and bad trusts. What did they see as a difference between good and bad trusts? And could they really make this distinction? Was it linked to this idea of ruthlessness that you talked about?

Naomi Lamoreaux
It was linked to the idea of ruthlessness. So when people looked around them, they looked at firms like Standard, and they said, that's a bad trust. This is a trust that's a large scale business that's growing large through unfair competitive methods. But when they looked around them,

they also saw other firms that grew large, that had major shares of the markets in which they operated, but they had grown large by innovating, by coming up with a better way of making a product that people desired, or by coming up with an entirely new product. And people thought of those firms as good trusts and argued that they really shouldn't be treated in the same way that Standard was treated. They should be allowed to grow and pursue their innovations. But the problem was that once a firm grew large by innovating, it could use its market share unfairly to try to maintain its position and erect barriers to new competition. So good trusts could do bad things, and it was really just very difficult to know when a good trust was moving into the bad territory.

Michael Klein
It sounds like one of those things, 'when good trusts go bad.'

Naomi Lamoreaux
Yes, that's right. Well, the meat packers were a good example. Gustavus Swift had this amazing innovation, which was to develop a refrigerated car where he could slaughter beef in Chicago and ship fresh beef all over the country. So before that time, fresh meat was a seasonal commodity, and after Swift's innovation, you could have high-quality fresh beef at all times of the year. But once the meat packers got major market shares, they began to collude to protect themselves from new competitors.

Michael Klein
The signature antitrust actions of the Progressive Era were the Sherman Act, the Clayton Antitrust Act, and the establishment of the Federal Trade Commission. What did these attempt to accomplish, and how? And did these reflect the idea of good trusts versus bad trusts?

Naomi Lamoreaux
Well, the Sherman Act, the first one in 1890, did not have that intellectual apparatus behind it. It was the first act that Congress passed to try to counter the market power of businesses like Standard Oil. And it was a very simple, very vague statute that basically just outlawed combinations or contracts in restraint of trade, or that had the intention of monopolizing trade. And when federal prosecutors began to use it, they found that it was quite an effective statue to use against cartels. But it was not very effective against large firms. And in fact, it took more than two decades after the passage of the act for Standard, you know, the epitome of the bad trust, to be successfully prosecuted under the Sherman Act. The Supreme Court in 1911, 21 years after the passage of the Sherman Act, broke up Standard Oil Company and also American Tobacco, which was another bad trust. And what the Supreme Court did in that decision was it articulated a concept called 'the rule of reason' where it said, well, we can tell a good trust from a bad trust if the company's evident purpose is to restrain trade. If its actions show that its evident purpose is to restrain trade, then it's a bad trust. But many observers thought this was weasley,

and not really a clear enough policy. And some people said, well, how can a trust be reasonable? They thought that that was oxymoronic. And so there was a lot of pressure on Congress to do something more. And so in 1914, Congress by really large majorities passed two pieces of legislation. One was the Clayton Act, which did a couple of different things. But one of them was that it said mergers were illegal if their evidence, if their purpose was anti-competitive. But then it also specified some kinds of practices that would be considered unfair, to give some substance to the idea of unfair competition. So for example, a tying contract, a contract whereby a company would say, if you want to buy my product, you have to enter into this arrangement not to deal with a competitor, that was going to be an unfair competitive practice.

Michael Klein
I think something like that happened more recently with Haagen-Dazs, and Ben and Jerry's, where Haagen-Dazs had told supermarkets that they would only sell to them to carry their product if they didn't carry Ben and Jerry's. And then famously, I don't know if it was Ben or Jerry, they went to the headquarters and dressed up as a Pillsbury Doughboy and said, what's the doughboy afraid of?

Naomi Lamoreaux
Well, of course, that's what Microsoft was accused of as well.

Michael Klein
Yeah. So these things echo into the present.

Naomi Lamoreaux
Right. And just to finish that, the FTC Act, which was the same year in 1914, the Federal Trade Commission Act, set up the FTC to enforce the antitrust law. It also stated that unfair competition was illegal, and gave the FTC the authority to decide what was an unfair competitive practice and to enforce the law. So it created an agency with the idea that that agency would be tasked with defining what was good and what was bad.

Michael Klein
So it took it out of the hands of the court and put it in an agency. And there's an issue now with whether or not agencies can make these kinds of rulings, or whether it should go to the court or to Congress.

Naomi Lamoreaux
Well, ultimately, I mean, the FTC ultimately is answerable to the courts, right? Anyway, but yeah, but the first line was that they would determine what were anti-competitive practices.

Michael Klein
Naomi, you also mentioned in that article that in the late 1930s, the government's view was that big companies are problematic just by virtue of their size. And this was a view put forward much earlier in 1914 by Louis Brandeis in his essay, 'Curse of Bigness.' Of course, Brandeis goes on to serve on the Supreme Court. There are certainly people in government today who take this Brandeis view like Lina Khan, the chair of the Federal Trade Commission. But there's an alternative view as well, one that focuses on the effects on consumers, regardless of market power. And that's the Chicago School, and it's most closely associated with the work of Robert Bork. Can you describe the ideas behind each of these approaches, and contrast how each approach the issue of large companies that dominate a market?

Naomi Lamoreaux
So I think the Chicago School idea is relatively simple. It basically is that if a large company is not harming consumers, then, you know, the presumption should be that it's not in violation of the antitrust laws, and should be given a pass, should be let alone. But people like Lina Khan, who is the, as you said, the head of the FTC, or Tim Wu, another neo-Brandeisian as they call themselves, he's a professor of law at Columbia, and also an advisor in the Biden administration – They believe that firms are dangerous when they're large. So Lina Khan really became famous as a result of a Law Review article she wrote when she was a law student, where she took out after Amazon and said, Amazon is doing all these things to amass market power. And we shouldn't let Amazon do that because even if it's not abusing its market power now, it'll be able to do it in the future. That was kind of the thrust of her article. And Tim Wu has been especially focused on what he sees as the dangers to democracy that come from having firms with that kind of market power. So he, for example, has compared the current situation to the situation in Germany at the time of the rise of the Nazis, when there were these major cartels and firms with market power that then could be swung on the side of the Nazis.

Michael Klein
So as a historian, and looking at the antitrust debates today, is it kind of like plus ça change, plus c'est la même, the more things change, the more they're the same? Are these the same arguments that were being made at the turn of the 20th century about Standard Oil and American meat packing?

Naomi Lamoreaux
There is a plus ça change aspect to that. I mean, the economy changes, so I think we have to be careful about thinking that things don't change. But certainly some of the aspects of today's antitrust actions against firms like Google and Amazon are very similar to things that were done earlier in the century.

Michael Klein
One possible source of difference, I guess, is that some of the biggest companies today have achieved their market power through what are called network effects and two-sided platforms, where they're serving both the consumers who are looking for products and the companies that are selling them. We have an EconoFact memo by my Tufts colleagues, Lynn Pepall and Dan Richards about this. Does this change in the way these industries operate as compared to Standard Oil, does this change the way we should think about antitrust policy?

Naomi Lamoreaux
So I think that's a very difficult question, and I'm of two minds on this. On the one hand, there's just the sameness to the charges now. Google's being accused of using its search engine to privilege affiliated businesses, or using its leverage with Android to privilege its search business. These are very similar things to what we've seen throughout the whole history of antitrust. Oh, and I would say that the two-sided market problem, you know, is familiar too. And in a sense, one of the difficulties the FTC had early in the 20th century was looking at the big meat packers' domination of the livestock markets. And that gave them, they were on both sides of those markets, and those were two-sided markets, and that gave them advantages that are in some ways similar to the ones we're talking about now, and were very difficult to distinguish between whether they were anti-competitive, or whether they enhanced efficiency. But there's no question that the informational advantages that large firms can wield today are truly unprecedented. And in this respect, I've been intrigued by a recent book by James Bessen called The New Goliaths. And Bessen thinks that there is a real problem with these informational advantages. But he thinks that Amazon is not a good example of the problem. In fact, he thinks Amazon shares its informational advantages with people on its marketplace, and actually that Amazon's actions are more pro-competitive than anti-competitive. And he has a lot of intriguing evidence for his view. And I just found his whole treatment of it really thought-provoking, and gave me some sense of the challenges that antitrust authorities face if they're going to wade into this issue of two-sided markets. It's really difficult to decide what's anti-competitive and what's not.

Michael Klein
Naomi, with your perspective, which is really wider, and greater than most people who work in this area, are there any policies in particular you would advocate that maybe aren't getting as much airing as you think they should, given what you know about the long history of antitrust?

Naomi Lamoreaux
Well, I think in the antitrust area, that actually simple is okay in the short run. That is probably the single most important thing that the antitrust authorities can do is to prevent large firms from using their market power to erect barriers to entry. And it seems to me that's what they're trying to do. And I think this kind of action is very useful even if it's just saber-rattling. That is one of the things we've seen repeatedly through history when the antitrust authorities get active, firms

become more careful. And they refrain from…they don't want to be prosecuted. And so they refrain from engaging in behaviors that are likely to attract the attention of the authorities. So I think that just saber-rattling is in fact very useful, and some prosecution showing that there's more to it than just saber-rattling, are also probably pretty useful. But the other thing that we aren't talking probably enough about is that outside the arena of antitrust. In the early 20th century, when firms began to throw their weight around with their money, and tried to influence policy, governments took the first steps to try to rein that in. So it's in the first decade of the 20th century that we get the first federal campaign legislation, and you get similar campaign legislation in other states to say corporations cannot contribute to political campaigns. And of course, we've undone all this in recent years. The Supreme Court's Citizens United decision says you [inaudible] essentially gives corporations contribution rights that they hadn't had for most of the 20th century. So I think we really have to think seriously about the issue of money in political campaigns, and the money doesn't just come from corporations. We have super rich people who are also engaged in heavy activities to influence political campaigns. But that's another issue of market power that we have to take very seriously.

Michael Klein
Well, Naomi, that perspective from the Gilded Age and the Progressive Era I think is very useful today and really helps us understand better what's going on. So thank you very much for joining me today. I enjoyed reading your article in the Journal of Economic Perspectives and the other work that you've done. And I really had a good time talking with you and learned a lot. Thank you.

Naomi Lamoreaux
Thank you. I enjoyed talking with you as well.

Michael Klein
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