Sherman Act 1890: Modernization and Impact on Markets

Alex Han

Independent Researcher, Chadwick International, SOUTH KOREA

*(alexjiyoonhan@gmail.com)*

**Abstract**

The major purpose of the Sherman Act was to prevent mergers from forming monopolies. It ensures consumers are protected from price discrimination, and there is free competition. Several economists, classical economists, neoclassical economists, Chicago school and Harvard school, pointed out several antitrust laws. Classical economists led by Smith argued that monopolists set prices at higher prices and raise their charges higher through understocking the markets hence corporations and mergers should be prevented. Neoclassical economists developed a model which assumes that there are no barriers to entry whereby there is free entry to the market. Harvard school also advocated for free competition. Either, the Chicago school was against the idea of free competition and proposed some acts from the antitrust laws to be removed. However, with advancements in technology, the Sherman Act has become outdated and some languages used are held, making it a challenge to interpret in courts. There is a need for the antitrust laws to be reformed to fit the changing technology. Bills should be proposed to make improvements to the acts. For example, Klobuchar Amy, in April 2021, proposed a bill seeking to reform antitrust laws to better perfect competition in the American economy.

**Keywords**

Sherman Act, Modernization of Antitrust law

---

**1. HISTORY OF SHERMAN ACT AND APPLICATION**

Sherman Act is the United States Antitrust Act passed in 1890 to bar businesses from merging to form a monopoly to control and manipulate market prices (Will, 2021). It was proposed and passed by John Sherman. The Sherman Act banned agreements formed to prevent competition and attempts to form monopolies. The major aim of the Sherman Act was to ensure economic fairness and fair competition without interfering with interstate trade. It was developed when certain industries were being monopolized by corporations such as Standard Oil (Will, 2021). As a result, according to Will (2021), consumers were made to pay high prices for essential goods, and competitors in the industry were shut out.

Clayton Antitrust Act amended the Sherman Act in 1914, which crossed gaps created by Sherman Act. For example, the Clayton Act banned the appointment of the same individual by various competing
businesses to make decisions. The Sherman Act, according to Will (2021), has been applied by the United States severally, such as Microsoft in 1998, AT&T in 1974, and Google in 2020. For example, the Justice department of the U.S filed an antitrust lawsuit against Google because it engaged in anticompetitive conduct preserving monopolies (Will, 2021).

2. ANALYSIS OF SHERMAN ANTITRUST ACT

Competition law is also known as antitrust law, and it is the statute that governments developed to protect consumers from predatory business practices and ensure fair competition (James, 2021). Antitrust laws are applied in business activities such as market allocation, bid-rigging, price-fixing, and monopolies. Competition /antitrust law has had many perspectives from economists, as explained below.

2.1. Classical Perspective

The classical economists argued that certain agreements and business activities could restrain business-people on their livelihoods. Adam Smith rejected monopoly power and stated that a monopoly granted either to an individual or trading company has the same effect as a secret trade or manufacture (James, 2021). Smith pointed out that monopolists set prices at higher prices and raised their charges higher through understocking the markets. Smith also stated that businesspeople assemble and form cartels to raise prices exploiting consumers, and he rejected the existence of corporations. However, Smith never proposed ways of combating the issues of cartels.

John Stuart Mill characterized free competition as freedom of contract and trade (Nicola, 2020). Mill stated that trade is a social act whereby anyone who sells to the public affects the public’s interest and society in general. Therefore, the price and quality of goods are provided for by leaving producers and sellers perfectly free, which is transferred to buyers.

With digitalization, businesses have considered using social platforms to carry out their activities. Other businesses consider coming together to ensure consumers get services at one point. For example, if one business deals with rehabilitation and another offer health care, then establishing those businesses at one point will benefit consumers. This will be to the benefit of society; therefore, antitrust laws need reform to incorporate changing technology.

2.2. Neo-Classical Perspective

Neo-classical economists developed a theoretical model of free markets, which stated that the production and distribution of goods and services in competitive free markets maximize social welfare (James, 2021). The neo-classical model assumes that there are no barriers to entry whereby new businesses are free to venture into the market and compete with present businesses. Free markets led to Pareto, productive, and dynamic efficiency. Pareto efficiency states that in the long run, resources in an economy will go to those who are willing and can buy (James, 2021). Productive efficiency states that products should be produced at the lowest cost possible. In contrast, dynamic efficiency is the development of new products and finding better ways of producing goods and services (Robert, 2014).

In this digital era, some acts in the Sherman Act use language that has been outdated. The act has made many businesses to be shut which if merged could have benefited consumers and increased competitions as required by the antitrust laws. For instance, the acts should be changed such that when businesses want to merge, they should give an assurance that they would not create a risk of reducing competition.

2.3. Harvard School Economics

Harvard economists; Edward Chamberlain, Edward Mason, and Joe Bain argued that the number of firms in the market and their sizes determines how effectively firms will perform in that market (Piraino, 2007). They pointed out that when so many firms are in the market, they are less likely to engage in
anticompetitive conduct. They stated that mergers made it easier for the remaining firms to engage in anticompetitive conduct.

Exercising market power by businesses is not anticompetitive rather there are activities done that can lead to competitiveness. Antitrust laws should be improved to ensure only those mergers that harm competition are prohibited while those that benefit consumers are allowed to operate.

2.4. Chicago School Economics

Economists associated with the University of Chicago have advocated an approach to competition law. The economists claim that activities considered by the Sherman Act to be hindering competition can promote competition.

Robert Bork criticized decisions made by courts concerning the U.S. Antitrust Law. Bork argued that the main aim of antitrust law was to protect consumer welfare and competition but not to protect competitors (Herbert & Fiona, 2019). Bork pointed out that only a few components of the Sherman Act should be removed, and others left. Acts that should be removed, according to Bork, include cartels who fix prices and divide markets, mergers that create monopolies and dominant firms with high prices, and acts that should be left include vertical agreements and price discrimination (Herbert & Fiona, 2019). However, the advocates of the Chicago School ignored important developments in economics that gave an important accounting of the economy.

Using the perspectives of Chicago School, Sherman Act only favored consumers rather than competitors. Proposals should be made to ensure all players in business are considered.

2.5. Further Analysis

According to Thomas (2007), standards applied by courts under antitrust laws are appropriate, and their elements include:

a) The law does not prohibit monopoly power but rather inhibits the acquisition and maintenance of monopoly power through improper means.

b) The antitrust laws protect consumers and competition, nor competitors.

c) Antitrust laws consider the impact on incentives, static and dynamic efficiency in assessing violations.

The antitrust laws are appropriate, but they require reforms to improve them considering advancement in technology. Through the application of antitrust laws, courts made decisions that resolved disputes between competitors in the market. The antitrust laws have been reformed continuously as new cases arise by courts developing laws to help rule the cases at hand. Courts use economic principles when cases arise to guide them in interpreting antitrust laws and have continued to rely on the economic principles in this Century than the past (Thomas, 2007). Antitrust laws are widely used to protect competition rather than competitors. For example, the Supreme court suggested that it would be unlawful for businesses to lower their prices to drive out small businesses.

3. POLICY SUGGESTIONS

3.1. New Bill 2021

A bill was presented before the Senate Judiciary Committee by Klobuchar Amy in April 2021, seeking to reform antitrust laws to better perfect competition in the American economy (United States Congress). According to Congress, the bill also proposed an amendment of the Clayton Act to modify the standard for unlawful acquisition, to prevent anticompetitive exclusionary conduct that harms competition and consumers, and to enhance the ability of the Department of Justice and the Federal Trade Commission to enforce the antitrust laws.

According to the Congress report (2021), the Senate Congress found out the following:
• competitive markets are crucial in ensuring economic opportunity for all,
• competition leads to the production of high-quality goods and low prices on the goods,
• competition decreases economic inequality and increases innovation,
• monopoly limits competition leading to higher prices and low-quality products,
• horizontal consolidation, vertical consolidation, and mergers increase market power, limiting competition and
• acquisition of potential rivals by dominant firms presents long-term threats to competition and innovation.

Congress amended the bill’s requirements, and penalties for violations of the laws were proposed together with whistle-blower awards.

3.2. Suggestions

The merger and acquisition law should be altered to ensure some acquisitions that do not affect competition are allowed (Linda, Bobby & Neil, 2021). Acquisitions enable venture partners to establish new investments, which will help improve the economy and job creation. For example, the acquisition of Instagram and WhatsApp by Facebook did not affect competition; rather, it aimed to ensure users get services at a central place. Using outdated antitrust laws to make it harder for firms will weaken the economy.

4. CONCLUSION

From the Sherman Antitrust Act analysis, it is clear that antitrust laws are of great significance. Antitrust laws ensure there is free competition in the market hence protecting consumers from price exploitation. By preventing mergers from forming monopolies, the laws ensure prices are set at appropriate levels, and large firms do not set prices high. The classical, neo-classical, and Harvard School economists supported the antitrust laws by arguing that they enable free competition among producers, sellers, and buyers. The economists further stated that mergers formed monopolies that set prices high and led to low-quality products due to limited competition. Chicago school economists argued that activities thought to hinder competition promote it and suggested acts to be removed from the law. However, these economists ignored important economic developments.

In conclusion, some acts in the antitrust laws are outdated, and some contain old languages such as "we don't want contracts and conspiracies that restrain trade"—interpreting these old languages to the modern economy when cases arise is complicating. Therefore, reforms should be made to these acts and phrases changed to incorporate changing technology and the modern era. In addition, reforming the laws will allow acquisitions which will create new jobs and improve the economy.

REFERENCE

Herbert, H. & Fiona, S.M. (2019). Framing Chicago School of Antitrust Analysis.https://www.researchgate.net/publication/337291216_Framing_the_Chicago_School_of_Antitrust_Analysis
James, C. (2021). "Understanding Antitrust Laws". Guide to Antitrust Laws. Government and Policy. Investopedia. Reviewed by Robert C Kelly, 29/05/2021. https://www.investopedia.com/ask/answers/09/antitrust-law.asp
Linda, M., Bobby, F., & Neil, B. (2021). Fundamentally Altering antitrust laws will harm U.S. startups and slow the economy. https://techcrunch.com/2021/10/28/fundamentally-altering-antitrust-laws-will-harm-us-startups-and-slow-the-economy/amp/
Nicola, G. (2020). Free from What? Classical and the Early Decades of American Antitrust. New Political Economy. Vol. 26,2021. Pg. 86-103. https://doi.org/10.1080/13563467.2019.1708880
Piraino, T.A.J. (2007). "Reconciling the Harvard and Chicago Schools: A New Approach for the 21st Century," Indiana Law Journal. Vol. 82; Iss. 2, Article 4.https://www.repository.law.indiana.edu/ilj/vol82/iss2/4
Robert, D. (2014). Dynamic efficiency- the key to lifting Australia's Productivity performance https://www.aph.gov.au/About_Parliamentary_Departments/Parliamentary_Library/Flag-Post/2014/March/Dynamic-Efficiency
Thomas, O.B. (2007). Competition Law and Policy Modernization: Lessons from the U.S. Common-Law Experience. The United States Department of Justice. https://www.justice.gov/atr/speech/competition-law-and-policy-modernization-lessons-us-common-law-experience

United States Congress (2021). S.225- Competition and Antitrust Law Enforcement Reform Act of 2021. https://www.congress.gov/bill/117th-congress/senate-bill/225/text

Will, K. (2021). Sherman Antitrust Act. Guide to Antitrust Laws. Government and Law Investopedia. https://www.investopedia.com/terms/s/sherman-antitrust-act.asp

--0--