



Thomas A. Schatz
President

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The Antitrust Modernization Commission
Attn: Public Comments
1001 Pennsylvania Avenue, NW
Suite 800 South
Washington, D.C. 20004-2505

via email: comments@amc.gov

Re: COMMENTS REGARDING COMMISSION ISSUES FOR STUDY

On behalf of the more than one million members of the Citizens Against Government Waste (CAGW), I appreciate the opportunity to submit the following in response to the Antitrust Modernization Commission's request for comments on the antitrust laws and how those laws correlate with today's constant technological advances and the dynamic and ever-evolving marketplace.

Much has changed since the last modernization commission met in 1998. There has been a plethora of antitrust suits brought by determined private law firms seeking to undermine successful businesses, often in conjunction with state attorneys general, as well as by competitors who have been unable to compete in the marketplace and view the courts as their last resort. In these instances, taxpayers bear the cost of the litigation.

Since the antitrust laws are supposed to protect consumers, not competitors, the commission should review the standards under which state attorneys general and the federal government should initiate such lawsuits. As the commission evaluates the current antitrust laws, CAGW believes the best way to keep the public's best interests in mind is to:

- • Examine the most efficient way to promote greater accountability and further independent review in antitrust lawsuits;
- • Carefully scrutinize whether a blocked merger benefits consumers or competitors who may be unfairly exploiting the Sherman Act; and
- • Not allow foreign entities' laws to influence antitrust decisions that affect U.S. businesses and the economy.

To better clarify why CAGW believes these are points that must be considered, I have detailed each subject in the attachments to this email.

Sincerely,

Tom Schatz



Greater Transparency and Accountability

In the last few years, there has been a large increase in antitrust lawsuits flooding the courts. Taxpayers have the right to be aware of the complete cost of these lawsuits, and the commission should recommend greater accountability and transparency, as well as independent review of antitrust cases.

While the antitrust laws are supposed to protect consumers, not competitors, some recent cases have been instigated by competitors with little or no benefit inuring to consumers. There should be standards established for an independent review of major antitrust cases, particularly those brought by more than one state.

Obtaining information on the cost of antitrust lawsuits has proven to be difficult. For example, Citizens Against Government Waste (CAGW) attempted to determine the cost of the Microsoft litigation. Despite Freedom of Information Act requests that were made in January of 2002 to the Justice Department and the states involved in that case, CAGW has yet to receive a complete accounting of the costs.

Several states treated the inquiry as if the expenditures were a state secret. State attorneys general are the people's advocates, their budgets are in the public domain, and both taxpayers and legislators have the right to know how much is being spent on each and every case in order to determine whether or not the attorney general's office is effectively spending tax dollars. This is particularly relevant when states are running budget deficits or may have other needs, such as homeland security, that are not being adequately funded.



Mergers and Acquisitions

The marketplace always moves more rapidly than the courts in regard to technological advances. In the area of mergers and acquisitions, some judges have used antitrust laws to block several mergers that could have benefited the public and made companies more productive. The decisions followed the theory that the mergers would have given the newly formed company an unfair advantage over the competition.

Recently, a judge struck down a proposed merger in order to regulate a market that includes just two of the enterprise application technologies the companies provide, while ignoring their competition from outsourcing firms. Hence, the decision to block this merger benefited not the public, but competitors who stood to lose from the merger. The tenets of the Sherman Act require the government to go after true monopolies, not mergers aimed at increasing productivity, and making products more accessible to users.

Competition is the best method of determining which company will provide the goods and services that Americans need and want. CAGW believes that the government's incursion in business and trade should be as infrequent as possible, and only occur in rare cases of predatory or other non-free trade practices.



Dismissal of U.S. Law by Foreign Entities

Since the last antitrust commission, there appears to be a growing lack of respect for U.S. court decisions by foreign entities. The European Commission (EC) has ignored the findings of U.S. courts, forcing industries to comply with different regulations in Europe than in the U.S. Incompatible decisions like these set a dangerous precedent for antitrust cases around the world that encourages companies to favor litigation over innovation as a tool to compete.

U.S. courts have repeatedly determined that the government should not be in the business of regulating the marketplace. But the EC has thumbed its nose at the U.S. antitrust system, promoting protectionism instead of competition. This slows the introduction of innovations into the marketplace, and adds uncertainty to an already shaky world economy.

The commission should promote a global standard for antitrust law, working with the EC and other foreign entities. Laws should be based on industry standards rather than each country's regulations, creating policies that stimulate economic growth and innovation rather than stifling competition.