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June 29, 2005

To: Antitrust Modernization Commission
Attn: Public Comments
1120 G Street, NW, Suite 810
Washington, DC 20005
Submitted also via electronic mail: comments@amc.gov

RE: Request for Public Comment – Robinson-Patman Act

The Robinson-Patman Act should not be modified or enforced differently, but completely repealed. The Act, like all antitrust legislation, is an immoral attack on the freedom of one individual to trade with another to mutual advantage. It prohibits *voluntary* actions of buyers and sellers (by limiting the terms of contracts); punishes those who are most moral (the most able, efficient, successful producers—those who create wealth); and rewards those who cannot compete. This is not justice. I have enclosed my book, *The Abolition of Antitrust* (Transaction Publishers, May 2005). The essays in this book explain the historical, legal, economic, and moral reasoning that gave rise to the passage and growth of antitrust legislation, and the errors in that reasoning. From my essay, "Antitrust Is Immoral":

> A civilized man guides his transactions with others by reference to the trader principle. As opposed to acting like a barbarian or a thief, such a man produces values and then offers them in voluntary exchange for the values produced by others—he "earns what he gets and does not give or take the undeserved." (Ayn Rand, "The Objectivist Ethics," in *The Virtue of Selfishness* (New York: Signet, 1964), 34). He does not seek values by initiating force or by fraud. Rather, he sets the terms under which he is willing to trade his production, uses persuasion, and then leaves others free to accept voluntarily, amend, or reject those terms. The essential way to violate the trader principle is by initiating physical force.
>
> The trader principle is the moral foundation of a civilized society and of free-market transactions. When I buy an automobile, for example, I voluntarily accept the terms offered by the seller. I agree to pay a specified amount over a fixed period of time, with the stipulation that the car may be repossessed if I fail to meet those terms. I regard the car that I am getting as a greater benefit to my life than is the money I am spending. Conversely, while the seller also voluntarily agrees to the terms of the trade, he regards the money he receives as a greater value than is the car he is relinquishing.
>
> A property owner may set whatever terms he wants for its trade—assuming there is no force or fraud involved. An artist, for example, might

stipulate that as a condition of purchasing his painting, a buyer must agree to allow the sale of reproductions, and not to alter the artwork. A potential buyer must then decide if the trade, including all of its contractual terms, is in his rational self-interest.

Every owner of a material value, every producer—no matter the industry and no matter the scope of his enterprise—has the moral right and obligation to guide his economic life by reference to the trader principle.

Antitrust laws, by contrast, *make acting on the trader principle a crime.* This is one more way in which those laws criminalize the men who use reason in the marketplace. The laws violate the trader principle by barring certain companies from entering into a contract—if in so doing the transaction results in one of the companies gaining "too large" a market share or in one of the companies besting its competition.

From "Antitrust: 'Free Competition' at Gunpoint" by Dr. Harry Binswanger:

Since a business cannot force anyone to buy, it must rely on the public's ability to recognize the objective value of its product. A firm's market share is the summed result of the independent value judgments of all the buyers, each acting in his own self-interest. Any sale requires two components: the creation of the good or service by the producer, and the voluntary payment by the buyer, in recognition of the value, to him, of that good or service. (If a buyer errs in his evaluation, if he comes to regret his purchase, he does not have to repeat his mistake; if he has been defrauded, then he did not consent to the actual transaction and he may gain restitution through the courts.)

In this sense, we in the buying public, by our "dollar votes," are the ones who make big businesses big. A business's market share reflects the decisions of the buyers—not collectively, but individually, with each individual making his own decisions in the context of his own priorities, goals, and life.

One grants economic power to a company whenever one buys its products. And the reason one buys is to profit by the purchase: one values the product more than the money it costs—otherwise, one would not buy it…

[A]ntitrust laws, which make it illegal to compete too effectively, are described as "preserving free competition."

From what does antitrust law seek to free us? Not from coercion, but from a firm's economic power. In the name of protecting this phony "freedom," the government uses its political power to deprive the firm of its actual freedom: the freedom to produce and trade. Thus, antitrust law violates not only the firm's rights but also the rights of everyone who would benefit from the activities the firm is barred from engaging in.

Who benefits? The failures—the feeble, mismanaged, inefficient competitors who, without antitrust protection, would not be patronized by buyers. The gun of antitrust law is aimed at the best competitors *and* at the buyers who want their products. In protecting less able firms from the market leader, antitrust laws are actually protecting them from buyers' choices…

To "participate" in a market means to make an offer, an offer to buy or an offer to sell—that is, to bid a certain amount or to ask a certain price. There is no such thing as an "unfair" bid or asking price. The amount bid or asked may be

silly, or even insulting, but it cannot be unfair. Those who consider the bid too low or the asking price too high will simply reject it.

What if the buyer just has to have the product, which is offered at an outrageous price? To say the buyer "just has to have it" means: it is of extremely high value to him. If he pays the price, that is because he judges that he will get more than his money's worth. He cannot complain of "unfairness" when he thinks he is gaining by the transaction.

Note the prejudice against producers. People are not sympathetic when a business "just has to have" customers. No one claims that potential customers are being "unfair" when they decide not to buy a given product because the price is too high for them. No one says that a business is being "robbed" by those who "force" it to lower its price below the level the business wished it could charge—or even below the level it needs in order to stay in existence.

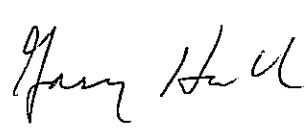
But buying and selling are two sides of the same coin. In order to buy, one has to have money earned by producing and selling something of value, whether a product or labor services. Even when one receives the required funds from another, one can only enter the market as a consumer because someone made the money by productive work. As Ayn Rand observed:

> Nature does not grant anyone an innate title of "consumer"; it is a title that has to be earned—by production. Only producers constitute a market—only men who trade products or services for products or services. In the role of producers, they represent a market's "supply"; in the role of consumers, they represent a market's "demand." The law of supply and demand has an implicit subclause: that it involves the same people in both capacities. (Ayn Rand, "Egalitarianism and Inflation," in *Philosophy: Who Needs It?* (New York: Signet, 1984), 130).

In any trade, morality is impartial between the parties. No moral principle can hold that fairness means more of the gains from trading should go to buyer, or to the seller. Even if one party gains ten-fold or a hundred-fold more than the other gains, there is no injustice. Morality deems it a fair transaction when both people enter it willingly, consensually, undefrauded.

I encourage you to consider these arguments and read the fuller explanations in the essays in *The Abolition of Antitrust*. Antitrust prosecution is an injustice that should not be allowed to continue.

Sincerely,



Gary Hull, Ph.D.

THE ABOLITION OF ANTITRUST

GARY HULL, EDITOR

Transaction Publishers
New Brunswick (U.S.A.) and London (U.K.)

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This book is printed on acid-free paper that meets the American National Standard for Permanence of Paper for Printed Library Materials.

Library of Congress Catalog Number: 2004058124
ISBN: 0-7658-0282-1 (cloth); 1-4128-0502-3 (paper)
Printed in the United States of America

Library of Congress Cataloging-in-Publication Data

The abolition of antitrust / Gary Hull, editor.
p. cm.
Includes bibliographical references and index.
ISBN 0-7658-0282-1 (cloth : alk. paper); 1-4128-0502-3 (pbk. : alk. paper)
1. Antitrust law—United States. 2. Antitrust law—Economic aspects—United States. I. Hull, Gary.

KF1649.A71 2005
343.73'0721—dc22 2004058124

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