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**Antitrust Essay for**

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Antitrust is a concept that stems out of the notion that there should be a way to promote equitable and healthy competition in the marketplace. In the United States, the first federal statute that prohibited activities that restricted interstate commerce and competition was the Sherman Antitrust Act of 1890. The act, passed during a time when many states had just passed their own antitrust laws, was broad in scope and prohibited attempts at monopolization of interstate trade or commerce. The act made such attempts a felony. Over the two decades that followed, the United States passed additional laws to ensure equitable competition and to prevent unfair trade practices. This entry reviews the Sherman Antitrust Act and then discusses several major antitrust cases involving the media.

## Sherman Antitrust Act

Two key provisions of the Sherman Antitrust Act were meant to curb situations where the concentration of power interferes with trade or reduces competition. One provision applies to cartels, or attempts by companies to limit industrial output, reduce competition within their market sector, and/or manipulate market share. A second provision, which is enforced by the Department of Justice, makes attempts to monopolize any part of commerce or trade within the United States illegal. When a firm is found to be in violation of the act, the Department of Justice can serve it with an injunction to prohibit further illegal action or, in extreme cases, the courts can order that it be dissolved.

Typically, enforcement actions under the antitrust act are civil actions and violators may be punished by fines, but criminal penalties can be applied and may be severe. Criminal prosecutions are usually limited to intentional and clear violations of the law, such as price fixing or rigged bids. Criminal offenses may result in

fines for corporations of up to $100 million and/or imprisonment of up to 10 years. Injured private parties may sue for triple the amount of damages incurred.

During the first two decades following passage of the act, most enforcement was against labor unions. This targeted action against unions created problems for workers who needed some way to balance the bargaining power of their employers. Some scholars speculate that this was because the language of the act was fairly vague and corporations used loopholes to their advantage. But by the turn of the century, the

Progressive era movement led by

President William McKinley and subsequently President Theodore Roosevelt breathed new life into the trust-busting action by the government. Congress first created the Federal Trade Commission (FTC) in September

1914 and 1 month later passed the Clayton Antitrust Act, with the purpose of adding clarity and substance to the Sherman Antitrust Act. This legislation amplified or changed the Sherman antitrust law by providing greater regulatory supervision of price discrimination, corporate supervision, and mergers. It allowed the Department of Justice and the newly created FTC the ability to regulate all mergers and gives government the discretion to approve them or not.

The FTC was set up with the power to enforce U.S. civil antitrust law and promotion of consumer protection, giving it the unique dual mission to promote both consumer protection and promote competition.

The FTC protects consumers by stopping unfair, deceptive, and fraudulent practices in the marketplace. Criminal aspects of antitrust are handled by the Department of Justice, but the FTC shares jurisdiction over federal civil enforcement of the laws with the Antitrust Division of the Department of Justice. Within the FTC there are three major bureaus that oversee and carry out its regulatory responsibilities.

Bureau of Consumer Protection enforces federal laws related to consumer affairs including advertising and marketing, telemarketing fraud, financial products and practices, and identity theft and protection. The bureau is also responsible for the Do Not Call Registry, which in the past few years has come under considerable scrutiny for its inability to contain robocalls. Bureau of Competition is charged with elimination and prevention of “anticompetitive” business practices. The bureau also reviews proposed mergers and investigates nonmerger practices that could include illegal agreements among businesses in the same industry, such as suppliers and commercial buyers. Bureau of Economics supports the other two bureaus by providing expert knowledge related to the state of the economy and the impacts of FTC’s legislation and operation.

Antitrust laws attempt to regulate market forces that could lead to unwanted market power. Excessive market control by one company in a particular industry is called a monopoly, while control of an industry by two or three companies is called an oligopoly. In both cases, it is possible for one or a few entities to stifle competition and innovation by controlling production within an industry (or market sector) and set prices for goods or services within that industry.

Over the past 100 years, antitrust has played a prominent role in the regulation of many aspects of the media business. In some cases, government used antitrust laws to promote competition, to maintain a level playing field among different competitors or to curtail unwanted behavior. In other cases, the government chose not to regulate in an attempt to encourage development of new industries.

## Major Antitrust Cases in the Media

This section presents several examples of the government’s use of antitrust laws to regulate the media.

### Associated Press

The U.S. Constitution guarantees the freedom to publish and freedom from government

interference for all, but it does not allow a cooperative association to prohibit one member of the cooperative from providing breaking news to nonmembers. During the Mexican American War (1846–1848), five New York newspapers formed the New York Associated Press to share the cost of transmitting news from the war front. In 1892, it became the Associated Press (AP) and in 1900, it was found guilty of restraint of trade.

During the early 20th century, the cooperative grew rapidly. In 1945, the Supreme Court held that AP had been violating the Sherman Antitrust Act by prohibiting members from selling or providing news to nonmembers as well as making it very difficult for nonmember newspapers to join the AP. The resulting Court decision facilitated the growth of its main rival, United Press International.

### Radio Corporation of America

The earliest days of broadcasting began when the Radio Corporation of America (RCA) was formed by General Electric (GE), Westinghouse, and the American Telegraph and Telephone Co. (AT&T). The newly formed company benefited from sharing patent and engineering expertise of all three companies, immediately gaining an advantage in the manufacture of radio sets for the newly developing field of broadcasting.

RCA also started the National Broadcasting Company (NBC) so that those who purchased radio sets would have something to listen to. Over the next 4 years, NBC developed several radio networks by stringing together radio stations across the United States using AT&T long-lines to make connections.

The Department of Justice began to examine the interlocking structure of this arrangement and after several years of litigation, Westinghouse and GE agreed to sell their interests in RCA, without admitting violation of the Sherman Antitrust Act. The outcome helped to establish competitive conditions for the manufacture of radio receivers. In the meantime, NBC continued to operate two radio networks, known as NBC Red and NBC Blue, simultaneously and benefited from advertising revenues.

### NBC and CBS

In 1934, the Federal

Communications Commission (FCC) was formed to take over the duties of the Federal Radio Commission established in 1927. It, like the FTC, is an independent regulatory commission set up to license radio and television stations and oversee telecommunications. The FCC has the power to promulgate rules that have the effect of law. Throughout the 1930s, accusations were made against both NBC and its primary rival, CBS, that the two networks engaged in anticompetitive behavior by signing talent to their own inhouse talent agencies and tying station affiliates to strict, onerous contracts. These and other network–affiliate practices came under scrutiny by the FCC in 1938 to see whether rules were needed to control network tendencies toward monopoly.

During this time, NBC held tight control on the radio markets in major metropolitan areas. In most large markets like New York, Boston, and Chicago, it owned two radio stations, each affiliated with one of the two NBC radio networks. These stations were usually the most powerful stations in the market, meaning they could reach larger audiences than smaller stations.

CBS radio, the other major network, also tended to own larger stations in the market. Mutual radio, the fourth commercial network, actually had more affiliates than either NBC or CBS, but these affiliate stations were smaller and less powerful and therefore unable to compete for listeners and advertisers.

By 1941, the FCC concluded that there had been abuses by the powerful networks and ordered NBC to sell one of the two stations it owned in each of the large metro markets. It also ordered NBC to divest itself of one of the two major networks. The Supreme Court upheld the FCC decision and as a result of the NBC network breakup, the ABC network was formed.

### Cross-Ownership

During this era, the FCC began to examine whether ownership of radio stations by newspapers in the same community (cross ownership) might stifle differing voices in the community. For example, in Syracuse, NY, both the morning and evening newspaper and the NBC radio station were owned by the same company. After World War II, when television licenses were allocated, the same company received a channel allocation, which became the NBC TV affiliate. Critics wondered whether news about local politics could be negatively impacted or whether different points of view might be stifled by such close media cross-ownership.

During the 1950s and 1960s, the FCC seemed too busy getting television and the new FM radio band underway to deal with cross ownership issues; however, in 1970 the commission limited ownership. Television stations had to divest any radio stations they owned in the same market. The commission also began a long investigation on newspaper broadcast station cross ownership. In 1975, the FCC prohibited new newspaper– television combinations and required newspapers to sell their television stations when there was only one TV station in the market. These rules were developed to prevent tying advertising across platforms and to encourage diversity of voices in the community.

***American Telegraph and Telephone Co.***

In 1885, AT&T was established. The company quickly expanded to create a nationwide long-distance network and began to acquire local and state telephone services. By 1913, most regarded AT&T a “natural” monopoly; that is, the immense cost of creating a nationwide service to compete with it was unlikely. State public utility commissions and the FCC regulated cost and structure of AT&T under Title II of the 1934 Communications Act. During this time AT&T was barred from entering new businesses, but it developed many new communications technologies in its famed Bell Laboratories. During most of the 20th century, AT&T firmly controlled many technologies but was stifled in introducing them in the telecommunications field.

In 1982, the company settled an 8year antitrust suit with the Department of Justice that essentially broken up the conglomerate and allowed competition to enter a deregulated marketplace. The rapid growth of new technologies, such as cellular telephones, home computer services, the Internet, and mobile wireless services, has now merged media and wireless together.

In 2005, Bell South bought AT&T with the idea of creating new media provider of voice, web, and video services. AT&T purchased DirecTV in 2014 to give it access to the fast-growing Latin American market and in 2016, it announced plans to acquire Time-Warner Media. However, the Department of Justice informed AT&T that it would block the acquisition under the Clayton Act unless it agreed to sell either DirecTV or Turner Broadcasting (the group that included CNN). The Department of Justice claimed that vertical mergers between companies with complementary businesses would reduce competition and that the $108 billion acquisition would substantially lessen competition in the media field because it would give AT&T excessive control over many of the cable channels and film vaults owned by Time Warner. The result would be higher prices and less innovation for the consumer. However, after a 2-year review, the U.S. Court of Appeals rejected the government’s claims and allowed the merger to proceed. Today the new AT&T owns DirecTV along with Time Warner Media that includes HBO, CNN, TBS, and a host of cable networks. It is the world’s largest media conglomerate.

### Microsoft

The FTC and Department of Justice have had a long history of litigating large, high-profile cases involving monopolistic practices, unfair competition, or deceptive advertising. They have not won all the big cases. The Microsoft case is one example. In 1994, the FTC began an inquiry into whether Microsoft was abusing its monopoly on personal computer operating systems by tying its web-browser, Internet Explorer, to its operating system and making it more difficult for competitors to load their software on the Windows platform. In a high-profile trial, the court ordered a breakup of the company. However, the court’s decision was reversed on appeal. In 2001, the Department of Justice reached a settlement with the company that required it to share its application program interfaces with third-party companies and to provide computer equipment to schools in states that had also sued the company.

### Facebook

During the 2016 presidential campaign, Cambridge Analytica, a consulting company working for the Donald Trump campaign accessed data from tens of millions of Facebook users. The FTC was concerned that Facebook should have done more to prevent that breach of data and to protect user privacy. Earlier, in 2012, the FTC had sued Facebook for making misleading promises about to what extent consumers could keep their personal information private. Now, it appeared that Facebook had ignored that earlier agreement. After nearly 2 years, the FTC and Facebook reached a settlement, whereby Facebook would pay a $5 billion penalty for violating consumer privacy and be required to make fundamental changes to its privacy policies. While the FTC touted this settlement as unprecedented, many Facebook critics claimed that the settlement was too small relative to the company’s massive profits.

### YouTube and Google

Privacy is a growing concern for the FTC as Americans become more reliant on media services, apps that can automate daily routines and provide new ways to communicate with friends, work from home, or explore interests and hobbies. Under a 2019 settlement with the FTC, YouTube and Google agreed to pay $170 million for collecting data on children under 13 years of age without properly notifying parents or getting their permission before collecting and using the children’s information for advertising purposes. As a result of the settlement, YouTube will be required to create a system for channels to identify their children directed content and when implemented, viewer’s information can no longer be tracked for advertising purposes.

Tech giants appear to be a growing concern for the FTC. In 2020, the FTC issued orders to major tech giants like Alphabet (Google), Apple, Amazon, Microsoft, and Facebook for information on terms and purposes of transactions and acquisitions of start-ups between 2010 and 2019.

## Final Thoughts

Nearly 90 years after its passage,

Supreme Court justice Thurgood

Marshall dubbed the Sherman Antitrust Act the “Magna Carta” of our free enterprise economy. By that, he meant that antitrust laws are as important to the continuance and preservation of economic freedom and the free enterprise system as the Bill of Rights is to the protection of fundamental personal freedoms. The United States is generally considered to be the first modern economy to develop comprehensive laws to address market abuses. Today, the European Union and many countries in the Asia-Pacific region have developed similar laws. On a global scale, implementation of antitrust laws can help consumers by keeping competition high, by preventing price fixing, and by encouraging innovations.

[**See also** Federal Communications](https://sk.sagepub.com/ency/edvol/the-sage-encyclopedia-of-journalism-2e/chpt/federal-communications-commission-fcc)

[Commission (FCC);](https://sk.sagepub.com/ency/edvol/the-sage-encyclopedia-of-journalism-2e/chpt/federal-communications-commission-fcc)

[Telecommunications Act of 1996](https://sk.sagepub.com/ency/edvol/the-sage-encyclopedia-of-journalism-2e/chpt/telecommunications-act-1996)

## Legal Citations

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