Freeman Classic Reprint

The Attack on Concentration

by Yale Brozen

(Editor's Note: Yale Brozen, former member of FEE's board of trustees and a retired professor of business economics at the University of Chicago, died March 4. Reprinted below as a memorial is his article published in *The Freeman*, January 1979. It is especially timely because of the government's current legal action against Microsoft.)

Once we gave high regard to those who created great enterprises by designing desirable products, producing them at low cost, and offering them at such attractive prices that they won a large body of customers. Henry Ford, in his day, was looked upon as an industrial hero. Today, he would be regarded as a monopolizing fiend upon whom the antitrust prosecutors should be unleashed. The 1921 Ford Company, with its more than 60 percent share of the market, would today be called a dominant firm and charged with violating the antitrust laws.

Just a few months ago [1978], an antitrust complaint was served upon Du Pont because it developed a low-cost method for producing titanium dioxide pigments. There was no objection to the development of a lower-cost method of production, but Du Pont made the fatal error of passing enough of the cost saving on to buyers to win 40 percent of the market served by domestic producers. Not only did it do that but it is going on to enlarge its capacity, building a new plant at De Lisle, Mississippi, in order to serve even more customers (who also would like to obtain domestic titanium dioxide at low cost). Can you imagine that any enterprise would engage in such a nefarious activity? It should, according to the Federal Trade Commission (FTC), behave like a monopolist. It should restrict its output, instead of expanding, and charge higher prices (and let the business go to foreign firms).

This article is condensed from an address before the Ashland, Kentucky, Economic Club, September 15, 1978.

Antitrust Upside Down

That is a total perversion of the intent of our antitrust law. If the FTC is not standing antitrust law on its head, then I simply do not understand what our antitrust law says. The words "every contract, combination, or conspiracy, in restraint of trade is hereby declared to be illegal" say that it is *restraint of output* that is in violation of the law. But the FTC contends that Du Pont is violating the law because it has "adopted and implemented a plan to *expand* its domestic production capacity."[1] That quite plainly says that the FTC regards Du Pont as breaking the law by *expanding* trade. Is that what the law says is illegal?

In whatever way I torture the phrases in the antitrust law, I simply cannot get it to say that expanding trade is illegal despite the thunder in the FTC complaint. Whenever anyone builds more capacity and uses it to produce

more product, more trade must result. I can't believe that Du Pont is building a new titanium dioxide plant just because it wants a handsome monument at which to gaze—and neither does the FTC. What the FTC is complaining about is that Du Pont intends to produce titanium dioxide in its new plant and increase its sales—and it is nasty of Du Pont to have already built enough plant to take care of 40 percent of the needs of customers for domestic product. That makes Du Pont "the nation's dominant producer." There can hardly be anything more venal than a "dominant producer," unless it is a "shared monopoly."

"Brand Proliferation" Through Hypnotic Advertising

"Shared monopoly" sounds like a label for a conspiracy among several firms to monopolize a market and share the fruits of that monopoly. But that is not what the FTC means by the label. The phrase is FTC code for a few firms winning and holding a large share of the business in some product line. The FTC staff is currently prosecuting Kellogg, General Foods, and General Mills for "sharing a monopoly" of ready-to-eat (RTE) cereals. These three firms have managed to produce and distribute cereals that taste good enough and cost consumers little enough to win more than three-quarters of the RTE business. That is their crime.

Did these three firms conspire with each other to somehow force other firms out of the industry and then conspire to reduce supplies and raise prices? The FTC disavows any accusation of any such conspiracy. It says that the crime of which these firms are guilty is "brand proliferation." The heinous conduct of which it accuses these firms is that of trying to give consumers what they want. It is now a crime, that is, the FTC is trying to make it a crime, to follow that old merchandising maxim for success, "give the lady what she wants."

The cereal companies should have stuck to producing corn flakes. Never mind the demand for a bran cereal, or a high-protein cereal, or a vitamin-enriched cereal, or a presweetened cereal. Anyway, says the FTC in its complaint, there are no differences between cereals—except those artificially created in the minds of consumers by hypnotizing them with advertising.[2] Of course, if the new brands offered by the three firms in the 1950s and 1960s had not won a large share of the market, nothing would have been wrong with "brand proliferation." But the new brands pleased consumers. They won for the three firms a large share of the market. That, at bottom, is the crime these firms committed. The RTE cereal industry has become "concentrated," that is, most of the sales in the industry are made by a few firms. That is a condition which neither the FTC nor the Antitrust Division intends to tolerate.

The FTC staff also has accused the eight major petroleum refiners of engaging in a "shared monopoly" in the petroleum-refining industry. It is asking that these corporations be broken into smaller companies. The major crime of which the Big Eight stand accused is that of maintaining a "noncompetitive market structure." This phrase is never cogently defined by the FTC staff, but "concentration" seems to be the nub of it. Complaint counsel says the eight companies "are well vertically integrated firms with *substantial horizontal concentration* at every level of the industry" (emphasis supplied).[3] Counsel also says the eight "own and operate refineries accounting for approximately 65 percent of rated crude oil refining capacity in the relevant market." Even more damning, "This figure . . . understates concentration . . . because [the eight firms] . . . utilize more of their refining capacity than other refiners. Hence [their] share of *production* of refined petroleum products . . . is higher than their share of rated refinery capacity. . . ."

Again, here is the accusation that these alleged monopolists are not behaving like monopolists. Instead of restricting output and restraining trade, they push their capacity harder than do their competitors and expand output and trade. Apparently they are unaware of the fact that they are monopolists who can get higher prices by restricting output. Again, the FTC is displeased by efforts to expand trade and is standing antitrust law on its head by saying that the *failure to restrict trade* is a