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The Beneficial Aspects of Exclusion from Anti-Trust Laws

Anti-trust laws set standards for the competitive conduct of businesses and prevent large companies from becoming too powerful. Anti-trust laws include monopoly-busting regulations that control anti-competitive behavior involving a company raising the costs or decreasing the revenues of rivals to prompt competitors to increase their prices, reduce production volume, and eventually, exit the market. Anti-trust enforcers and the courts' decisions prohibit monopolistic tactics and thus protect less efficient competitors from default or bankruptcy. Exclusion can harm competitors and benefit consumers, provided competition takes place on merit. Being excluded from anti-trust laws can be beneficial for businesses since they can maintain their market power by means of disadvantaging their competitors. Therefore, the exclusion from anti-trust laws benefits enterprises by increasing their market power, enhancing their competitive capacity, and regulating the anti-competitive conduct of competitors in specific industries.

In the United States, for-profit and not-for-profit organizations, including labor unions, sports organizations, agricultural cooperatives, and insurance companies, can be excluded from anti-trust laws, provided they are not involved in interstate commerce and have no intention to influence market trends. According to the provisions in the Sherman Act, sports organizations can be excluded from anti-trust laws since sporting events are exhibitions rather than acts of commerce ("The Antitrust Laws"). For instance, Major League Baseball, the National Football League, and the American Professional Basketball League are allowed to operate as monopolies in their respective sports. Anti-trust laws also exclude agricultural cooperatives from liability since farmers often have to collude to remain competitive in the global food market. In such a way, exclusion from anti-trust laws increases not-for-profit organizations' capacity for operating successfully in the world market.

Once excluded from anti-trust laws, businesses assume the ability to protect their monopoly on certain products or services and achieve market power by outperforming their competitors. Firms can disadvantage their competitors by exclusionary conduct that increases their costs or limits their access to both suppliers and consumers (Sawyer 22). In such a manner, for-profit organizations can cause a reduction in competitors' production capacity if the marginal costs of established competitors are increased (Sawyer 23). The exclusion of certain business organizations benefits the competitiveness of other companies by incentivizing rivals to reduce their prices and raise their output while remaining viable. Thus, anti-trust laws encourage business entities to engage in economically rational and maximally profitable practices, thereby mitigating the anti-competitive effect.

Exclusion from anti-trust laws is beneficial because it allows a company to team with other firms to enhance their business practices. For example, according to the Newspaper Preservation Act, a newspaper, which is designated as a failing publication, can be excluded from anti-trust laws and team up with another local daily in a joint operating agreement (JOA) ("Memorandum Opinion and Order"). Importantly, both newspapers must agree to a revenue-sharing agreement to pool all gains from advertising, and their advertisement rates should be identical ("Memorandum Opinion and Order"). Before forming a JOA, both companies should petition the Justice Department to receive a confirmation, without which such a practice would be considered unfair and illegal. Thus, the government uses provisions in the U.S. anti-trust laws to regulate joint operating agreements between individual entities that side with each other to sustain their competitiveness in the market.

State-owned for-profit enterprises are also excluded from anti-trust laws if these act in their sovereign capacity and do not pursue legislative intent to cover business combinations. In the *Parker v. Brown* case of 1943, the Supreme Court of the United States expanded the scope of the United States anti-trust law and granted state agencies immunity from federal anti-trust law ("Parker v. Brown, 317 U.S. 341 (1943)"). The beneficial aspects for the state entities being excluded from anti-trust laws include the ability to lobby government officials, affect competition results in the public interest, and compete with the private sector. The regulation of lobbying is excluded from anti-trust laws because it can violate citizens' First Amendment rights to petition the government for a redress of a grievance ("Parker v. Brown"). Hence, anti-trust laws ensure First-Amendment protection to state-owned business organizations.

However, exclusion from anti-trust laws, which harms competitors, can benefit consumers if competition on the merits is involved. Anti-trust laws rely heavily on both the profit-sacrifice standard and the consumer welfare effect standard serving as tests of businesses' anti-competitive intent, which can provide evidence of anti-competitive purposes. The consumer welfare effect test, which is conducted by anti-trust law enforcers, is designed to determine the effect of exclusion on price and consumer welfare (Melamed). In other words, if companies use their powers of exclusion to coerce or intimidate consumers, their exclusion from anti-trust laws will evaporate, and their prices will be regulated by the government. Thus, anti-trust laws serve as a consumer welfare prescription since the tension between the dominant firm and competitors is beneficial to customers.

American anti-trust laws protect businesses that use exclusionary practices involuntarily or based on market conditions. In the U.S., the Supreme Court is likely to weigh the competitive effect of strategic business decisions that dominant companies made rather than disregard claims of monopolization or after-market restraints on services agreements (Sawyer 22). For example, in 2000, in *Eastman Kodak Co. v. Image Technical Services Inc.*, the Court dismissed the charges against Kodak for exclusion in the after-market sales of its products, holding that product lock-in and consumers' poor awareness might make the customers dependent on Kodak articles (Sawyer 22). Such a state of affairs perfectly explained the reasons for Kodak's monopolizing restraints. The scope of anti-trust liability is large in the U.S., but the legislation still guarantees protection for dominant firms that impose economic harm on competitors without a direct intention.

Both European anti-trust laws under Article 82 and American anti-trust laws under Section 2 require courts to conduct a "profit sacrifice" test regarding dominant firms, thereby benefiting competitors. Such a test is to determine whether excluded businesses' conduct involved sacrificing profits in circumstances where it was rational, or the main aim was to exclude competitors (Jones and Sufrin 381). For instance, using a predatory pricing technique, according to which firms set prices below cost to push competitors out from the market, businesses can be charged for anti-competitive conduct (Jones and Sufrin 381). Investigation in the research and development (R&D) sector that results in the elimination of competitors from the market is also a form of anti-competitive conduct, which is forbidden by anti-trust laws and envisions anti-trust liability. The profit sacrifice test conducted by courts can benefit competitors by bringing charges against a dominant firm on the part of its illegal exclusionary conduct.

Additionally, companies operating in specific industries, which are of great importance for the state, are excluded from anti-trust laws when regulation is preferable to competition, and natural monopolies have to be controlled. For example, railroads, ocean shippers, and insurance organizations are granted exclusion from anti-trust laws while setting prices, determining terms of services, and forming joint ventures because this way the state can transform them into highly regulated cartels that can orient collective industry decisions for the common good (Melamed). The U.S., as the world's only superpower, is aware of the fact that the free market and fair competition between rivals are key indicators of a competitive marketplace and a good national economy. Those are the main reasons the state is interested in excluding companies in specific industries from anti-trust laws.

As a result, exclusion from anti-trust laws benefits the state by providing an opportunity to mitigate the effect of businesses' monopolistic power and increasing the capacity of state-owned companies to compete with the private sector in a free market. The main benefits for profitable organizations that are excluded from anti-trust laws involve the ability to increase their market power, introduce their goods and services to global consumers, and freely set prices for their output in domestic and international markets. Anti-trust enforcers and courts prohibit monopolistic tactics and practices only in areas where competition is not free. In other circumstances, the state allows companies to compete for higher market power and open access to suppliers and consumers. Therefore, exclusion from anti-trust laws helps a country to keep the balance between monopolies and oligopolies in different industries and between the private and state-owned sectors, thereby encouraging fair competition in a free market.

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