

Does the presence of just one producer automatically point to an absence of competition requiring anti-trust authorities to intervene?

Competition is considered to be lacking when a company holds large shares of a “market” – all the more so when it is alone in producing a given good or service. Such firms are systematically suspected by public authorities of “abuse of dominant position,” and their prices and practices are condemned as anti-competitive. Anti-trust policy in Europe, as elsewhere in the world, subjects them to various penalties.

However, apart from cases of legally protected monopolies, competition continues to exist. Public authorities are really just preventing those companies from better satisfying consumers. The authorities' decisions block rather than favour free competition.

The constraints of anti-trust policy

Anti-trust policies – and those of the European Union are hardly an exception – are rooted in the belief that competition is measured by the number of competitors in a given economic sector. According to this belief, competition is “pure and perfect” if many suppliers offer exactly the same product and none of them can influence prices.

Accordingly, a company is ruled to be a “near-monopoly” if it holds a substantial share of sales. It is considered to be in a “monopoly” position if it is alone in providing a particular good or service. From this perspective, competition is weakened in the former case and inexistent in the latter.

Anti-trust policies then aim to restore competition by having public authorities control these companies' commercial practices and prices. If they are suspected of abusing their position to

raise prices, sanctions and other measures are provided for, supposedly to protect consumers.

In addition to price rises, price cuts are also targeted by anti-trust authorities. They can apply sanctions if they rule that, by setting prices “too low,” a company is pushing its competitors out of the niche it occupies or preventing them from getting in. Many companies in numerous sectors have been sanctioned in the EU for applying such prices.(1) For example, after being convicted in Japan for cutting prices on its microprocessors, Intel is currently being investigated by Brussels for the same type of commercial practice.(2)

Public authorities may also sanction a “dominant” company or sole producer by requiring it to share part of its assets with competitors. For example, Brussels compelled Microsoft to provide strategic information on its operating system to rivals. In addition, public authorities oblige



1. See Valentin Petkantchin, *European anti-trust restrictions on rebates and discounts by “dominant” companies*, Economic Note, Institut économique Molinari, June 2007, available at: <http://www.institutmolinari.org/pubs/note20075en.pdf>.

2. See Commission's press release, available at:

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO%2F07%2F314&format=HTML&aged=0&language=EN&guiLanguage=en>. On this subject, see also Cécile Philippe, “AMD-Intel: Are price cuts anticompetitive?,” available at: <http://www.institutmolinari.org/editos/20070328.htm>. A version of this item was published in *The Wall Street Journal* on March 1, 2007.

telephone or electricity companies to share their networks with resellers of their own services.(3)

In short, once a company is assumed to be “dominant” or alone in a niche, it can easily find itself prosecuted by anti-trust bureaucracies. It is then no longer able to offer the prices or discounts it chooses to, nor can it provide the contracts it would like to arrive at with its customers. Whatever prices it offers can be judged as either too high or too low, leading to sanctions. Anti-trust authorities require it not only to face the commercial risks inherent in its activities but also to cope with a permanent climate of uncertainty, diverting resources in the process. These resources are then no longer available to satisfy consumers more effectively.

Arbitrary subdivision of market niches by anti-trust authorities

The very concept of a “market” – also called a “relevant market” in bureaucratic jargon – in which market share is supposedly captured by a single firm, is based on the notion that certain products cannot be substituted by consumers with other products. In theory, then, a product would constitute a separate “market” when it is judged not to have any close substitutes.

For example, in the 1999 conviction in France of the maker of the Barbie doll, anti-trust bureaucrats had to rely on an arbitrary subdivision of the toy sector, as noted by economist Philippe Simmonot.(4) After separating toys for boys from toys for girls, they had to isolate dolls from other toys for girls, such as arts and craft products, games involving creative manual activity, construction games, puzzles or stuffed toys. Moreover, in the doll “market,” they had to distinguish between “baby dolls,” “miniature dolls” and “model dolls.” It was only in this last sub-sub-niche of the sub-niche of toys for young girls –

“revolutionised” by Barbie, in the words of the French competition council – that the maker was considered to be abusing its “near-monopoly” position, capturing 86% and 90% of sales by value in 1990 and 1991 respectively.(5) It was sentenced to pay 1.5 million francs (nearly 230,000 euros).

But such procedures ignore the fact that it is consumers who ultimately decide subjectively if one product can in practice be substituted for another as they see it. Thus, despite the arbitrary bureaucratic subdivision, buyers can easily decide to replace a Barbie doll with another type of doll or another toy. Many toys are indisputably in competition with Barbie when parents or grandparents decide to devote part of their budgets to pleasing their children or grandchildren.

Pushing the limits of market subdivision until they find a niche where a company may be on its own, as anti-trust authorities have been doing, is simply baseless. It may always be possible to accuse Sony, for example, of being the only maker of Sony products or Porsche of being the sole provider of cars bearing that brand, but this has no economic relevance.

The economic advantages of having a single supplier

Despite the difficulty in defining different and clearly delineated niches, let us imagine nonetheless that it was possible to observe companies that were alone in producing a particular good or service.

In the absence of legal or regulatory barriers to entry,(6) this phenomenon would simply indicate that, given the specific nature of certain technologies at a particular moment and the characteristics of production and demand in the sector at issue, this company is able, even on its own, to satisfy consumers in the best way possible.

3. On compulsory sharing in telecoms, see Valentin Petkantchin, “Regulatory Framework for Tomorrow’s Telephony Systems,” brief submitted to the Telecommunications Policy Review Panel, Montreal Economic Institute, Canada, August 2005, pp. 13-15, available at: http://www.iedm.org/main/show_events_en.php?events_id=126. For an assessment of compulsory sharing in the electricity field, see Robert Michaels, “Vertical Integration and the Restructuring of the U.S. Electricity Industry,” *Policy Analysis*, July 13, 2006, Cato Institute, available at: <http://www.cato.org/pubs/pas/pa572.pdf>. Free competition depends on firm respect for property rights, but this type of anti-trust intervention attacks property rights and results in a *de facto* nationalisation of assets subjected to compulsory sharing, thereby reducing incentives to invest in their upkeep or modernisation.

4. See Philippe Simmonot, *L’erreur économique*, éditions Denoël, Paris, 2004, p. 225.

5. See ruling No. 99 D-45 of 30 June 1999 on practices seen in the French toy sector, Conseil de la concurrence, 11 December 1999, available at: <http://www.conseil-concurrence.fr/pdf/avis/99d45.pdf>.

6. With the existence of such barriers to entry and thus of an impeded market, removing these barriers is the logical solution for restoring free competition. Having the anti-trust authorities impose price controls, penalties and sanctions on companies does not resolve this lack of competition. On the contrary, it adds new layers of regulation that run counter to this goal.

This type of case would involve the most efficient company which, through economies of scale, new practices or better organisation, is likely to supply all consumers under optimal conditions.

In some sectors, such as those that rely on the existence of networks (rail or air transport, electricity, or telecommunications) or where innovation plays a major role (high-tech), there may be a company that, as the most efficient and innovative, naturally becomes the preferred or sole supplier to all consumers. There is no valid reason to exclude this possibility.

Anti-trust authorities, in their systematic zeal to penalise these companies once they are judged to be “dominant” or alone in their niche, thereby end up inflicting direct harm on consumer satisfaction. They prevent these firms from taking advantage of economies of scale, lower prices and better offers for certain goods or services.

A sole producer remains subject to competition

But if a company remains alone in a niche, without competitors, does that not mean competition is lacking? Would anti-trust authorities not then have to intervene to restore it?

Contrary to appearances, this reasoning is incorrect.

On the one hand, it fails to consider that, when a competitor decides to leave a sector, its factors of production (labour, buildings, machinery, equipment, raw material, etc.) are either converted and transferred to the production of other goods and services, thereby meeting other more urgent consumer needs, or they remain partly unused. If ever a sole producer decided to reduce production and raise prices and profit margins without economic justification, all these resources could be converted back and reused to take advantage of the opportunities that the sole producer created through its behaviour.

The situation of a sole producer is never immutable: changes in technology or in consumer preferences may justify the appearance of new competitors that will not hesitate to enter the market to meet customer needs better and to turn a profit. If a company finds itself alone in a niche, its position can be challenged at any time, as long

as it enjoys no legal protection.

Thus, even if in a market niche there are no direct competitors to an established company, competitive pressure is still there. This may take the form of new companies appearing in a niche where there arise opportunities for profit, and it may also involve companies active in other sectors of the economy.

For example, with regard to telephone services, where monopolies have long been protected by public authorities, cable television firms, mobile operators or electricity distributors are able now, with prohibitions to entry removed, to become competing suppliers of telephone and other telecommunications services.

By intervening to cause production to rise artificially and prices to drop in a given market niche, anti-trust authorities are eliminating profit opportunities and actually preventing the emergence of these new competitors. At the same time, they are depriving consumers of the chance to benefit later from broader, more diverse choices and offers.

Are consumers penalized if a sole producer lowers output and raises its prices?

A situation like this would be irrefutable evidence of a market failure under free competition. Would it not be justified to think – at least when no competitor comes in and prices remain higher than they were – that consumers are being “cheated” and that the anti-trust authorities should step in to protect them?

In reality, it cannot be claimed that such behaviour by a sole supplier in a free market causes harm to consumers. It is true that, for the product in question, production is lower and prices are higher: consumers appear to be penalised, at least with respect to this particular good or service. This is a direct and visible consequence.

But what this reasoning overlooks is that resources have been freed up by the sole producer’s lower output. These resources – machinery, labour, buildings or raw materials – are available to produce other goods or services elsewhere in the economy.

Therefore, following the sole producer's behaviour and a reorientation of resources, indirect effects on the free market include more resources and greater production of other goods at lower prices than would otherwise have been the case.⁽⁷⁾

From a consumer's point of view, production of these other goods and a lowering of their prices are more pressing than maintaining lower prices in the sole producer's specific niche. Instead of remaining there, factors of production are drawn elsewhere. If competitors have trouble attracting them and cannot emerge to challenge the sole producer, this is because consumers prefer that companies elsewhere in the economy take them instead and use them to fill some of their other needs.

Anti-trust policy considers only the direct effects on consumers in an isolated sector. It fails to take account of how consumers fare in other areas or sectors of the economy and keeps them from benefiting from lower prices on goods and services other than those of the sole producer.

Conclusion

It may sometimes be economically justified for a company to be kept as the sole supplier satisfying the entire demand in a market niche. Such a company is not exempt, however, from the pressures of competition and the requirements of consumers.

If it rests on its laurels and disregards major innovations capable of improving the quality of service or lowering prices, this offers an opportunity for another firm to serve customers better and turn a profit. New competitors – or companies entering from other sectors of the economy – will not take long to seize such opportunities, provided legal or regulatory barriers imposed by public authorities do not prevent them from doing this.

Anti-trust authorities forget that competition is not measured by the number of competitors but by the absence of such barriers enabling competition to remain vigorous even when there is just one company in a market niche.

Rather than attack monopolies that remain legally protected or eliminate enduring regulatory obstacles, anti-trust authorities take a whole series of measures to put an end to “monopoly” or “near-monopoly” situations, claimed to be incompatible with free competition. Under the pretext of restoring it, such measures instead block competition, protect inefficient companies against pressure from “dominant” producers and in reality deal a blow to the latter's ability to better meet all consumer needs. It is necessary to stop believing that the fact of a company being “dominant” or being the sole producer in a sector automatically means competition is inexistent.

“Once a company is assumed to be ‘dominant’ or alone in a niche, it can easily find itself prosecuted by anti-trust bureaucracies and is then no longer able to offer the prices or discounts it chooses to, nor can it provide the contracts it would like to arrive at with its customers.”



**Institut Economique
Molinari**

rue Luxembourg, 23 bte 1
1000 Bruxelles
Belgique
Tél. +32 2 506 40 06
Fax +32 2 506 40 09
e-mail:
cecile@institutmolinari.org
www.institutmolinari.org

The Molinari Economic Institute is an independent, non-profit research and educational institute. It endeavors an economic approach to the study of public policy issues.

Reproduction is authorized on condition that the source is mentioned.

© Institut Economique
Molinari

Printed in Belgium

Design par LEONard

7. On this subject, see the reasoning that economist Murray Rothbard applies to the similar situation of cartels that hold back production to raise prices, in *Man, Economy and State*, Ludwig von Mises Institute, 1962/2004, pp. 636-643, available at: <http://www.mises.org/rothbard/mespm.PDF>.