

Some Notes on Antitrust, The Market as A Communications System and Human Evolution

THE MARKET AS A COMMUNICATIONS SYSTEM

I believe that it was the economist Hayek who first pointed out (35 *American Economic Review* 519) that a capitalist market achieves its greatest glory and utility if it is seen as a communications system in which economic actors may signal to each other their own perceptions of value. The market is not only a place where one can exchange mere goods, i.e. tangible objects, though of course that happens there. The most important thing about a market is that is a mechanism which allows/encourages the exchange of information, i.e. *of signals*. (Cities are preeminently markets in the broadest sense—see a paper from the sixties by Christopher entitled "The City as a Mechanism for Sustaining Human Contact.") The market is a method by which a social consensus on relative value may be reached. Our society attempts to allocate its resources through the free-flow of a myriad of individual decisions.

FOOTNOTE 59 ALLUDES TO THIS VIEW

Would it not be helpful to view Anti-Trust Law as a means to ensure that this exchange of information is not stunted? Without putting undue emphasis on what may have been only the most casual wording, in his famous Footnote 59 of *Socony-Vacuum*, Douglas alludes to an 'information theory' approach to anti-trust law. He says: "Whatever economic justification particular price fixing agreements may be thought to have, the law does not permit an inquiry into their reasonableness. They are all banned because of their actual or potential threat to the *central nervous system* of the economy." (emphasis added) The 'central nervous system' of an organism is that part of it which handles communications between its disparate parts. What Douglas is saying is that the market acts as a coordinator of economic activity—buyers and sellers signal their perceptions about relative values of good and services through their offers to buy and sell.

ANTI-TRUST AND THE FREE FLOW OF INFORMATION

The real reason for anti-trust (in general) and the per se rule (in particular) is to prevent the distortion of signals within the economy; it is not merely to prevent amorphous 'bad things' (such as a decreased 'moral fiber'^see Hofstadter's article on the decline of anti-trust) or a lessening of 'consumer welfare' per Bork. Under this 'information approach', the long-term health of the society depends on the collective wisdom of all the buyers and sellers in the market place and their ability to communicate their perceptions. Prices vary—'rightly' or 'wrongly'—as changes the collective human perception of the environment. 'Arrangements' (as the euphemism runs) which prevent members of the market from speaking freely about prices will eventually distort the allocation of resources with a loss of social welfare. And this collective wisdom can best emerge when there is nothing to prevent buyers and sellers from communicating their own perceptions of value in accordance with their own judgment. *Socony-Vacuum*. Anti-trust law appears to be about preventing interference with the flow of information in the market as much as any particular social or economic goal.

FREE MARKETS OF IDEAS AND OF GOODS

Just as we base our faith in democracy on the wisdom which we hope will emerge from vigorous and unfettered debate, so too do we assume that the free-flow of information among market participants will lead to the most beneficial allocation of resources on the societal scale. Our faith in the market is, perversely, a socialistic faith. I mean that a common defense of capitalism in our century is not that it's so OK for the smarter and more energetic people to get rich but that their own personal enrichment is but a casual by-product of the ever more efficient ways to organize the basic resources of the planet which they have been clever enough to discern and which ultimately benefits us all.

THE SIGNIFICANCE OF 'COMPETITION'

How then do we reconcile anti-trust's obsession with "competition" with the growing emphasis which evolutionary studies places on "cooperation?" By the technique found useful in so many areas: stepping up a level in our examination of the system. My observation is that the concern for "competition" uses that element as a

symbol; not too much emphasis should be placed on its presence or absence, *per se*. Competition is not an end in itself but is a means of ensuring that there is a free market which can make "accurate" decisions about resource allocations. Under this theory, any manipulation of the market by anybody (except the government, of which more later) is suspect.

MARKET 'PARTICIPANTS' SHOULD NOT BE 'MARKET REGULATORS'

The real issue in anti-trust is not really whether a practice is pro- or anti-competitive but whether there is a manipulation of the market outside of the normal offer-and-bid of the market itself. The goal of anti-trust is to keep the market "clean," to prevent extra-market activities which may tend to skew it. We use "competition" as an indicator that there are no elements of the market which seek to step outside their role as market participants to become self-appointed market regulators. Such market regulation is a role reserved, if at all, for the sovereign. In this way we can see "trusts" and "restraints of trade" as an attack on the basic governmental structure; that it is a crime should thus be no surprise. Thus government regulation of markets is no contradiction but just another form of social self-defense.

EVOLUTION NEEDS INFORMATION

I do not use the phrase "self-defense" casually. I see the free-flow of information, to which Douglas alluded, as essential to the survival of the human race. It is critical that no one unselected group interferes with the collective judgments of the market; it is only by an "uninhibited, robust and wide-open" debate, *New York Times C. v. Sullivan*, over values that a social organism can come to the outcome of any election or the closing price on a stock exchange. The evolutionary imperative to experiment ("Evolution is about trying stuff" per Stewart Brand) and allow the information to flow is the same, whether in politics or economics. It requires that there be minimum manipulation of the raw data of the marketplace of ideas or goods. A social organism which seeks to direct its own future--to even the slightest degree--must ensure that the information which it may and will need to adjust to a changing environment is not impeded. Viewed from the perspective of information and evolution, perhaps anti-trust law may gain increased vigor and be able to put to rest the, I believe, narrow and question-begging notion that all that matters in anti-trust law is "consumer welfare."