

America's Antitrust History And What We Can Learn From It

THE GILDED AGE AND ANTITRUST'S BEGINNINGS 1888-1900



1890

Congress passes the Sherman Act, the country's first antitrust law.

Unreasonable restraint of trade = illegal
Monopoly + monopolization = illegal

PROGRESSIVE REFORMS, EXPERTISE, & FLEXIBILITY 1900-1939



1911

Standard Oil Co. v. United States, 221 U.S. 1: 8 to 1

Not all monopolies are illegal

1918

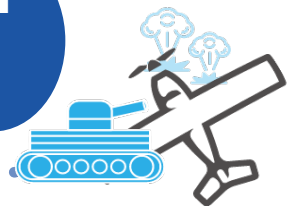
Chicago Board of Trade v. United States, 246 U.S. 231, 238: unanimous

Established the RULE OF REASON!

Antitrust law was still working to establish itself.

- Era started with courts interpreting Sherman Act in a really strict way (prohibiting specific kinds of conduct)
- Era ended with courts employing more nuanced analysis
 - RULE OF REASON: Lawful if procompetitive > anticompetitive
 - Size alone is not an antitrust violation

PROGRESSIVE ANTITRUST: FROM WORLD WAR II THROUGH THE WARREN COURT 1940-1969



Far more aggressive enforcement now.

- Per-se rules
 - Automatically outlawed certain conduct regardless of other factors

CONSUMER WELFARE STANDARD

- Grounded in theoretical and empirical economic evidence
- ONLY enforce antitrust when evidence of consumer harm

1956

United States v. E.I. duPont de Nemours & Co., 353 U.S. 586: 4 to 3

Introduced "market definition" requirement

"CONSUMER WELFARE" ERA: PUTTING CONSUMERS FIRST 1970-PRESENT



Courts refine the consumer welfare standard

- More sophisticated methods to determine pro- and anti-competitive conduct
 - Price
 - Quality
 - Innovation
- Now non-price factors like quality more important than ever
 - More services free-to-use than ever before

1977

Cont'l T.V., Inc. v. GTE Sylvania Inc., 433 U.S. 36, 54: 6 to 2

Officially adopted the CONSUMER WELFARE STANDARD

2004

Verizon Commc'ns Inc. v. Law Offices of Curtis V. Trinko, LLP, 540 U.S. 398: unanimous

Recognized punishing success will stifle innovation

2018

Ohio v. American Express, 138 S. Ct. 2274: 5 to 4

Must consider both sides in two-sided markets