

# AntitrustConnect Blog

## Maybe History Can Provide Useful Perspective

Steven J. Cernak (Bona Law PC) · Tuesday, August 1st, 2017

*“We’re living in a moment where an increasing share of our commerce and communications are being mediated by a handful of dominant platforms, and that has huge ramifications for competition in ways that it’s becoming clear the current antitrust regime is not fit to address.”*

*“It is evident that business has grown to such an extent, mergers have been taking place with such rapidity, and economic power is being concentrated in fewer and fewer hands to such a degree, that the legislative and executive power of this Nation should come quickly to an understanding as to a formula for clarifying the antitrust laws by which we can stabilize our economy.”*

Do those two quotes look familiar? They should, if you’ve been reading any of the mainstream media discussion of concentration and corporate power and how antitrust enforcers should “do something about it.” The news coverage started last year, especially during the U.S. presidential campaign – I covered them [here](#) and [here](#). The stories have continued in 2017. Some decry [alleged increases in concentration and decreases in competition across industries](#). Others focus more specifically on a [few giant tech companies](#) or the potential nefarious effects of “big data” or [horizontal shareholdings by a small number of investors](#).

That first quote above is from the [latest such article](#) and quotes Lina Khan, a fellow with the Open Markets program at the New America Foundation. The article nicely encapsulates the themes that run through the articles: A handful of companies are getting too big, antitrust ought to do something about it, and if it can’t or won’t, maybe we need to change the antitrust laws.

And the second quote? It, too, relates to a giant, high-tech company, one with huge market shares in several industries. One that intimidated its much smaller competitors, suppliers and distributors. And the person speaking is no mere pundit but a U.S. senator speaking during a hearing to study potential changes to the antitrust laws to better handle corporate giants.

You’re forgiven if the name of the senator doesn’t leap to mind immediately. It is Sen. Joseph O’Mahoney (D-WY) and the quote comes from November 8, 1955, the first of 18 days of hearings into the antitrust issues raised by the operations of General Motors Corporation.

You remember General Motors Corporation, right? The company that had about a 54 percent U.S.

light duty vehicle market share the year before the hearings but then saw that share steadily decline to just under 20 percent before declaring bankruptcy in 2009. The hearings spent plenty of time on other “dominant” non-automotive businesses owned by GM at the time, like Frigidaire, a company whose name was practically synonymous with “refrigerator.” GM sold it in 1979. Also Electro-Motive Division, the GM division that led the passenger locomotive industry in the switch from steam to diesel. At the time of the hearing, EMD had sold more than 60 percent of the diesel locomotives then operating on U.S. railroads. GM sold EMD in 2005. (As an aside, those 1955 hearings have a colorful refutation of EMD’s competitors’ “[path dependence](#)” explanation for EMD’s dominance – but that’s a story for another day.)

Perhaps you’re more interested in retail. Well, then here’s a different quote for you:

*... stores sapping the civic life of local communities with an absentee overlordship, draining off their earnings to his coffers, and reducing their independent business men to employees or to idleness.*

What kind of stores were performing those dastardly deeds? Internet retailers or “everything stores”? Big box retailers? Club stores? No – chain stores. Specifically, The Great Atlantic & Pacific Tea Company or simply A&P. The quote is from Rep. Wright Patman during the debate over the price discrimination law of 1936 that bears his name. As for A&P, its store numbers went from about 16,000 in 1930 to about one-quarter of that 20 years later. In 2009, it was ranked the 21<sup>st</sup> largest grocery retailer in the U.S., shortly before its first of several bankruptcy filings. (More on A&P’s history, including the quote, in [this book](#).)

So what lessons should we take from this history? I do not mean to suggest that antitrust enforcers should ignore these large companies and their actions. Enforcers must always remain vigilant to attempts to distort or obstruct market forces and unnaturally preserve these companies’ current positions. I also don’t mean to minimize the social changes that might arise from the growth – or long slow decline – of these companies or other changes in the economy. While consumers and society overall benefitted from A&P’s and GM’s developments, such changes were tough for local grocers and employees of steam locomotive builders, for instance.

But I do think the history can provide perspective, some comfort even, that the economy has survived, even flourished in many ways, with these types of wildly successful companies before. After all, the original reason for the success of these companies was that so many consumers found their offerings so attractive, whether that was lower-priced one-stop grocery shopping, cleaner and more efficient locomotives or “[a car for every purse and purpose](#)”.

Yes, antitrust enforcement played some role, for good or bad, in the gradual decline of these giants. But probably playing a larger role were changing tastes and technologies and company missteps, such as GM’s mistakes surrounding the U.S. market’s move to smaller cars. Even during the giants’ era of supposed dominance, new or growing competitors, like Kroger for groceries and General Electric for locomotives, offered other choices to customers and then eventually outlasted them.

Just like “[every generation throws a hero up the pop charts](#),” every several years a company or two comes along and seems unassailable but, eventually, isn’t. (Forget GM and A&P – I have trouble

convincing my students reading the U.S. and EU Microsoft cases from 20 years ago that those cases were a big deal.) Those proposing new types of antitrust enforcement or laws to deal with this generation's giants should answer these questions: Why is this time different? Why are you so confident that this new type of government intervention will produce better results than a market policed by antitrust enforcement?

I'll finish with one more quote, this time from an expert at the 1955 hearings who didn't heed the great philosopher's admonition to be careful about making predictions, especially about the future:

*It may turn out that Chrysler Corp.'s entry in 1923 is the last successful one.*

Almost exactly two years later, a foreign company established its U.S. subsidiary in an abandoned Rambler dealership in California. Modest sales of 288 vehicles followed in 1958. You might not remember [Rambler](#)—but surely you know [Toyota](#).

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