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Amy Klobochar, *Antitrust: Taking on Monopoly Power from the Gilded Age to the Digital Age*, Harvard Business School Press, 2021, 607 pp. $13 Hardcover

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Abstract. Minnesota's Senator Amy Klobuchar takes up educating the American public on competition policy in her book Antitrust: Taking on Monopoly Power from the Gilded Age to the Digital Age. Concerns regarding undue market power in the Tech Sector run across the political aisle, and there are multiple cases under review in the United States against: Facebook, Apple, Amazon, Netflix, and Google.
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Book review

Is there anything less interesting than United States' antitrust policy? However, Minnesota's Senator Amy Klobuchar has taken up exactly this in her book *Antitrust: Taking on Monopoly Power from the Gilded Age to the Digital Age.* There are unique international characteristics across legal systems with different approaches to anticompetitive legislation that defines what is and is not acceptable in commercial arrangements, and when it passed the Sherman Antitrust Act of 1890, the United States became a forerunner in antitrust legislation. Several laws and rulings followed, and the United States is left with a series of complex and political questions regarding how firms are allowed to interact. In the US, every four years when voters decide on their political leaders regarding fiscal, monetary, and trade policy, antitrust policy is waiting in the background regarding how antitrust policies will affect the average citizen's economic well-being. However, as removed as the average person is from fiscal, monetary, and trade policy, antitrust policies garner even less interest. Not so for Senator Klobuchar, and agree or disagree, she has taken up this Herculean task to educate the general public regarding the intricacies of US anti-competition policy.

Any academic understanding of US antitrust policy—and an academic understanding is the place to start—begins with economic theory and what

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an economic understanding lends to how firms are allowed to compete. In the 1950s, Harvard economist, Joe Bain, established the accepted industrial economics' causal chain toward the study of firm interaction. Industry structure leads to how firms conduct themselves, which leads to an industry's performance and the ability for markets to get consumers products at low prices. This structure, conduct, performance lends itself to the importance of industry structure and its ability to get consumers products at low prices. More is the pity, because industry structure is not the end goal of anticompetition policy, but actual products and low prices. Associated with these industry structure, conduct, performance is the bedrock principle of economies of scale, which is the output market relationship between production and cost related through technology and managerial processes, where average costs decrease as production increases. Well-founded instances of economies of scale justify market concentration because duplicated sunk costs are eliminated with market concentration, and society is better off with concentration when production and costs exhibit scale.

Like other areas in common law, statutes are passed, and courts are left to apply the law on a case-by-case basis. Landmark cases clarify many applications, and these interpretations and subsequent applications form the basis of case law (Hay, 2007). For example, *Standard Oil, Alcoa,* and *Grinnell* define what it is to be a single price monopolist. Other rulings define what it means to exercise undue market power in price discrimination, tying, and other areas of market power (Kwoka & White, 2014). As a progressive Minnesota Senator, Klobuchar favors strict enforcement toward antitrust law applications, and throughout the history of case law, her narrative and the cases she includes, the contemporary sources she sites, and how she interprets antitrust law favors progressive antitrust enforcement. It is not that simple.

Two general approaches to antitrust laws are partitioned into the Harvard and Chicago views, and Senator Klobuchar makes a surprising effort to inform the reader of both. As the institution where Professor Bain worked, the Harvard approach to antitrust law and enforcement emphasizes industry structure, conduct, and performance. The central focus is on market conditions and concentration, and market conditions that lead to concentration are interpreted as anticompetitive. Loosely interpreted, this Harvard view is less sympathetic toward mergers and combinations are anticompetitive without considering actual output market outcomes on prices, innovation, and market conditions, and there is a low bar to illustrate the effects of market concentration. It is concentration itself that is problematic. However, such a view is outdated, and contemporary antitrust law is more complex (Hay, 2007, p.27; Ginsburg & Wright, 2015, p.380).

Shortly after the Harvard approach was formulated, scholars at the University of Chicago re-evaluated antitrust interpretation and enforcement to formulate how concentration influenced structure, which

influenced market performance, and the ability of producers to get innovative products to consumers at low prices. Under the Chicago view, large producers need not be anticompetitive just because they are large. This Chicago view is not fixated on market shares and pre-conditions to interpret and enforce antitrust laws but the actual effects of lower prices and innovation, which requires a more sophisticated approach to antitrust laws. Although Milton Friedman—a leading Chicago School figure—was weary of economies of scale and government sanctioned concentration, the Chicago view is less concerned with market structure and more concerned with market outcomes (Carson, 2018; Carson, 2020). and when there are gains to lower prices and greater consumer welfare, the Chicago view is less focused on per se market concentration as an indicator of market power. In the Chicago tradition, mergers and concentration are tolerated if lower prices and greater innovation result, and there is a higher bar in the use of active antitrust legislation and enforcement. In economic theory and legal practice, the focus on actual lower prices and market outcomes rather than market preconditions won the day, and antitrust laws follow the rough outlines of the Chicago view (Ginsberg & Wright, 2015). Subsequently, Senator Klobuchar's antitrust interpretation and the narrative she follows is heavily influenced by the Harvard view toward antitrust interpretation and is dated.

However, the world is more complicated than a binary choice between simple Harvard and Chicago views toward antitrust and industrial economics. A good illustration for how economic principles are used in the changing industrial economic landscape is *Information Rules* (1999) by Carl Shapiro and Hal Varian. Using basic economic principles, Shapiro and Variant apply key economic principles to the changing economic environment and how changing technologies are key to firm behavior. Nowhere are the effects of market power more prevalent than the Tech and medical sectors, and Senator Klobuchar is correct to question how growing market power in the Tech Sector may need greater oversight and antitrust enforcement. For example, in the 1992 *Eastman Kodak Company v. Image Technical Services*, Kodak was found guilty of tying parts to the purchase of copiers. In contemporary antitrust, where computer designers and manufacturers send updates that can change software requirements that may be used to hasten obsolescence that was not available or known by consumers when hardware was purchased. Or, firms offering free applications may change agreements after unsuspecting consumers accept a free product, only to have terms change once consumers are locked-in. Examples for potential unsuspected exercises in market power are near limitless, and the result may be that firms are exercising undue market power under current antitrust laws and enforcement.

Nevertheless, not all commodities and output markets are equivalent. As a result, homogeneous commodity market concentration can tolerate a high-bar for antitrust and merger enforcement, and economies of scale are more likely to bring prices down. For example, the oil and gas market is

one industry where the underlying product—crude oil—is set mostly by international oil markets; however, competition exists among smaller regional producers (Carson, forthcoming). Because of scale, the low bar interpretation toward market power and merger policy makes little sense and prevents economically beneficial market concentration. Oil and gas companies can reduce prices through concentration, sharing infrastructure, and consolidation. Examples exist in other industries. Subsequently, Senator Klobuchar's low-bar approach to antitrust and merger policy does not apply in the homogeneous oil and gas industry and other parts of the modern economy.

Concerns regarding undue market power in the Tech Sector run across the political aisle, and there are multiple cases under review in the United States against the FANGs: Facebook, Apple, Amazon, Netflix, and Google. Some cases are in state courts. The State of Texas has a lawsuit against Google's Alphabet, where it accuses Google of breaking state antitrust laws that boost Google's already large advertising business (Horwitz & Hagey, 2021). Colorado is suing Google over allegations that Google is operating a monopoly with its app store and Google Billing (Tracy, 2020). At the federal level, in a combination with 36 states, the Federal Trade Commission has filed a new version of its antitrust lawsuit against Facebook, bolstered by its case that Facebook is abusing its monopoly power in social media (Kendall, 2021). Furthermore, where concerns regarding concentration were primarily from the left, there are now concerns from both the political Right and Left. In addition to traditional Democratic concerns against market power, Republican Senators Mike Lee (Utah) and Josh Hawley (Missouri) and representative Jim Jordan (Ohio)—all political right of center—raise concerns over increased market power from Big Tech.

An attorney herself, Klobachar wants a low standard for antitrust litigation and enforcement, where it is easier to show firms exercise market power and extend market concentration. However, the low-bar comes at the expense of realized benefits and economies of scale, which helps consumers with potentially lower prices and economic growth. Other areas within contemporary antitrust economics are left largely untouched. Throughout the book, Senator Klobuchar repeatedly combines antitrust legislation with social equity objectives that are not part of antitrust law, which weakens her positions and politicizes the antitrust debate. Nevertheless, agree or disagree, Senator Klobuchar has taken up the Herculean task to educate the general public regarding the intricacies of US antitrust policy. Her success is limited by her ideological bias and political agenda that is apparent when comparing her conclusions to an informed interpretation of anti-competition policies.

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