Creative Antitrust
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The FTC is expensive. They reported a $425.7 million budget in fiscal year 2025, and according to them "a single monopolization case can cost well over $25 million in fees for outside experts." This is not to say that the money isn't well-spent. If they're truly accomplishing their stated mission to "protect consumers from unfair and deceptive conduct by businesses and to promote competition in the marketplace," it's very possible that their budget pays for itself manifold and benefits all of us. But is the money being spent wisely? Could we get all the benefits of the FTC (or even greater benefits) at a lower cost?

It's very possible that we could. Consider a paper that was published last year in the *Antitrust Law Journal*. The paper proposes a simple financial solution to antitrust concerns: force companies to take "negative ownership" of their rivals (to "short sell" their stock). Any firm that has negative ownership of its rivals would lose money any time their rivals' size or profits increased. If the negative ownership stake were large enough, this would be a strong disincentive to any anti-competitive behavior. Firms would become laser focused not only on increasing their own profits, but decreasing their competitor's profits – exactly what's supposed to happen in the type of competitive economy that the FTC wants us to have. A negative ownership requirement wouldn't have any direct costs to the FTC, immediately saving many millions annually on the huge costs of experts and lawsuits. And it could apply equally to the entire economy simultaneously, a broader scope than the FTC's traditional individual, case-by-case enforcement approach.

Negative ownership is a creative idea for achieving antitrust goals, but it's not the only one. A European project called OpenWebSearch shows another promising approach. The idea is that Google cemented its strong market position in part because its search engine uses a proprietary web index that would-be competitors can't access. Creating a web index as good as Google's would require huge investments that nearly all startups (not to mention mature companies) can't afford to make. The OpenWebSearch project aims to create a web index that rivals Google's in breadth and quality, and provide it freely worldwide. If they can succeed, then "everyone" will be able to build a high-quality search engine that rivals Google with a day or two of effort, and viable Google competitors will flood the market. Google's near-monopoly on search could conceivably crumble, not because of an expensive lawsuit or a financial arrangement, but because of a public infrastructure project that increases competition by decreasing barriers to entry.

The OpenWebSearch project is creative, not only in the sense that it's imaginative and different from existing antitrust approaches, but also in the sense that it creates something rather than destroying something. Standard FTC enforcement consists of a multi-million dollar lawsuit to *prevent* something (a merged company) from being created, or to effectively *destroy* something (a company that's too large). Rather than destroying or preventing creation, OpenWebSearch actively creates something that never existed before, and thereby facilitates the creation of new companies and whatever new products they can dream of that rely on the index they've created.

OpenWebSearch has not yet completed its efforts, and it remains to be seen whether it will succeed. But the model of creation and provision of technology to foster innovation and competition has proven itself many times over in the world of open source software. Consider Microsoft Windows: it consisted of 50 million lines of code in 2015 and it has grown since then. If a new startup today wishes to build a new operating system to take on Microsoft's dominance, there is no realistic chance that they can write 50 million lines of quality code from scratch without Microsoft's enormous resources. But the existence of open source operating systems like Linux has enabled companies like Red Hat and Canonical to reach billion-dollar valuations and disrupt Microsoft by using Linux's millions of lines of code and building on the Linux public good. Linux has decreased

Microsoft's anticompetitive power in the same way that OpenWebSearch intends to decrease Google's. If we had more open source software, bigger tech companies would have smaller moats, and we would see a healthier ecosystem of smaller companies that could take down some of the tech giants down a notch and foster a more competitive economy. Creating new technology products for public use could be much more effective and maybe cheaper than suing Microsoft, Google, and their peers.

We could imagine an alternative universe in which antitrust efforts were focused not on destructive and expensive lawsuits, but rather on the provision of enabling technologies. Consider 3D printing as another potential example. If individuals and small startups could easily get access to advanced 3D printing technology, we could imagine a near future where people could download CAD designs and an operating system for free online and then print cell phones in their garages at home, paying only for the cost of materials instead of paying extremely high markups to Apple. We would have more inventors and more small businesses, and a more competitive economy, as manufacturing capabilities were distributed to individual entrepreneurs rather than being monopolized by the Foxconns of the world. If this has any realistic probability of coming to pass, it's worth investing in 3D printing technology as a public good in the way that OpenWebSearch is investing in web indexing. The antitrust benefits to consumers could be huge.

Every antitrust issue could be approached in an analogous way: instead of destroying companies or preventing mergers, new public goods (especially technologies) can be provided that decrease barriers to entry and lead to the quick creation of dozens of viable competitors to any potential monopoly. A primarily negative and destructive agency would become one that is primarily positive and creative.

There's no perfect solution to antitrust problems. Like weeds, anti-competitive arrangements will pop up naturally everywhere and we will always need to work hard to beat them back. But the status quo of destructive and extremely expensive lawsuits is not the only possible way to fight this good fight. If we're thoughtful and creative, we can spend less and get a better, more competitive economy.

Sources for Paragraph 1:

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