



Statement of John Conyers, Jr. Antitrust Task Force Hearing on "The Findings and Recommendations of the Antitrust Modernization Commission" May 8, 2007

This hearing of the Antitrust Task Force will come to order. Good afternoon everyone.

I welcome the Chair and Vice Chair of the Antitrust Modernization Commission and appreciate your being here to report on the Commission's findings and recommendations.

For the past three years, our witnesses, along with ten other Commissioners, have been analyzing the antitrust laws to determine whether they are fully effective as is, or if they could benefit from refinements to reflect changes in technology and the marketplace.

For over a century, the antitrust laws have served as our economic bill of rights, providing the ground rules for fair competition. The antitrust laws are our chief bulwark against schemes by cartels and monopolists to deprive consumers and our economy of the benefits of competition and innovation – lower prices, better products, and greater efficiency.

The AMC's report is ambitious. With over 300 pages of analysis and recommendations, the AMC covered a lot of ground. Some of the AMC's recommendations are particularly useful. For example, its recommendation that immunities from the antitrust laws should be disfavored, and only created when the heavy burden is met of clearly demonstrating that the exemption is necessary to satisfy a specific societal goal that trumps the benefits of a free market – is a good starting point for Congress as it moves forward with various proposals.

Other recommendations, such as repeal of the Robinson-Patman Act, I am skeptical of. The Robinson-Patman Act provides a set of guidelines for marketplace behavior by guaranteeing that everyone competing in any given marketplace has a level playing field. It does this by prohibiting sellers from offering different prices to different purchasers of commodities where there is no pro-competitive justification. Robinson-Patman helps endure that small businesses and mom-and-pop stores have the ability to compete with big power retailers like Wal-Mart.

In its recommendations, the AMC suggests repeal of Robinson-Patman, claiming that it is not performing its intended function and that it conflicts with the goals of modern antitrust law. I am not in full agreement with the AMC on this point. Admittedly, the Act has its flaws; it is structurally complex and hard to administer, and it is not often used as an enforcement tool. But these problems don't mean we should repeal the law altogether. Instead of repealing the Act, I believe we should be finding ways to make it work.

I also have concerns about the Commission's ambiguous recommendation on the repeal of *Illinois Brick* and *Hanover Shoe*. In these two cases, the Supreme Court ruled that only direct purchasers, not indirect purchasers, may sue for damages from price fixing, and that antitrust defendants in these cases cannot use the defense that the direct purchaser passed on the overcharge to the indirect purchaser or consumer. *Illinois Brick* has been controversial since it was adopted, and many States have adopted policies that allow indirect purchasers to sue.

I applaud the Commission for attempting to resolve this issue, and I agree that allowing indirect purchasers to sue will enhance consumer welfare. However, I am skeptical of the Commission's proposal because of the potentially adverse effect it could have on direct purchaser actions. If each direct purchaser must determine how much of the overcharge was passed on downstream, it may be very difficult for to pursue these actions. The result could be an overall decrease in holding price fixers and monopolists accountable. This is an issue we should study carefully.

I also want to mention that no matter how current or modern the antitrust laws are, the positive effects of such laws cannot be felt without adequate enforcement by the agencies. The AMC says that U.S. merger policy is "fundamentally sound" and that there "does not appear to be a systematic bias toward either overenforcement or underenforcement."

Yet, in the past few years, with technological and market innovation occurring at breakneck speed, we've seen a wave of consolidation in some of our key industries. In fact, according to Thomson Financial, this past year was the fourth largest in history for mergers and acquisitions. The fact that the DOJ has failed to challenge any of these massive industry-consolidating mergers makes me skeptical of the AMC's conclusion here.

I look forward to hearing from the Commissioners, as well as continuing our ongoing dialogue about the importance of our antitrust laws and making sure they are working as well as possible. Once again, I appreciate all the hard work that our two witnesses and the rest of the Commissioners put into this report.

Recognition of Ranking Minority Member Chabot

I now recognize our Ranking Minority Member, Steve Chabot, for an opening statement.

[when Mr. Chabot has concluded]

Without objection, other Members' opening statement will be included in the hearing record.