

FTC/DoJ Sept. 26, 2007

1. Asked to address monopolization, the conduct that leads to it, and the conduct that accompanies it. Big order; could be, and has been, a lifetime's work. Not sure I know what the organizers are seeking, so please interrupt if I stray. Recognize major cases of Handian monopolization (65 percent plus) are rare. Will ignore the special case of attempted monopolization.
2. How monopolize? Several causes.
  - a. Mergers. Should be prevented or combatted ex post. Powerful legal mandates and precedents.
  - b. Natural advantages: EoS, natural resources, network externalities. Rare except in traditional regulated industries or with narrow market definitions (e.g., some pharma therapy classes).
  - c. Superior efficiency, especially technical innovation. Hardest cases, probably also the most prevalent now. The sample of seven. We clearly should encourage tech. superiority. How antitrust action affects incentives is a complex question over which I must pass.
  - d. Patent accumulation -- a subset. In my view, should be (Cisco as a puzzle). Past cases in my sample of seven: GE, ATT. Xerox questionable.
3. The pricing consequences of monopoly. Varied, depends upon entry barriers. If low, how explain? The USS case -- worst precedent of all. Inco behaved similarly, lost monopoly.
4. Much more important than pricing: Are monopolists superior innovators? Duality of theory; in small or slowly growing markets, perhaps -- need to cover R&D costs. But after scientific or technical breakthroughs, or with secure monopolists reluctant to cannibalize existing rents, monopolies are typically slow, deficient innovators. Intel as a limited exception: "Only the paranoid survive." Microsoft too. But clearly much to criticize on conduct of SO, GE, AT&T, Xerox, IBM (fast second), Microsoft (same). See separate notes, long paper. And combined with a fast second strategy, discourage challengers. Judge Jackson in MS:

Most harmful of all is the message that Microsoft's actions have conveyed to every enterprise with the potential to innovate in the computer industry. Through its conduct toward Netscape, IBM, Compaq, Intel, and others, Microsoft has demonstrated that it will use its prodigious market power and immense profits to harm any

firm that insists on pursuing initiatives that could intensify competition against one of Microsoft's core products. Microsoft's past success in hurting such companies and stifling innovation deters investment in technologies and businesses that exhibit the potential to threaten Microsoft. The ultimate result is that some innovations that would truly benefit consumers never occur for the sole reason that they do not coincide with Microsoft's self-interest.

5. Intel too: the chart from Microsoft testimony, prepared for FTC's Intel case.
6. The superiority of open competition in inducing vigorous innovation seems clear. The presumption of antitrust should be to err on the side of maintaining competition and keeping both conduct and structural barriers at minimum feasible levels.
7. This is hard. There is no way to evaluate such situations without a careful rule of reason analysis guided by appropriate economic theory. Natural experiments don't work; the facts vary too much from case to case. But when monopoly positions exist, the job can be done and should be done.
8. I would be pleased to answer questions.