



Alcoa v. U.S.

a Historical Perspective

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Alcoa's market shares, 1937

<i>Primary Products</i>	<i>% Alcoa</i>
Bauxite, for aluminum	100
Alumina	100
Aluminum, primary	100

<i>Fabricated products</i>	<i>% Alcoa</i>
Sheet	60
Extrusions	60
Forgings	40
Tubing, rod, wire and bar	60
Foil	50
Pistons	22
Powder	50
Utensils	50

Sources: Government estimates and data filed by Alcoa. E.B. Alderfer and H.E. Michl, *Economics of American Industry* (New York, 1942), p. 103.

Crafting a monopoly

- Alcoa scaled up primary operations rapidly during period of aluminum process patent control
- Vertical integration forward and backward
- Secured exclusive contracts with suppliers of scarce inputs: hydro, bauxite, etc.
- R&D internalized; expertise established
- Tariffs kept foreign aluminum out
- Canadian operations did business in Europe
- Costs (and prices) came dramatically down
- By WWI—no new entrants in primary production

Years of scrutiny

- 1911 antitrust settlement

- Alcoa agreed to cancel exclusive supply contracts; to refrain from participating in foreign cartels; to refrain from such downstream practices as price discrimination and market allocations

- FTC investigation, 1922-30

- Concluded with no action taken

- Private suits—*Baush v. Alcoa*

- *2 inconclusive trials around issue of “price squeezing” customer; settled out of court*

Politics of *U.S. v. Alcoa*

Result of policy shift in 2nd FDR administration away from NRA “regime”

- DOJ’s antitrust division (Thurman Arnold and Robert Jackson) brought suits against dominant companies across a swath of US industries
- Alcoa was a sitting duck: a monopoly with poor public image
- 1937: Alcoa charged with kitchen sink of antitrust violations

The Trial

- Trial: presiding judge Francis G. Caffey of US District court for Southern District of NY
- Duration: longest trial in U.S. history—6.5 mo's trial days over nearly 5 years; 58,000 pages of trial record
- The DOJ “outlawyered”?
 - Alcoa's lead atty: William Watson Smith
 - Sympathetic judge?
 - Tenor of government case too simple?
 - No smoking gun: specific acts of wrongdoing easy to refute
 - Arthur Vining Davis—commanding and credible testimony
 - Sympathetic testimonies from competitors and customers
 - “[The] judge did not grasp what we were trying to say about the overwhelming influence of monopoly in stultifying the mergence of new ideas”—Irving Lipkowitz, DOJ economist

Judge Caffey's ruling

- Opinion was lengthy—read aloud over a period of nine days
- Premise: government must *prove intent* to monopolize
 - Alcoa passed the 1911 Supreme court's "test" of an acceptable trust
 - Judge Caffey rejected all Government allegations regarding bad behavior—its positions in all its markets reflected fair and sound business practice
 - Alcoa emerges from the opinion as an efficient and fair monopoly

Appeal

● “If there is any legal way for me to get rid of this case, I’ll do it so quick that it’ll make your head swim.” – Judge Caffey

- Arnold filed an appeal post-verdict, which languished during the war.
- In 1944, following an act of Congress enabling it to sit in lieu of the supreme court, the U.S. Court of Appeals for the Second Circuit heard the government’s appeal.

Wartime interregnum

- Alcoa could not meet military demands for aluminum in WWII
- Government financed doubling of US aluminum capacity from 1941-43
- New entrants into primary production

Learned Hand's Opinion, March 1945

- All that mattered was

“...whether [Alcoa] falls within the exception established in favor of those who do not seek, but cannot avoid, the control of a market. It seems to us that question scarcely survives its statement. It was not inevitable that it should always anticipate increases in the demand for ingot and ...supply them...to keep doubling and redoubling its capacity.... We can think of no more effective exclusion of competitors than progressively to embrace every opportunity as it opened, and to face every newcomer with new capacity already geared into a great organization, having the advantage of experience, trade connections and the elite of personnel.”

Learned Hand

“Having proved that ‘Alcoa’ had a monopoly of the domestic ingot market, the plaintiff had gone far enough; if it was an excuse that ‘Alcoa’ had not abused its power, it lay upon ‘Alcoa’ to prove that it had not. But the whole exercise is irrelevant anyway, for it is no excuse for ‘monopolizing’ a market that the monopoly has not been used to extract from the consumer more than a ‘fair’ profit.”

Learned Hand

“The Sherman act has wider purposes.... Congress...did not condone ‘good trusts’ and condemn ‘bad’ ones; it forbade all. Moreover in doing so it was not necessarily actuated by economic motives alone. It is possible...to prefer a system of small producers, each dependent for his success upon his own skill and character, to one in which the great mass of those engaged must accept the direction of the few.”

Alcoa's view: "the whipsaw"

"I can see why Judge Hand felt that no matter how we got where we were, that it wasn't in the public interest that we be in such a dominant position. If you kept that in mind, then you worked back from that. 'What do I pin on them?' ...the fact that we were the first in every market that we opened up.

"But...suppose that we had acted as a monopoly is supposed to act, and we simply sat back and took our profits and hadn't developed the market? You would say now that there is a monopoly of action. There is a great need for new markets and new uses for aluminum and you aren't meeting it. So, in a way, from his approach, we had no escape. He'd get us either way."

--Leon Hickman, Alcoa attorney

Remedies

● New industry structure

- Surplus Property Board sell-off of wartime assets to Kaiser and Reynolds created oligopoly in primary production
- Alcoa required to license critical alumina production technology to competitors, royalty-free

● Alcoa under court oversight until 1957

● Aluminium Limited (now Alcan) effectively spun off by 1950 court ruling

Impact on Alcoa's behavior

- Greater competition in product markets
- Aluminum prices higher than they might have been had Alcoa not been obliged to shelter less efficient producers?
- R&D focus changes—shift from long-term scientific research to shorter-term process and product engineering
- Timid management?