Research Workshop and Conference on Marketing, Competitive Conduct, and Antitrust Policy

Gregory T. Gundlach, Associate Editor

This past spring, in collaboration with the American Antitrust Institute and its Business School Project and as one of the Journal of Public Policy & Marketing’s developmental initiatives, the University of Notre Dame held the Research Workshop and Conference on Marketing, Competitive Conduct, and Antitrust Policy. The objectives of the two-day program were first to provide a forum for dialogue between members of the marketing and antitrust disciplines and, second, to facilitate further integration of marketing thought into the practice of antitrust. The underlying premise was that fostering greater understanding of antitrust by marketing scholars would aid in advancing antitrust as a field of public policy.

The program brought together interested members of marketing’s academic community, top antitrust scholars, and respected public policy officials and practitioners. A broad spectrum of research interests was represented, including those who study marketing strategy, competitive response/decision making, interfirm and marketing channel relationships, retailing, consumer behavior, and other topics related to competition. Various research methodologies were also represented, including mathematical modeling, survey research, experimentation, and interpretivist methods.

The workshop portion of the program included presentations by leading antitrust scholars, marketing academics, policymakers, and practitioners. This concluded with an interactive brainstorming session that identified important research topics intersecting the fields of marketing and antitrust. The conference portion of the program then included invited presentations on marketing and antitrust-related topics. Selected papers from both the workshop and conference portions of the program are assembled in this special section of the Journal through the invitation of editor, Joel Cohen, who also attended and spoke at the event. As a basis for archiving these contributions and making them readily accessible to a wider audience, authors were asked to create shorter “overview” articles. The result is a cogent collection of modern perspectives on the prospective role of marketing knowledge in antitrust policy.

Antitrust Developments and the Opportunity for Marketing

“The Third Leg of the Antitrust Stool” by Albert A. Foer

Adopting the physical metaphor of a “three-legged stool,” Foer explains how the antitrust field is currently in disequilibrium, resting on only two of the three legs necessary to maintain its stability. Antitrust currently benefits from the objective understanding of economics and the objective rules, process, and remediation of the law. However, Foer contends (p. 57) that what is missing from antitrust is focus on the “subjective world of both the firm and the managers who make decisions within the firm and the consumers who purchase from the firm.” Advocating the integration of marketing and strategic management into antitrust, he describes how these disciplines can provide the “third leg” to give antitrust its stability, as illustrated through application of how marketing insights could contribute to the role of prediction in antitrust analysis.

“Antitrust and Marketing: A Primer and Call to Research” by Gregory T. Gundlach, Joan M. Phillips, and Debra M. Desrochers

Gundlach, Phillips, and Desrochers overview the nature of modern antitrust, its development in economics, and trends suggestive of its emergence as an interdisciplinary field of public policy. They describe marketing as a key repository of knowledge capable of contributing to antitrust. To motivate interest, the authors present a “Call for Research,” identifying opportunities for research organized within antitrust’s analytic process. They conclude that recent developments foretell considerable opportunity for marketing scholarship.

Historical Background: Economic Approaches to Antitrust


Peritz offers a historical sketch of the relationship between antitrust policy and antitrust economics. Characterizing four approaches to antitrust economics—the political economy freedom of contract, the second generation of price theory, postclassical theories of oligopoly and product differentiation, and innovation economics—he observes that antitrust policy has adopted each new approach as a supplement to its
predecessor rather than as a replacement. As a consequence, antitrust policy and law has often reflected combinations of several approaches. In attempting to make predictions, Peritz describes game theory as the next antitrust orthodoxy and discusses its use in understanding aggressive competitive conduct in the Supreme Court's Kodak case.

Prevailing Views on the Role of Marketing in Antitrust

"Antitrust Economics and Marketing" by David T. Scheffman
Scheffman assesses the relationship of marketing and industrial organization economics and how they might work together in antitrust. Focusing on the contributions of economics and marketing to each other for understanding competition and pricing, he observes clear benefits to adding marketing to the mix of tools used to analyze competition and to improve understanding of pricing in antitrust. Scheffman illustrates the antitrust challenge in assessing the role of trade promotions on the competitive impact of grocery mergers and concludes that there is much that marketing can contribute to the economic analysis of antitrust issues.

"The Role of Marketing in Antitrust" by Mary W. Sullivan
Sullivan distinguishes the different objectives, theoretical domains, and language distinctive to marketing and antitrust economics. Focusing on the merger review process, she reports on a project that addresses how insights from marketing could aid in the challenging task of assessing effects of temporary trade promotions and improve econometric analysis used in such reviews. Sullivan concludes that antitrust economists can improve their analysis for antitrust enforcement through tapping the field of marketing.

"Marketing in Antitrust: Contributions and Challenges" by Gregory T. Gundlach and Joan M. Phillips
Gundlach and Phillips focus on the subject matter, role in society, underlying processes, informing foundations, and primary methodology of marketing and antitrust. They identify common linkages as well as distinctive features and reveal both marketing’s possible contributions to antitrust and the challenges that could result from applying its insights.

Selected Topics: Choice as an Antitrust Goal

"Choice and Variety in Antitrust Law: A Marketing Perspective" by Joseph P. Guiltinan
Guiltinan examines choice and variety as an antitrust goal from the perspectives of economics and marketing. Describing their common and complementary contributions, he presents a marketing perspective of choice and variety. Guiltinan identifies research opportunities to enhance the use of choice as an antitrust goal.

"Limiting Product Choice: Innovation, Market Evolution, and Antitrust" by Ross D. Petty
Petty examines the emergent concept of choice or dynamic efficiency in antitrust analysis. Accepting that innovation fuels choice in a market over time and working from a model that describes the temporal state of a product market (e.g., the product life cycle) with respect to innovation, he describes the nature of product strategies that may be employed by rivals to limit innovation-based choice. The article shows how this approach provides new insight into analysis of product strategies that have been questioned by antitrust courts and commentators.

Selected Topics: Sloting Fees and Allowances and Category Management

"Marketing Research and Public Policy: The Case of Sloting Fees" by William L. Wilkie, Debra M. Desrochers, and Gregory T. Gundlach
Wilkie, Desrochers, and Gundlach focus on the forces that have stimulated the growth of sloting allowances, the trends associated with their practice, how managers view sloting fees, and how this practice is spreading. In addition to quantitative findings on the views of a nationwide sample of managers, the authors provide narrative-based insights drawn from respondents and analyze existing secondary published research. Their work provides a broadened under-
standing of slotting allowances and fees—an area of research recently called for by many policymakers.

“Recent Legal and Regulatory Developments in Slotting Allowances and Category Management” by David A. Balto

Focusing on an area that has increasingly become the subject matter of antitrust litigation and enforcement actions, Balto, an antitrust practitioner and recent director of the Policy Office of the Bureau of Competition at the Federal Trade Commission, who directed the Commission’s Task Force on slotting fees and related practices, identifies important recent developments and describes their implications for antitrust. In so doing, he explains why these controversial practices are likely to continue to attract the attention of antitrust policymakers, litigants, and interested scholars far into the future.