

A Study of the Antitrust Laws (Book Review)

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A STUDY OF THE ANTITRUST LAWS. By Joseph W. Burns. New York: Central Book Company, 1958. Pp. XIV, 574. \$12.50.

Each session of Congress brings new demands for an overhaul of the nation's antitrust laws which, in turn, lead to a new series of hearings and studies, out of which come new proposals and counter-proposals which seem to get nowhere. For those who have become cynical about the value of such hearings and studies in the face of confusing court decisions and the continued growth of power in a few corporations, this work of Mr. Burns, an attorney specializing in this field who served as Chief Counsel to the United States Senate's Subcommittee on Antitrust and Monopoly of the 83rd Congress, will come as a surprise and a solace.

Mr. Burns is careful to point out that this comprehensive report is the product of the efforts of his staff while he served as counsel, and has as its objective the presentation in readable form of the various points of view, as developed in more than 4,500 pages of testimony at public hearings. It is in no sense a report of the Senate Subcommittee or its members, but is an attempt to provide the public, and members of Congress in particular, with a starting point for discussing the necessity of specific legislation or further hearings. Of course, in the process of discussing the pros and cons of various proposals the author's personal recommendations frequently come into view. These are, on the whole, extremely provocative and persuasive. But all readers, influenced or not, having been exposed to the wide diversity of opinion which has been set out so successfully in this study will never again approach the complexities of the antitrust statutes in quite the same way. Perhaps the best proof that the author has succeeded in summarizing and analyzing all points of view in a thorough and impartial study is the bipartisan endorsement contained in its preface from two senators identified with the conflicting forces in our economy, Senator O'Mahoney of Wyoming and Senator Dirksen of Illinois.

Mr. Burns has divided the material presented to his committee on the basis of six major problems in the antitrust field: the uncertainty arising out of the antitrust statutes and their judicial interpretation; the overlapping jurisdiction of the Department of Justice and the Federal Trade Commission; distribution practices under the Robinson-Patman Act; the relationship of foreign trade with antitrust statutes; corporate mergers and acquisitions; and the problem of bigness and concentration of power, as demonstrated by a detailed analysis of the growth and operations of General Motors Corporation. He concludes with a chapter containing a summary of the prior chapters and making certain recommendations.

The scope of the study's sources is unlimited. Reports of bar associations, chambers of commerce, legislative committees, federal

agencies, and all manner of groups are summarized. Recommendations of judges, economists, businessmen, and individual lawyers concentrating in this field, are also presented so that any worthwhile proposal with respect to the antitrust laws is covered. Yet, despite its detailed analysis of the complex problems under consideration, the study remains an easy work to read. Quite apart from its worth as a study, this valuable book can serve as a summary of antitrust law for the businessman or law student, as a practical analysis of current law for the general practitioner, and as a guide to the future for the antitrust expert.

Its value as a study does not lie alone in its easy compilation of the various proposals for remedial antitrust legislation but also in the manner in which it points out the vagueness and conflicting philosophies underlying existing legislation. When one sees why the dual enforcement policy under existing statutes makes possible the prosecution of a single action under three different statutes with different consequences to the violator in each case, he has a sound basis upon which to support or recommend the enactment of new legislation. For example, the wisdom and fairness of criminal sanctions contained in the Sherman Act can only be considered in the light of the vague language of the statute and the understandable reluctance of judges and prosecutors to apply same. In the same manner, the apparent contradiction between the unfettered trade provided for under the Sherman Act, and the restrictions on marketing in the Robinson-Patman Act, must be understood and resolved before the test of "injury to competition" is clarified. This study has spotlighted successfully the basic difficulties in our existing antitrust laws.

It is in the area of the overlapping jurisdiction of the Department of Justice and the FTC in the enforcement of antitrust laws that the author has developed particularly challenging proposals. He has made a convincing presentation of the proposal that all enforcement activity be placed in the hands of the Department of Justice and that the FTC cease its dual role as prosecutor and judge. Under this arrangement the FTC would be an administrative tribunal in which all civil actions under the Sherman, Clayton, Robinson-Patman and Federal Trade Commission Acts, and related laws, would be brought. Review of its final orders would be had in the courts. Although this proposal might be generally approved, the further recommendation that the FTC be given rule-making authority to obviate the present difficulties of enforcing antitrust laws on a case-by-case basis would appear to be unacceptable. Although these and other proposals, particularly with respect to foreign trade, appear to be favored by the author, they are discussed with other suggestions in an impartial manner consonant with the author's purpose of making an objective study.

One discouraging conclusion reached by Mr. Burns is that the irreconcilable differences of opinion make a single comprehensive re-

vision unobtainable. After reviewing the inconsistencies in the existing law which have resulted, in part, from piecemeal amendment and changing concepts of competition, one might question the wisdom of attempting to effect the needed clarification by more amendments. Regardless of the method of revision used, however, this is, in the words of Senator O'Mahoney, a "monumental work" which is certain to be the starting point for future legislation.

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