

*The*  
Antitrust  
Bulletin

Symposium:  
American Antitrust  
Institute's 2013  
Invitational  
Symposium—  
Antitrust as a  
Multidisciplinary  
Field

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**SYMPOSIUM: AMERICAN ANTITRUST INSTITUTE'S 2013 INVITATIONAL SYMPOSIUM—ANTITRUST AS A MULTIDISCIPLINARY FIELD**

Gregory T. Gundlach, *Guest Editor*

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*A*ntitrust as a  
multidisciplinary field:  
Introduction and overview  
of the symposium

BY GREGORY T. GUNDLACH\*

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The focus of antitrust is competition. For over a century, the mandate of antitrust has been to evaluate aggressive commercial conduct and then judge its purposes and effects to determine whether to permit or forbid such conduct as procompetitive or anticompetitive. In this capacity, like all law, antitrust has evolved over time, responding to new insights and understanding regarding competition and competitive conduct. This symposium in the *Antitrust Bulletin*, Antitrust as a Multidisciplinary Field, takes stock of this evolution by focusing on new insights from economics and existing insights from the business disciplines for shaping the intellectual foundations of antitrust.

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AUTHOR'S NOTE: *The American Antitrust Institute is indebted to those who participated in the symposium, which took place at the National Press Club in Washington, DC, on June 11, 2013, each of the authors who contributed to this special issue, and the audience who asked questions, provided additional information, and sometimes elevated discourse on the topic.*

## I. INTELLECTUAL FOUNDATIONS OF ANTITRUST

Antitrust has never suffered from a shortage of insights for understanding competition and competitive conduct. Many fields address the nature and effects of competition. These include economics, business, philosophy, political science, biology, ecology, psychology, sociology, and anthropology, to name a few. Each discipline has its own paradigms for understanding competition, identifies with particular theories to explain competition, emphasizes different antecedents and effects when studying competition, and calls upon preferred methods and data when investigating competition. It is economics, however, especially microeconomics and specifically the field of industrial organization, that has had the deepest and most consistent involvement with antitrust. Indeed, economics has provided enormous intellectual understanding for the field. To even attempt an overview of the contributions of antitrust economics would take far too much space here. Existing treatises and textbooks of this kind are readily available.<sup>1</sup>

## II. CALLS FOR REFLECTION AND ADVANCEMENT

Against the aforementioned backdrop, at different times and from different vantage points, antitrust stakeholders have called for reflection on the intellectual status of the field.<sup>2</sup> These calls have included

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<sup>1</sup> See, e.g., JOHN E. KWOKA & LAWRENCE J. WHITE, *THE ANTITRUST REVOLUTION: ECONOMICS, COMPETITION AND POLICY* (2013); E. THOMAS SULLIVAN & JEFFREY L. HARRISON, *UNDERSTANDING ANTITRUST AND ITS ECONOMIC IMPLICATIONS* (2014); PHILLIP E. AREEDA & HERBERT HOVENKAMP, *ANTITRUST LAW: AN ANALYSIS OF ANTITRUST PRINCIPLES AND THEIR APPLICATION* (2006); ERNEST GELLHORN, WILLIAM KOVACIC & STEPHEN CALKINS, *ANTITRUST LAW AND ECONOMICS* (2004); ROGER D. BLAIR & D. DANIEL SOKOL, *THE OXFORD HANDBOOK OF INTERNATIONAL ANTITRUST ECONOMICS* (2014); EINER R. ELHAUGE, *RESEARCH HANDBOOK ON THE ECONOMICS OF ANTITRUST LAW* (2013); RICHARD S. MARKOVITS, *ECONOMICS AND THE INTERPRETATION AND APPLICATION OF U.S. AND E.U. ANTITRUST LAW* (2014); and KEITH N. HYLTON, *ANTITRUST LAW AND ECONOMICS* (2010).

<sup>2</sup> See, e.g., Ky P. Ewing, Jr., *Introduction: Perspectives on Competition*, 69 *ANTITRUST L.J.* 349, 349–50 (2001) (“It would be arrogant folly for us to believe that our current perspectives are the ultimate truth . . . [W]e need regularly to re-examine our basic models, perspectives and tools of analysis . . . .”); Spencer W. Waller, *The Language of Law and the Language of Business*, 52 *CASE W. RES. L. REV.* 283, 328 (2001) (“Business theory represents a rare chance to

appeals to engage in efforts to identify and incorporate new insights from economics as well as to draw more broadly on relevant advances from outside of economics. In each case the thesis is the same—that current scholarship, despite providing valuable insights, leaves questions and important gaps in our understanding of competition and its effects. The contention is that these questions and gaps can be addressed through incorporation of insights from intradisciplinary advances in economics and through interdisciplinary efforts that

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expand the community of expertise and for the discourse of antitrust to take into account the discourse of the actual decision makers whose conduct is being analyzed for antitrust purposes.”); Oliver Williamson, *Assessing Vertical Market Restrictions: Antitrust Ramifications of the Transaction Cost Approach*, 127 U. PA. L. REV. 953, 991 (“Antitrust is an interdisciplinary field that is best served by acknowledging that a deeper understanding of the issues will result by addressing the subject from several points of view.”); Albert Foer, *What Do Business Schools Teach About Antitrust? The Third Leg of the Antitrust Stool: What the Business Schools Have to Offer to Antitrust*, 47 N.Y.L. SCH. L. REV. 21, 29 (2003) (“Thinking in terms of Kuhn’s famous essay on scientific revolutions, I believe we are at a point where the old paradigm of antitrust is increasingly recognized as inadequate, but the successor paradigm has not yet been brought into focus.”); Thomas B. Leary, *The Dialogue Between Students of Business and Students of Antitrust*, 47 N.Y.L. SCH. L. REV. 1, 7 (2003) (“There is a growing recognition of the need to examine some of the fundamental assumptions of our present antitrust regime and to consider the contributions of other disciplines.”); David T. Scheffman, *Antitrust, Economics, and “Reality”*, in THE ECONOMICS OF THE ANTITRUST PROCESS 240 (1996) (recommending “bringing into economics much more of the reality of actual firms and tapping what is useful in the disciplines of marketing, accounting, and business strategy”); Gregory T. Gundlach & Joan M. Phillips, *Contributions and Challenges of Marketing to Antitrust*, 47 N.Y.L. SCH. L. REV. 51, 66 (2003) (“Sharing a common subject matter and related in many ways, marketing has much to offer antitrust that has the potential to complement and extend extant understanding.”); Michael E. Porter, *Competition and Antitrust: Toward a Productivity-Based Approach to Evaluating Mergers and Joint Ventures*, 46 ANTITRUST BULL. 919, 920 (2001) (describing “how the intellectual foundations of antitrust might be updated, based on a large body of theoretical and empirical research on company strategy, competition, and economic development”); and Gregory T. Gundlach, *Marketing and Modern Antitrust*, in HANDBOOK OF MARKETING AND SOCIETY 34, 48 (Paul N. Bloom & Gregory T. Gundlach eds., 2001) (“Recent developments in antitrust economics as reflected in the two schools of economic thought currently informing antitrust, foretell considerable opportunity for marketing scholarship in antitrust.”).

include insights from beyond economics. The questions that motivate calls for a multidisciplinary approach to antitrust focus on the sufficiency of antitrust's existing perspectives, current theories, and applied methods and data to adequately capture and understand the breadth and depth of the market structures, business organizations, commercial conduct, and consumer behavior that increasingly describe our economy. Embrace of a multidisciplinary approach is argued to provide the basis for overcoming these challenges.

### III. AAI'S INVITATIONAL SYMPOSIUM

The potential for multidisciplinary development of antitrust through advances in economics and insights from the business disciplines was the focus of the American Antitrust Institute's 2013 Invitational Symposium: Antitrust as a Multidisciplinary Field. The day-long symposium included presentations by noted scholars, business leaders, and experienced practitioners with expertise in antitrust law, economics, strategic management, marketing, and related disciplines. Presentations examined the evolving role of economics in competition policy and antitrust together with relevant trends and developments occurring in the business disciplines of strategic management and marketing. A concluding roundtable invited participants to share and discuss their ideas.

### IV. CONTENTS OF THE ISSUE

The articles appearing in this issue of the *Antitrust Bulletin* contribute to the central theme of the symposium. Each was presented in a preliminary version by the author or authors as part of the event. Together, their inclusion in the *Antitrust Bulletin* is intended to provide a resource for those interested in the interdisciplinary development of antitrust. The articles have been reviewed by experts and edited by their authors in light of their presentations and discussions at the event as well as input from the subsequent editorial process.

#### A. *How competition agencies can use behavioral economics* (Maurice Stucke)

An important development in antitrust economics involves the extension of concepts and research from behavioral economics to competitive decisionmaking. Taking stock of this development, Pro-

fessor Stucke identifies four ways in which competition authorities can benefit from applying behavioral economics to assist them in their role. This includes the use of behavioral economics as a “gap” filler—explaining “real world” evidence that neoclassical economics cannot. It also includes the use of behavioral economics to assess in critical ways the assumptions of specific antitrust policies, such as merger review and cartel prosecutions. It further includes the use of behavioral economics to revisit fundamental antitrust questions concerning the nature of competition, the appropriate goals of antitrust, and the best legal standards to promote those goals. Finally, the author describes the use of behavioral economics to assess the degree of potential convergence and divergence of competition law across the over 100 differing jurisdictions with competition laws. The author extensively elaborates on each of these uses and offers in-depth examples for each. Together they offer an excellent case for the value and role of behavioral economics in antitrust.

*B. Network organization and systems competition: A marketing analysis (Ravi S. Achrol & Gregory T. Gundlach)*

As one of the core disciplines of business, marketing offers insights for understanding the competitive strategy and performance of firms. In their article, Professors Achrol and Gundlach organize insights that describe the nature and implications of the “network” form of business organization for competition and antitrust. Tracing the historical emergence of these complex forms of business organization starting with early modes of distribution channel organization, the authors identify and describe the theoretical paradigms that have accompanied and informed their formation and practice over time. They then offer a typology of marketing-based networks that distinguishes their structure and pattern of exchange connections in a market. The differing resources and skills that comprise the competitive advantages sought by marketing networks are also examined. This understanding is then applied to key questions that have emerged in relation to networks and network (that is, systems) competition in antitrust. The article demonstrates the benefits to be obtained in antitrust from a marketing perspective on business organization and competitive behavior.

C. *Strategic management concepts for antitrust: Cooperation, stakeholders, and sustainability (Norman W. Hawker)*

In addition to marketing, the field of strategic management offers insights for understanding the competitive strategy and performance of firms. Examining the most popular textbooks in the field, Professor Hawker describes recent advances in strategic management that are of relevance to antitrust. The author observes that apart from antitrust considerations firms choose from among different strategies when dealing with competitors including cooperation as well as competition. Detailing the accompanying strategies for each, the author describes how the field of strategic management enables managers to be aware of antitrust concerns. The author also elaborates upon the increasing emphasis given in strategic management to the concepts of stakeholder management and sustainability. Both are described as mechanisms to deal with lapses in business ethics and social concerns, with their potential application to antitrust analyses also explored. The author concludes that through further examination strategic management can offer useful insights to antitrust.

D. *The strategy field's influence on antitrust discourse (Hillary Greene & Dennis A. Yao)*

Given the potential usefulness of strategic management to antitrust, a critical question regards the field's impact on antitrust law and policy over time. In their article, Professors Greene and Yao examine the extent to which ideas from strategic management scholarship have influenced antitrust law and policy. Observing that accurate assessment and prediction of the effects of firm conduct depends in part on understanding individual firm capabilities and consumer choices, the authors contend that knowledge from strategic management and other business fields offer a natural complement to economics. In turn they elaborate on the potential contributions of strategic management to merger analysis focusing on the benefits of understanding in more depth the nature of firm strategy and behavior. The extent to which strategic management has played a role in antitrust law and scholarship over time is then assessed using citation analyses. Their findings suggest that the direct influence of strategic management scholarship on antitrust has not matched its potential. Given



the benefits of strategic management in antitrust, the authors conclude with a discussion of challenges to increasing the influence of strategic management and other fields of business in antitrust.

*E. Is complexity in antitrust a virtue?: The accuracy-simplicity tradeoff (Timothy J. Brennan)*

Taking a step back, Professor Timothy J. Brennan assesses the benefits and costs of incorporating additional considerations in antitrust identifying an “accuracy-simplicity” tradeoff. As explained by the author, antitrust analyses that currently rely on economic factors are already overly complex. Despite the potential to increase the accuracy of these analyses, the addition of multidisciplinary insights may be unproductive if they render antitrust evaluations even more complex and more difficult for businesspeople to understand and anticipate. Elaborating on these circumstances and tradeoffs the author explores a number of potential simplifications to competition law observing that none implies leniency. He then considers the challenges of integrating additional considerations in the form of externalities and the findings of behavioral economics. He concludes by opining that if simplicity is important alternative criteria other than economic efficiency may need to be considered as the basis for antitrust enforcement including populist or process-oriented criteria.

## V. CONCLUSION

The multidisciplinary development of antitrust offers potential to shape the intellectual foundations of antitrust in important and beneficial ways. Although economics and in particular neoclassical economics primarily serve as the intellectual foundation of contemporary antitrust, many fields address the nature and effects of competition. These include other fields in economics and the core disciplines of business. Incorporation of advances and insights from each of these areas offer the potential to assist antitrust in gaining greater conceptual consensus, theoretical understanding, methodological accuracy, and practical relevance. The articles in this symposium take stock of this potential by elaborating on advances in economics and describing insights from business that can benefit antitrust.