



ANTITRUST CONSENT DECREES IN THEORY AND PRACTICE: WHY LESS IS MORE

By Richard A. Epstein

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In *Antitrust Consent Decrees in Theory and Practice* (AEI Press, March 2007), Richard A. Epstein, the James Parker Hall Distinguished Service Professor of Law at the University of Chicago Law School, addresses the timeless dilemma of antitrust laws: how do we ensure that the antitrust tools intended to preserve competition are not used to undermine it?

The antitrust consent decree has been a major weapon in the enforcement of federal antitrust laws for over a hundred years. Epstein demonstrates, however, that although aggressive, broadly structured antitrust decrees often lasting for many decades may satisfy populist demands for strong antitrust enforcement, they are likely to do far more harm than good.

In particular, Epstein takes issue with aggressive antitrust enforcement strategies that seek to use government power to fundamentally alter industry structures or the business practices of regulated firms, which in some instances lead to their breakup. To explain the perils of that approach, Epstein carefully examines the history of consent decree litigation, culminating in detailed studies of the AT&T breakup and the government antitrust actions against Microsoft.

Epstein's central thesis is that bold antitrust remedies that are not tightly tied to a defensible theory of wrongful conduct often prove counterproductive. Such measures typically force firms to adopt business practices and structural reorganizations that substantially impede their ability to compete effectively in the marketplace. Moreover, the scope and ambition of consent decrees are related to their longevity. Broad consent decrees have an unfortunate tendency to hamper firms' conduct long after market conditions have changed dramatically and the original violations have been remedied.

Antitrust Consent Decrees in Theory and Practice is a landmark study that will be of interest to any reader who is concerned with the larger implications of government regulation of law and business. It is an invaluable resource to any student of regulation and economic policy, as well as lawyers and policymakers concerned with antitrust litigation.

Richard Epstein is the James Parker Hall Distinguished Service Professor of Law at the University of Chicago Law School and the Peter and Kirsten Bedford Senior Fellow at the Hoover Institution. He writes on a wide variety of legal and economic topics, and his most recent book is *Overdose: How Excessive Regulation Stifles Pharmaceutical Innovation* (Yale University Press, 2006).

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