



ROUND TABLE TAKEAWAYS

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US v Microsoft

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TAKEAWAYS FROM THE DCI ROUNDTABLE ON US v MICROSOFT



This note is based on the feedback gathered from 10 experts who participated in an interdisciplinary roundtable on the US Microsoft case on **16 November, 2021**. The note contains comments but also questions about the case. There is no attribution to individual participants. All participants have, however, vetted the note as representative of the content of the discussion.



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- 1 *US v Microsoft* is often placed on the pedestal of good antitrust in today's policy conversation. There is, however, uncertainty about the actual impact the case had on innovation. We do not have good empirical tools to measure this. How then should we proceed?
- 2 During the case itself, the US Department of Justice did not have a sophisticated theory of innovation in mind in *US v Microsoft*. It had in mind that there was bad conduct that was perpetuating a monopoly or increasing entry barriers to competition for operating systems (or that was likely to do so).
 - Microsoft's own innovation could not be the only innovation concern of the Department of Justice during the case. It also had to care about innovation from all the other competitors and potential competitors.
 - That said, innovation was never a big cylinder in the engine of *US v Microsoft*.
- 3 Is the lesson from *US v Microsoft* that **the proper function of antitrust is to prevent dominant firms from duplicating efforts by innovators in adjacent, neighbouring, or substitute product areas?**
 - A downside of this approach is the risk of condemning good business foresight. Documentary evidence shows that Microsoft had correctly identified the disruptive threat of the Internet.
 - + An upside is that the superior resources of incumbent firms are leveraged towards more distant and uncertain innovation trajectories.

→ On 26 May, 1995, Gates wrote an internal memo to Microsoft's executive staff titled 'The Internet Tidal Wave'.
- 4 Suppose a firm is stuck trying to hold on to what it has, e.g., a dominant market position. **Antitrust policy can then be 'therapeutic', helping the firm in getting unstuck.** What is needed then is the development of indicators of degree of effort. Such indicators can tell us whether the firm is 'stuck' or 'unstuck'.
- 5 Can we say that cases like *US v Microsoft* were brought against firms that were declining in their core markets, even if such a decline might not have been apparent at the time?
 - Under this approach, firms in decline are the ones that cannot sustain themselves exclusively through 'competition on the merits'.
- 6 **Is good antitrust one that scares monopolies into self-regulation?**
 - Antitrust enforcement against Microsoft may have had effects not only through influencing companies' innovation incentives, but also through interfering with how business is conducted (i.e. through companies' organisational structures or decision-making practices).
- 7 The strategy and management scholarship is overlooked in antitrust policy discussions. It would be fruitful to mainstream some insights from this body of literature in future research initiatives.
- 8 It is important that antitrust enforcement take the time to develop theories articulating sound principles and illustrate how these can be applied in a sound way.
 - Can we say that what determines innovation today is different from what determined innovation at the time of *US v Microsoft*? If so, should we develop a different type of antitrust policy today?
- 9 The legitimacy of current antitrust enforcement initiatives against players such as Google, Amazon, or Facebook is questionable. These initiatives are not tackling the core of the business models and, in any case, it is still too early and there are not enough facts to support them.



Interesting questions for future research

- Do we see a correlation (strong or not) between business decline and anticompetitive conduct?
- Do we see business model changes following antitrust intervention?
- Does antitrust policy target conduct that firms implement when creating the business or rather practices that firms develop once they are more established?
- How does the top management in a firm think about its competitive environment? Can we document competitive paranoia? What antitrust implications can be drawn from a managerial fear of disruption?
- What does the top management in a firm believe in terms of prospects for growth or decline and how does that relate to anticompetitive conduct?
- Do iconic cases such as *IBM*, *Intel*, or *Microsoft*, which raise the level of antitrust awareness in the respective industry, move firms in that industry from the receiving end of antitrust scrutiny to the supply side of antitrust complaints?