

## *Preface*

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The American Antitrust Institute (AAI) was founded in 1998 as an independent, non-profit education, research, and advocacy organization. Celebrating its tenth anniversary during the important 2008 presidential campaign, the AAI determined to utilize this year to generate an integrated vision for re-energizing competition policy in the United States.

Ours is a vision that departs in substantial ways from the outlook that has driven competition policy for much of the past generation. We offer it to the next administration without presupposition as to which party will control Congress or who the President will be. Traditionally, the ideal of competition as the preferred regulator of business behavior has enjoyed bipartisan support, beginning with the introduction of the Sherman Act in 1890 by a Republican and its signing into law by a Republican. But interpretations of what constitutes healthy competition and priorities for enforcement have varied over time, sometimes dramatically. Indeed, there have been periods of war or depression when the ideal of competition has been eclipsed by other priorities and policies. Yet, time and again, the ideal has been rejuvenated – by both Republicans and Democrats. We argue that we should now be entering a period of reinterpretation and rejuvenation.

This Report is the edited product of a set of committees formed in the fall of 2007. The committee chairs and participants are all members of the AAI's Advisory Board. Those who contributed their time to this project are listed at the end of this Preface. The Board of Directors wants to thank particularly Jonathan Baker, David Balto, Richard Brunell, Peter Carstensen, John Connor, Gary French, Thomas Greaney, Warren Grimes, Veronica Kayne, John Kirkwood, John Kwoka, Roger Noll, Maurice Stucke, and Bonny Sweeney. We owe a special debt to Sarah Frey for her role in helping to make the entire process work, to our summer interns Drew Edge and Sandeep Vaheesan for their editing and research assistance, and to Amy Fine for the final edit.

The views expressed in this Report should not be taken necessarily to reflect those of any particular Advisory Board member or of the various committee chairs. The ultimate decisions on what to say and how to say it were the responsibility of the AAI's five-

person Board of Directors, which worked closely with the committees throughout the process. The identity and backgrounds of the Directors are also described in this Preface.

Indeed, the views expressed here could not possibly reflect fully and accurately the views of any particular Advisory Board member or Director. Antitrust is uniquely a discipline in which there has always been – and likely always will be – great room for differing perspectives on goals and values, doctrines, and interpretation of facts. Our Advisory Board members have interdisciplinary backgrounds spanning law, economics, government and business. Moreover, AAI Advisory Board members have current institutional ties to both plaintiff-oriented and defendant-oriented law practices, state antitrust enforcers, economic consulting firms, law schools, economics departments, and business schools.

Certain Chicago School economists have argued both that their views represent objective scientific fact and that these views have been all but universally accepted. In contrast, AAI presents a consumer-based post-Chicago perspective that takes account of a wider range of experiences and viewpoints. This perspective suggests a more aggressive approach to competition policy than has prevailed in the United States during recent years.

The Report consists of ten chapters and an introduction to competition policy and the philosophy behind the Report. The first set of chapters examines substantive areas of antitrust law and economics, including cartel enforcement, monopolization, merger policy, and a relative newcomer to antitrust discourse, buyer power. The following chapters then offer prescriptions for building the institutions of public enforcement and restoring the legitimacy of private enforcement. Finally, the report concludes with four chapters devoted to several of the key economic sectors in which competition policy issues are currently important: media, food, health, and energy. Together, these sectors account for more than one-third of the national economy.

The Board of Directors of the AAI reflects the broad make-up of the ninety-five person Advisory Board. Albert Foer is President and co-founder of the AAI. He has experience as a lawyer in private practice with Hogan & Hartson and Jackson & Campbell, was a senior executive of the Federal Trade Commission's (FTC) Bureau of Competition, and was for thirteen years the chairman of a mid-sized chain of retail jewelry stores. Robert

Lande, the co-founder, is the Venable Professor of the University of Baltimore Law School. He has practiced law with the Jones, Day firm and worked on policy matters within the FTC. Jonathan Cuneo is the senior partner in Cuneo, Gilbert & LaDuca, a plaintiff-oriented law firm in Washington, DC. He often relies upon his prior experience as a lawyer with the FTC and as Counsel to the Subcommittee on Monopolies and Commercial Law of the House Committee on the Judiciary. Dr. Diana Moss, Vice President of the AAI, was a senior staff economist and coordinator of competition analysis for the Federal Energy Regulatory Commission and has been an economic consultant. Robert Skitol is a partner in the Washington, DC, office of Drinker, Biddle & Reath LLP, with over thirty years experience in all aspects of antitrust representation. Each Director served as liaison with several committees during the drafting of the Report.

We are particularly grateful for the contributions of the committee chairs and committee participants. We stress again – in part because they sometimes have client interests and in part because unanimity in these matters is virtually impossible – that the contents of this Report do not necessarily reflect the views of any individual Advisory Board Member or Director.

We dedicate this Report to two of our staunch Advisory Board members, major contributors to the on-going evolution of antitrust, who passed away in recent years: Professor Larry Sullivan and Senator Howard Metzenbaum.

### **AAI Transition Report Contributors**

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