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Strategy and Antitrust: A Reflection on Leadership, Competitive Advantage and Legal Limits

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Abstract

Strategy and antitrust are usually taught in different buildings. Strategy lives in business schools; antitrust lives in law schools. The first teaches how to build competitive advantage; the second teaches when competitive advantage becomes a market power that the law might have to circumscribe. This paper treats the two as a single subject. It asks what strategic leaders should take from the history of antitrust enforcement, where the two disciplines reinforce one another, where they collide, and how a thoughtful leader should navigate the space between them. The aim is not doctrinal completeness but practical wisdom. This paper examines the relationship between strategic business leadership and competition law. It explores how firms pursuing growth, innovation and market power may simultaneously attract antitrust scrutiny. The paper analyses the areas where business strategy and competition law align, as well as the tensions that arise when successful competitive practices are viewed as anti-competitive conduct. It argues that competition law awareness should form an essential part of modern strategic decision-making and concludes that sustainable competitive advantage lies in business practices that remain innovative, efficient and legally defensible.

Keywords: competition law; strategic management; market power; antitrust compliance

1. TWO DISCIPLINES, ONE SUBJECT

Walk into a business strategy or strategic management classroom and the vocabulary one hears is the vocabulary of advantage: barriers to entry, switching costs, network effects, economies of scale and scope, ecosystem lock-in, first-mover advantage, moats. The objective, made explicit in Michael Porter's foundational framework,[3] is to identify and occupy positions in an industry that are defensible against suppliers, customers, new entrants, substitutes, and existing rivals. The successful strategist builds something that the competition cannot easily replicate.

Walk into a competition Law classroom and what falls into the ears is precisely the same vocabulary — but inflected differently. Barriers to entry are not opportunities; they are obstacles to competition. Switching costs are not strategic assets; they are evidence of lock-in. Network effects are not virtuous self-reinforcement; they are the structural conditions that produce concentration. Ecosystem control is not the apex of strategic achievement; it is the doctrinal precursor of an abuse-of-dominance claim. The successful

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[3]Michael E Porter, Competitive Strategy: Techniques for Analysing Industries and Competitors (Free Press 1980).

antitrust enforcer dismantles what the successful strategist built.

This is the productive tension at the centre of the present paper. The two disciplines are looking at the same firms doing the same things and reaching different conclusions about what those firms have accomplished. The lawyer asks whether the conduct is consistent with what competition authorities and courts have called competition on the merits — a phrase that recurs in both United States and European Union jurisprudence as the operative line between aggressive but lawful behaviour and conduct that exceeds the limits of permissible competition.[4] The strategist asks whether the conduct produces a durable advantage. The question this paper puts is whether the two enquiries can be brought into closer alignment, and what is gained — and what is lost — when leaders attempt to do so.

2. WHERE THE DISCIPLINES ALIGN (THE PROS)

A first observation, and one that is sometimes obscured by the adversarial register of antitrust enforcement, is that strategy and antitrust agree on more than they disagree on. Both disciplines treat genuine innovation as legitimate. Both treat productive efficiency — making more with less — as a value to be encouraged. Both accept that firms with superior products, lower costs, or more attractive offerings will tend to grow, and that this growth is socially beneficial. The legal doctrine of competition on the merits is precisely an effort to identify the conduct that strategy at its best aspires to: outcompeting rivals by being better at the underlying activity rather than by raising rivals' costs through means unrelated to performance.[5]

A leader who internalises this convergence develops, in my view, a more rigorous strategic discipline than one who does not. The discipline operates as a forcing function. If one's competitive advantage cannot be defended in language that the law would call meritocratic — superior product, lower cost, more efficient operation, better service, novel insight — then one is likely relying on something else: structural conditions that exclude rivals, leverage from one market to another, lock-in that consumers cannot easily escape. That kind of advantage may be commercially profitable in the short term. It is also the kind that attracts the attention of regulators and, in time, gets unwound by them. The leader who asks early in the strategic planning cycle whether the firm's position rests on merit or on exclusion is doing both better strategy and better compliance.

A second alignment, less often emphasised, is that strategy and antitrust both reward honest assessment of one's own market position. The strategist who underestimates the firm's market power makes bad capital-allocation decisions. The general counsel who underestimates the firm's market power makes worse legal decisions. Both disciplines, when practised seriously, require an unsentimental account of what the firm actually controls — over its suppliers, its customers, its complements, and its competitors. A leader who lets the marketing department's self-aggrandising language seep into the boardroom is in trouble on both fronts: the strategy is unmoored, and the antitrust risk is unmanaged.

3. WHERE THEY COLLIDE (THE CONS)

The points of collision between the two disciplines are sharper than the points of agreement, and they are where most of the real difficulty lies.

The first is that strategic success makes a firm a target. The relationship is, in a sense, inverted from what

[4]Sherman Antitrust Act 1890, 15 USC §§ 1–2; Consolidated Version of the Treaty on the Functioning of the European Union, art 102 [2012] OJ C326/47.

[5]The phrase 'competition on the merits' traces in EU jurisprudence to Case 85/76 Hoffmann-La Roche v Commission [1979] ECR 461, para 91, and has since become the standard formulation for permissible competitive conduct.

most leaders expect. The market-share figure that delights the chief executive and the board — sixty per cent, seventy per cent, eighty per cent — is the same figure that produces a presumption of dominance in EU competition analysis and a Section 2 monopolisation inquiry in the United States. The point of the antitrust regime, after all, is to scrutinise the firms that strategy has succeeded with. A leader who treats this scrutiny as an unjust imposition has misunderstood the system in which the firm operates. The scrutiny is the system functioning as designed. For one to have that number on report is the goal and for the other the number is the sound alert of vigilance.

The second is that several of the most celebrated strategic moves in modern business literature are precisely the conduct that has produced the leading antitrust cases. Vertical integration, praised by transaction-cost economists as a way to reduce coordination costs, has been the operative theory in cases reaching back to the dissolution of Standard Oil.[6] Bundling, taught in strategy seminars as a way to leverage strength in one product to drive adoption in another, was the structural feature that produced the most consequential monopolisation case of the past three decades against Microsoft.[7] Self-preferencing — using one's position as a platform to favour one's own downstream offerings — is the technique that has produced the largest fines under EU competition law in the digital sector.[8] In each instance, the move that the strategy textbook would call insightful is the move that the competition authority calls exclusionary. The two characterisations are not necessarily wrong; they are descriptions of the same conduct from different positions in the analytical field.

The third collision concerns time. Strategic decisions are made under conditions of uncertainty about competitive response and market evolution. Antitrust analysis, by contrast, frequently proceeds after the fact, with the benefit of hindsight about how the market in question developed. A leader who acquires a small competitor in 2014 to pre-empt a perceived future threat is making a strategic decision under uncertainty. The competition authority that revisits the same acquisition in 2024, with the benefit of knowing exactly how dominant the acquirer became, is conducting an exercise in retrospective rationalisation. The concept of the killer acquisition, developed initially in the pharmaceutical context but now applied widely in digital markets, captures precisely this analytical asymmetry: what looked like routine M&A at the time of the transaction looks, in hindsight, like the elimination of a competitive challenger.[9] The leader who must make the decision in real time cannot escape this hindsight problem entirely. But it can be managed by being more conservative about acquiring potential competitors than transaction-cost economics alone would recommend.

4. THE WAY IT LOOKS THROUGH THE EXAMPLES

Some examples make the analysis less abstract.

The first is the case of Standard Oil. John D. Rockefeller built Standard Oil through what was, in its day, the most sophisticated strategic playbook in business: aggressive vertical integration, preferential freight arrangements with railroads, predatory pricing in markets where competitors were vulnerable, and a corporate structure — the trust — engineered to coordinate pricing across nominally independent firms. Each element was a strategic innovation. Each was also, in time, characterised by the Supreme Court as conduct exceeding the limits of permissible competition, and Standard Oil was dissolved into thirty-four

[6]Standard Oil Co of New Jersey v United States 221 US 1 (1911).
[7]United States v Microsoft Corp 253 F 3d 34 (DC Cir 2001) (en banc).
[8]Case T-612/17 Google LLC and Alphabet Inc v Commission ECLI:EU:T:2021:763 (General Court, 10 November 2021).
[9]Colleen Cunningham, Florian Ederer and Song Ma, 'Killer Acquisitions' (2021) 129(3) Journal of Political Economy 649.

successor companies in 1911.[10] The lesson is not that vertical integration is unlawful; many vertical structures are entirely lawful. The lesson is that the cumulative effect of strategic decisions, each defensible in isolation, can produce a market position whose foundations cannot be defended as meritocratic.

The second is Microsoft in the late 1990s. The strategic logic of bundling Internet Explorer with Windows was simple: every Windows user would receive the browser at zero marginal cost, foreclosing the market position of Netscape Navigator, the dominant browser of the time. From a strategy perspective, this was textbook competitive manoeuvring — using a position in one market (operating systems) to advantage a complementary product (browsers). From an antitrust perspective, it was the maintenance of a monopoly through means other than competition on the merits, and the D.C. Circuit said so.[11] What strikes reading the case decades later, is that Microsoft's strategic logic was not wrong; the firm correctly identified that the browser was a strategic threat. The error was a failure to ask whether the response to that threat was something that could be defended in court. The cost of that failure included consent decrees and years of monitored conduct.

The third is Google Shopping. The strategic logic was to use Google's dominant position in general search to direct user traffic to its own comparison-shopping service rather than to competing services. The General Court of the European Union characterised this as self-preferencing constituting abuse of dominance. The fine ran into the billions.[12] What is notable about Google Shopping is that the strategic move was structurally identical to what platforms had been doing for years - directing users to first-party offerings - but the scale and dominance of the platform shifted the legal characterisation. There is a useful general principle in this: identical conduct does not produce identical legal consequences. Scale matters. A leader who replicates a competitor's strategy without adjusting for the firm's own position in the market is reasoning poorly.

The fourth is Meta's acquisitions of Instagram in 2012 and WhatsApp in 2014. Both were strategically sensible decisions at the time, and both passed merger review without significant intervention. Each acquisition, in isolation, looked like the routine purchase of a complementary social-media asset. A decade later, the Federal Trade Commission alleged that the cumulative effect was the elimination of nascent competitive threats and the entrenchment of Meta's position in personal social networking.[13] Whether the FTC ultimately succeeds on those allegations is, at the time of writing, undetermined. The strategic-leadership lesson is independent of the litigation outcome: acquisitions that look defensive in real time can be re-characterised as anticompetitive in hindsight, particularly when the acquirer's market position grows substantially in the intervening years. Leaders contemplating acquisitions of small competitors should ask not only whether the deal makes sense today but whether it will make sense after years of scrutiny by regulators who will know what the company became.

The fifth example, and the most current, is the Microsoft–OpenAI partnership and the parallel partnerships between Amazon and Anthropic and between Google and Anthropic. These are the most analytically interesting structures in contemporary digital markets because they achieve many of the strategic effects of an acquisition — equity, exclusivity, revenue sharing, technical integration, control over the destination of computational workloads — without necessarily triggering merger review. The Federal Trade

[10]Standard Oil Co of New Jersey v United States (n 4).
[11]United States v Microsoft Corp (n 5).
[12]Case T-612/17 Google LLC and Alphabet Inc v Commission (n 6).
[13]FTC v Meta Platforms Inc No 1:20-cv-03590-JEB (DDC, filed 9 December 2020).

Commission's 2025 staff report describes the architecture of these arrangements in considerable detail.[14] From a strategic standpoint, the partnership-investment is an innovation: it secures the strategic benefits of vertical alignment with a frontier AI developer while preserving the appearance of independence between the two firms. From a regulatory standpoint, it represents a structural gap that existing competition law was not designed to address. The European Union's Digital Markets Act, which imposes ex ante obligations on designated gatekeepers irrespective of merger-review status, is an early attempt to close this gap.[15] Whether the partnership-investment model will survive the regulatory response now under construction is one of the central questions of digital-market competition policy.

5. THE LEADER'S TIGHTROPE

The picture that emerges from these examples is neither cynical nor reassuring. It is not cynical because the law does not punish success; the firms in these examples were not unwound because they grew, but because they engaged in particular conduct that the law characterised as exclusionary. It is not reassuring because the line between aggressive but lawful competition and unlawful exclusion is genuinely difficult to identify in advance, and intelligent strategic leaders have crossed that line repeatedly across multiple decades. The picture is, rather, a picture of a tightrope.

What does the tightrope require? Three things in addition to many others.

First, antitrust literacy as a core leadership skill. The chief executive of a firm operating in a concentrated digital market who cannot articulate, in the language of competition law, why the firm's conduct constitutes competition on the merits is a chief executive whose strategic decisions are inadequately stress-tested. This does not require the leader to be a lawyer. It requires the leader to be able to subject strategic proposals to the discipline of the question: 'can we defend this as competing on the merits, or are we relying on something else?' When the answer is the latter, the response is not necessarily to abandon the strategy; sometimes it is to reshape it so that the answer becomes the former.

Second, the integration of antitrust risk into strategic planning rather than its quarantine in a compliance department. Antitrust is not a constraint that strategy must work around; it is a strategic input that strategy must incorporate. The firms that treat their general counsel's antitrust function as a brake on operations are the firms whose growth eventually produces the cases they spent years trying to avoid. The firms that treat antitrust principles as a design input — that ask, at the strategic planning stage, what the regulatory trajectory implies for the firm's long-term position — produce more durable strategies and fewer headline cases.

Third, a sober appreciation of the fact that strategic dominance is its own form of strategic risk. The history of antitrust shows the same pattern repeating across generations and industries: Standard Oil, AT&T, IBM, Microsoft, Google, and now potentially the AI infrastructure firms. The firm that achieves the most aggressive strategic position becomes, almost by operation of the system, the firm under the most regulatory scrutiny. This is not unjust; it is the system functioning as designed, because the system was designed to constrain accumulations of private economic power. The leader who builds a strategy on the assumption that this scrutiny will not come is not being strategic but reckless.

[14]Federal Trade Commission, Partnerships Between Cloud Service Providers and AI Developers: FTC Staff Report on AI Partnerships & Investments 6(b) Study (P246201, 17 January 2025).

[15]Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 (Digital Markets Act) [2022] OJ L265/1.

6. CONCLUSION: COMPLIANCE AS STRATEGY

The conventional view treats strategic leadership and antitrust compliance as opposing forces — one offensive, the other defensive; one ambitious, the other cautious. The conventional view is not progressive. The two are different aspects of the same underlying enquiry: what kind of firm is this, what kind of advantage does it hold, and is that advantage of the sort that the legal and regulatory system is designed to permit?

A leader who understands this convergence does not have to choose between ambition and prudence. The ambition is to build something that lasts; the prudence is to build it on foundations that the regulatory system will not have a reason to dismantle. These are not separate goals. They are the same goal, asked in different languages. The strategic leader who learns to speak both languages — who can describe the firm's competitive position in the vocabulary of strategy and in the vocabulary of competition law — is the leader who is most likely to build something durable. Everyone else is, in effect, gambling on regulatory inattention, and the historical record suggests that this is not a gamble that survives a long time horizon.

The good strategist does everything legitimate to win — R&D, technology, speed, product quality — and the law does not disturb a position earned that way. The difficulty is at the boundary: when a dominant firm exploits asymmetry against competitors who lack the resources to contest the conduct, or in fields where the legal framework hasn't yet caught up. Winning in that space isn't competing on the merits — it's timing the regulatory gap. And the law closes gaps. The conduct that looked like strategic genius in an under-regulated field tends to become the case that prompted the regulation. And balancing this is where a strategist becomes a good leader.

What can be taken away from writing this is a single proposition: the most enduring competitive advantage is the one regulators have no reason to attack. That is not a constraint on strategic ambition. It is a definition of what genuine strategic ambition consists of.