

CPI's Asia Column Presents:

Antitrust in Times of National and Global Emergencies

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Introduction

The COVID-19 pandemic is being compared to the Spanish flu and other pandemics of the past. Past experiences predict that society and the economy after the pandemic, when it subsides, will look very different from how it did at the start of 2020. We should anticipate structural change in the economy and society, and antitrust (and other policies) should keep this in mind. In this paper, I draw on the experience of the Great East Japan Earthquake of 2011 and past pandemics to suggest how antitrust during and after pandemic should be.

The road to the post-pandemic world will be long and winding. Antitrust during the pandemic will be different from before and after. During the pandemic, the threshold for antitrust enforcement should be different to account for changes in both demand and supply capacity (i.e. production and distribution). However we should not forget that the crisis will be resolved by innovation such as new technologies, new goods and services provided by new entities, as well as simply new ways of doing things. Antitrust should promote this process and not get in the way. Once we overcome the pandemic, the economy will have changed, but the application of antitrust will be surprisingly unchanged. The new technology developed as we face the pandemic, and the digital economy and digital platforms, will contribute to the recovery. There will also be new players providing novel solutions that we need to make sure will not be excluded.

Experience from the Great East Japan Earthquake of 2011

The Great East Japan Earthquake refers to the sequence of disasters that started in 2011 with the earthquake off the Pacific Coast of Tohoku at 2:46 pm on March 11th. This was followed by tsunamis overcoming cities and villages along the coast. One of the tsunamis destroyed nuclear power plants belonging to Tepco (Tokyo Electric Power Company Holdings) in Fukushima prefecture. The earthquake and tsunami affected a large area in northeastern Japan, but the electricity blackout affected Tokyo and the surrounding six prefectures served by the power plants. The disaster resulted in losses of human life and of physical capital including roads, railroads, factories, storage facilities and retailers in a very large area. Factories destroyed by the earthquake and tsunami included subcontractors in the electronics and automobile parts industries. The physical damage to factories and the transportation system was limited to three prefectures near the epicenter, but the production shutdown had national and global consequences. This was in addition to effects on producers of food and other final goods that sold nationally and globally. The electricity shutdown affected factories in a very wide area around Tokyo area for months.

The Japan Fair Trade Commission (“JFTC”) published “Examples of Antimonopoly Act Applications during the Earthquake Disaster and other Emergencies”² to clarify situations where coordination among competitors would be tolerated during emergencies. The examples focus on how firms may coordinate production of critical inputs when factories or supply routes have been disrupted. Such coordination could be organized either by central or local governments or by industry and trade associations. The JFTC stressed the need to adjust the trade-off between public benefit and efficiency losses *in the short run*.

During the months after the earthquake and the other disasters that followed, the distribution networks of convenience stores, which are open 24 hours a day, seven days a week, became

very important. Convenience chains, with their extensive 24 hour national networks that distribute goods to all their stores, became indispensable to consumers. This is because the shortage from factories closing down not just from earthquakes but from scheduled electricity blackouts in some areas required redistribution of goods at the national level. At the same time, national calls to reduce electricity consumption allowed convenience stores to reduce their lighting. Keeping a store well-lit throughout the night is critical when your rivals are also brightly-lit. The convenience stores' profits increased, and came out stronger after the crisis. I note that the three major convenience franchises (Seven-Eleven, Family Mart and Lawson) continued to compete during the emergency.³ I also note that some of them have been under investigation for violation of subcontracting law since.

Japan has been engaged in “fukko” reconstruction since March 2011. The word “fukko” has two characters, “fuk” meaning to revive and “ko” meaning to promote. Some people have stressed the “ko” aspect, that the goal is not to rebuild everything as it was before, but to go further. In fact, taking years to rebuild former production capacity has sometimes been misplaced effort, because the relevant demand or workers are no longer there. Buyers and workers had adjusted to the changed environment. While we grieve for the hardship workers, consumers and managers went through, we can also be comforted by the fact that they have moved on, and are now prospering in the new environment.

I believe this is what will happen with COVID-19. Consumers, firms, and workers are adjusting. This will be very painful for some. Public policy should focus on assisting them. At the same time, part of the pain will be relieved by new services and goods. Indeed, for some, the situation will be an opportunity to develop new services or goods markets, or enter existing ones. And society will be better off. It will never be better than if the pandemic never occurred, but will be better off than if it had not adapted.

The role of the antitrust authority will be to adjust to the COVID-19 situation. It may be necessary to change the level of coordination allowed for the good of society in extraordinary circumstances. It is important to make clear the limits of any such adjustments, including the relevant time horizon. This can be done by publishing examples, as the JFTC did following the 2011 disaster. Publication of such examples at an early stage will save time and effort by making individual inquiries unnecessary. We should always remember that society will also benefit from new entrants. The solution to a temporary problem may not be to save suppliers of current goods and services but to have them replaced by better goods and services. Thus, exemptions from antitrust rules should not be automatic.

Past Pandemics

Unfortunately, there is no denying that losses from pandemics are never recovered. The economy would have been better off if no pandemic had occurred. However, the losses of human and physical capital were not uniform across regions, which meant pandemics changed their distribution. Past pandemics also led to the adoption of new technologies. Shortages of labor after the Black Death in the 14th century led to higher wages, resulting in higher demand for manufactured goods, and urbanization. Evidence from the Spanish flu pandemic shows that the demographic shock led to fundamental changes in economic structures.⁴

During the pandemic, production and distribution should focus on curing or correcting the damage. If there is a shortage of medical products or food, we should concentrate on adjusting the system to address this shortage. If there is a break in the supply chain, competitors that produce substitutes could step in. This may require coordination that in normal times could be anticompetitive. But we also should remember that a new alternative could step in. We need to avoid coordination among incumbents that would keep entrants or new technologies out.

This is particularly important because evidence from previous pandemics is that economic and social structures do change. Policy should take this into account, as the Japanese experience shows. We should not concentrate on reconstructing the pre-pandemic world. We should strive to build a better economy and society, including by adopting new technologies.

The Pandemic and the Digital Economy

Digital platforms are in a constant state of flux, and the pandemic has introduced new forces that will influence their direction. E-commerce provides a valuable service when physical contact must be avoided. They serve a function similar to how convenience stores provided valuable services after the Great East Japan Earthquake. Their market position was strengthened in the process. Matching services for workers should help shift workers from unemployment to where they are needed.

Apple and Google have exchanged information in order to build a pandemic fighting tool. This coordination will provide a valuable weapon to fight COVID-19. Concerns have been raised about personal information and privacy. This may be the moment when existing digital platforms find solutions to overcoming such privacy concerns. At the same time, I would also be concerned about coordination among incumbents leading to new OS being shut out in the future. There is no OS in the horizon that I am aware of, but there is no reason to believe there will never be a better one in the future. This could be an ideal time for a new OS that better addresses personal information concerns to enter the mobile OS market. We need to be careful this is not hindered in the name of the emergency.

We have already seen the rise of a new communication platform, Zoom. It captured user share by being a service that had attractive new attributes at an attractive price. It has improved quality of life for those locked down at home. I cannot help but wonder if Skype changed its course after it was acquired by Microsoft, allowing it to be overtaken by Zoom.

¹ Opinions expressed here are those of the author and do not represent that of the Japan Fair Trade Commission.

² https://www.jftc.go.jp/soudan/shinsaikanren/index_files/souteijirei.pdf (in Japanese only).

³ The JFTC published clarification on antitrust thinking for intra industry cooperation for distribution of emergency supplies. <https://www.jftc.go.jp/soudan/shinsaikanren/110318busshi.html> (in Japanese).

⁴ The Economist, "Throughout history, pandemics have had profound economic effects," March 13, 2020. Brainerd, E. & M. V. Siegler, "The Economic Effects of the 1918 Influenza Epidemic," CEPR Discussion Paper No. 3791. February 2003. Voigtlander, N. & H-J. Voth, "The Three Horsemen of Riches: Plague, War and Urbanization in Early Modern Europe," *Review of Economic Studies*, 2013.80:774-811.