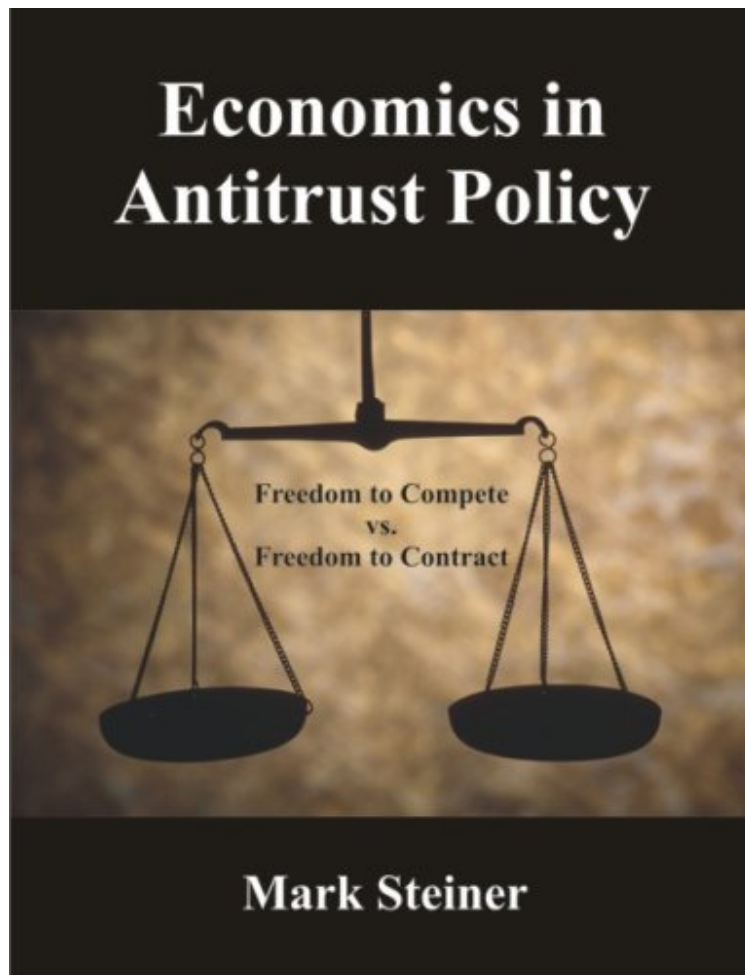


# Economics in Antitrust Policy: Freedom to Compete vs. Freedom to Contract

Mark Steiner

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**Mark Steiner : Economics in Antitrust Policy: Freedom to Compete vs. Freedom to Contract** before purchasing it in order to gage whether or not it would be worth my time, and all praised Economics in Antitrust Policy: Freedom to Compete vs. Freedom to Contract:

0 of 0 people found the following review helpful. Excellent review of the effects of economics on policyBy Charles BrookingsThe book presents a very good overview of how economics has come to influence antitrust policy in recent decades. Unlike other books it is not a mere descriptive text listing cases. The author connects decicions with economic theory and empirical evidence from studies. This includes a nice - and brief - insight into various economic theories of competition.In the analysis part, the book sheds a new and different light on the effects that the influence of economics has on antitrust policy in the US and in the EU. The author critically analyses the incentives it gives to

economists, lawyers and administrators in antitrust agencies. Supported by numbers from various empirical studies, he bases his theses not just on solid theoretical but practical ground. In the last chapter, the author recommends some new policy solutions that are different and sometimes contrary to the mainstream literature on economics in antitrust. Being an economist, the author also takes into account the negative effects his trade can have on policy and thus gets to interesting conclusions. A very good read for all interested people from antitrust lawyers to authorities, economists and even students or scholars of antitrust.

In the field of antitrust, the freedoms to contract and compete can and do contradict. Profit-maximizing companies desire perfectly competitive input markets to minimize their costs, but want monopolistic markets for their outputs to maximize their profits. Consequently, they have strong incentives to undermine competition in their output markets. In a world without antitrust laws, many companies would thus eliminate competition by using their freedom to contract, either by entering into legally enforceable agreements which fix prices or divide up markets, or by merging and acquiring rivals to gain market control. Therefore, guaranteeing and safeguarding companies' abilities to compete comes at the cost of restricting their freedoms to contract. The state's role in this task is a delicate one though: government intervention itself necessarily limits the economic freedom of individuals and firms, and limiting the freedom of contract has potentially detrimental effects on economic activity as well. Hence, antitrust policy must find the right balance between the two freedoms of competition and contract, allowing competition to flourish while upholding the contractual freedoms necessary for a functioning market. The policies in the U.S. and Europe used to protect competition with per se rules, setting clear boundaries for the freedom to contract where it interfered with the freedom to compete. Over the past decades, improvements in economic analysis provided measurable dimensions for 'competition' through measures like efficiency and welfare. With these new and complex economic tools, the aim of an antitrust policy moved away from an 'indirect' mechanism which provided and enforced a strict framework of negative per se rules within which the competitive process was allowed to happen. The current policies directly aim at promoting welfare by attempting to 'balance' the welfare effects of individual business practices, permitting contracts or mergers with benign effects and prohibiting contracts with detrimental effects on welfare in potentially every case. These economic insights have promoted a better understanding of the competitive process and contributed to improved antitrust rules. However, in the actual enforcement of antitrust laws, recent developments caused by the influence of economic analysis have had a detrimental impact on antitrust policy in both the U.S. and the EU. First, it increased the discretion of competition authorities, lowering legal certainty for companies and increasing the potential for wrong decisions. Second, it gave companies incentives to waste resources on rent seeking activities by using economic analyses to demonstrate efficiencies in complicated and timely investigations and litigation. And third, the predominant use of economic analysis has massively increased the costs of enforcement. This thesis is the first one to depict these negative effects caused by recent developments and shows that a policy with clear limitations through proposed per se rules would be superior for it would eliminate the illustrated negative effects.